

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUEBEN HERRERA,

Petitioner,

v.

SHERRY L. BURT,

Respondent.

Case Nos. 17-12175, 17-12192

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

UNITED STATES MAGISTRATE JUDGE
ANTHONY P. PATTI

ORDER CONSOLIDATING CASES

Petitioner Rueben Herrera (“Petitioner”), incarcerated at the Muskegon Correctional Facility in Muskegon, Michigan, has filed two petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner was convicted in 1974 after a jury trial in the Oakland Circuit Court of second-degree murder, MICH. COMP. LAWS § 750.317, for which he received a life sentence. Both petitions raise a single claim: Petitioner was denied his right to appeal his conviction when his appellate counsel disregarded his instructions to file a timely appeal of right. The first petition was assigned Case No. 17-12175, and the second petition was assigned Case No. 17-12192.

Federal Rule of Civil Procedure 42(a) provides as follows:

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

FED. R. CIV. P. 42(a).

It is within the discretion of the district court to determine whether cases involving the same factual and legal questions should be consolidated. *Stemler v. Burke*, 344 F.2d 393, 396 (6th Cir. 1965). In the instant case, Petitioner filed two petitions challenging the same conviction and raising the same issue. Indeed, it appears Petitioner may have intended to file a single action but sent the documents in separate envelopes. Because the two cases involve common questions of fact and law, the court will consolidate the two cases pursuant to Federal Rule of Civil Procedure 42(a).

IT IS ORDERED that Case Nos. 17-12175 and 17-12192 are hereby **CONSOLIDATED**. The Clerk of the Court shall docket a copy of this order in both cases.

IT IS FURTHER ORDERED that the Clerk shall docket all of the documents filed in Case No. 17-12192 in Case No. 17-12175. All future documents shall be filed under Case No. 17-12175.

IT IS FURTHER ORDERED that Case No. 17-12192 is **DISMISSED**.

/s/Gershwin A Drain

GERSHWIN A. DRAIN
United States District Judge

Dated: July 11, 2017