

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

DALE J. GENTRY,

Petitioner,

v.

STATE OF WISCONSIN,¹

Respondent.

ORDER

11-cv-120-wmc

Dale J. Gentry, an inmate at the McNaughton Correctional Center, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the five dollar filing fee.

Petitioner is challenging his Taylor County conviction for interfering with child custody in Case No. 2001-CF-105. He filed motions for post conviction relief in the trial court, which were denied. The Wisconsin Court of Appeals summarily affirmed the trial court's orders on November 16, 2010. His petition for review was denied by the Wisconsin Supreme Court on January 11, 2011.

Petitioner alleges that his conviction violated the double jeopardy clause of the Fifth Amendment of the United States Constitution. This allegation is sufficient to state a valid constitutional claim. In addition, it appears that petitioner has exhausted his state court remedies and filed his petition within the one-year limitations period. Accordingly,

¹By its own motion, the court names petitioner's custodian, the Warden of McNaughton Correctional Center, as the proper respondent in this petition.

ORDER

IT IS ORDERED THAT:

1. **Service of petition.** Pursuant to an informal service agreement between the Attorney General and the court, the Attorney General is being notified to seek service on respondent Warden of the McNaughton Correctional Center.

2. **Answer deadline.** Within 30 days of the date of service of this order, respondent must file an answer to the petition, in compliance with Rule 5 of the Rules Governing Section 2254 Cases, showing cause, if any, why this writ should not issue.

3. **Motions to dismiss.** If the state contends that the petition is subject to dismissal on its face - - on grounds such as the statute of limitations, an unauthorized successive petition, lack of exhaustion or procedural default - - then it is authorized to file within 30 days of this order, a motion to dismiss, a supporting brief and any documents relevant to the motion. 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.

4. **Denial of motion to dismiss.** If the Court denies such a motion to dismiss in whole or in part, then it will set deadlines for the state to file its answer and for the parties to brief the merits.

5. **Briefing on the substantive merits.** If respondent does not file a motion to dismiss, 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 his petition within 30 days after respondent files its answer. With respect to claim adjudicated on the merits by the Wisconsin Court of Appeals, petitioner must show either that (1) the state appellate court contravened a controlling opinion of the United States Supreme Court; (2) the state appellate court applied a controlling opinion of the United States Supreme Court in an unreasonable manner; or (3) the state appellate court's decision rested upon an unreasonable determination of the facts. 28 U.S.C. § 2254(d).
- Respondent shall file a brief in opposition within 30 days after petitioner files his initial brief.
- Petitioner shall have 20 days after respondent files its brief in which to file a reply brief.

Entered this 9th day of March, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge