

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

DARIUS RUSH,

Petitioner,

Case No. 2:20-CV-11540

HONORABLE DENISE PAGE HOOD

v.

O'BELL WINN,

Respondent.

**OPINION AND ORDER GRANTING THE MOTION TO STRIKE (ECF No. 14) THE MOTION TO HOLD IN ABEYANCE THE PETITION FOR A WRIT OF HABEAS CORPUS (ECF No. 12) AND DENYING WITHOUT PREJUDICE THE MOTION FOR AN EVIDENTIARY HEARING (ECF No. 13).**

Darius Rush, ("Petitioner"), confined at the Saginaw Correctional Facility in Freeland, Michigan, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction for first-degree home invasion, conspiracy to commit first-degree home invasion, and receiving and concealing stolen property less than \$ 200.00. Petitioner filed a motion hold the petition in abeyance to permit him to return to the state courts to present additional claims that have not been exhausted with the state courts and that are not included in his habeas petition. Petitioner also filed a motion for an evidentiary hearing.

Petitioner has now filed a motion to strike (ECF No. 14) the motion to hold the petition in abeyance (ECF No. 12). The motion to strike (ECF No. 14) is granted. The Court will not hold the petition in abeyance (ECF No.12).

The motion for an evidentiary hearing (ECF No. 13) is denied without prejudice. Petitioner's request for an evidentiary hearing is premature because this Court has yet to receive the answer and the Rule 5 materials from respondent. Once the Court receives the answer and the Rule 5 materials from respondent, the Court will be in a better position to determine whether an evidentiary hearing is warranted.

### **ORDER**

**IT IS HEREBY ORDERED** that the motion to strike the motion to hold the petition in abeyance (ECF No. 14) is **GRANTED** and the motion to stay (ECF No. 12) is **WITHDRAWN** by Petitioner.

It is further **ORDERED** that the motion for an evidentiary hearing (ECF No. 13) is **DENIED WITHOUT PREJUDICE**.

s/Denise Page Hood  
Denise Page Hood  
Chief Judge, United States District Court

Dated: November 20, 2020