

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

ROGER DEAN GILLISPIE,

Petitioner,

:

Case No. 3:09-cv-471

:

-vs-

Magistrate Judge Michael R. Merz

DEB TIMMERMAN-COOPER, Warden,

Respondent.

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**DECISION AND ORDER STRIKING AMENDED HABEAS PETITION**

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This habeas corpus case is before the Court on Petitioner's filing of an Amended Petition (Doc. No. 55). Petitioner filed the Amended Petition immediately after filing his Motion for Leave to File Amended Habeas Petition (Doc. No. 54), but without indicating consent of opposing counsel and indeed without awaiting a court ruling on the Motion for Leave.

28 U.S.C. § 2243 provides that a habeas petition may be amended "as provided in the rules of procedure applicable to civil actions." Fed. R. Civ. P. 15 provides that a complaint may be amended once as a matter of course until 21 days after a responsive pleading or motion under Fed. R. Civ. P. 12. The time for amendment of course has long since expired in this action.

Therefore, the Amended Habeas Petition is stricken, but Respondent shall treat it as the amended petition Petitioner intends to file and shall respond to the Motion for Leave to Amend not later than May 12, 2011.

April 29, 2011.

s/ **Michael R. Merz**  
United States Magistrate Judge