

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY PERKINS,

Petitioner,

- against -

THOMAS LAVALLEY,

Respondent.

11 Civ. 3855 (JGK)

MEMORANDUM OPINION
AND ORDER

JOHN G. KOELTL, District Judge:

The Court has received the attached pro se petitioner's application for an extension of time to file his reply memorandum. The petitioner's application is granted. The petitioner should submit his reply memorandum by **January 10, 2012**.

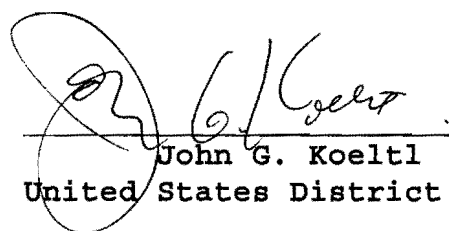
The petitioner has also requested that the Court stay his petition for habeas corpus. The Court may stay a habeas petition to allow for exhaustion of claims in state court if the petitioner can demonstrate that: (1) good cause exists for failing to exhaust the claims previously, (2) the claims are potentially meritorious, and (3) the petitioner did not intentionally engage in dilatory litigation tactics. See Rhines v. Weber, 544 U.S. 269, 277-78 (2005); Vasquez v. Parrott, 397 F.Supp.2d 452, 464 (S.D.N.Y. 2005).

In the attached letter, the petitioner acknowledges the respondent's argument that his petition includes both exhausted

and unexhausted claims. However, he does not address the merits of the respondent's argument as to why the allegedly unexhausted claims are now procedurally barred and deemed exhausted. The petitioner does not assert that it is now possible for him to return to state court, where he has already concluded his direct appeal, in order to exhaust the allegedly unexhausted claims. Nor does the petitioner explain why there was good cause for his alleged failure to exhaust any claims previously, or whether any allegedly exhausted claims are potentially meritorious. If the petitioner seeks to stay consideration of his petition, he should make a motion for a stay explaining why he satisfies the requirements for a stay. To the extent that the current letter is an application for a stay, it is denied without prejudice to renewal upon a proper showing.

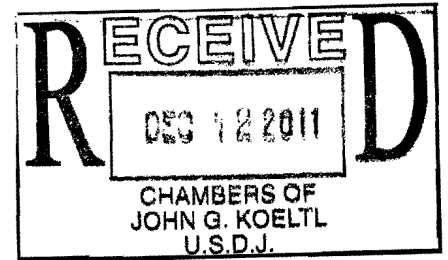
SO ORDERED.

Dated: New York, New York
December 14, 2011



John G. Koeltl
United States District Judge

Anthony Perkins
08 A 2935
Clinton Corr. Facility
P O Box 2000
Dannemora N.Y. 12929



THE HONORABLE John G. Koeltl
United states District Court
Southern District Of New York
New York N.Y. 10007-1312

Date: December 4, 2011

RE: Perkins v. LAVally, 11-civ.-3855(JGK)

Dear Judge Koeltl,

I am writing concerning the extension of time that you granted upon my request dated November 4th and the 7th of 2011.

In that order to the records management your honor order them to send me copies of requested documents. They only send half. I wrote to them and received the other ones on about November 28, 2011.

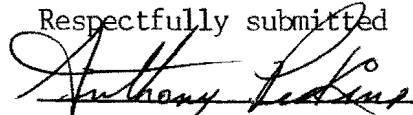
Your Honor because of my difficulty fully understanding these legal issues and just quite how to present these arguments to the court. I am forced to yet again request a second extension of time to go over these papers with someone more knowledgeable than myself concerning these issues within the law library of inmates clerks. But first I must seek permission/authorization from the Superintendent of this facility. I have attached a copy of that letter.

Based on the respondents response there seem to be the issue of my filing of an mixed petition of exhausted and unexhausted claims. It is my understanding of such thus far that the court should stay, rather than dismiss a mixed petition containing mixed claims/issues if the petitioner has good cause for his failure to exhaust the unexhausted claims. I ensure the court that I am not engaging in intentional dilatory litigation tactics.

I request your honors understanding that I am a layman to these matters but I am trying my best to understand these things before I present them to the courts attention for your honors consideration.

I once again thank you in advance for your time, attention, and consideration.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Anthony Perkins".

Clinton Corr; Facility
P O Box 2000
Dannemora N.Y. 12929

cc: Alyson J. Gill
Assistant Attorney General
120 Broadway
New York N.Y. 10271- 0332

TO: Thomas La Valley, Superintendent.
Clinton Corr. Facility

From: Anthony Perkins # 08A2935

Date: December 4, 2011

RE : Request for authorization for legal assistant.
From law library staff.

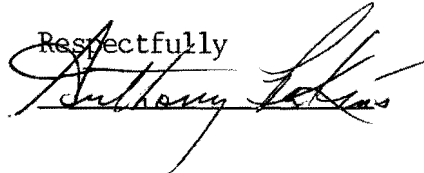
Dear Sir,

IT is my understanding that in order to receive assistant from the library or for them to be in possession of any of my legal papers I first had to seek permission or authorization from you.

I am at this time making such a request to be allowed to receive assistance from the staff workers with my legal work within the Southern District Of New York.

I thank you in advance for your attention to this matter

Respectfully

A handwritten signature in black ink, appearing to read "Anthony Perkins", written over the word "Respectfully".

cc: District Judge Honorable John G. Koeltl
Southern District Of New York

2- Alyson J Gill
assistant Attorney General
State Of New York

3- File

Clerk of court
Pro Se Office

THE HONORABLE John G. Koeltl

United States District Court/
Southern District Of New York
500 Pearl Street
New York N.Y. 10007-1312
Att: Office of records management;

Novemeber 16, 2011
RE: Perkins v. Lavally civ 3855
(JGK)

DEar Sir/madam,

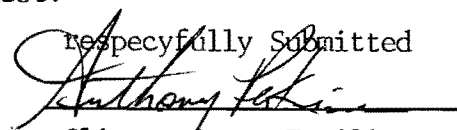
I recieved an order from Judge John G; Koeltl, which was sent to your office on 11/10/11 along with an attached letterof mf request for copies of the petition as well as all related eahibits, that were submitted with the petition on 5/23/11.

Upon recueving this information from your office two items were missing. Number 2. on the affidavit of service, The brief and reply brief which was filed in the state court with the Appellate Division: First D epartment.

These items were included with the filling of the petition in this matter and I am in need of those copies as well.

I thank again for your time, attention to my request.

respecyfully Submitted



Clinton Corr. Facility
P O BOX 2000
Dannemora, N.Y. 12929

cc; Alyson J. Gill
Assistant Attorney General
120 Broadway
New York, N.Y. 10271-0332