

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

-----  
STANLEY MARTIN,

ORDER

Petitioner,

08-cv-518-bbc

v.

BYRAN BARTOW, Director,  
Wisconsin Resource Center,

Respondent.  
-----

Stanley Martin, who is serving an indefinite term of confinement under Wisconsin's sexually violent person civil commitment provision, Chapter 980, at the Wisconsin Resource Center in Mauston, Wisconsin, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. In an opinion and order dated June 1, 2009, I dismissed the petition as untimely upon respondent Byran Bartow's motion. Petitioner appealed to the Court of Appeals for the Seventh Circuit, which reversed the dismissal, holding that the petition is timely because petitioner is challenging the state's most recent decision to continue his confinement, which became final on August 18, 2008. The court of appeals remanded the case for further proceedings.

In the petition, petitioner contends that the state's decision to continue his

commitment violated his right to due process because it is based in part on (1) sexual assault charges that were dismissed pursuant to a plea agreement and (2) the opinions of medical experts who considered those dismissed charges in forming their opinions.

Petitioner's allegations in his petition are sufficient to state plausible constitutional claims. In addition, the court of appeals held that the petition is timely. Thus, I will order respondent to show cause why this petition should not be granted.

## ORDER

IT IS ORDERED that

1. Within 30 days of the date of service of this order, respondent must file an answer to petitioner Stanley Martin's claims that the state's decision to continue his commitment was unconstitutional because it was based on (1) sexual assault charges that were dismissed pursuant to a plea agreement and (2) the opinions of medical experts who considered those dismissed charges in forming their opinions. The answer must comply with Rule 5 of the Rules Governing Section 2254 Cases and must show cause, if any, why this writ should not issue.

2. **Dispositive motions.** If the state contends that the petition is subject to dismissal on grounds such as the statute of limitations, an unauthorized successive petition, lack of exhaustion or procedural default, it is authorized to file a motion to dismiss, a

supporting brief and any documents relevant to the motion, within 30 days of this order, either with or in lieu of an answer. If the state contends that the petition presents a mix of exhausted and unexhausted claims, then it must address in its supporting brief whether petitioner meets the criteria for a stay announced in Rhines v. Weber, 544 U.S. 269 (2005), in the event he opts to pursue his unexhausted claims in state court. Petitioner shall have 20 days following service of any dismissal motion within which to file and serve his responsive brief and any supporting documents. The state shall have 10 days following service of the response within which to file a reply.

If the court denies the motion to dismiss in whole or in part, it will set a deadline within which the state must file an answer, if necessary, and establish a briefing schedule regarding any claims that have not been dismissed.

**3. When no dispositive motion is filed.** If respondent does not file a dispositive motion, then the parties shall adhere to the following briefing schedule regarding the merits of petitioner's claims:

- Petitioner shall file a brief in support of the petition within 30 days of the date of service of respondent's answer. Petitioner bears the burden to show that his conviction or sentence violates the federal Constitution, United States Supreme Court case law, federal law or a treaty of the United States. With respect to any claims that were adjudicated on the merits in a state court proceeding, petitioner bears the burden to show that the state court's adjudication of the claim:
  1. resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as

determined by the Supreme Court of the United States; or,

2. resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). Petitioner should keep in mind that in a habeas proceeding, a federal court is required to accept the state court's determination of factual issues as correct, unless the petitioner rebuts the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

**NOTE WELL:** If petitioner already has submitted a memorandum or brief in support of his petition that addresses the standard of review set out above, then he does not need to file another brief. However, if petitioner's initial brief did not address the standard of review set out in § 2254(d), then he should submit a supplemental brief. If he fails to do so, then he risks having some or all of his claims dismissed for his failure to meet his burden of proof.

- Respondent shall file a brief in opposition within 30 days of the date of service of petitioner's brief.
- Petitioner shall have 20 days after service of respondent's brief in which to file a reply brief.

Entered this 18th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge