

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

DAVID MAURICE LYONS-BEY,

Petitioner,

v.

SHERMAN CAMPBELL,

Respondent,

Case No. 5:16-CV-13797

HON. JOHN CORBETT O'MEARA
UNITED STATES DISTRICT JUDGE

HON. R. STEVEN WHALEN
UNITED STATES MAGISTRATE
JUDGE

**OPINION AND ORDER MODIFYING THE
ORDER OF RESPONSIVE PLEADING (Doc. 10)**

David Maurice Lyons-Bey, (“petitioner), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions for assault with intent to do great bodily harm less than murder, conspiracy to commit assault with intent to do great bodily harm less than murder, armed robbery, and conspiracy to commit armed robbery. On October 26, 2016, Magistrate Judge R. Steven Whalen signed an Order of Responsive Pleading, requiring the respondent to file an answer and the Rule 5 materials by May 1, 2017 (Doc. 10). For the reasons that follow, the Court modifies the Order of Responsive Pleading.

The habeas corpus rules require respondents to attach the relevant portions of the transcripts of the state court proceedings, if available, and the court may also order, on its own motion, or upon the petitioner’s request, that further portions of the transcripts be

furnished. *Griffin v. Rogers*, 308 F. 3d 647, 653 (6th Cir. 2002); Rules Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254. Petitioner has attached the entire trial court record to his petition for writ of habeas corpus. Petitioner has also attached various pre-trial transcripts and some appellate court materials to his various motions. Because petitioner has attached these Rule 5 materials to his habeas petition and other pleadings, it is unnecessary for this Court to compel respondent to provide these Rule 5 materials when it files the answer. *See Burns v. Lafler*, 328 F. Supp. 2d 711, 717-18 (E.D. Mich. 2004). Respondent is only required to file with this Court any Rule 5 materials that have not been provided by petitioner with his petition for writ of habeas corpus or other pleadings.

Based upon the foregoing, the Court MODIFIES the Order of Responsive Pleading. Respondent is required to produce only those Rule 5 materials that have not already been provided by petitioner when respondent files the answer to the petition for writ of habeas corpus.

s/R. Steven Whalen

HON. R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

DATED: November 1, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on November 1, 2016, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla

Case Manager to the
Honorable R. Steven Whalen