

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GENESIS HILL,

Petitioner,

v.

BETTY MITCHELL, Warden,

Respondent.

Case No. 1:98-cv-452

JUDGE EDMUND A. SARGUS, JR.

Magistrate Judge Terence P. Kemp

OPINION AND ORDER

Petitioner, a prisoner sentenced to death by the State of Ohio, has pending before this Court a habeas corpus action pursuant to 28 U.S.C. §2254. This matter is before the Court upon Petitioner's unopposed motion for extension of time to file his traverse. (Doc. # 189.)

On April 6, 2009, this Court issued an *Opinion and Order* holding that if the United States Supreme Court denied an appeal from the Sixth Circuit's *en banc* decision in *Garner v. Mitchell*, 557 F.3d 257 (6th Cir. 2009), the stay of proceedings issued by this Court would automatically be lifted and Petitioner's traverse would be due within thirty days. Petitioner filed a notice indicating that the United States Supreme Court denied an appeal in *Garner* on October 5, 2009, making Petitioner's traverse due on November 4, 2009. On October 21, 2009, this Court issued an order granting Petitioner's unopposed request for a sixty-day extension of time to January 4, 2010, to file his traverse. (Doc. # 185.)

On November 3, 2009, Petitioner filed a motion for stay and abeyance of his federal habeas corpus proceedings, pending the outcome of litigation that he is pursuing in the state courts. (Doc. # 186.) Pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), where the United States Supreme Court held that the Eighth Amendment prohibits the execution of the mentally

retarded, Petitioner has filed a petition in the state trial court arguing that he is mentally retarded and therefore ineligible for the death penalty. Petitioner's motion for stay and abeyance before this Court is fully briefed and at issue.

Notwithstanding Petitioner's attempt to stay this federal habeas corpus action, Petitioner's traverse is due on January 4, 2010. Petitioner presently seeks a ten-day extension of time to January 14, 2010, to file his traverse. In support of his request, Petitioner not only points to the pendency of his motion for stay and abeyance, but also asserts that newly appointed counsel are continuing to collect and review extensive records in his case, to research legal issues, and to prepare the traverse. Petitioner also notes that newly appointed counsel have had to meet deadlines in other habeas corpus cases. Finally, Petitioner states that counsel for Respondent does not oppose a ten-day extension.

For good cause shown, because Respondent does not object, and because no undue delay or inconvenience to the Court will result, Petitioner's unopposed motion for a ten-day extension of time (Doc. # 189) is **GRANTED**. Petitioner shall have until January 14, 2010 to file his Traverse.

IT IS SO ORDERED.

/s/ Terence P. Kemp
United States Magistrate Judge