

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

BRANDON R. DIXON,

Petitioner,

: Case No. 3:22-cv-070

- vs -

District Judge Michael J. Newman
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe Correctional
Institution,

:

Respondent.

**DECISION AND ORDER GRANTING PETITIONER'S MOTION TO
WITHDRAW/STRIKE AMENDED PETITION**

This habeas corpus case is before the Court on Petitioner's Motion to Withdraw/Strike Amended Petition to Include *Brady* Violations (ECF No. 38). Petitioner insists "he must be permitted to withdraw/strike the amended petition to include *Brady* violations. To avoid the unnecessary expenditure of time and resources that arise from the litigating spurious issues," citing *Kennedy v. City of Cleveland*, 797 F.2d 297, 305 (March 6, 1986)". Motion, ECF No. 38, PageID 613. Instead, Dixon states "Petitioner stands on the filed pleadings of the original complaint and the attached exhibits with affidavits. (ECF Doc. No. 1 and exhibits, and affidavits)."

With the Amended Petition stricken, Dixon asserts:

All of the asserted claims that are within the definite statement rests [sic] upon the original complaint and exhibits attached. Petition will be fully complying with the order of the court to file the definite statement by September 15, 2022. The Petitioner's intention is for the District Court to construe his pleadings as Doc. No. 1 with the

exhibits and affidavits as Magistrate Judge Elizabeth P. Deavers did in the Order of March 30, 2022.

Id. at PageID 613.

As Dixon states, he is under an order from this Court to prepare and file by September 15, 2022, a definite statement of all the claims he makes in this case (ECF No. 19). The Magistrate Judge understands the instant Motion is intended to withdraw any claims made in the Amended Petition that were not included in the original Petition. With that understanding and pursuant to Fed.R.Civ.P. 41(a)(1), the Motion is granted. Consideration of any evidentiary material filed with the Petition remains subject to the restrictions imposed by *Cullen v. Pinholster*, 563 U.S. 170 (2011), and *Shinn v. Martinez Ramirez*, 596 U.S. ___, 142 S.Ct. 1718 (2022).

September 13, 2022.

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