

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

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RASHAAD A. IMANI,

Petitioner,

v.

TIM HAINES,

Respondent.

ORDER

11-cv-329-wmc

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Rashaad Imani, an inmate at the Wisconsin Secure Program Facility, 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 convictions from the Circuit Court for Waukesha County for armed robbery and possession of a firearm by a felon in Case No. 2006-CF-677. Petitioner received a forty-year prison sentence in that case on October 25, 2007. On direct appeal, petitioner argued that the evidence against him was insufficient and that the trial court erred by denying petitioner's pretrial motion to represent himself. On June 3, 2009, the Wisconsin Court of Appeals held that the evidence was more than sufficient to support the verdict, but reversed the conviction and remanded the case for a new trial after finding that the circuit court failed to conduct the waiver-of-counsel colloquy required by *State v. Klessig*, 211 Wis. 2d 194, 564 N.W.2d 716 (1997). Dkt. #1, Exh 1. On July 7, 2010, the Wisconsin Supreme Court reversed the decision of the Court of Appeals and upheld petitioner's conviction, finding that the trial court did not err in denying petitioner's motion to represent himself. *Id.*, Exh. 2. On November 4, 2010, the Supreme Court denied petitioner's motion for reconsideration.

Petitioner alleges that his conviction was obtained in violation of his right to self-representation. *See Fareta v. California*, 422 U.S. 806, 820-21 (1975). Petitioner also alleges that he was denied due process because, in upholding his conviction, the Wisconsin Supreme

Court decided his case on an issue that was not presented in the State's petition for review. It appears that petitioner has exhausted his state court remedies and that he has filed his petition within the one-year limitations period.

## 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 the respondent, Tim Haines, in his official capacity as warden of the Wisconsin Secure Program Facility.

2. **Answer deadline.** Within 60 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 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:

- (a) 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 in state court, petitioner must show either that (1) the state court contravened a controlling opinion of the United States Supreme Court; (2) the state court applied a controlling opinion of the United States Supreme Court in an unreasonable manner; or (3) the state court's decision rested upon an unreasonable determination of the facts. 28 U.S.C. § 2254(d).
- (b) Respondent shall file a brief in opposition within 30 days after petitioner files his initial brief.
- (c) Petitioner shall have 20 days after respondent files its brief in which to file a reply brief.

Entered this 5<sup>th</sup> day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge