

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK ABRAITIS,

Petitioner,

v.

CONNIE HORTON,¹

Defendant.

Case No. 14-cv-14434

Honorable Laurie J. Michelson

Magistrate Judge Mona K. Majzoub

**OPINION AND ORDER GRANTING MOTION TO LIFT STAY AND AMEND
PETITION [11] AND REOPENING CASE**

Petitioner Mark Abraitis filed a *pro se* petition for writ of habeas corpus in this Court on November 11, 2014. (R. 1.) On April 7, 2015, this Court granted Abraitis's motion for stay and abeyance to allow him to return to state court and exhaust new claims for relief. (R. 7.) Abraitis has now filed a motion amend his Petition, which the Court also construes as a motion to lift the stay, on February 23, 2017. (R. 11.) This motion will be GRANTED.

The Court may reopen and reinstate a habeas proceeding upon a timely request from the Petitioner. *See, e.g., Rodriguez v. Jones*, 625 F. Supp. 2d 552, 560 (E.D. Mich. 2009). Petitioner represents that he has pursued his remedies in state court and has timely filed a motion to reopen his case. He has also attached an Amended Petition to his motion. The Amended Petition is therefore ripe for consideration. And the Court does not discern any prejudice in allowing the amendment. *See Coe v. Bell*, 161 F.3d 320, 341–42 (6th Cir. 1998).

¹ The Court hereby amends the case caption to reflect that the proper respondent in this case is now Connie Horton, the warden of the prison where Petitioner is currently incarcerated. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004); *De Los Santos v. United States*, 133 F. App'x 992, 993 (6th Cir. 2005); *see also* Rule 2(a), 28 foll. U.S.C. § 2254.

Petitioner also filed an application to proceed *in forma pauperis*. (R. 13.) This Court already granted Petitioner *in forma pauperis* status (R. 3), and it does not appear that Petitioner's financial situation has changed. Accordingly, to the extent it is not mooted by this Court's prior order, Petitioner's application will be GRANTED.

Accordingly, IT IS ORDERED that Petitioner's motion to amend. (R. 11) is GRANTED. The Court directs the Clerk of Court to reopen this case to the Court's active docket.

IT IS FURTHER ORDERED that Petitioner's application to proceed *in forma pauperis* is GRANTED.

IT IS FURTHER ORDERED that the case caption is AMENDED to reflect Connie Horton as the proper respondent.

IT IS FURTHER ORDERED that that Clerk of Court shall serve copies of the Petition (R. 1), Amended Petition (R. 12), and this Order on Respondent and the Attorney General by first class mail. Respondent shall file an answer and produce the Rule 5 materials within one hundred and eighty (180) days of this order.

IT IS FURTHER ORDERED that Petitioner shall have forty five days from the date he receives the answer to file a reply brief.

Dated: March 2, 2017

s/Laurie J. Michelson
LAURIE J. MICHELSON
U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on March 2, 2017.

s/Keisha Jackson
Case Manager