

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

DONALD ALLAN RAY DOUGAN,

Petitioner,

v.

STATE OF WISCONSIN,¹

Respondent.

ORDER

11-cv-193-wmc

Donald Allan Ray Dougan, an inmate at the Waupun Correctional Institution, 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 St. Croix County convictions for two counts of repeated sexual assault of same child and one count of felon in possession of a firearm in Case No. 2002-CF-186. Petitioner filed a post-conviction motion in the trial court, asserting that his trial counsel was ineffective. The trial court held an evidentiary hearing and denied his motion.

Petitioner appealed the denial of his post-conviction motion and his convictions to the Wisconsin Court of Appeals. On June 2, 2010, the court of appeals affirmed his judgment of convictions and the denial of his post-conviction motion, finding that (1) petitioner's trial counsel did not provide him ineffective assistance, (2) he was denied a right to a speedy trial and (3) the presentence investigation writer did not violate his due process rights. Case. No. 2009-AP50-CR. Petitioner's petition for review was denied by the Wisconsin Supreme Court on October 27, 2010.

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

Petitioner alleges that he was denied effective assistance of trial counsel, denied a speedy trial and that his due process rights were violated during the presentence investigation. These allegations are sufficient to state valid constitutional claims. In addition, it appears that petitioner has exhausted his state court remedies and filed his petition within the one-year limitations period. Accordingly,

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 William Pollard.

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 4th day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge