

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MICHAEL C. JENKINS,)	
)	
Petitioner,)	
)	
vs.)	Case Number CIV-13-230-C
)	
TERRY MARTIN, Warden, et al.,)	
)	
Respondent.)	

ORDER

This action for habeas corpus relief brought by a prisoner proceeding pro se, was referred to United States Magistrate Judge Shon T. Erwin, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Erwin entered a Report and Recommendation (“R&R”) on April 11, 2013, followed by Petitioner’s second Motion for Leave to Amend (Dkt. No. 7).

Petitioner seeks habeas relief from a conviction for forcible oral sodomy and lewd or indecent acts with a child under sixteen. As noted by Judge Erwin, Petitioner’s habeas action raises six grounds for relief: 1) the evidence was insufficient to prove his guilt; 2) the trial court improperly admitted an interview of the victim; 3) the trial court improperly admitted propensity evidence; 4) he was denied the opportunity to cross-examine a witness in violation of the Confrontation Clause; 5) the jury was coerced into reaching a verdict by use of an Allen charge; and 6) the cumulative effect of these errors deprived him of a fair trial. In the R&R, Judge Erwin noted that Petitioner in his habeas Petition alleged exhaustion of only claims 1 and 2, thus requiring dismissal as a “mixed” petition.

Petitioner now seeks to amend, arguing that he has exhausted all issues. If, as the attached Oklahoma Court of Criminal Appeals opinion suggests, Petitioner has, in fact, exhausted all claims raised, dismissal for failure to exhaust all claims would be inappropriate. Accordingly, the Court will grant Petitioner's Motion for Leave to Amend his Habeas Petition.

As set forth more fully herein, Petitioner's Motion for Leave to Amend (Dkt. No. 7) is GRANTED. For that reason, the Court declines to adopt the Report and Recommendation (Dkt. No. 6), except that Petitioner's first Motion to Amend (Dkt. No. 5) is granted, and this matter is recommitted to the Magistrate Judge for further proceedings consistent with the original Order of Referral (Dkt. No. 4).

IT IS SO ORDERED this 23rd day of April, 2013.



ROBIN J. CAUTHRON
United States District Judge