

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

JEREMY T. GREENE,

Petitioner,

ORDER

v.

08-cv-0623-slc

WILLIAM POLLARD, Warden,
Green Bay Correctional Institution,

Respondent.

Jeremy Greene, an inmate at the Green Bay Correctional Institution, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the five dollar filing fee. The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

Petitioner, who is African-American, was convicted in 2002 in the Circuit Court for Dane County of first-degree intentional homicide, armed robbery and armed burglary, all arising from the same home invasion. He was sentenced to life in prison. Petitioner contends that he is in custody in violation of the laws and Constitution of the United States. He raises 10 claims in his petition, which are substantially as follows:

1) the prosecutor failed to offer a valid, race-neutral reason for using a peremptory strike to remove the sole African-American person from the jury, in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986);

- 2) one of the jurors was biased because he had read articles containing prejudicial information about petitioner;
- 3) petitioner was denied the equal protection of the laws because the jury pool, which contained only one African-American, did not represent a fair cross-section of the community;
- 4) the prosecutor deprived petitioner of a fair trial when she made improper comments about petitioner's invocation of his right to remain silent;
- 5) the prosecutor improperly introduced statements made by petitioner's co-defendants, "causing severance issues;"
- 6) "co-defendant's defense became antagonistic mid-trial due to comments made by her counsel;"
- 7) trial counsel was ineffective for failing to object to these errors;
- 8) trial counsel was ineffective for failing to present a valid theory in support of petitioner's request for lesser-included instructions on reckless homicide and felony murder;
- 9) appellate counsel was ineffective for failing to bring a post-conviction motion challenging trial counsel's effectiveness and for failing to raise the *Batson*, biased jury, prosecutorial misconduct and severance issues on appeal; and
- 10) the trial court improperly denied petitioner's request for lesser-included instructions on reckless homicide and felony murder.

It appears that petitioner has exhausted his state court remedies by presenting his claims to the state courts of Wisconsin on direct appeal, in a post-conviction motion pursuant to Wis. Stat. § 974.06 and in a habeas corpus petition pursuant to *State v. Knight*, 168 Wis. 2d 509, 520, 484 N.W. 2d 540 (1992). The claims are sufficient to require a response from the state.

ORDER

IT IS ORDERED that:

1. Pursuant to an informal service agreement between the Attorney General and the court, the Attorney General is being notified to seek service on Warden Pollard.
2. The state shall file a response to the petition not later than 30 days from the date of service of the petition, showing cause, if any, why this writ should not issue.

If the state contends that any of petitioner's claims are subject to dismissal with prejudice on grounds such as procedural default or the statute of limitations or without prejudice on grounds of failure to exhaust, then it should file a motion to dismiss and all supporting documents within its 30-day deadline. If relevant, the state must address in its supporting brief the issue of cause, prejudice and staying this action while petitioner exhausts his state court remedies. Petitioner shall have 20 days following service of any such 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 at this time the state wishes to argue petitioner's claims on their merits, either directly or as a fallback position in conjunction with any motion to dismiss, then within its 30-day deadline the state must file and serve not only its substantive legal response to petitioner's claims, but also all documents, records and transcripts that commemorate the findings of fact or legal conclusions reached by the state courts at any level relevant to petitioner's claims. The state also must file and serve any additional portions of the record that are material to deciding whether the legal conclusions reached by state courts on these claims was unreasonable in light

of the facts presented. 28 U.S.C. § 2254(d)(2). If the necessary records and transcripts cannot be furnished within 30 days, the state must advise the court when such papers will be filed. Petitioner shall have 20 days from the service of the state's response within which to file a substantive reply.

If the state chooses to file only a motion to dismiss within its 30-day deadline, it does not waive its right to file a substantive response later, if its motion is denied in whole or in part. In that situation, the court would set up a new calendar for submissions from both sides.

3. Once the state has filed its answer or other response, petitioner must serve by mail a copy of every letter, brief, exhibit, motion or other submission that he files with this court upon the assistant attorney general who appears on the state's behalf. The court will not docket or consider any submission that has not been served upon the state. Petitioner should include on each of his submissions a notation indicating that he served a copy of that document upon the state.

4. The federal mailbox rule applies to all submissions in this case.

Entered this 13th day of November, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge