

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRELL MANN,

Petitioner,

v.

BONITA HOFFNER,

Respondent,

Case No. 2:14-cv-12828

HONORABLE STEPHEN J. MURPHY, III

**OPINION AND ORDER GRANTING MOTION TO
REOPEN HABEAS PETITION [15], GRANTING MOTION TO AMEND
PETITION FOR WRIT OF HABEAS CORPUS [15], AND AMENDING CAPTION**

On April 17, 2015, Judge Patrick J. Duggan entered an opinion and order granting Petitioner Mann's motion to hold his habeas petition in abeyance to allow Petitioner to return to the state courts to exhaust additional claims that he had failed to exhaust in the state court prior to filing his habeas petition. Order, ECF No. 12. The court also administratively closed the case. Petitioner has now filed a motion to reopen his petition for writ of habeas corpus following the exhaustion of his claims in state courts. Petitioner has also filed a motion to amend his habeas petition. ECF No. 15. For the reasons below, the Court will grant Petitioner's motion.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner, following the exhaustion of state court remedies. *See, e.g., Rodriguez v. Jones*, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). Petitioner Mann's claims have been exhausted with the state courts; his petition is now ripe for consideration. Accordingly, the Court will order that the original habeas petition be reopened.

Also, the Court will order that the caption in this case be amended to reflect that the proper respondent in this case is now Bonita Hoffner, the warden of the prison where petitioner is currently incarcerated. See *Edwards Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006) (holding that a habeas petition must name the appropriate state official as the respondent); see also Rule 2(a), Rules Governing § 2254 Cases in United States District Courts, 28 U.S.C. § 2254.

Additionally, the Court will grant Petitioner's motion to amend his habeas petition. "Notice and substantial prejudice to the opposing party" are the critical factors in determining whether an amendment to a habeas petition should be granted. *Coe v. Bell*, 161 F.3d 320, 341–42 (6th Cir. 1998). Here, there is no indication that allowing the amendment would cause prejudice to Respondent or delay to the Court; nor is there evidence of bad faith on Petitioner's part in bringing the motion. See *Gillette v. Tansy*, 17 F.3d 308, 313 (10th Cir. 1994).

The Clerk of the Court shall serve a copy of the amended petition for writ of habeas corpus and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases. See *Coffee v. Harry*, No. 04-71209, 2005 WL 1861943, *2 (E.D. Mich. Aug. 2, 2005). The Respondent shall file a supplemental answer addressing the claims raised by Petitioner in his amended petition, within one hundred and eighty days of the Court's order. See *Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. Respondent is also ordered to provide this Court with any additional Rule 5 materials that have not already been provided to the Court at the time that it files its supplemental answer. See *Griffin v. Rogers*, 308 F.3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28

U.S.C. foll. § 2254.

Petitioner shall have forty-five days from the receipt of the answer to file a reply brief, if he so chooses. See Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

ORDER

WHEREFORE it is hereby **ORDERED** that:

(1) The motion to reopen the petition for writ of habeas corpus [15] is **GRANTED**. The Clerk of the Court shall reopen the habeas petition to the Court's active docket.

(2) The caption of the case is **AMENDED**.

(3) The motion to amend the petition for writ of habeas corpus [15] is **GRANTED**.

(4) The Clerk of the Court shall **SERVE** a copy of the amended petition for writ of habeas corpus [15] and a copy of this Order on Respondent and the Attorney General by first class mail.

(5) Respondent shall **FILE** a supplemental answer and any additional Rule 5 materials within **one hundred and eighty (180) days** of the date of this Order or show cause why they are unable to comply with the order.

(6) Petitioner shall have **forty-five days** from the date that he receives the answer to file a reply brief.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: January 26, 2017

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 26, 2017, by electronic and/or ordinary mail.

s/David P. Parker
Case Manager (313) 234-2680