

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

WALTER LUMPKIN,

Petitioner,

Civil No. 5:08-10304

HONORABLE JOHN CORBETT O'MEARA

v.

UNITED STATES DISTRICT JUDGE

KENNETH ROMANOWSKI,

Respondent,

**OPINION AND ORDER GRANTING THE MOTION TO AMEND THE
PETITION FOR WRIT OF HABEAS CORPUS**

Before the Court is habeas petitioner Walter Lumpkin's motion to amend the petition for writ of habeas corpus.

The decision to grant or deny a motion to amend a habeas petition is within the discretion of the district court. *See Clemmons v. Delo*, 177 F. 3d 680, 686 (8th Cir. 1999); *citing to* Fed.R.Civ.P. Rule 15. Notice and substantial prejudice to the opposing party are the critical factors in determining whether an amendment to a habeas petition should be granted. *See Coe v. Bell*, 161 F. 3d 320, 341-342 (6th Cir. 1998). A motion to amend a habeas petition may be denied when it has been unduly delayed and when allowing the motion would prejudice the nonmovant. *See Smith v. Angelone*, 111 F. 3d 1126, 1134 (4th Cir. 1997)(internal citations omitted). However, delay by itself is not sufficient to deny a motion to amend. *See Coe*, 161 F. 3d at 342.

Petitioner's proposed amended habeas petition alleges additional support for the

claims that he raised in his original petition, was not the subject of undue delay, and would not unduly prejudice respondent. Accordingly, the motion to amend should be granted. *See Riley v. Taylor*, 62 F. 3d 86, 92 (3rd Cir. 1995). There is no indication that allowing the amendment would cause any delay to this Court nor is there any evidence of bad faith on petitioner's part in filing the amended petition or prejudice to respondent if the amended habeas petition is filed. *See Gillette v. Tansy*, 17 F. 3d 308, 313 (10th Cir. 1994). Additionally, because petitioner has filed his amended petition before the Court has adjudicated the issues in his petition, the Court will permit him to file an amended petition for writ of habeas corpus. *See Stewart v. Angelone*, 186 F.R.D. 342, 343 (E.D. Va. 1999). Accordingly, the Court will permit petitioner to amend his petition.

IT HIS HEREBY ORDERED that the Motion to Amend the Petition for Writ of Habeas Corpus [Court Dkt. # 7] is **GRANTED**.

s/John Corbett O'Meara
United States District Judge

Date: January 23, 2009

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, January 23, 2009, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager