

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM EDWARD LAVELLY,

Petitioner,

vs.

CIVIL ACTION NO. 2:15-CV-11245
HON. GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

KEVIN LINDSEY,

Respondent.

**ORDER REQUIRING RESPONDENT TO FILE AN ANSWER AND THE
RULE 5 MATERIALS WITHIN SIXTY DAYS OF THE COURT'S ORDER**

Petitioner's habeas application was held in abeyance to permit petitioner to exhaust additional claims. On June 21, 2018, this Court granted the motion to lift the stay and gave petitioner ninety days to file an amended habeas petition, if he chose to do so. Respondent was given one hundred and twenty days from the date that the amended petition was filed, or the date that the period for filing an amended petition expired, whichever was later, to file an answer to the original and/or amended petitions. Petitioner never filed an amended petition. Respondent had one hundred and twenty days from the expiration of the 90-day period for filing an

amended petition to file an answer, which would have been no later than January 17, 2019. Respondent has not filed an answer to the original petition.

Delays by the state in responding to a petition for writ of habeas corpus “can, in and of themselves, prejudice a petitioner by creating a bar to a merits review of a prisoner’s constitutional claims.” *Burgess v. Bell*, 555 F. Supp. 2d 855, 857 (E.D. Mich. 2008). Moreover, “Rapid adjudication of habeas petitions is important because...the writ of habeas corpus exists so that people wrongly detained may obtain freedom.” *Wilkerson v. Jones*, 211 F. Supp. 2d 856, 860 (E.D. Mich. 2002). This Court has the discretion under the rules governing responses in habeas corpus cases to set a deadline for a response to petitioner’s habeas petition. *Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001). 28 U.S.C. § 2243. In light of the amount of time that has passed without an answer, respondent shall file an answer to the petition for writ of habeas corpus within sixty (60) days of this order. Respondent is also ordered to provide this Court with the Rule 5 materials at the time that it files its 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 (45) 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.

Dated: March 18, 2019

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on March 18, 2019, by electronic and/or ordinary mail and also on William Lively #848603, G. Robert Cotton Correctional Facility, 3500 N. Elm Road, Jackson, MI 49201.

s/Barbara Radke
Deputy Clerk