

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN VILLENEUVE,

Petitioner,

Civil No. 2:14-CV-13768

HONORABLE DENISE PAGE HOOD

v.

CHIEF UNITED STATES DISTRICT JUDGE

GEORGE STEPHENSON,

Respondent,

OPINION AND ORDER: (1) GRANTING MOTION TO LIFT THE STAY OF PROCEEDINGS, (2) AMENDING CAPTION, (3) GRANTING THE MOTION TO AMEND PETITION FOR WRIT OF HABEAS CORPUS, (4) DIRECTING THAT THE FIRST AND SECOND AMENDED PETITIONS (Dkts. # 13, # 22) BE SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL, AND (5) DIRECTING RESPONDENT TO FILE A SUPPLEMENTAL ANSWER AND ANY ADDITIONAL RULE 5 MATERIALS IN THIS CASE

John Villeneuve, (“Petitioner”), confined at the Thumb Correctional Facility in Lapeer, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 20, 2015, the Court granted petitioner’s motion to amend the habeas petition but then held the amended petition in abeyance so that petitioner could return to the state courts to exhaust his new claims.

Petitioner has now filed a second motion to file an amended habeas

petition, which is construed as a motion to lift the stay of proceedings.

The Court grants the motion to lift the stay of proceedings and the motion to amend the habeas petition. The Court amends the caption. The Court orders respondent to file a supplemental answer and any additional Rule 5 materials within sixty (60) days of this order. Petitioner has forty five (45) days from receipt of the answer to file a reply brief.

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 alleges in his second amended petition that his claims were exhausted with the state courts. The case is reopened.

The Court orders that the caption in this case be amended to reflect that the proper respondent in this case is now George Stephenson, the warden of the prison where petitioner is now incarcerated. *See Edwards Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); *See also* Rule 2(a), 28 foll. U.S.C. § 2254.

The Court grants 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, 341-342 (6th Cir. 1998). The motion to amend the petition is granted; there is no evidence of bad faith on Petitioner's part in bringing the motion to amend or prejudice to respondent if the motion is granted. See *Gillette v. Tansy*, 17 F.3d 308, 313 (10th Cir. 1994).

The Clerk of the Court shall serve a copy of the first amended habeas petition [Dkt. # 13], a copy of the second amended petition for writ of habeas corpus [Dkt. # 22], 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, Rule 4. See *Coffee v. Harry*, No. 04-71209, 2005 WL 1861943, * 2 (E.D. Mich. Aug. 2, 2005). Respondent shall file a supplemental answer to these amended petitions within sixty days of the Court's order.¹ 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

¹ Respondent filed an answer to petitioner's original habeas petition on February 6, 2015 and is therefore only required to file an answer addressing the claims raised by petitioner in his two amended petitions.

supplemental answer. See *Griffin v. Rogers*, 308 F. 3d 647, 653 (6th Cir. 2002). Petitioner has 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.

S/Denise Page Hood
Denise Page Hood
Chief Judge, United States District Court

Dated: August 31, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 31, 2017, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager