



pleadings indicates that Petitioner actually secured a statement from a juror, which he considers to be an affidavit. As the inquiry on summary judgment does not involve weighing evidence as to whether counsel fell asleep, but whether Petitioner can show that such alleged behavior prejudiced the presentation of his defense, the motion will be denied.

The Motion to Amend Motion to Vacate/Set Aside/Correct Sentence (2255) (Doc. No. 27) seeks not to amend the claims of the petition, but to provide the Court with additional arguments and evidence that has been annexed to such motion. The Court will, therefore, deem such motion to be a Motion to Supplement Response and allow the request. Respondent will be allowed to file a reply to such supplement within 14 days. Petitioner is advised that he need take no further action to place such supplemental materials and arguments before the Court, and that the pleadings will close with Respondent's Reply, if any.

Finally, in the Motion for Judgment on the Pleadings (Doc. No. 28), petitioner seeks to bring to the Court's attention the fact that the cross motions for summary judgment have been ripe for decision since July 19, 2011. The Court has noted such and will issue its decision within a reasonable time after the filing of Respondent's Reply (or the passage of such deadline).

**IT IS, THEREFORE, ORDERED** that Petitioner's

1. Motion for Judgment on the Merits (Doc. No. 5) is **DENIED** as premature;
2. Motion to Stay and Motion to Amend/Correct Motion to Vacate/Set Aside/Correct Sentence (2255) (Doc. No. 25) is **DENIED**;
3. Motion to Amend Motion to Vacate/Set Aside/Correct Sentence (2255) (Doc. No. 27) is **DEEMED** to be a Motion to Supplement Response and is **ALLOWED**. Respondent is **GRANTED** leave, but is not required, to file a Reply to such supplement within 14 days; and
4. Motion for Judgment on the Pleadings, (Doc. No. 28), is **DENIED**.

Signed: March 2, 2012



Robert J. Conrad, Jr.  
Chief United States District Judge

