

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

JEFFREY ANTONIO BROWN,

Petitioner,

: Case No. 3:17-cv-080

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

SHEA HARRIS, Warden,
Warren Correctional Institution,

Respondent.

:

**DECISION AND ORDER ON RENEWED MOTION TO EXPAND
THE RECORD**

This habeas corpus case under 28 U.S.C. § 2254 is before the Court on Petitioner’s Motion to Expand the Record to include file-stamped copies of “Exhibit 15” and “Exhibit 48.”(ECF No. 42).

In his prior Motion to Expand the Record, Brown requested to “include exhibits numbers, 12, 14, 15, 16, 17, 25, 26, 27, 28, 30, 32, 33, 48, and 58 of ECF No. 21.” (ECF No. 23, PageID 3471). The Magistrate Judge denied adding Exhibits 15 and 48¹ for the following reasons:

Exhibit 15 (PageID 3490-99) does not show that it was ever filed in the state court and is excluded on that basis.

* * *

Exhibit 48 (PageID 3574-80) purports to be a memorandum in opposition to motion to dismiss by appellees in the Second District

¹ The Magistrate Judge remains unsure how these documents were thus numbered and what they were exhibits to. That is immaterial to the propriety of including them in the record here.

Court of Appeals. The document does not show that it was ever filed in the Second District and is excluded on that basis.

(Decision and Order, ECF No. 24, PageID 3587-88.) The Decision on the prior Motion was filed December 1, 2017, and Brown filed no objection. He asserts he did not do so because the case was then pending on a Report recommending Grounds One through Eighteen be dismissed as time-barred (Motion, ECF No. 42, PageID 3806). That Report has been withdrawn and Brown asserts these exhibits are now relevant “because they are apart [sic] of the State Court Record in this case, and the Respondent failed to provide them.” *Id.*

In his new Motion. Brown does not claim that the prior decision was wrong, but says instead that he has now “finally obtained one file stamped copy of each motion to demonstrate prove that the motions were in fact filed in the Second District Court of Appeals of Ohio as attested to in (ECF No. 21, PageID 3038, 3077; ECF No. 25, PageID 3595-96, 2603-05; ECF No. 39, PageID 3738-41) where Brown attempted to support his claims concerning these filings.” *Id.*

Exhibit 15

As attached to the instant Motion, Exhibit 15 consists of ten handwritten pages labeled Application for Reconsideration and file-stamped as filed with the Ohio Second District Court of Appeals on July 27, 2011, in its Case No. 24658 (ECF No. 42-1, PageID 3808-17).

The next page (PageID 3818) is labeled “Appendix” and bears reference to its being page 8 of 16 of a scanned document but also page 5 of 28 of a scanned document. The bottom of the page contains the web address of the Montgomery County Clerk of Courts and the date 11/20/2008

(PageID 3818).

The next page (PageID 3819) appears to be page 1 of a three-page document from the docket of the Montgomery County Clerk of Courts in Case No. 1995 CR 01536 showing filing dates from 04/17/2003 to 06/01/2011, the clerk's website address, and the date 06/14/2011.

A search of the Public Records portion of the Montgomery County Clerk of Courts website shows that there was docketed on July 27, 2011, an Application for Reconsideration of the Second District's Decision of July 11, 2011. The docketed matter consist of what Brown has submitted with his instant Motion at PageID 3808-19. Therefore the renewed Motion to Expand is GRANTED as to "Exhibit 15."

Exhibit 48

As attached to the instant Motion, Exhibit 48 consists of seven handwritten pages (ECF No. 42-1, PageID 3820-3826. Attached as Exhibit 1 (PageID 3827) is a single page containing a copy of an Inmate Pass dated 05/3/2011 and a Personal A/C Withdrawal Check Out Slip dated 04/27/2011. Attached as Exhibit 2 is a document which is unlabeled but appears to be an inmate pass for Brown to the mail room on 04/30/2011. Finally, there is an attached single-page document (PageID 3829) which purports to be a note from Brown to some unnamed person asking whether his mail to the Common Pleas Court was sent on April 27, or 28, 2011, was actually sent; Brown notes that his postage slip for \$1.68 was returned without a paid stamp.

A search of the Public Records portion of the Montgomery County Clerk of Courts website shows that there was docketed on June 14, 2011, a document labeled "Motion in Contra to

Appellees' Motion to Dismiss." The docketed matter consist of what Brown has submitted with his instant Motion at PageID 3820-29. Therefore the renewed Motion to Expand is GRANTED as to "Exhibit 48."

Brown has not explained why he has just now obtained file-stamped copies of these documents, since they have been available on the public website of the Montgomery County Clerk of Courts with the file-stamp showing for well over six years.

April 10, 2018.

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