

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

MARVIN LAMAR WILBURN,

Petitioner,

Case Number 2:18-CV-10253
HONORABLE DENISE PAGE HOOD

v.

DANIEL LESATZ,

Respondent.

**OPINION AND ORDER GRANTING PETITIONER'S MOTION FOR AN
EXTENSION OF TIME TO FILE HIS POST-CONVICTION MOTION FOR
RELIEF FROM JUDGMENT WITH THE STATE COURT**

Marvin Wilburn, ("Petitioner"), filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was held in abeyance so that petitioner could return to the state courts to exhaust additional claims. Petitioner was given sixty days to initiate post-conviction proceedings in the state trial court to exhaust these claims.

Petitioner has filed a motion for an extension of time to file the post-conviction motion for relief from judgment with the state trial court.

Petitioner claims that he needs the assistance of a prison paralegal from the Legal Writers' Program to help him research, write, and file his post-conviction motion for relief from judgment. Petitioner claims that the Covid-19 Pandemic has limited his ability to confer with his assigned prison paralegal in prison to prepare his post-conviction motion.

A federal district court has the power to extend the stay of a habeas petition, particularly where the respondent does not oppose the extension of the stay. See *e.g. Roberts v. Norris*, 415 F.3d 816, 819 (8th Cir. 2005). Petitioner did all that he could reasonably do to file his state post-conviction motion for relief from judgment on time, but was “prevented in some extraordinary way” from filing the motion with the state trial court on time, in part, because of the various restrictions placed on prisoners within the Michigan prison system due to the COVID-19 Pandemic. Accordingly, an extension of time should be granted to petitioner. See *Schillereff v. Quarterman*, 304 F. App’x 310, 314 (5th Cir. 2008).

The Court grants petitioner a ninety day extension of time from the date of this order to initiate post-conviction proceedings in the state courts. Petitioner is still required to return to federal court within sixty days of completing the exhaustion of state court post-conviction remedies.

IT IS HEREBY ORDERED THAT:

The motion for an extension of time to file the post-conviction motion (ECF No. 17) is **GRANTED**. Petitioner has **ninety (90) days** from the date of this order to file his post-conviction motion with the state trial court.

s/Denise Page Hood

Denise Page Hood

Chief Judge, United States District Court

Dated: November 20, 2020