

Kerner v. NH DOC, et al.

13-CV-132-SM 5/8/14

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Mark A. Kerner

v.

Case No. 13-cv-132-SM
Opinion No. 2014 DNH 104

Edward Reilly, Warden,
Northern New Hampshire
Correctional Facility

O R D E R

Mark Kerner has filed a habeas petition in this matter pursuant to 28 U.S.C. § 2254. Before the court are Kerner's: motion to lift stay (doc. no. 11); motion to amend (doc. no. 12) his habeas petition, including an amended petition (doc. no. 12-1) and three addenda (doc. nos. 16-18) to the motion; motion for independent in-camera review (doc. no. 14); a motion for an evidentiary hearing (doc. no. 15); and motion to subpoena witnesses (doc. no. 19).

On September 6, 2013, the court issued an order (doc. no. 8) granting a stay in this matter to allow Kerner to return to the state courts to exhaust the claims in his petition that were then unexhausted. That order directed Kerner to supply the court with regular status reports during the litigation of his state court proceedings, and after the New Hampshire Supreme Court ("NHSC") issued a final order, to move this court to amend his petition

and include exhibits to the motion, to demonstrate that each of the claims in the petition was exhausted.

Kerner filed his motion to lift the stay, motion to amend, and amended petition in a timely fashion. Kerner has not, however, supplied the court with documentation demonstrating that each of his federal claims has been presented to the NHSC for consideration. Accordingly, Kerner has not demonstrated that his NHSC filings exhausted his claims here. The court grants Kerner leave to file the appropriate documentation, as directed below.

Conclusion

1. Kerner's motions to lift the stay (doc. no. 11) and to amend the petition (doc. no. 12) are granted. The clerk's office is directed to redocket Kerner's proposed amended petition (doc. no. 12-1) as the amended petition in this matter.

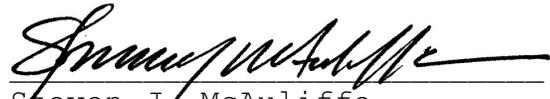
2. The motions for in-camera review (doc. no. 14), an evidentiary hearing (doc. no. 15), and to subpoena witnesses (doc. no. 19) are denied, without prejudice, as premature, as they ask the court to address the merits of the petition prior to the court's completion of preliminary review.

3. Kerner is directed to supply this court, within thirty days of the date of this order, with all of the documents he has filed in the NHSC during the stay of this matter, including, but

not limited to, motions, petitions, briefs, and notices of appeal, that served to present the federal habeas claims listed in the amended complaint (doc. no. 12-1) in a manner adequate to constitute exhaustion of those claims in the NHSC.

Failure to comply with the terms of this order may result in the dismissal of this action.

SO ORDERED.


Steven J. McAuliffe
United States District Judge

May 8, 2014

cc: Mark A. Kerner, pro se

SM:jba