

PEARSON, MJ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|-------------------|---|----------------------------------|
| ROBERT O. POWERS |) | CASE NO. 5:08CV520 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | MAGISTRATE JUDGE PEARSON |
| |) | |
| MAGGIE BEIGHTLER, |) | |
| WARDEN, |) | |
| |) | <u>MEMORANDUM OPINION</u> |
| Respondent. |) | <u>AND ORDER</u> |

I.

Pending before the Court is Robert O. Powers’ petition for a writ of habeas corpus pursuant to [28 U.S.C. § 2254](#). [ECF No. 1](#). On October 22, 2009, Powers filed “Petitioner’s Response to the Courts’ ‘Minutes and Order’ of 10-9-09.” [ECF No. 28](#). This Order addresses that pleading.

On October 8, 2009, the undersigned held a telephonic status conference in an effort to move the case forward and, at the conclusion of the conference, adopted a cut-off date of October 30, 2009 for all outstanding Items to be provided to the undersigned and Petitioner by Respondent.¹ During the conference, Powers indicated that he would like the Court to reconsider its refusal to hold an evidentiary hearing regarding a June 8, 2006 hearing (Item 2) in State Court. *See* [ECF No. 14 at 2](#). During the telephonic status conference, the undersigned verbally ordered

¹ The next day, October 9, 2009, the undersigned also filed Minutes of the proceedings (non-document) and issued an Order that memorialized all verbal orders from the telephonic status conference. [ECF No. 25](#).

(5:08CV520)

Powers to articulate in writing his motion for reconsideration and to file it by October 16, 2009.

On October 22, 2009, Powers wrote, in response to the Court's Order, that:

(1) he did not receive the Order of October 9, 2009 until October 16, 2009;

(2) "due to unfortunate and unforeseen circumstances" he would not be able to determine to what extent an evidentiary hearing would be necessary until Respondent has provided all outstanding Items to him and;

(3) after reviewing the transcript of the June 13th hearing (Item 4), he finds that "several significant discrepancies are present throughout the entire transcript."

[ECF No. 28 at 2-3](#). Ultimately, Powers requests that he be permitted to file his motion for reconsideration *after* he has received all outstanding Items. [ECF No. 28 at 3](#).

II.

The undersigned interprets Powers' pleading as a belated motion for extension of time to file his motion for reconsideration. The undersigned GRANTS Powers' motion for extension of time.

Accordingly, Powers is ordered to file his motion for reconsideration at the same time that he files his Revised Traverse. Powers is further ordered to file both the motion for reconsideration and Revised Traverse no later than November 20, 2009. If Powers decides not to file a Revised Traverse, his motion for reconsideration is still due no later than November 20, 2009. Respondent may respond to the motion for reconsideration within one week of receiving a copy of the motion, should Respondent deem it necessary.

IT IS SO ORDERED.

October 27, 2009
Date

/s/ Benita Y. Pearson
United States Magistrate Judge