

APPENDIX

A

AMENDED

STATE OF WISCONSIN, CIRCUIT COURT, EAU CLAIRE COUNTY

For Official Use

State of Wisconsin, Plaintiff, -vs-

Order of Commitment for Institutional Care (Not Guilty by Reason of Mental Disease or Defect)

FILED CIRCUIT COURT COUNTY

JUN 02 2003

Bill Marquart Name Defendant

12-17-75 Date of Birth

Case No. 00CF137

DIANA J. MILLER

CLERK OF CIRCUIT COURT

THE COURT FINDS:

- 1. The defendant was found not guilty by reason of mental disease or defect of the following crime(s):
Crime(s) Wis. Statute(s) Charged Date(s) Occurred
6 Counts-Mistreatment of Animals/Cause Harm 951.02 03-13 to 3-15-00
2 Counts Felon Possess Firearm 941.29(2)(a) 03-13 to 3-15-00
1 Count of Aggravated Burglary 943.10(2)(a) 03-13 to 3-15-00
2. The total maximum term of incarceration for the crime(s) is:
3. A hearing has been conducted and the court determines that conditional release would pose a significant risk of bodily harm to the defendant or to others, or of serious property damage.
4. The involuntary administration of psychotropic medications is needed, given the legitimate needs of institutional confinement, because:
5. The crime (or, if more than one, at least one of them) is a felony and the court has informed the defendant of the requirements and penalties under §941.29, Wisconsin Statutes, that possession of a firearm is a Class E felony with a penalty of a fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both.

THE COURT ORDERS:

- 1. The defendant is committed to the Department of Health and Family Services for institutional care for:
2. If the defendant is not competent to refuse psychotropic medication or treatment, whoever administers the medication or treatment to the defendant shall observe appropriate medical standards.
3. The sheriff of the county shall transport the defendant to the Department's designated institution:

BY THE COURT

[Signature]

Circuit Court Judge/Clerk of Court

Eric Wahl

Name Printed or Typed

06-02-2003

Date

Distribution:

- 1. Court (Original)
2. District Attorney
3. Defense Attorney
4. Department of Health and Family Services
5. Sheriff (of county of defendant's residence)
6. §51.42 Board (of county of defendant's residence)

APPENDIX

B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

BILL PAUL MARQUARDT,

Petitioner,

v.

Case No: 5:16-cv-590-Oc-10PRL

**SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS
and FLORIDA ATTORNEY GENERAL**

Respondents.

ORDER

This matter is before the Court on the motion of Petitioner's counsel to file an amended habeas petition on behalf of Petitioner (Doc. 45) and to stay these proceedings pending restoration of Petitioner's competency and exhaustion of his post-conviction remedies in state court. (Doc. 46).

Petitioner is currently represented by attorneys with the Office of Capital Collateral Regional Counsel – Middle Region, and has been since May of 2015. Throughout these proceedings, Petitioner has repeatedly attempted to fire his attorneys and proceed *pro se*. (See Docs. 3, 10, 21, 30, 31, 47). The Court has denied those requests due (in part) to ongoing competency proceedings in state court, as well as counsel's efforts to pursue and preserve all of Petitioner's claims in this court. (Docs. 27, 42). Accordingly, and for the reasons set forth in the District Judge's most recent Order (Doc. 42), Petitioner's renewed motion to fire his counsel (Doc. 47) is due to be **DENIED**.

According to counsel, Petitioner's initial petition, which was filed *pro se*, fails to include all of his potential federal claims. Counsel seeks leave to file an amended habeas petition on

behalf of Petitioner, which includes his post-conviction claims, as well as direct appeal claims. The proposed petition (attached as an exhibit) asserts seventeen grounds, twelve of which are unexhausted. Because this is a mixed petition (i.e., it contains both exhausted and unexhausted claims), counsel requests that the amended petition be stayed until such time as Petitioner is competent and has fully exhausted his state post-conviction claims. Respondents have not filed a response in opposition, and thus, the Court assumes that they do not oppose the requested relief.


In *Rhines v. Weber*, 544 U.S. 269 (2005), the Supreme Court held that "district courts have discretion to employ, in limited circumstances, 'stay and abeyance' procedures to hold a § 2254 petition in abeyance while the petitioner exhausts his previously-unexhausted claims." *King v. Chase*, 384 Fed. Appx 972, 975 (11th Cir. 2010) (citing *Rhines v. Weber*, 544 U.S. at 275-77). Stay and abeyance is only appropriate if: "(1) the petitioner had good cause for his failure to exhaust his claims; (2) the unexhausted claims are not plainly meritless; and (3) there is no indication that the petitioner engaged in abusive litigation practices or intentional delay." *Id.* (quoting *Rhines*, 544 U.S. at 277-78). If a petitioner meets these conditions, "it likely would be an abuse of discretion for a district court to deny a stay and to dismiss a mixed petition." *Id.* (quoting *Rhines*, 544 U.S. at 278).

Here, all of the conditions are met. First, there is no dispute that Petitioner's ongoing competency and mental health issues played a part in his premature filing of his incomplete federal habeas petition. There is no suggestion that his failure to exhaust was a dilatory tactic or an otherwise abusive litigation practice. Moreover, Petitioner's unexhausted claims are not plainly meritless. For example, the amended petition asserts that: (1) Petitioner was tried while incompetent to proceed; (2) he received ineffective assistance of counsel; (3) the State committed prosecutorial misconduct and Brady violations; and (4) newly discovered evidence casts doubts

about his guilt. In addition, because (according to counsel, see Doc. 46, p.5) Petitioner has only 14 days remaining on his federal habeas clock, he may be at risk of losing his chance of federal review of his claims without an order staying his petition. *See, e.g., Talbot v. Jenkins*, No. 09-cv-28-bbc, 2010 WL 2900349, at *4 (W.D. Wis. July 21, 2010) ("[T]his court generally deems 30 days to be a sufficient time period within which a petitioner should be able to re-file a perfected habeas petition after exhausting his state court remedies").

Accordingly, Petitioner's motion for leave to file an amended petition (Doc. 45) is **GRANTED**. The Clerk is **directed** to docket the amended petition (Doc. 45, Ex. A) as a separate docket entry. Petitioner's Motion to Stay and Hold Proceedings in Abeyance Pending Restoration of Competency and Exhaustion of Remedies (Doc. 46) is **GRANTED**, and this case is **STAYED** pending final resolution of the pending state court post-conviction proceedings. Petitioner, through counsel, shall file a motion to reopen this case within **30 days** after a final decision has been rendered regarding the pending state court post-conviction proceedings.¹ The failure to do so could result in the dismissal of this case without further notice. Lastly, Petitioner's counsel shall file a status report with the Court every 90 days.

DONE and ORDERED in Ocala, Florida on April 4, 2017.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:
Counsel of Record
Unrepresented Parties

¹ The Court stresses that the filing must be in the form of a motion, otherwise the docket will not reveal that the case is in need of renewed attention.

Leahy, Matthew

From: cmecf_flmd_notification@flmd.uscourts.gov
Sent: Thursday, April 06, 2017 3:48 PM
To: cmecf_flmd_notices@flmd.uscourts.gov
Subject: Activity in Case 5:16-cv-00590-WTH-PRL Marquardt v. Secretary, Florida Department of Corrections et al Order on Motion for Leave to File

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U.S. District Court

Middle District of Florida

Notice of Electronic Filing

The following transaction was entered on 4/6/2017 at 3:48 PM EDT and filed on 4/6/2017

Case Name: Marquardt v. Secretary, Florida Department of Corrections et al

Case Number: 5:16-cv-00590-WTH-PRL

Filer:

Document Number: 51

Docket Text:

ORDER granting [45] Motion for Leave to File an Amended Petition; The Clerk is directed to docket the Amended Petition (Doc. 45, Ex. A) as a separate docket entry; granting [46] Petitioner's Motion to Stay and Hold Proceedings in Abeyance Pending Restoration of Competency and Exhaustion of Remedies; this case is STAYED pending resolution of the pending state court post-conviction proceedings; Petitioner, through counsel, shall file a motion to reopen the case within 30 days after a final decision has been rendered regarding the pending state court post-conviction proceedings; Petitioner's counsel shall file a status report with the Court every 90 days; denying [47] Petitioner's Renewed Motion to Terminate Counsel. Signed by Magistrate Judge Philip R. Lammens on 4/6/2017. (JEB)

5:16-cv-00590-WTH-PRL Notice has been electronically mailed to:

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] [296b32b175ecf3428962062eda12a6852d40ca7d2edf1d1b9332284b7a293cc429e
7d59b0f74dabdd87df2b37a7bdb3846815b0e5d2d03b20911eb0efa8a8698]]