

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRYL STEVEN GOSS,

Petitioner,

Case No. 1:07-cv-1167

v.

Honorable Gordon J. Quist

LEONARD TOWNSEND et al.,

Respondents.

**ORDER GRANTING MOTION TO AMEND, VACATING DEFICIENCY ORDER
AND DIRECTING PETITIONER TO FILE AMENDED PETITION**

This initially was filed as a civil action under 28 U.S.C. § 1331 that did not invoke federal habeas corpus relief. A \$5.00 filing fee was paid at the time of filing. Because the action was not a habeas corpus action, Petitioner was ordered to pay the full civil action filing fee of \$350.00 or to apply in the manner required by law to proceed *in forma pauperis*. (Docket #3.) In response to the Court's deficiency order, Petitioner instead filed a motion to amend or correct his complaint to call it a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. (Docket #7.)

Rule 15(a) of the Federal Rules of Civil Procedure permits a party to amend its pleadings once as a matter of course at any time before a responsive pleading is served. As a result, Petitioner's motion to amend his complaint will be granted.

Because the filing fee for a habeas corpus action is \$5.00, Petitioner has paid the proper filing fee and the deficiency order issued by this Court on November 30, 2007 is no longer valid. Therefore, the deficiency order will be vacated.

Petitioner is required to file a habeas petition on the form provided by this Court. *See* Rule 2(d), RULES GOVERNING § 2254 CASES; W.D. Mich. LCivR 5.6(a). Petitioner failed to file his petition on the requisite form. If Petitioner wishes to proceed with his action, he must carefully fill out the form and submit it to the Court. Accordingly,

IT IS ORDERED that Petitioner's motion to amend the complaint (docket #7) is **GRANTED** and Petitioner's complaint is hereby converted to a petition for habeas corpus under 28 U.S.C. § 2254.

IT IS FURTHER ORDERED that the Court's deficiency order (docket #3) is **VACATED**.

IT IS FURTHER ORDERED that the Clerk of the Court send to Petitioner a copy of the form for a petition filed pursuant to 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody.

IT IS FURTHER ORDERED that Petitioner shall submit an amended petition by filing his habeas petition on the requisite form within thirty days from the date of entry of this order. Petitioner's case number must appear on the front page of the amended petition. If Petitioner fails to submit an amended petition in proper form within the time allowed, the petition may be dismissed without prejudice by the district judge.

Dated: January 9, 2008

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge