

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK BROOKS,)	
)	
Petitioner,)	
)	
v.)	No. 4:14CV00061 AGF
)	
TERRY RUSSELL,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This action for federal habeas corpus relief under 28 U.S.C. § 2254 is before the Court on pro se Petitioner Mark Brooks’ motion to stay. (Doc. No. 13.) Petitioner filed his initial § 2254 petition on January 14, 2014. He filed an amended petition on January 24, 2014. In his amended petition, Petitioner challenges his November 18, 2009 state court convictions for forcible rape and attempted forcible sodomy, committed in 2001, and seeks federal habeas relief on the grounds of ineffective assistance of counsel and denial of a fair trial for failure to sever charges during trial.

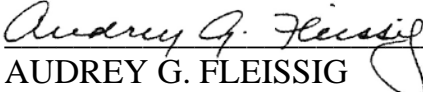
On August 8, 2016, Petitioner filed a motion to amend his petition on the basis that he had hired David Kelly as legal counsel and would be able to acquire a copy of the rape kit from the underlying criminal case. On those representations, on November 18, 2016, the Court granted Petitioner’s motion and directed him to file a new § 2254 petition no later than December 18, 2016.

On December 15, 2016, Petitioner filed the instant motion to stay. He requests that this Court stay proceedings so that “appellate attorney David Kelly can enter his appearance on the defendants case as the attorney of record and file a state Habeas Corpus petition for post conviction DNA testing under 547.035 RSMO in order to acquire and test all of the available evidence.” (Doc. No. 13 at 2.) Petitioner further asserts that a stay is appropriate because it will allow him to exhaust state court remedies, and federal court proceedings do not allow for the subpoenaing of rape kit records, which he asserts must be done in state court.¹

Accordingly,

IT IS HEREBY ORDERED that Respondent is directed to file a response to Petitioner’s motion to stay no later than **Thursday, January 5, 2017**.

Dated this 22nd day of December, 2016.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

¹ Although it is not entirely clear, it appears that Petitioner is stating that Mr. Kelly will be entering his appearance on Petitioner’s behalf in state court proceedings, and not in the proceedings before this Court.