

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

EDWARD D. ANDERSON,

Petitioner,

v.

LIZZIE TEGELS,

Respondent.

ORDER

11-cv-584-wmc

Edward D. Anderson, an inmate at the New Lisbon Correctional Institution within this judicial district, 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 challenges his convictions in the Circuit Court for Milwaukee County for two counts of third degree sexual assault of a child, Case No. 2001-CF-1783. Petitioner alleges that his conviction was obtained in violation of his right to be provided exculpatory evidence and his right to the effective assistance of counsel. These allegations are sufficient to state constitutional claims.

Petitioner appealed his conviction to the Wisconsin Court of Appeals, Case no. 2004-AP-2607. That court remanded his case to the trial court for an evidentiary hearing. After the trial court held the evidentiary hearing, on November 6, 2007, the Wisconsin Court of Appeals affirmed petitioner's convictions. The Wisconsin Supreme Court denied his petition for review on March 18, 2008. On October 2, 2008, petitioner filed a post conviction motion in the trial court. That motion was denied. Petitioner appealed the trial court's decision to the Wisconsin Court of Appeals. Case No. 2009-AP-1516. On November 23, 2010, the Wisconsin Court of Appeals affirmed the trial court's order. On March 15, 2011, the Wisconsin Supreme Court declined to review petitioner's case. It appears from this that petitioner has exhausted his state court remedies and 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 respondent Lizzie Tegels.

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 ten days following service of the response within which to file and serve 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 the state files respondent's answer. With respect to claims adjudicated on the merits by the Wisconsin Court of Appeals, petitioner must show 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.

See 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 12th day of September, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge