

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Mark A. Kerner

v.

Civil No. 13-cv-132-SM

Edward Reilly, Warden, Northern New
Hampshire Correctional Facility¹

O R D E R

On May 8, 2014, the court issued an order (doc. no. 20) lifting the stay in this matter and directing petitioner Mark Kerner to file documents to demonstrate that his federal habeas claims in this court had been exhausted in the state courts. Kerner has now responded (doc. no. 22). The attachments to that response demonstrate that each claim raised here has been presented to the New Hampshire Supreme Court for consideration, and is thus exhausted. See Dutil v. Murphy, 550 F.3d 154, 158 (1st Cir. 2008). Accordingly, the habeas petition in this matter, which the court finds is comprised of Kerner's aggregated filings, numbered 3, 16-18, 21, and 22, in the court's docket, may proceed.

¹In addition to Edward Reilly, Kerner has named William Wrenn, the Commissioner of the New Hampshire Department of Corrections as a respondent. Reilly is the proper respondent, as he is Kerner's present custodian. See Rules Governing Section 2254 Cases in the United States District Courts, Rule 2(a). Accordingly, the court construes the petition to name only Reilly as Respondent.

The court therefore directs as follows:

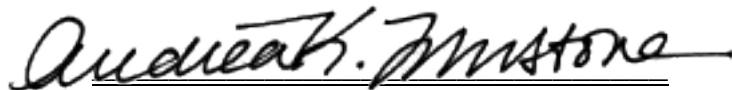
1. The clerk's office is directed to amend the docket in this matter to reflect that Edward Reilly is the only respondent to this action.

2. The petition (doc. nos. 3, 16-18, 21, and 22) shall be served upon respondent Edward Reilly, Warden of the Northern New Hampshire Correctional Facility. The clerk's office is directed to serve the New Hampshire Office of the Attorney General, as provided in the Agreement on Acceptance of Service, electronic copies of this Order and Kerner's habeas petition (doc. nos. 3, 16-18, 21, and 22), including any attachments filed with those pleadings.

3. Respondent shall file an answer or other pleading in response to the allegations made in the amended petition within thirty days of service. The answer shall comply with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts. The respondent shall thereafter comply with LR 7.4.

4. Petitioner is referred to Fed. R. Civ. P. 5, which requires that every pleading, written motion, notice, and similar paper, after the petition, shall be served on all parties. Such service is to be made by mailing the material to respondent's attorney(s).

SO ORDERED.



Andrea K. Johnstone
Andrea K. Johnstone
United States Magistrate Judge

June 20, 2014

cc: Mark A. Kerner, pro se