

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

RALPH COTTENHAM,

Petitioner,

v.

Case Number 2:19-CV-10690
HONORABLE SEAN F. COX
UNITED STATES DISTRICT JUDGE

NOAH NAGY,

Respondent,

OPINION AND ORDER: (1) GRANTING MOTION TO REOPEN THE HABEAS PETITION, (2) AMENDING THE CAPTION, (3) GRANTING PETITIONER AN EXTENSION OF TIME TO FILE AN AMENDED HABEAS PETITION, AND (4) SETTING A DEADLINE FOR RESPONDENT TO FILE A SUPPLEMENTAL ANSWER

Petitioner filed a petition for writ of habeas corpus, which was held in abeyance so that petitioner could return to the state courts to exhaust additional claims. The Court administratively closed the case.

Petitioner filed a motion to reopen the petition. For the reasons that follow, the motion to reopen the petition is **GRANTED**. Petitioner is **GRANTED** a ninety day extension of time to file an amended habeas petition. The Court amends the caption to reflect the name of petitioner's current warden, Noah Nagy.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner, following the exhaustion of state court remedies. *See e.g. Rodriguez v. Jones*, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). Petitioner claims that his post-conviction proceedings have been finalized. The Court orders that the original habeas petition be reopened.

The Court also orders that the caption in this case be amended to reflect that the proper respondent in this case is now Noah Nagy, the warden of the prison where petitioner is currently

incarcerated. *See Edwards Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); *See also* Rule 2(a), 28 foll. U.S.C. § 2254.

The Court grants petitioner an extension of time to file an amended habeas petition to raise the additional claims that he exhausted on state post-conviction review. A federal district court has the power to grant an extension of time to a habeas petitioner to file an amended habeas petition. *See e.g. Hill v. Mitchell*, 30 F. Supp. 2d 997, 998 (S.D. Ohio. 1998).

The Court grants petitioner ninety days from the date of this order to file an amended habeas petition. If petitioner fails to file an amended petition by that date, the Court will adjudicate petitioner's remaining claims based on the pleadings already filed in this case. If petitioner files an amended petition, respondent shall have ninety days from the date of the amended petition to file an answer to the amended petition.¹ Petitioner has forty five days from the receipt of the supplemental 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.

ORDER

IT IS ORDERED THAT:

- (1) The motion to reopen the petition for writ of habeas corpus (ECF No. 15) is **GRANTED**. The Clerk of the Court shall reopen the habeas petition to the Court's active docket.
- (2) the caption of the case is amended to reflect that Noah Nagy is the proper respondent in this case.
- (3) Petitioner is **GRANTED** an extension of time to file an amended habeas petition. Petitioner has **ninety (90) days** to file an amended petition.
- (4) Respondent has **ninety (90) days** following receipt of the amended petition to file a supplemental answer.

¹ Respondent filed an answer to petitioner's original habeas petition on September 13, 2019 (ECF No. 8) and would only be required to file an answer addressing the claims raised by petitioner in any amended petition.

(5) Petitioner has **forty five (45) days** to file a reply brief.

Dated: February 16, 2021

s/Sean F. Cox
Sean F. Cox
U. S. District Judge