

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,)	
)	
Respondent.)	<u>MEMORANDUM OPINION</u> <u>AND ORDER</u>

Introduction

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](#). This Order is related to the undersigned’s October 9, 2009 Order. [ECF No. 25](#).

I. Background

On October 7, 2008, Petitioner Powers filed a motion requesting expansion of the record. [ECF No. 14 at 2](#). On March 13, 2009, the undersigned issued a Memorandum of Opinion and Order granting in part and denying in part Petitioner’s Motion to Expand the Record. [ECF No. 17](#). On September 16, 2009, Petitioner Powers again moved the Court to expand the record. At that time, he also asked that Respondent be compelled to respond to the Court’s previous order. *See* Motion to Expand the Record, Supplemented with Motion to Compel, [ECF No. 18](#). On September 22, 2009, the undersigned issued an Order granting Petitioner Power’s Motion to

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Expand and Motion to Compel. [ECF No. 19](#).

On October 8, 2009, the Court conducted a telephonic status conference, with Petitioner Powers and Respondent's counsel, to insure there are no further delays in this matter and that all documents will be filed in a timely manner going forward. On that same day, the undersigned filed an order, which said in pertinent part:

The Court adopted the cut-off date of October 30, 2009, as the date by which Counsel for Respondent, Thelma Price, will provide Items 1- 6 to Petitioner Powers. Attorney Price should continue to provide the Items (to both Petitioner and the Court) as they become available, *i.e.*, on a rolling basis. Upon providing the last Item, Attorney Price should attach a declaration setting forth that all Items responsive to the Court's Order issued September 22, 2009 have been provided to Petitioner and the Court. In the event Attorney Price is unable to file all Items by October 30, 2009, she should immediately notify the Court in writing, in advance of October 30, 2009.

[ECF No. 25 at 1](#).

From September 25, 2009 to October 30, 2009, Respondent filed several transcripts that appear to be Petitioner Powers requested Items. ECF Nos. [22-1](#), [22-2](#), [26-1](#), [27-1](#), and [30-1](#). On October 30, 2009, Respondent filed a declaration informing the undersigned that the final transcript was filed. [ECF No. 30](#).

II. Order

The undersigned acknowledges that Respondent has filed several transcripts that appear to be Petitioner Powers' requested Items. The dates on the transcripts, however, do not match the dates on Petitioner Powers requested Items. Respondent is hereby ordered to resolve all discrepancies, including the difference between the dates of Petitioner Powers' requested Items and the dates of the transcripts Respondent filed. Respondent is to make clear the correlation between the recent transcript filings and Petitioner Powers' requested Items.

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On October 25, 2009, Respondent was in the process of “reviewing the motion request in conjunction with the Summit County Prosecutor to determine whether Powers[’] Waiver of counsel form [Item 6] is available.” [ECF No 21 at 1](#). After reviewing the filings by Respondent, the undersigned has determined that Respondent did not file Item 6, or an explanation of why the Item was not provided. Pursuant to the October 9, 2009 Order, Respondent is hereby ordered to provide Item 6 or explain in writing why Item 6 has not been provided.

Respondent must comply with the undersigned’s Order by Wednesday, November 11, 2009.

A copy of this Order shall be sent to Powers and the Warden *via* U.S. Mail.

Respondent will be served electronically

IT IS SO ORDERED.

November 3, 2009
Date

/s/ Benita Y. Pearson
United States Magistrate Judge