

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TINA MARIE CLARKE,

Petitioner,

v.

CASE NO. 05-60151

HON. JOHN CORBETT O'MEARA

MILLICENT WARREN,

Respondent.

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ORDER

- (1) DIRECTING RESPONDENT TO FILE AN ANSWER
TO PETITIONER'S NEW CLAIMS,
(2) GRANTING PETITIONER'S MOTIONS FOR
AN ENLARGEMENT OF TIME AND TO AMEND CLAIM I, AND
(3) DENYING PETITIONER'S MOTIONS FOR APPOINTMENT OF COUNSEL,
FOR AN EVIDENTIARY HEARING, TO SUPPRESS HER STATEMENT,
FOR A PSYCHIATRIC EVALUATION AND FOR APPOINTMENT OF
AN EXPERT WITNESS, AND FOR APPOINTMENT OF AN INVESTIGATOR**

This is a habeas corpus proceeding filed a state prisoner pursuant to 28 U.S.C. § 2254. The habeas petition and amended petition challenge petitioner Tina Marie Clarke's convictions for first-degree murder, conspiracy to commit armed robbery, armed robbery, and two firearm offenses.

Petitioner presented three claims in her initial petition filed in 2005 and five new claims in an amended petition, which was filed on May 18, 2009. See Dkt. #41. Respondent has addressed Petitioner's first three claims, but not the five new claims set forth in the 2009 petition. Respondent is **ORDERED** to file a supplemental answer addressing Petitioner's new claims that the trial court abused its discretion when denying Petitioner's motion for relief from judgment, that the pathologist perjured herself

and was unqualified, and that Petitioner's trial and appellate attorneys were ineffective. The supplemental answer shall be due within **twenty-one (21) days** of the date of this order. Petitioner may file a reply brief **limited to a total of twenty (20) pages**, including any attachments. The reply brief shall be due within **fourteen (14) days** of the date of Respondent's supplemental answer.

Pending before the Court are seven of Petitioner's motions. Her motion for enlargement of time to file a traverse to Respondent's answer [Dkt. #43] is **GRANTED**, and the traverse filed on October 21, 2009, [Dkt. #48] is accepted. The motion to amend habeas claim I [Dkt. #45] likewise is **GRANTED**, as it merely supplements Petitioner's argument regarding the sufficiency of the evidence.

Petitioner alleges in her motion for appointment of counsel [Dkt. #47] that she is unable to retain counsel, that she has a learning disability, and that she needs assistance with filing motions. "[T]here is no constitutional right to counsel in habeas proceedings," *Post v. Bradshaw*, 422 F.3d 419, 425 (6th Cir. 2005), and Petitioner has adequately addressed the issues in her petition. She also has demonstrated competence in filing motions. Therefore, her motion for appointment of counsel [Dkt. #47] is **DENIED**.

Petitioner seeks an evidentiary hearing [Dkt. #49] on her claims of ineffective assistance of trial and appellate counsel. This motion is **DENIED** without prejudice pending further review of the record. It will *not* be necessary for Petitioner to renew her motion.

Petitioner's remaining motions seek (1) to suppress her custodial statement to the police [Dkt. #46], (2) a psychiatric evaluation and appointment of an expert witness

on post-traumatic stress disorder to determine whether she was competent to stand trial [Dkt. #50], and (3) appointment of a private investigator [Dkt. #52]. These motions suggest that Petitioner is attempting to re-try her case de novo. The writ of habeas corpus, however, “has limited scope; the federal courts do not sit to re-try state cases de novo but, rather, to review for violation of federal constitutional standards.” *Milton v. Wainwright*, 407 U.S. 371, 377 (1972). Accordingly, the motions to suppress Petitioner’s statement, for a psychiatric evaluation and appointment of an expert witness, and for appointment of a private investigator [Dkt. #46, 50, and 52] are **DENIED**.

s/John Corbett O’Meara
United States District Judge

Date: September 8, 2010

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, September 8, 2010, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager