

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

DARIUS AMONTEE COLE,

Petitioner,

v.

Case No. 1:17-cv-01105-JDB-egb

SHAWN PHILLIPS,

Respondent.

ORDER DIRECTING PETITIONER
TO FILE AMENDED PETITION ON OFFICIAL FORM OR FILE STATEMENT,
AND
DIRECTING CLERK TO MAIL OFFICIAL FORM

On June 5, 2017, Petitioner, Darius Amontee Cole, filed a *pro se* pleading on a § 2254 form that substantially complied with the Court's official form. (Pet., ECF No. 1.) The Court ordered Respondent, Shawn Phillips, to respond to the petition by July 21, 2017. (Order, ECF No. 6.) On June 27, 2017, Cole filed a "Petition for Post-conviction Relief and/or Motion Pursuant to Tenn. R. Crim. P. 36.1 to Correct Illegal Sentence." (Post-Conv. Pet., ECF No. 7.) The pleading was docketed as an amended petition. (*Id.*)

Although the original petition was clearly brought pursuant to 28 U.S.C. § 2254, the amended petition, which references only state rules for post-conviction relief and is on a state-court form, suggests that Cole may have intended to file the form in the state court for the purpose of pursuing state post-conviction relief.¹ However, since Petitioner's intent is unclear, he is hereby ORDERED to either refile his amended petition on the Court's official form seeking

¹ Under certain circumstances, a district court has discretion to stay a habeas petition to allow the prisoner to exhaust his claims in state court. *Rhines v. Weber*, 544 U.S. 269, 278 (2005).

relief available in a § 2254 proceeding or file a statement with the Court indicating whether he is currently pursuing, or intends to pursue, state post-conviction relief. Petitioner has twenty-eight days from the date of this order to comply. Failure to comply will result in dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk is DIRECTED to send Petitioner the Court's official § 2254 form.

IT IS SO ORDERED this 30th day of June 2017.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE