

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RONALD A. GRAY,

Petitioner,

v.

CASE NO. 08-3289-RDR

JAMES W. GRAY,

Respondent.

O R D E R

Petitioner proceeds with pro bono counsel on a petition for writ of habeas corpus under 28 U.S.C. § 2241, alleging constitutional error in his court-martial and death sentence.

Before the court is petitioner's request to amend and supplement his petition to raise the additional issues presented in his traverse. Respondent objects to any expansion of the issues, arguing undue delay by petitioner in raising the proposed amended grounds, and that amendment to include said grounds would be futile under this court's limited review of court-martial proceedings. Respondent further moves to strike the traverse, or in the alternative, to be allowed to file a surreply to address arguments raised in petitioner's traverse.

An application for a writ of habeas corpus "may be amended or supplemented as provided in the rules of procedure applicable to civil actions." 28 U.S.C. § 2242. The court is to "freely give leave [to amend] when justice so requires." Fed.R.Civ.P. 15(a)(2).

Under the circumstances of this unique habeas action, the court finds no unjustifiable delay, bad faith, or dilatory motive in petitioner's presentation of his amendments and supplementation of the petition, or any undue prejudice to respondent if leave to amend and supplement the petition is granted. See *Foman v. Davis*, 371 U.S. 178, 182 (1962). Nor is the court persuaded at this time that consideration of the proposed amended and supplemental material would be necessarily futile, and instead favors respondent's alternative request for a surreply to be filed that addresses petitioner's claims.

IT IS THEREFORE ORDERED that petitioner's motion to amend and supplement the petition (Doc. 43) is granted, and respondent's motion to strike the traverse (Doc. 44) is denied.

IT IS FURTHER ORDERED that respondent is granted thirty (30) days to file a surreply to the traverse.

DATED: This 30th day of September 2010, at Topeka, Kansas.

s/ Richard D. Rogers  
RICHARD D. ROGERS  
United States District Judge