

**NOT RECOMMENDED FOR PUBLICATION**

No. 23-2065

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

Feb 1, 2024

KELLY L. STEPHENS, Clerk

DOUGLAS CORNELL JACKSON, )  
Petitioner-Appellant, )  
v. ) ON APPEAL FROM THE UNITED  
NATHAN HOFFMAN, Warden, ) STATES DISTRICT COURT FOR  
Respondent-Appellee. ) THE EASTERN DISTRICT OF  
 ) MICHIGAN  
 )

**ORDER**

Before: STRANCH, BUSH, and MATHIS, Circuit Judges.

This matter is before the court upon initial consideration of appellate jurisdiction.

Douglas Cornell Jackson filed a 28 U.S.C. § 2254 habeas corpus petition. At the same time, Jackson was pursuing state post-conviction relief. On September 20, 2019, the district court stayed the habeas corpus proceedings and administratively closed the case to allow Jackson to exhaust his state remedies. The district court's order stated: "Nothing in this order . . . shall be considered a dismissal or disposition of this matter." *Jackson v. Parish*, No. 15-cv-11622, 2019 WL 4573799, at \*4 (E.D. Mich. Sept. 20, 2019). Jackson filed a notice of appeal from the September 20, 2019, order, which we dismissed for lack of jurisdiction. *Jackson v. Lesatz*, No. 19-2367, 2020 WL 897442, at \*1 (6th Cir. Jan. 21, 2020).

Jackson continued to file pleadings in the district court after it administratively closed his case. The district court eventually enjoined Jackson from further filing in the case without leave from the court. Jackson filed a notice of appeal from that decision, which we also dismissed for

lack of jurisdiction. *Jackson v. Lesatz*, No. 20-1027, 2020 WL 1807966, at \*1 (6th Cir. Mar. 27, 2020).

Jackson then filed a motion in the district court to lift the stay of his habeas proceedings. The district court denied the motion in March 2022, noting that it appeared that Jackson's state-court proceedings were still pending. Jackson appealed, and we dismissed the appeal for lack of jurisdiction. *Jackson v. Davids*, No. 22-1423, 2022 WL 16835875, at \*1 (6th Cir. Nov. 7, 2022).

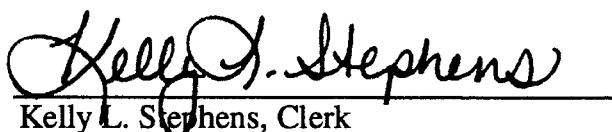
Jackson subsequently filed a motion for reconsideration of the order denying the motion to lift the stay. He also filed another motion to lift the stay and a motion to amend his habeas petition. The district court denied all three motions in an order issued on September 22, 2022.

In March 2023, Jackson filed a motion to vacate the September 22, 2022, order on the basis that he never received a copy of the order. Jackson asked that the opinion be vacated and reissued. On November 2, 2023, the district court granted the motion to vacate, vacated the September 22, 2022, order, and reinstated it. Jackson now appeals.

This court lacks jurisdiction over this appeal. A district court's decision to grant or deny a stay of its own proceedings "is not ordinarily a final decision." *Swanson v. DeSantis*, 606 F.3d 829, 834 (6th Cir. 2010) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 10 n.11 (1983)). And if an order denying a motion to lift a stay is not appealable, the denial of reconsideration of that order is also not appealable. *See United States v. Gomez-Gomez*, 643 F.3d 463, 469 (6th Cir. 2011). Finally, an order denying a motion to amend is not immediately appealable. *See Inge v. Rock Fin. Corp.*, 281 F.3d 613, 617 (6th Cir. 2002).

It is ordered that the appeal is **DISMISSED**.

ENTERED BY ORDER OF THE COURT

  
\_\_\_\_\_  
Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Feb 1, 2024  
KELLY L. STEPHENS, Clerk

No. 23-2065

DOUGLAS CORNELL JACKSON,

Petitioner-Appellant,

v.

NATHAN HOFFMAN, Warden,

Respondent-Appellee.

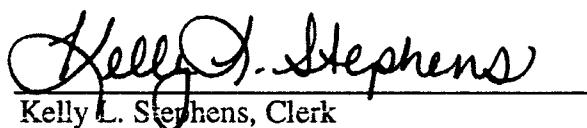
Before: STRANCH, BUSH, and MATHIS, Circuit Judges.

**JUDGMENT**

THIS MATTER came before the court upon consideration of appellate jurisdiction.

IN CONSIDERATION THEREOF, it is ORDERED that the appeal is DISMISSED.

**ENTERED BY ORDER OF THE COURT**

  
\_\_\_\_\_  
Kelly L. Stephens, Clerk

No. 23-2065

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

Mar 25, 2024

KELLY L. STEPHENS, Clerk

DOUGLAS CORNELL JACKSON, )  
Petitioner-Appellant, )  
v. )  
NATHAN HOFFMAN, Warden, )  
Respondent-Appellee. )

ORDER

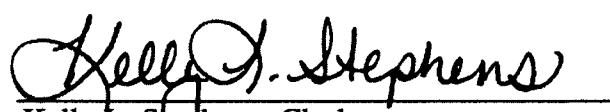
Before: STRANCH, BUSH and MATHIS, Circuit Judges.

Douglas Cornell Jackson, filed a petition for rehearing of this court's February 1, 2024, order dismissing this appeal for lack of jurisdiction.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it entered the decision. *See* Fed. R. App. P. 40(a).

The petition for rehearing is **DENIED**.

ENTERED BY ORDER OF THE COURT

  
\_\_\_\_\_  
Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DOUGLAS JACKSON,

Petitioner,

Case No. 15-cv-11622

v.

U.S. DISTRICT COURT JUDGE  
GERSHWIN A. DRAIN

LES PARISH,

Respondent.

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**ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION**  
**[#123], MOTION TO LIFT THE STAY [#129], AND MOTION TO AMEND**  
**THE PETITION [#130]**

Before the Court are petitioner's Motion for Reconsideration, Second Motion to Lift Stay, and his Motion to Amend the petition. For the reasons that follow, the motions are **DENIED**.

Petitioner filed a petition for writ of habeas corpus with this Court pursuant to 28 U.S.C. § 2254. This Court held the petition in abeyance and administratively closed the matter to allow Petitioner to complete state post-conviction proceedings in the state courts where he attempted to exhaust additional claims. *Jackson v. Parish*, No. 15-CV-11622, 2019 WL 4573799 (E.D. Mich. Sept. 20, 2019). The undersigned based the stay on the fact that the Michigan Supreme Court on September 10, 2019, remanded Petitioner's case back to the Wayne County Circuit

Court to address his motion for reconsideration. The Michigan Supreme Court ordered the trial court to determine whether Petitioner's amended motion for relief from judgment filed on May 24, 2016, constitutes a successive motion for relief from judgment within the meaning of M.C.R. 6.502(G). If the trial judge determined that it is not a successive motion, the judge was directed to decide the motion under the standard for granting or denying post-conviction relief found in M.C.R. 6.508. If the judge determined that the motion is successive, the judge could deny relief pursuant to M.C.R. 6.502(G). The judge was ordered to "issue an opinion setting forth its analysis." *In re Jackson*, 932 N.W.2d 622 (Mich. 2019).

This Court held the case in abeyance to give Petitioner the opportunity to properly exhaust his claims on state post-conviction review. A state prisoner who seeks federal habeas relief is first required to exhaust his or her available state court remedies before raising a claim in federal court. 28 U.S.C. § 2254(b) and (c). *See Picard v. Connor*, 404 U. S. 270, 275–78 (1971). This Court recognized that a habeas petition is unexhausted when a state post-conviction motion remains pending in the state courts. The Court also noted that Petitioner can appeal any denial of the post-conviction motion to the state appellate courts. *Jackson v. Parish*, 2019 WL 4573799, at \* 3. This Court ruled that "a federal court cannot consider granting habeas relief 'if there still is a potential state remedy for the state

courts to consider.”” *Id.* (quoting *Wagner v. Smith*, 581 F. 3d 410, 415 (6th Cir. 2009)).

Presently before the Court is Petitioner’s Motion to Lift the Stay [#129] and a Motion to Amend the Petition [#130]. There is no indication in his motions that the Wayne County Circuit Court adjudicated his motion on remand, nor is there any allegation or documentation that he appealed any denial of the motion to the Michigan Court of Appeals or Michigan Supreme Court. Petitioner suggests that exhausting his remedies should be excused because four years passed before his post-conviction motion was initially decided by the Michigan trial and appellate courts between 2015 and 2019. Petitioner points to further delays in adjudicating his post-conviction motion on remand from the Michigan Supreme Court. On remand, the trial court appointed counsel for Petitioner who neither filed an appearance on petitioner’s behalf nor visited petitioner to discuss his case. This attorney eventually asked to withdraw from the case. Petitioner filed a motion for substitute counsel, which was granted. Petitioner claims that this second attorney filed a post-conviction motion which raised different claims than those raised by Petitioner in his original post-conviction motion. On May 31, 2021, Petitioner filed another motion to substitute counsel. On February 10, 2022, petitioner filed his own *pro per* amended motion for relief from judgment. According to Petitioner, neither of these motions have been ruled upon. Because of the lengthy

delays in this case, petitioner argues that exhaustion is futile and should be excused. ECF No. 130, PageID.7436–37, 7514–24.

It is true that some courts have excused a habeas petitioner’s failure to exhaust their state court remedies where the petitioner shows an “inordinate delay” in the state court’s resolution of the petitioner’s postconviction motion. *Johnson v. Bauman*, 27 F.4th 384, 391 (6th Cir. 2022) (citing *Workman v. Tate*, 957 F.2d 1339, 1344 (6th Cir. 1992) (collecting cases)). Nonetheless, “a lengthy proceeding, while in some instances lamentable, does not always leave a petitioner incapable of securing his rights—that is, in the words of the statute, does not necessarily imply that ‘circumstances’ beyond the petitioner’s control have rendered the “process ineffective to protect [his] rights.” *Id.* (citing 28 U.S.C. § 2254(b)(1)(B)(ii)). The Sixth Circuit noted that nothing in the habeas statute excuses the exhaustion of state court remedies merely because of a delay in the state court process. *Id.* at 391–93. The Sixth Circuit opined that “the “inordinate delay” standard is more a product of judicial decision making (and confused decision making at that) than an effort to interpret a statutory text.” *Id.* at 392. Although a petitioner’s failure to exhaust their claims may be excused where “circumstances exist that render [the state’s corrective] process ineffective to protect the rights of the applicant,” *Id.* at 388 (quoting § 2254(b)(1)(B)(ii)), the Sixth Circuit observed that “the inordinate delay exception, if taken at face value,

could exceed the statutory “ineffective” standard, expanding § 2254(b)(1)(B)(ii)’s scope beyond both its text as well as the preexisting exceptions that the [habeas] statute codified.” *Id.*, at 394. Although the Sixth Circuit has never “explicitly define[d]” what an inordinate delay is, it never held that a petitioner demonstrated “inordinate delay” through delay alone. *Id.* For example, “a failure to exhaust may be excused only if the state is responsible for the delay.” *Id.* The Sixth Circuit indicated that the court “applied these two guideposts … in a manner that aligns with the statute’s original meaning as well as the common law exhaustion doctrine that preceded the statute.” *Id.*

In the present case, Petitioner fails to show that the delays in adjudicating his state post-conviction motion, both initially and on remand from the Michigan Supreme Court, present exceptional circumstances that justify excusing the exhaustion of state court remedies. *Johnson*, 27 F.4th at 395. It is true that Petitioner’s case has continued in the state courts for seven years, but the case has not sat idle. *Id.* This Court recites verbatim the procedural history of Petitioner’s post-conviction motion up to the remand by the Michigan Supreme Court from the opinion holding the petition in abeyance:

Petitioner attempted to file a post-conviction motion for relief from judgment with the state trial court, but his initial motion was returned by the trial court because it exceeded fifty pages. *People v. Jackson*, No. 09-003770-01 (Wayne Cty. Cir. Ct. Jan. 21, 2016). Petitioner subsequently filed another motion for relief from judgment and a

subsequent motion to amend the motion for relief from judgment. The trial court judge denied petitioner post-conviction relief on several grounds, including the belief that at least a portion of the motion for relief from judgment constituted a prohibited successive motion for relief from judgment within the meaning of M.C.R. 6.502(G). *People v. Jackson*, No. 09-003770-01 (Wayne Cty. Cir. Ct. Nov. 21, 2016).

Petitioner claims that he filed a motion for reconsideration with the trial court on December 9, 2016, which was never adjudicated by that court.

The Michigan Court of Appeals dismissed petitioner's subsequently filed post-conviction appeal because it was untimely filed. *People v. Jackson*, No. 342075 Order (Mich. Ct. App. March 29, 2018).

The trial judge subsequently entered an order granting a correction to the register of actions as had been ordered by the Michigan Court of Appeals. *People v. Jackson*, No. 09-003770-01 (Wayne Cty. Cir. Ct. Jan. 11, 2017).

Petitioner filed a motion for legal assistance to assist him with filing an application for leave to appeal with the Michigan Supreme Court following the dismissal of his appeal by the Michigan Court of Appeals on March 29, 2018. This Court denied petitioner's request, in part because the fifty-six-day deadline for filing an application for leave to appeal with the Michigan Supreme Court had expired. This Court believed, based on petitioner's motion, that he no longer had any post-conviction remedies remaining in the state courts. This Court found that the petition was now ripe for consideration, permitted petitioner to reopen his case to the Court's active docket and gave him an opportunity to file an amended habeas petition. *Jackson v. Parish*, No. 15-CV-11622, 2018 WL 3020463 (E.D. Mich. June 15, 2018).

Petitioner has since filed an amended petition and numerous pleadings. Respondent filed an answer to the petition, and petitioner has filed a reply brief.

While petitioner's case was again pending before this Court, petitioner had a post-conviction appeal that had been filed with the Michigan Court of Appeals. The appeal was denied because petitioner had failed to demonstrate entitlement to an application of any of the exceptions to the general rule that a movant may not appeal the denial of a successive motion for relief from judgment. *People v. Jackson*, No. 342075 Order (Mich. Ct. App. March 12, 2019).

This Court believed, in light of all of the pleadings received by petitioner and respondent, that the petition was now ripe for a merits review. In preparing to adjudicate the merits of the petition, this Court learned that the Michigan Supreme Court, on September 10, 2019, remanded the matter to the Wayne County Circuit Court to address petitioner's motion for reconsideration:

On order of the Court, the motions to file a supplement are GRANTED. The applications for leave to appeal the March 12, 2019 orders of the Court of Appeals are considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND the case of *People v. Jackson*, Wayne CC: 09-003770-FC, to the Wayne Circuit Court for reconsideration of whether the defendant's May 24, 2016 motion for relief from judgment is a successive motion, as the circuit court states in the November 21, 2016 order denying relief from judgment, and for further proceedings as set forth in this order.

We first note that the circuit court record is in disarray and possibly incomplete. Based on the record provided to this Court, the defendant filed his first motion for relief from judgment on July 16, 2015. The defendant sought to amend that motion on October 16, 2015. The amended motion for relief from judgment was returned to the defendant by order dated January 21, 2016, because it exceeded the page limit. The defendant was encouraged to resubmit the motion after redacting his issues and arguments to a more manageable length. The defendant refiled the motion on May 24, 2016. This motion was denied by the circuit court on November 21, 2016, in an order that characterized the motion as successive and denied relief under MCR 6.502(G).

In support of its characterization of the motion for relief from judgment as a successive motion, the circuit court's November 21, 2016 order states that an earlier motion for relief from judgment was denied on November 24, 2015. No such order can be found in the record provided to this Court. The Register of Actions states that an order was entered on November 24, 2015, but it does not describe the order and this appears to be a reference to an unrelated order dated November 23, 2015, denying the defendant's request for a copy of the Register of Actions. We further note that the circuit court's description of the procedural history of the case in its January 26, 2016 opinion returning the motion for relief from judgment to the defendant, and in a March 11, 2016 order denying the defendant's request for the appointment of counsel, does not support the conclusion that the defendant's May 24, 2016 motion for relief from judgment is a successive motion.

Under these circumstances, we REMAND the case of *People v. Jackson* to the Wayne Circuit Court for reconsideration of whether the defendant's May 24, 2016 motion for relief from judgment is a successive motion under MCR 6.502(G). On remand, the circuit court shall issue an opinion setting forth its analysis. If the circuit court determines that the defendant's motion for relief from judgment is not a successive motion, as appears to be the case based on the circuit court record provided to this Court, the circuit court shall decide the motion under the standard set forth in MCR 6.508(D). If, however, the court determines that the motion for relief from judgment was correctly denied under MCR 6.502(G) as a successive motion, it shall then rule on the motion for reconsideration that the defendant filed on December 9, 2016. A date-stamped copy of the motion for reconsideration is contained in the circuit court file, but the motion is not listed in the Register of Actions, and there is no order in the circuit court file deciding the motion.

We do not retain jurisdiction.

*Jackson v. Parish*, No. 15-cv-11622, 2019 WL 4573799, at \*1–3 (E.D. Mich. Sept. 20, 2019) (quoting *In re Jackson*, No. 159412, 2019 WL 4302547, at \*1–2 (Mich. Sept. 10, 2019)).

Once the case was remanded back to the Wayne County Circuit Court, various motions were filed and ruled upon in the end of 2019. The Circuit Court appointed counsel to represent Petitioner in November of 2020. At some point, that attorney moved to withdraw from the case. The Circuit Court granted the motion to withdraw and appointed substitute counsel to represent Petitioner on April 19, 2021. After counsel filed a motion for relief from judgment that was not to Petitioner's satisfaction, Petitioner filed a motion for new substitute counsel on May 31, 2021. On February 10, 2022, Petitioner filed his own *pro per* amended motion for relief from judgment. He filed an additional motion for relief from judgment on March 28, 2022. The Circuit Court ruled on several motions, although it is unclear from the docket sheet which motions those are. The trial court also ordered the prosecutor to file responses to some of the motions.<sup>1</sup>

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<sup>1</sup> This Court obtained some of this information from the Wayne County Circuit Court website. See <https://cmspublic.3rdcc.org/CaseDetail.aspx?CaseID=994002>. Public records and government documents, including those available from reliable sources on the Internet, are subject to judicial notice. See *Daniel v. Hagel*, 17 F. Supp. 3d 680, 681, n.1 (E.D. Mich. 2014); *United States ex. rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003).

Although a considerable amount of time has passed in this case, the case has not sat idle for several years in the state courts with no activity. *See Johnson*, 27 F.4th at 395. None of the time periods are “particularly striking when considered against the backdrops of both post-sentencing litigation, which often proceeds incrementally, and the much longer gaps [which the Sixth Circuit has] addressed in some of [their] other inordinate delay cases.” *Id.* at 395. Petitioner presents no evidence showing that these delays were due to malfeasance or bad faith on the state trial or appellate courts’ behalf. *Id.* at 396. Petitioner also fails to show that the state is “clearly ... responsible” for all the delays. *Id.* This is particularly so where Petitioner moved to reopen this case without informing this Court that a post-conviction appeal was pending in the Michigan Court of Appeals or that his motion for reconsideration was pending in the Michigan Supreme Court. *Id.*

Finally, this Court takes judicial notice of the fact that much of the activity in petitioner’s case on remand before the trial court took place during the COVID-19 Pandemic, which had adverse effects on court operations at the state and federal level for over two years. Some of the delays here were due to court closures undertaken to ameliorate the spread of the disease. While this caused unfortunate delays in many court proceedings, it would not excuse petitioner’s failure to exhaust his claims. *See Crowley v. Miniard*, No. 2:21-CV-10183, 2021 WL 1085154, at \*2 (E.D. Mich. Feb. 10, 2021) (“Although the COVID-19 pandemic

has had an undeniable impact on all aspects of society, including delaying court proceedings, there is no indication that Petitioner cannot obtain relief in the state courts.”).

Additionally, Petitioner could seek an order of superintending control from the Michigan Court of Appeals pursuant to M.C.R. 3.302 (D)(1) and M.C.R. 7.203 (C)(1) to order the Wayne County Circuit Court to adjudicate his pending motions for relief from judgment. If the Michigan Court of Appeals failed to issue an order of superintending control, Petitioner could seek an order of superintending control from the Michigan Supreme Court pursuant to M.C.R. 7.306. Because Petitioner has not sought relief from the Michigan appellate courts to compel the trial court to entertain his pending motions, he is not excused from exhausting his claims in the state courts. *See Porter v. Sanders*, No. 2:12-CV-11287, 2012 WL 1353703, at \*2 (E.D. Mich. Apr. 16, 2012); *Scott v. Woods*, No. 2:15-CV-13095, 2016 WL 1554934, at \*3 (E.D. Mich. Apr. 18, 2016); *Washington v. Warden, Ross Correctional Institute*, No. 02-70096, 2003 WL 1867914, \* 3 (E.D. Mich. Mar. 21, 2003); *see also Wells v. Marshall*, 885 F. Supp. 314, 318 (D. Mass. 1995) (state prisoner was not exempt from exhaustion requirement for filing a petition for writ of habeas corpus, though his motion for new trial had been pending in the state trial court since July, 1991, where he did not seek intervention from the highest state court to remedy the delay). Petitioner’s failure to adequately pursue his

claims in state court “disqualifies his case from consideration under the narrow exception” to the exhaustion requirement.” *See Dillon v. Hutchinson*, 82 F. App’x. 459, 462 (6th Cir. 2003).

**IT IS HEREBY ORDERED** that the motion for reconsideration [#123], Motion to Lift Stay [#129] and the Motion to Amend the petition [#130] are **DENIED**.

**IT IS SO ORDERED.**

/s/ Gershwin A. Drain  
GERSHWIN A. DRAIN  
UNITED STATES DISTRICT JUDGE

Dated: September 22, 2022

**CERTIFICATE OF SERVICE**

Copies of this Order were served upon attorneys of record on September 22, 2022, by electronic and/or ordinary mail.

/s/ Teresa McGovern  
Case Manager

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**DOUGLAS JACKSON,**

Petitioner,

Case No. 2:15-CV-11622

v.

**UNITED STATES DISTRICT JUDGE  
GERSHWIN A. DRAIN**

**LES PARISH,**

Respondent.

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**OPINION AND ORDER DENYING AS PREMATURE  
THE MOTION TO LIFT THE STAY (ECF No. 149) AND  
ACKNOWLEDGING RECEIPT OF OCTOBER 10, 2023 LETTER (ECF No.  
154)**

Before the Court is petitioner's motion to lift the stay. Also, before the Court is the Petitioner's October 10, 2023 Letter requesting speedy adjudication of his July 14, 2023 petition for mandamus. For the reasons that follow, the motion is DENIED as premature and the request for speedy adjudication is DENIED.

Petitioner filed a petition for writ of habeas corpus with this Court pursuant to 28 U.S.C. § 2254. This Court held the petition in abeyance and administratively closed the case permitting petitioner to complete state post-conviction proceedings in the state courts where he had attempted to exhaust additional claims. *Jackson v. Parish*, No. 15-CV-11622, 2019 WL 4573799 (E.D. Mich. Sept. 20, 2019). The stay was based on the fact that the Michigan Supreme Court remanded petitioner's case

back to the Wayne County Circuit Court to address petitioner's motion for reconsideration. The Michigan Supreme Court's lengthy decision ordered the trial court to determine whether petitioner's amended motion for relief from judgment filed on May 24, 2016 constituted a successive motion for relief from judgment within the meaning of M.C.R. 6.502(G). If the trial judge determined that it was not a successive motion, the judge was directed to decide the motion under the standard for granting or denying post-conviction relief found in M.C.R. 6.508. If the judge determined that this motion is successive, the judge could deny relief pursuant to M.C.R. 6.502(G). The judge was ordered to "issue an opinion setting forth its analysis." *In re Jackson*, 932 N.W.2d 622 (Mich. 2019).

Petitioner has now filed a motion to lift the stay. Petitioner claims that on June 2, 2023, the Wayne County Circuit Court judge denied his remaining claims pursuant to M.C.R. 6.502(G), apparently finding the amended motion to be a successive motion for relief from judgment. Petitioner argues that his case is now ripe for review because he believes that M.C.R. 6.502(G) precludes a defendant from appealing a trial court order denying a successive motion for relief from judgment.

Under M.C.R. 6.502(G)(1), a criminal defendant in Michigan can typically file only one motion for relief from judgment with regard to a criminal conviction. *See Banks v. Jackson*, 149 F. App'x 414, 418 (6th Cir. 2005). Although M.C.R. 6.502(G)(1) indicates that a defendant cannot appeal the denial or rejection of a

successive motion for relief from judgment, contrary to petitioner's belief, this rule does not act as a complete ban on an appeal from the denial of a successive motion for relief from judgment. *See e.g. Ingram v. Prelesnik*, 730 F. App'x 304, 311, n. 3 (6th Cir. 2018); *see also Adams v. Lesatz*, No. 2:17-CV-11056, 2019 WL 6310925, at \* 2 (E.D. Mich. Nov. 25, 2019)(holding habeas petition in abeyance to permit the petitioner to file an appeal from the denial of a successive motion for relief from judgment).

There are several possible grounds that petitioner could bring to appeal the judge's order.

First, M.C.R. 6.502(F) provides that, “[t]he court may permit the defendant to amend or supplement the motion [for relief from judgment] at any time.” The Michigan Supreme Court initially remanded the case back to the trial court to determine whether or not the amended motion for relief from judgment should be treated as a successive motion for relief from judgment that would be barred under M.C.R. 6.502(G), or whether it was, in fact, a supplement to the original motion. Although the judge treated the amended motion as an improperly filed successive motion, the Michigan Court of Appeals or Michigan Supreme may determine the amended motion for relief from judgment is a supplement to the petitioner's original motion for relief from judgment and conclude that the judge erred in denying the motion pursuant to M.C.R. 6.502(G). *See e.g. Rushing v. Booker*, No. 04-74322,

2005 WL 1529623, \* 3 and n. 5 (E.D. Mich. Jun. 28, 2005)(suggesting that petitioner could file another motion for relief from judgment, when petitioner's first motion was dismissed without prejudice and he had not been given an opportunity, pursuant to M.C.R. 6.502(F), to amend or supplement the first motion).

Secondly, M.C.R. 6.502(G)(2) states that a defendant may file a second or subsequent motion based on a retroactive change in the law that occurred after the first motion for relief from judgment or a claim of new evidence that was not discovered before the first such motion. *Banks*, 149 F. App'x at 418.

Finally, although not specifically mentioned in M.C.R. 6.502(G)(2), jurisdictional defects can be pursued in a successive motion for relief from judgment because such defects can be raised at any time. *People v. Washington*, 508 Mich. 107, 131–32, 972 N.W.2d 767, 779 (2021).

This Court "should exercise caution in finding that" 6.502(G) would bar petitioner from presenting these claims to the Michigan appellate courts. *Banks*, 419 F. App'x at 418. "Because it is at least debatable whether the Michigan [appellate] courts would entertain [these claims] on a second or successive motion for state postconviction relief," *Id.*, petitioner's motion to lift the stay is premature, particularly if petitioner is operating on the belief that he is completely barred from appealing the denial of his amended motion for relief from judgment by the trial court. When the Michigan Supreme Court denies an appeal under M.C.R. 6.502(G),

the typical language used is not that “the *appeal* itself was barred, but because [the defendant’s] “*motion* for relief from judgment is prohibited by MCR 6.502(G).” *Ingram v. Prelesnik*, 730 F. App’x at 311, n 3 (emphasis original). Petitioner “also would have a difficult time explaining his interpretation of Rule § 6.502(G) as a complete ban on appeals, given the over-900 Michigan Supreme Court orders that deny leave to appeal citing that rule.” *Id.*

Because it is possible for petitioner to appeal the denial of his amended motion for relief from judgment to the Michigan appellate courts, the Court denies the motion to lift the stay as premature.<sup>1</sup> Petitioner can move to reopen the petition within sixty days of the conclusion of any post-conviction appeals. Alternatively, if petitioner chooses not to appeal the judge’s decision denying the amended motion for relief from judgment, he has sixty days from the date of this order to move to reopen the case.

Finally, petitioner seeks speedy resolution of his July 14, 2023 mandamus petition; however, the Court never received a mandamus petition on that date.

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<sup>1</sup> A criminal defendant in Michigan has six months from the denial of a motion for relief from judgment by the trial court to file an application for leave to appeal with the Michigan Court of Appeals. M.C.R. 6.509 (A); M.C.R. 7.205(G)(3). The trial judge denied the motion on June 2, 2023. Petitioner would have six months from this date to appeal the trial judge’s decision should he choose to do so.

Accordingly, petitioner's request for speedy resolution of his mandamus petition [ECF No. 154] will be denied.

IT IS ORDERED that the motion to lift the stay (ECF No. 149) is DENIED WITHOUT PREJUDICE.

Dated: November 2, 2023

/s/Gershwin A. Drain  
GERSHWIN A. DRAIN  
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on November 2, 2023, by electronic and/or ordinary mail.

/s/ Teresa McGovern  
Case Manager

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**DOUGLAS JACKSON,**

Petitioner,

Case No. 2:15-CV-11622

v.

**UNITED STATES DISTRICT JUDGE  
GERSHWIN A. DRAIN**

**LES PARISH,**

Respondent.

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**OPINION AND ORDER GRANTING THE MOTION TO VACATE (ECF  
No. 143) AND DIRECTING THE CLERK OF THE COURT TO MAIL A  
COPY OF THE OPINION AND ORDER DENYING THE MOTION FOR  
RECONSIDERATION, THE MOTION TO LIFT THE STAY, AND THE  
MOTION TO AMEND/CORRECT THE PETITION (ECF No. 131) AND A  
COPY OF THIS ORDER TO PETITIONER**

On September 22, 2022, this Court denied petitioner's motion for reconsideration of his motion to lift the stay, and his motion to amend or correct the petition. (ECF No. 131). Petitioner has now filed a motion to vacate the opinion, in which he claims he never received a copy of the Court's order and only learned about it after the United States Court of Appeals for the Sixth Circuit denied his petition for mandamus. Petitioner asks that the opinion be vacated and reissued so that he can file a timely motion for reconsideration. For the reasons that follow, the motion to vacate is GRANTED.

Fed. R. Civ. P. 60(b) allows a court to reissue an opinion and order where a party to the litigation did not receive timely notice of the judgment or order. *See e.g.* *Williams v. Arn*, 654 F. Supp. 241, 246 (N.D. Ohio 1987). Petitioner claims he never received a copy of this Court's order. The opinion and order of September 22, 2022 denying the motion for reconsideration, the motion to lift the stay, and the motion to amend or correct the petition is vacated; the Court reinstates the opinion entered on that date *nunc pro tunc* as of the date of this order. *See Id.*, at 248.

The Clerk of the Court is directed to mail a copy of the Opinion and Order Denying the Motion For Reconsideration, the Motion to Lift the Stay, and the Motion to Amend/Correct the Petition (ECF No. 131) and a copy of this order by first-class mail to Petitioner.

**IT IS HEREBY ORDERED That:**

- (1) The motion to vacate (ECF No. 131) is **GRANTED**. The Opinion and Order Denying the Motion for Reconsideration, the Motion to Lift the Stay, and the Motion to Amend/Correct the Petition dated September 22, 2022 is vacated and is reinstated *nunc pro tunc* as of the date of this order.
- (2) The Clerk of the Court shall mail a copy of the Opinion and Order Denying the Motion for Reconsideration, the Motion to Lift the Stay, and the Motion to Amend/Correct the Petition (ECF No. 131) and a copy of this order to Petitioner via first-class mail.

**SO ORDERED.**

Dated: November 2, 2023

/s/Gershwin A. Drain  
GERSHWIN A. DRAIN  
United States District Judge

**CERTIFICATE OF SERVICE**

Copies of this Order were served upon attorneys of record on  
November 2, 2023, by electronic and/or ordinary mail.

/s/ Teresa McGovern  
Case Manager

**Additional material  
from this filing is  
available in the  
Clerk's Office.**