

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MURAD WILLIAMS,

Petitioner,

Civil No. 2:07-CV-15376
HONORABLE ARTHUR J. TARNOW

v.

THOMAS BIRKETT,

Respondent,

**OPINION AND ORDER ON REMAND REOPENING THE PETITION FOR WRIT OF
HABEAS CORPUS TO THE COURT'S ACTIVE DOCKET, APPOINTING COUNSEL
FOR PETITIONER, RELEASING PETITIONER ON PERSONAL RECOGNIZANCE
BOND, AND SETTING DEADLINES FOR THE PARTIES TO FILE PLEADINGS**

On February 26, 2010, this Court granted an unconditional writ of habeas corpus to petitioner, finding that petitioner had been constructively denied the assistance of counsel at his probation revocation hearing on his unarmed robbery conviction. See *Williams v. Birkett*, 697 F. Supp.2d 716 (E.D. Mich. 2010). On February 29, 2012, the Sixth Circuit held that petitioner's habeas application was not filed in compliance with the one year statute of limitations found in 28 U.S.C. § 2244(d) and remanded the matter to this Court to determine whether the limitations period is subject to equitable tolling in petitioner's case. See *Williams v. Birkett*, --- F.3d ----, No. 2012 WL 638508 (6th Cir. February 29, 2012).

For the reasons that follow, the Court will order the Clerk of the Court to reopen the petition to the Court's active docket. The Court will also order that the Federal Defender Office be appointed again to represent petitioner. The Court will further order

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that petitioner be released on a personal recognizance bond during the pendency of these proceedings in the district court. Lastly, the Court will set deadlines for the parties to file pleadings in this matter.

Federal courts have the power to order that a habeas petition be reinstated in various contexts. See *e.g. Rodriguez v. Jones*, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). In light of the fact that this case has been remanded by the Sixth Circuit to this Court for a determination of whether the limitations period should be equitably tolled, the Court will reopen the petition and order the Clerk of the Court to reinstate this case to the Court's active docket.

The Court will also order that the Federal Defender Office be once again appointed to represent petitioner in this matter on remand. Counsel may be appointed, in exceptional cases, for a prisoner appearing *pro se* in a habeas action. *Lemeshko v. Wrona*, 325 F. Supp, 2d 778, 788 (E.D. Mich. 2004). The exceptional circumstances which justify the appointment of counsel to represent a petitioner acting *pro se* in a habeas action occur where a petitioner has made a colorable claim, but lacks the means to adequately investigate, prepare, or present the claim. *Id.* This Court has already determined that petitioner is entitled to the issuance of an unconditional writ of habeas corpus based upon the egregious violation of petitioner's constitutional rights at the probation revocation hearing, particularly the constructive denial of counsel. Moreover, in their remand order, the Sixth Circuit has suggested that there might be grounds to equitably toll the limitations period. Accordingly, the Court will again appoint the Federal Defender Office to represent petitioner.

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This Court will also order that petitioner be released on a personal recognizance bond while this case is on remand from the Sixth Circuit. A federal district court has the inherent authority to grant bond to a habeas petitioner while it considers the merits of his claims on remand from the Sixth Circuit. See *Nash v. Berlin*, 437 F.3d 519, 526 n. 10 (6th Cir. 2006). Although this case has been remanded back to this Court from the Sixth Circuit, this Court notes that petitioner has been free for two years.

Reincarcerating petitioner pending this Court's disposition on remand, which could ultimately result again in his release, might create an undue hardship for petitioner and his family. Accordingly, this Court will allow petitioner to remain free on bond pending the disposition of this case. See *U. S. ex rel. Sims v. Sielaff*, 563 F. 2d 821, 829, n. 11 (7th Cir. 1977).

This Court will also order petitioner's counsel to file a brief within forty-five days of this order which addresses any equitable tolling arguments that may be advanced in this case. The AEDPA's statute of limitations "is subject to equitable tolling in appropriate cases." *Holland v. Florida*, 130 S. Ct. 2549, 2560 (2010). Respondent shall than have forty-five days after the filing of petitioner's brief to file a response brief.

ORDER

IT IS HEREBY ORDERED that the Clerk of the Court reopen the case to the Court's active docket.

IT IS FURTHER ORDERED that the Federal Defender Office is appointed to represent petitioner.

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IT IS FURTHER ORDERED that petitioner shall be released on his own personal recognizance pending the disposition of this case.

IT IS FURTHER ORDERED that petitioner's counsel shall file a brief addressing the equitable tolling arguments within forty-five days of this order. Respondent shall have forty-five days from the filing of petitioner's brief to file a response.

S/Arthur J. Tarnow
Arthur J. Tarnow
Senior United States District Judge

Dated: March 6, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 6, 2012, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Assistant