

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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PERRY F. SMITH, JR.,

Petitioner,

v.

9:22-CV-0732  
(BKS)

REARDON, Superintendent,

Respondent.

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APPEARANCES:

OF COUNSEL:

PERRY F. SMITH, JR.  
Petitioner, pro se  
22-B-1570  
Marcy Correctional Facility  
P.O. Box 3600  
Marcy, NY 13403

BRENDA K. SANNES  
United States District Judge

**DECISION and ORDER**

Petitioner Perry Smith sought federal habeas relief pursuant to 28 U.S.C. § 2241. Dkt. No. 1, Petition ("Pet."). On August 3, 2022, this Court granted petitioner thirty days leave to clarify whether he: (1) consented to having his § 2241 petition converted into a § 2254 petition; or (2) wanted to voluntarily withdraw the pending petition instead of having it converted. Dkt. No. 6, Decision and Order ("August Order"), at 5, 7-8. Petitioner was also directed that, if he chose to consent to conversion, he would need to file an amended petition to properly plead exhaustion of his state court remedies. *Id.* at 6-7.

Presently pending before the Court is a letter responding to the August Order. Dkt. No. 7. In it, petitioner expresses his "desire [to do] the conversion." *Id.* at 1. Petitioner also

"await[s the Court's] new form for [his] completion." *Id.* Petitioner indicates that he has "surely tried over and over again [to exhaust his state court remedies] without the least bit of success," and states that he has an attorney who represented him. *Id.* It is still unclear to the Court

whether [petitioner] filed a direct appeal of the sentence he received as a result of the probation revocation proceedings or the status of that challenge. Accordingly, the Court cannot determine whether proper exhaustion has occurred. . . . [Therefore, petitioner] is [again] directed to file an amended petition within thirty (30) days of the filing date of this Decision and Order that addresses if and how he has exhausted his state court remedies, as outlined below.

August Order at 6-7 (internal quotation marks and citations omitted). Accordingly, with the form § 2254 petition provided to petitioner by the Court, he is directed to fully complete each and every part of the blank petition. **The amended petition must clearly list the date(s) on which petitioner filed any application(s) in state court for direct or collateral review concerning his probation revocation, the name and location of the court in which he filed each application, and the date on which each court denied each application.**

Petitioner must also clearly state each claim he wants the court to consider, and the facts supporting each claim, in the petition.

**WHEREFORE**, it is

**ORDERED** that petitioner's letter notifying the Court that he wishes to convert his federal habeas petition from one brought pursuant to 28 U.S.C. § 2241 to one brought pursuant to 28 U.S.C. § 2254 is **GRANTED**; and it is further

**ORDERED** that the Clerk is respectfully directed to provide petitioner with a blank § 2254 habeas petition. Petitioner shall fully complete each and every part of the blank

petition. **The amended petition must clearly list the date(s) on which petitioner filed any application(s) in state court for direct or collateral review concerning his probation revocation, the name and location of the court in which he filed each application, and the date on which each court denied each application.** Petitioner must also clearly state each claim he wants the court to consider, and the facts supporting each claim, in the petition.

Petitioner must not incorporate any portion of any prior petition into his amended petition by reference. Petitioner must include all relevant information in the amended petition in accordance with the terms of this Decision and Order; and it is further

**ORDERED** that if petitioner fails to file an amended petition **within thirty (30) days** of the filing date of this Decision and Order, **the Clerk shall enter judgment dismissing this action without further order**; and it is further

**ORDERED** that upon the filing of any amended petition, the Clerk shall forward the file to the Court for further review; and it is further

**ORDERED** that the Clerk shall serve a copy of this Decision and Order on petitioner in accordance with the Local Rules.

Dated: August 16, 2022



**Brenda K. Sannes**  
U.S. District Judge