

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OMAR RASHAD POUNCY,

Petitioner,

v.

Case No. 13-cv-14695

Hon. Matthew F. Leitman

CARMEN D. PALMER,

Respondent.

ORDER DENYING MOTION TO DISMISS
WITH PREJUDICE (ECF No. 238)

Omar Pouncy's Petition for a Writ of Habeas Corpus is currently pending before the Court. On May 31, 2019, Respondent filed a motion to dismiss the Petition based upon alleged litigation-related misconduct by Pouncy. (*See* Mot. To Dismiss, ECF No. 238.) During an on-the-record conference on February 5, 2020, the Court explained that even if it were to find that Pouncy actually committed the alleged misconduct, the Court would not dismiss the entire Petition because doing so would be a disproportionately harsh sanction. (*See* Tr. 2/5/2020, ECF No. 284.) The Court concluded that an appropriate sanction would be to decline to consider any claim that is the subject of a valid procedural default defense. (*See id.*) Stated another way, the Court concluded that if it determined that Pouncy was guilty of the alleged misconduct, it would not entertain any argument aimed at excusing any

procedural default. After explaining its position, the Court offered Pouncy a choice: he could dispute the allegations of misconduct and attempt to preserve his opposition to Respondent's procedural default arguments, or he could withdraw the claims that were the subject of a valid procedural default defense. (*See id.*) Pouncy chose the latter option. (*See* Notices, ECF Nos. 287-89.) He has agreed to withdraw the claims that are the subject of a valid procedural default defense and to forego his opportunity to seek to excuse the valid procedural default defenses. (*See id.*) Given Pouncy's position and the Court's refusal to dismiss the entire Petition even if it found Pouncy guilty of the alleged misconduct, there is no need for additional proceedings in connection with the motion to dismiss. The motion is DENIED for the reasons stated on the record, and the Court will neither (1) entertain any arguments by Pouncy attempting to excuse Respondent's valid procedural default defenses nor (2) proceed to decide any claims that are the subject of a valid procedural default defense.

IT IS SO ORDERED.

Dated: October 13, 2020

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE