

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

**FILED**

JUL 22 2008

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY *[Signature]* DEPUTY CLERK

DARLIE LYNN ROUTIER, §  
TDCJ No. 999220, §

Petitioner, §

V. §

CIVIL NO. SA-05-CA-1156-RF

NATHANIEL QUARTERMAN, Director, §  
Texas Department of Criminal §  
Justice, Correctional §  
Institutions Division, §

Respondent. §

ORDER LIFTING STAY AND ABEYANCE

The matter before the Court is the status of this case. In an Order issued August 2, 2006, docket entry no. 26, this Court granted petitioner's motion to stay this cause and hold same in abeyance pending disposition of petitioner's state court proceedings seeking DNA testing of materials which petitioner represented might contain exculpatory or mitigating evidence.

In a pair of status reports submitted to this Court June 17 and June 20, 2008, (docket entry nos. 31 & 32) respondent and petitioner, respectively have advised this Court the state courts have finally resolved some, but not all, of petitioner's requests for DNA testing of organic materials found at or near the crime scene. Most of the material which petitioner wishes to test appears to still be in existence and potentially subject to modern DNA testing procedures. However, based upon the information the parties have conveyed to this Court, it appears doubtful there

currently is a "rape kit" in existence obtained from the petitioner obtained on the night in question. Thus, the state courts have had ample opportunity to resolve petitioner's requests for discovery and DNA testing and have granted, in part, and denied, in part, those requests. The parties appear to be in general agreement regarding the current status of the materials which petitioner wishes to have tested.

Having reviewed the parties' advisories, Court believes the best course available at present to be to (1) lift the stay and abeyance this Court ordered almost two years ago and (2) permit the parties to proceed forward with this cause. Given the possibility the DNA testing authorized by the state courts may produce new evidence, the Court will direct petitioner to file an amended petition in this cause after petitioner has had a reasonable opportunity to review any new DNA test results. Petitioner will also be directed to file (in an expedited manner) a motion identifying any further discovery petitioner wishes to pursue in this cause.

Accordingly, it is hereby **ORDERED** that:

1. This Court's Order issued August 2, 2006, docket entry no. 26, is **VACATED**.
2. On or before thirty days from the date of this Order, petitioner shall (1) file any further discovery request or motion petitioner wishes to pursue before this Court and (2) specifically


identify in any such request or motion any and all documents, evidence, or other materials petitioner wishes to examine or have scientifically examined in connection with this cause.

3. On or before January 5, 2009, petitioner shall file with the Clerk of this Court and serve on counsel of record for respondent petitioner's *first amended* petition herein and set forth therein all claims for federal habeas corpus relief petitioner wishes this Court to consider in this cause.

4. Respondent shall file his answer to petitioner's *first amended* federal habeas corpus petition or other responsive pleading on or before sixty (60) days after receipt by petitioner's counsel of record of a copy of petitioner's *first amended* federal habeas petition. Respondent's answer or other responsive pleading thereto shall conform to the requirements of Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts and Rule 12 of the Federal Rules of Civil Procedure.

5. In all other respects, the terms and provisions of this Court's original scheduling Order, issued December 8, 2005, docket entry no. 9, shall remain in full force and effect.

SIGNED AND ENTERED this 21<sup>st</sup> day of July, 2008, at San Antonio, Texas.

  
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ROYAL FURGESON  
United States District Judge