

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JONATHAN VASQUEZ,

Petitioner,

Case No. 13-10125

Honorable Mark A. Goldsmith

v.

THOMAS MACKIE,

Respondent.

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OPINION AND ORDER

(1) GRANTING PETITIONER'S MOTION TO LIFT STAY AND TO AMEND THE HABEAS PETITION (Dkt. 1); (2) ORDERING THAT THE AMENDED PETITION (Dkt. 8) BE SERVED UPON RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL; AND (3) DIRECTING RESPONDENT TO FILE AN ANSWER AND THE RULE 5 MATERIALS

I. INTRODUCTION

Petitioner Jonathan Vasquez filed a pro se petition for writ of habeas corpus under 28 U.S.C. § 2254 (Dkt. 1), in which he challenged his convictions for second-degree murder and armed robbery. On February 6, 2013, this Court entered an order granting Petitioner's motion for stay pending completion of state post-conviction proceedings. 2/6/2013 Order (Dkt. 7). The Court also administratively closed the case. Petitioner has now filed a motion to lift the stay (Dkt. 9), claiming he has now exhausted his state court remedies. For the reasons explained below, the Court grants Petitioner's motion. Respondent is ordered to file a responsive pleading to the amended petition (Dkt. 8) and the Rule 5 materials within 60 days of the Court's order.

II. ANALYSIS

Federal courts may reinstate a federal habeas petition upon a timely request by a petitioner. See Frazier v. Bell, No. 2:11-CV-10893, 2013 WL 5902480, at *5 (E.D. Mich. Oct.

31, 2013) (citing Rodriguez v. Jones, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009); see also Parisi v. Cooper, 961 F. Supp. 1247, 1249 (N.D. Ill. 1997)). Petitioner represents that he has now exhausted his claims in state court. Accordingly, the Court will order that the matter be reopened and that the amended petition is accepted for filing.

The Court will further order that the Clerk of the Court serve a copy of the amended petition for writ of habeas corpus (Dkt. 8) and a copy of this order on Respondent and on the Attorney General for the State of Michigan by first class mail, as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4.

The Court will also order Respondent to file a response to the habeas petition within 60 days of the Court's order. This Court has the discretion under the rules governing responses in habeas corpus cases to set a deadline for a response to Petitioner's habeas petition. The Court will also order Respondent to file any additional Rule 5 materials relating to Petitioner's post-conviction proceedings at the time that it files its answer. Griffin v. Rogers, 308 F.3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254.

Finally, the Court will give Petitioner 45 days from the filing of Respondent's answer to file a reply brief. See Rules Governing § 2254 Cases, Rule 5(e), 28 U.S.C. foll. § 2254 (a habeas petitioner "may submit a reply to the respondent's answer or other pleading within a time fixed by the judge").

III. CONCLUSION

For the reasons stated above, the Court grants Petitioner's motion to lift the stay and to amend the habeas petition (Dkt. 9). Accordingly, the Court orders that the petition for a writ of habeas corpus is reinstated to the Court's active docket. The Court further orders that the Clerk

of the Court serve a copy of the amended petition for writ of habeas corpus and a copy of this order on Respondent and the Attorney General by first class mail.

Respondent shall file an answer and produce the state-court record within 60 days of the date of this order, or show cause why they are unable to comply with the order. Petitioner shall have 45 days from the filing of the answer to file a reply brief.

SO ORDERED.

Date: June 26, 2015
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 26, 2015.

s/Carrie Haddon
Case Manager