

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

**REGINALD MARCEL JOHNSON,**

**Petitioner,**

**v.**

**CASE NO. 18-3260-SAC**

**BRAD CAIN, et al.,**

**Respondents.**

**MEMORANDUM AND ORDER**

This matter is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner initiated this action on October 11, 2018. (Doc. 1.) The Court conducted an initial review of the petition under Rule 4 of the Rules Governing 2254 Cases in the United States District Courts and, on October 26, 2018, issued an order directing Petitioner to show cause why this matter should not be dismissed without prejudice so that Petitioner could complete ongoing state-court proceedings. (Doc. 5.) Petitioner responded to the show-cause order and requested that the Court stay this matter pending completion of the state-court proceedings. (Doc. 6.) The Court granted the stay on August 23, 2019 and directed Petitioner to notify the Court in writing upon the issuance of a final decision in that matter. (Doc. 7.)

On April 7, 2021, Petitioner filed a "motion to reopen case," which this court construes as a motion to lift the current stay of proceedings. (Doc. 8.) Therein, Petitioner informs the Court that the Kansas Supreme Court issued its final decision on March 12, 2021. *Id.*; see also *Johnson v. State*, 2020 WL 2503264 (Kan. Ct.

App. 2020), *rev. denied* March 12, 2021. Petitioner also filed a motion for leave to amend his petition, seeking to amend his claims, include claims he has now exhausted in state court, and "correct the respondent in this case to the Kansas Department of Corrections from Brad Cain." (Doc. 9.)

The Court will grant Petitioner's motion to lift the stay and his motion to amend his petition and it will direct the clerk of court to transmit to Petitioner the appropriate form on which to submit his amended petition. The Court cautions Petitioner, however, that the proper respondent in a 2254 action is the individual who has the immediate custody of the petitioner. See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Thus, unless Petitioner's location of incarceration or the warden of that facility has changed, it appears that the correct respondent is Brad Cain and it would be improper to substitute the Kansas Department of Corrections as respondent.

**IT IS THEREFORE ORDERD** that Petitioner's motion to reopen case (Doc. 8) is construed as a motion to lift the stay and is **granted**.

**IT IS FURTHER ORDERED THAT** Petitioner's motion for leave to amend petition (Doc. 9) is **granted**. Petitioner is granted until July 28, 2021, to submit an amended petition. The clerk of the court shall transmit a form petition to Petitioner.

**IT IS SO ORDERED.**

DATED: This 28th day of June, 2021, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW  
U.S. Senior District Judge