UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DENNIS RUSSELL,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 4:11CV2016 TIA
	)	
JEFF NORMAN,	)	
	)	
Respondent.	)	

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's Motion to Amend Petition (Doc. No. 17), motions for extension of time to file a reply to Respondent's Response to Order to Show Cause (Doc. Nos. 16, 20, 23 and 24), Motion for Clarification (Doc. No. 22), and Motion to File Reply to Respondent's Answer to Petition Out of Time (Doc. No. 25). The parties consented to the jurisdiction of the undersigned pursuant to 28 U.S.C. § 636(c).

On November 16, 2011, Petitioner Dennis Russell filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, asserting seven grounds for habeas relief. Respondent filed his Response to Show Cause Order on January 19, 2012. Subsequently, Petitioner filed a Motion to Amend the Petition, seeking to add 11 additional claims. All but one of these grounds pertain to ineffective assistance of post-conviction counsel for failing to raise specific claims of ineffective assistance of trial counsel during collateral review. (Proposed Am. Pet. 1-24, ECF No. 17-1) The other ground contends that post-conviction counsel failed to raise ineffective assistance of appellate counsel during collateral review. (Id. at 24-25)

Petitioner argues that Martinez v. Ryan, ___ U.S. ___, 132 S. Ct. 1309 (2012) allows him to file additional claims involving ineffective assistance of post-conviction counsel. However,

Respondent correctly notes that Martinez merely held that when state law requires ineffective assistance of trial counsel claims to be raised in an initial-review collateral proceeding, "a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial, if, in the initial-review collateral proceeding, . . . counsel in that proceeding was ineffective." Id. at 1320. Thus, "[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." Id. at 1315. The Martinez decision does not allow a petitioner to add new claims of ineffective assistance of counsel to the federal habeas petition. Therefore, Petitioner's Motion to Amend is denied.

However, Petitioner has also filed several motions for extension of time to file a response to Respondent's Response to Order to Show Cause and most recently filed a motion to file a reply out of time, with an accompanying 126-page Traverse. The undersigned will allow additional time for Petitioner to file a response, which may include arguments of ineffective assistance of counsel in an initial-review collateral proceeding to establish cause for alleged procedural default. Martinez, 132 S. Ct. at 1315. However, the Court will not allow Petitioner to file his suggested Traverse, which far exceeds acceptable page limits and addresses claims not before the Court. Any response must be no longer than 30 pages in length. For clarification, the Petition now pending before this Court is Document Number 1, containing seven claims, and the Prayer for Relief docketed as Document Number 9.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion to Amend Petition (Doc. No. 16) is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's Motion for Extension of Time to File a

Response to the Respondent's Reply to the Petition (Doc. No. 24) is **GRANTED.** Petitioner shall file a Traverse no later than December 21, 2012 addressing only the seven claims included in the original Petition and contained in the Response to Order to Show Cause. The Traverse shall not exceed 30 pages.

IT IS FURTHER ORDERED that Petitioner's Motions for Extension of Time (Doc. Nos. 16, 20, and 23) and Motion for Clarification (Doc. No. 22) are **DENIED** as **MOOT.**

IT IS FINALLY ORDERED that Petitioner's Motion to File Reply Out of Time (Doc. No. 25) is **DENIED** as **MOOT.**

/s/ Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE

Dated this 19th day of November, 2012.