

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

MICHAEL HAZEL,

Petitioner,

: Case No. 3:13-cv-332

- vs -

District Judge Timothy S. Black  
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe  
Correctional Institution,

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Respondent.

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**ORDER**

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This is a habeas corpus case brought *pro se* by Petitioner Michael Hazel under 28 U.S.C. § 2254 to seek release from imprisonment in Respondent’s custody resulting from Hazel’s conviction in the Clark County Common Pleas Court for domestic violence (Petition, Doc. No. 1, PageID 1, ¶¶ 1, 5). The case has been referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. §636(b) and the Dayton General Order of Assignment and Reference.

Petitioner has neither paid the filing fee of \$5.00 nor applied to proceed *in forma pauperis*. Given his incarcerated status, the Court *sua sponte* grants him leave to proceed *in forma pauperis*.

**Procedural History**

Hazel was convicted by a Clark County petit jury of two counts of domestic violence

with additional findings of two prior convictions and that the victim was pregnant at the time of the assaults. His conviction was affirmed on direct appeal. *State v. Hazel*, 2012 Ohio 835, 2012 Ohio App. LEXIS 727 (2<sup>nd</sup> Dist. Mar. 2, 2012), and the Ohio Supreme Court declined to take jurisdiction of an appeal. *State v. Hazel*, 132 Ohio St. 3d 1535 (2012). The Clark County Common Pleas Court's denial of post-conviction relief has been affirmed on appeal. *State v. Hazel*, 2013 Ohio 118, 2013 Ohio App. LEXIS 80 (2<sup>nd</sup> Dist. Jan. 18, 2013). The Ohio Supreme Court declined to review that decision September 4, 2013. *State v. Hazel*, 2013 Ohio 3790, 2013 Ohio LEXIS 1998 (2013). The Ohio Supreme Court also denied a motion for delayed appeal. *State v. Hazel*, 136 Ohio St. 3d 1403 (2013).

### **Attached Motions**

Hazel attaches several motions to his Petition which are decided below.

#### **1. Motion to Waive Required Number of Copies (Doc. No. 1-1, PageID 17-18).**

Hazel moves to excuse him from the requirement of providing four copies of "Appellant's Principal Brief." There is no such requirement in this Court. Hazel says he has included a copy of his Appellant's Principal Brief, but none was included with his filing. He also requests that the Court order the Clerk to make and send him a time-stamped copy of that document. The Clerk is not authorized to make free copies of documents for litigants but is in fact required to charge \$.50 per page for such copies. A litigant requiring a time-stamped copy must send the copy to be time-stamped plus an envelope with sufficient postage to cover mailing it back to him. As an alternative, Petitioner may wish to rely on the Notice of Electronic Filing

which will be sent to him when any document is filed, showing title and time of filing.

**2. Motion for Additional Pages** (Doc. No. 1-2, PageID 19-20).

Hazel seeks to exceed the page limit provided in Fed. R. App. P. 28.1. The Federal Rules of Appellate Procedure do not apply to filings in this United States District Court. The rules applicable here are the Federal Rules of Civil Procedure, the Rules Governing § 2254 Cases, and the Local Rules of the U.S. District Court for the Southern District of Ohio. Only the latter includes a prima facie limit on brief size of twenty pages. Leave to exceed that limit may be sought.

**3. Motion to Stay** (Doc. No. 1-3, PageID 21-22).

Hazel moves to stay these proceedings pursuant to Fed. R. App. P. 8(a) pending exhaustion of his “Notice of Determination of the Second Appellate District Court’s Decision and Entry Pertaining to the Two Certified Conflicts” that Hazel says he has filed with the Ohio Supreme Court under Ohio S. Ct. Prac. R. 4.4(B)<sup>1</sup>. The Ohio Supreme Court’s docket<sup>2</sup> in the referenced case, 2013-0496, shows Hazel filed a Notice of Appeal in that case on March 25, 2013, and two Notices of Pending Motions to Certify Conflict. After the Second District decided not to certify a conflict, Hazel notified the Ohio Supreme Court of that decision on June 20, 2013. On September 4, 2013, the Ohio Supreme Court declined jurisdiction. Thus there is no pending matter before the Ohio Supreme Court to exhaust.

Accordingly, the Motion to Stay is DENIED.

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<sup>1</sup> Ohio Supreme Court Rules of Practice were re-numbered January 1, 2013. Previous Rule 4.4 is, as of that date, Rule 7.07.

<sup>2</sup> Available on the web at [www.supremecourt.ohio.gov](http://www.supremecourt.ohio.gov).

## **Order for Answer**

Upon preliminary consideration pursuant to Rule 4 of the Rules Governing §2254 Cases, the Court finds that it does not plainly appear from the face of the Petition and any exhibits attached thereto that the Petitioner is not entitled to relief in this Court. Accordingly, it is hereby ORDERED that Respondent shall, not later than November 15, 2013, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2254 Cases. Specifically, said answer shall respond to each allegation made in the Petition, raise any affirmative defense relied on by Respondent, and state whether, from Respondent's perspective, any claim in the Petition is barred by a failure to exhaust state remedies, a procedural bar, non-retroactivity, or a statute of limitations.

Before filing the answer, the Respondent shall file those portions of the state court record needed to adjudicate this case, accompanied by an index of the documents in the record. When the record is filed electronically, the Court's CM/ECF filing system will affix a unique PageID number to each page of the record, displayed in the upper right-hand corner of the page. All papers filed in the case thereafter, by either party, including the answer and the exhibit index, shall include record references to the PageID number. Prior to filing the state court record, the Warden's counsel shall ensure that any borders on parts of the record (typically, court reporter transcripts) do not obscure the PageID number when the page is filed.

As required by Fed. R. Civ. P. 5, a complete copy of the answer and state court record with the PageID numbers must be served on Petitioner at the time of filing.

Petitioner may, not later than twenty-one days after the answer is filed, file and serve a reply to the answer.

The Clerk is ordered to serve the Petition on Respondent and the Attorney General of

Ohio, c/o Assistant Attorney General M. Scott Criss, Section Coordinator, 150 E. Gay Street,  
16<sup>th</sup> Floor, Columbus, Ohio 43215.

September 30, 2013.

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