

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

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GORDON E. SUSSMAN,

Petitioner,

v.

LARRY JENKINS,

Respondent.  
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ORDER

09-cv-35-bbc

Petitioner Gordon E. Sussman was convicted in state court of repeated sexual assault of a child. After an appeal and unsuccessful attempts to obtain state court remedies, he filed a motion for habeas corpus under 28 U.S.C. § 2254 in this court. His petition was denied; he appealed and won a reversal of this court's order in the Court of Appeals for the Seventh Circuit. Sussman v. Jenkins, 636 F.3d 329 (7th Cir. 2011). The court of appeals granted the writ of habeas corpus and remanded the case to this court with instructions to grant the writ unless the state elected to retry petitioner.

Respondent moved promptly in the court of appeals for a stay of the mandate so that he would have an opportunity to petition for a writ of certiorari in the Supreme Court. In a lengthy opinion issued on April 28, 2011, the court of appeals denied the motion. The

state then filed a motion in this court to stay the issuance of the writ for 180 days after the Supreme Court has acted on the petition for a writ of certiorari that the state intends to file, so that if the Supreme Court denies the petition or grants it and affirms the court of appeals, the state will have six months in which to prepare for petitioner's retrial. Petitioner opposes the motion for stay pending action on a petition for certiorari and asks this court to impose a deadline of 90 days on petitioner's retrial.

Respondent approaches the motion for stay in this court as an open question, but I do not share his view. The court of appeals has made it clear that no grounds exist for a stay that is any longer than necessary to allow the parties to prepare for retrial. It is not appropriate for a lower court to reach a different decision. At most I can set a reasonable deadline for the state to retry petitioner, which I will do.

Taking into account the difficulties of proof, the possibility of new counsel for both parties and the amount of time that has passed since the first trial, I believe that four months is sufficient, to provide both sides enough time to prepare for the retrial.

## ORDER

Respondent Larry Jenkins's motion for stay of the issuance of the writ of habeas corpus for 180 days after completion of review by the United States Supreme Court of the petition for a writ of certiorari that the state intends to file is DENIED. However, because

the state has confirmed that it will retry petitioner Gordon Sussman, issuance of the writ will be STAYED for 120 days to allow the retrial.

Entered this 1st day of June, 2011.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge