

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HENRY BROWN,

Petitioner,

v.

Case No. 17-cv-13817

Honorable George Caram Steeh

SHANE JACKSON,

Respondent.

_____ /

ORDER

**(1) DIRECTING PETITIONER TO SUBMIT A
COMPLETE MEMORANDUM OF LAW IN SUPPORT
OF HIS PETITION FOR WRIT OF HABEAS CORPUS,
(2) GRANTING PETITIONER'S MOTION FOR
ADDITIONAL RULE 5 MATERIALS (ECF NO. 9), AND
(3) GRANTING RESPONDENT AN EXTENSION OF TIME TO FILE
A RESPONSE TO THE PETITION WITH THE RULE 5 MATERIALS**

Petitioner Henry Brown, a state prisoner at the Carson City Correctional Facility in Carson City, Michigan, seeks the writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted of assault with intent to commit murder, felon in possession of a firearm, and possession of a firearm during the commission of a felony. He alleges as grounds for habeas relief that (1) his sentence is cruel and unusual punishment, (2) the victim's out-of-court statements were inadmissible hearsay, (3) the prosecution's evidence was insufficient, (4) trial and

appellate counsel were ineffective, and (5) the prosecutor (a) failed to correct perjured testimony and (b) suppressed exculpatory impeachment evidence. Currently before the Court is petitioner's Motion for Additional Rule 5 Materials (ECF No. 9). Respondent Shane Jackson has not filed an answer to Petitioner's motion or a response to the habeas petition.

As a preliminary matter, the Court notes that the Memorandum of Law which petitioner attached to his habeas petition is incomplete. It currently includes a table of contents, an index of authorities, a statement of the questions presented to the Court, and a one-page statement of facts. The statement of facts appears to end mid-statement, and there are no arguments in support of petitioner's habeas claims. Accordingly, the Court orders Petitioner to submit an amended Memorandum of Law in Support of Petition for Writ of Habeas Corpus to the Clerk of this Court within thirty (30) days of the date of this order. Respondent shall have an additional forty-five (45) days after petitioner files his amended memorandum to file his responsive pleading and the Rule 5 materials.

In his pending motion, petitioner seeks to have respondent file certain transcripts from Wayne County Circuit Court case number 10-009267-01-FC. The requested transcripts are for (1) the September 1, 2010 preliminary examination and (2) the November 12, 2018 Wade hearing.

Rule 5© of the Rules Governing Section 2254 Cases in the United States District Courts requires the respondent to attach to his or her answer “parts of the transcript that the respondent considers relevant.” In addition, “[t]he judge may order that the respondent furnish other parts of existing transcripts or that parts of untranscribed recordings be transcribed and furnished.” Id.

Although the transcripts that petitioner seeks were filed in a criminal case other than the one at issue in his habeas petition, petitioner asserts that the transcripts are relevant to his fifth habeas claim regarding the prosecutor’s alleged suppression of evidence and failure to correct perjured testimony. Furthermore, it does not appear that acquiring the transcripts will be unduly burdensome for respondent. Accordingly, the Court grants petitioner’s Motion for Additional Rule 5 Materials (ECF No. 9) and directs respondent to file the transcripts for the preliminary examination and the Wade hearing in Wayne County Circuit Court case number 10-009267-01-FC. Respondent may file those items with his response to the habeas petition and the other Rule 5 materials.

ORDER

To summarize, and for the reasons given above, it is ordered that:

- petitioner shall submit a complete copy of his Memorandum of Law in Support of the Petition for Writ of Habeas Corpus to the Clerk of this Court within thirty (30) days of the date of this order; petitioner also shall mail a copy of the Memorandum of Law to Respondent;

- petitioner's Motion for Additional Rule 5 Materials (ECF No. 9) is granted;

- respondent shall file the transcripts for the September 1, 2010 Preliminary Examination and the November 12, 2010 Wade hearing in Wayne County Circuit Court case number 10-009267-01-FC with his response to the habeas petition and the other Rule 5 materials;

- respondent shall have forty-five (45) days from the date of petitioner's amended memorandum of law to file his response to the habeas petition and the relevant Rule 5 materials, including the two transcripts from case number 10-009267-01-FC.

- petitioner shall have forty-five (45) days to file a reply to respondent's answer.

Dated: June 14, 2018

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 June 14, 2018, by electronic and/or ordinary mail and also on Henry Brown #281484, Carson City Correctional Facility, 10522 Boyer Road, Carson City, MI 48811.

s/Barbara Radke
Deputy Clerk