

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GREGORY J. MISFELDT,

ORDER

Petitioner,

04-C-696-C

v.

JOSEPH SCIBANA, Warden of
Oxford Prison Camp,

Respondent.

In an order entered in this case on September 30, 2004, I gave petitioner Gregory Misfeldt until October 15, 2004, in which to submit a verified copy of his habeas corpus petition for filing in this case, and proof of service of the verified petition upon the respondents as soon as he has it. Now petitioner has submitted a copy of his petition on which he has written "Verified Copy Per Order," and a copy of the postmarked certified mail receipts he used to mail his petition to the respondent.

Although I will accept petitioner's proof of service of his petition on the respondent, I am unable to accept petitioner's "Verified" petition as sufficient to satisfy 28 U.S.C. § 2242. Indeed, I can discern no difference between petitioner's original petition and the petition he has submitted in response to the September 30 order.

The verification required by § 2242 is a declaration, certification, or statement *made under penalty of perjury* that the factual assertions in the petition are true and correct. The declaration must be dated and signed by the petitioner. See, for example, “Model Form for Use in Applications for Habeas Corpus under 28 U.S.C. § 2254,” Appendix of Forms, pp. 346-348, Federal Civil Judicial Procedure and Rules, 2004 Edition. Petitioner Misfeldt’s petition for a writ of habeas corpus comprises 8 pages of assertions and seven “enclosures,” including an enclosure marked “Encl 1” and titled “affidavit.” Although the affidavit is sworn to and notarized, petitioner’s willingness to attest to the truthfulness of the statements in his affidavit does not nullify his obligation under § 2242 to verify the statements made in his petition. Therefore, I am returning petitioner’s “Verified Petition” to him so that he had add a proper verification of the truthfulness of the content of his petition following the conclusion on page 8.

ORDER

IT IS ORDERED that petitioner may have until October 22, 2004, in which to submit for filing in this case a copy of his habeas corpus petition that has been verified in compliance with 28 U.S.C. § 2242. No final ruling in this action will be taken until the

record includes a properly verified petition.

Entered this 15th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge