

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYRONE BOSWELL,

Petitioner,

Case No. 14-cv-12705

v.

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

LORI GIDLEY AND DUNCAN McLAREN,

Respondents.

UNITED STATES MAGISTRATE JUDGE
PATRICIA T. MORRIS

**OPINION AND ORDER GRANTING PETITIONER'S MOTION TO
DEFER A RULING [14]**

On July 9, 2014, Petitioner Tyrone Boswell, presently confined at Kinross Correctional Facility in Kincheloe, Michigan, filed a *pro se* habeas corpus petition under 28 U.S.C. § 2254 *See* Dkt. No. 1. Petitioner challenged his conviction for felony murder, MICH. COMP. LAWS § 750.316(1)(b). *See id.* at 1 (Pg. ID 1). On the same day, Petitioner filed a motion to hold his habeas petition in abeyance. Dkt. No. 2. On August 13, 2014, this Court entered an order granting Petitioner's motion to hold his habeas petition in abeyance so that he could complete post-conviction proceedings in state court and exhaust state remedies for certain new claims. Dkt. No. 4, p. 4 (Pg. ID 156). The Court also administratively closed the case. *See id.*

Petitioner subsequently moved to reopen this case and to amend his original habeas petition. Dkt. No. 6, p. 1 (Pg. ID 159). On September 2, 2016, the Court entered an order that re-opened this case, granted Petitioner's motion to amend his habeas petition, and ordered Respondent to file an answer to the amended petition within one hundred eighty days of the Court's order. Dkt. No. 10, pp. 2–3 (Pg. ID 242–43.) In the same order, the Court stated that Petitioner would be permitted to file a reply to Respondent's answer within forty-five days of his receipt of the answer. *Id.* at 4 (Pg. ID 244).

On February 3, 2017, Respondent filed an answer to the amended petition and the Rule 5 materials. Dkt. Nos. 12, 13. Currently before the Court is Petitioner's Motion to Defer a Ruling on his case, pending receipt of his Reply, his Motion for a Fact-Finding Procedure, or a Motion for Summary Judgment. Dkt. No. 14.

Petitioner mistakenly states in his pending motion that the Court failed to set a date for his reply to Respondent's answer. *Id.* at 2 (Pg. ID 1137). In fact, the Court stated in its previous order that Petitioner would have forty-five days from receipt of Respondent's answer to file a reply. Dkt. No. 10, p. 4 (Pg. ID 244). Nevertheless, Petitioner states that he has not obtained his General Education Diploma (GED) and that he is permitted to spend only a few hours a week in the prison law library. Dkt. No. 14, p. 2 (Pg. ID 1137). The Court, moreover, was

unable to address Petitioner's motion until now, even though Petitioner sought a deadline of March 30, 2017, in which to file his reply and motions. Under the circumstances, the Court believes that Petitioner should be given additional time to file a reply. Accordingly,

IT IS ORDERED that Petitioner's Motion to Defer a Ruling Pending Receipt of his Reply, Motion for Fact Finding Procedure, or Motion for Summary Judgment [14] is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner shall have forty-five days from the date of this order to file a reply to Respondent's answer to the amended petition. The Court will defer ruling on the habeas petition for at least forty-five days from the date of this order.

IT IS SO ORDERED.

Dated: April 6, 2017

s/Gershwin A Drain
HON. GERSHWIN A. DRAIN
United States District Court Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on April 6, 2017, by electronic and/or ordinary mail.

/s/ Tanya Bankston
Deputy Clerk