

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

RONALD A. GRAY,

Petitioner,

vs.

Case No. 08-3289-RDR

**JAMES W. GRAY, COLONEL, U.S. ARMY,
Commandant, USDB - Fort Leavenworth,**

Respondent.

**RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S
MOTION FOR A 90-DAY EXTENSION FOR FILING
REPLY TO RESPONSE TO PETITIONER'S TRAVERSE**

Respondent James W. Gray, Colonel, U.S. Army, Commandant, USDB - Fort Leavenworth, by and through Barry R. Grissom, United States Attorney for the District of Kansas, and T.G. Luedke, Assistant United States Attorney for said District, hereby submits the following response in opposition to Petitioner's Motion for a 90-Day Extension for Filing Reply to Response to Petitioner's Traverse.

1. On April 1, 2009, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, Doc. 17.
2. On May 1, 2010, Respondent filed an Answer and Return, Doc. 20.
3. After appointment of counsel, on December 18, 2010, Petitioner filed his Traverse, with a Motion to Supplement and Amend, Docs. 42 and 43.
4. On September 30, 2010, this Court entered an order granting Respondent thirty (30) days to respond to the Traverse, Doc. 47.

5. On November 1, 2010, Respondent filed a Response to the Traverse, addressing only the new claims raised by Petitioner in his Traverse, without requesting or receiving an extension of time, Doc. 48.

6. On November 10, 2010, Petitioner requested a 90-day extension of time to reply to the Respondent's Response to his Traverse. See Doc. 49.

ARGUMENT

Pursuant to D. Kan. Rule 6.1, any motion for extension of time to respond to an opposing party's pleading requires a statement that "...there has been consultation with the other parties and views of the other parties." See D. Kan. Rule 6.1(a)(1). Petitioner failed to contact Respondent regarding this matter to solicit Respondent's position on the proposed extension. Petitioner's motion for extension is deficient in the regard and should be denied for non-compliance with D. Kan. Rule 6.1.

Additionally, Petitioner asserts that a delay is necessary because "[m]any of the questions raised in this litigation are complex" and [m]any are questions of first impression." See Doc. 49, at ¶ 5. The issues in this case are extremely important, but that does not mean they are overly complex or novel. Petitioner has an expert team of four (4) court-appointed attorneys well equipped to address the jurisdictional issues that govern full and fair consideration of habeas claims under 28 U.S.C. § 2241.

This Court's Scheduling Order established the time lines for post-petition pleadings and briefings. See Doc. 15. Petitioner was granted one-hundred three (103) days to file the Petition, Respondent was afforded thirty (30) days to file an Answer and Return, and Petitioner was provided fifty (50) days to file a Traverse. Petitioner now seeks an additional delay of ninety (90) days to submit a reply to Respondent's Response to Petitioner's Traverse. By analogy, in an expedited

capital habeas review of a state case, one-hundred twenty (120) days is considered adequate for both parties to complete post-petition briefing and any hearings. See 28 U.S.C. § 2266(b)(1)(B) (“a district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to submission of the case for decision”). Petitioner unreasonably requests ninety (90) additional days to file his reply, which almost exceeds the entirety of the time period deemed adequate to complete post-petition briefing for both parties.

Petitioner is represented by four (4) expert attorneys, three (3) of whom have represented Petitioner since August 2008, and an additional capital experienced attorney who was appointed in November 2008. With the exception of Grounds Eighteen (18), Nineteen (19) and Twenty-one (21), all of his habeas grounds are claims that were previously litigated before the military courts or are waived. Furthermore, Respondent only replied to Petitioner’s additional Grounds of Nineteen through Twenty-one (19-21) as Respondent had previously replied to Grounds One through Eighteen (1-18). See Doc. 48. Thus, Petitioner simply needs to address those same three (3) Grounds. Hence, the legal issues and reply are far less complicated than the lengthy pleadings may suggest. See Doc. 20.

The issues addressed in Respondent’s Response (Doc. 48) have been sufficiently narrowed to allow Petitioner to respond within the fourteen (14) days as allowed pursuant to D. Kan. Rule 6.1(d). Respondent in this case complied with this Court’s Order dated September 30, 2010 (Doc. 47) by submitting its response within the thirty (30) day time limit, to the new claims raised by Petitioner in his Traverse. By allowing an additional ninety (90) days for Petitioner to reply would be unjustified and excessive.

CONCLUSION

WHEREFORE, Respondent would respectfully request that the Court overrule and deny Petitioner's request for a 90-day extension of time to reply to the response to the traverse filed in this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a copy to the following CM/ECF participants:

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