

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

RICARDO E. MARINEZ,

Petitioner,

v.

WARDEN WILLIAM POLLARD,

Respondent.

ORDER

11-cv-802-wmc

Petitioner Ricardo E. Marinez, 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. He has also submitted an amended version of his petition, dkt. 4, along with supporting exhibits, dkt. 5.

Petitioner is challenging his September 6, 2007 conviction from the Circuit Court for Jefferson County for repeated sexual assault of the same child (3 counts) and habitual criminality in Case No. 2007-CF-205. Petitioner received consecutive twenty-year prison sentences for each count of sexual assault in that case, followed by a term of extended supervision.

On direct appeal, petitioner argued that his trial attorney was ineffective for failing to introduce any alternative theory as to how one of the three minor victims contracted chlamydia and that the circuit court erred in allowing evidence that Marinez fled from police on the night of his arrest. On October 28, 2008, the Wisconsin Court of Appeals affirmed the conviction, holding in an unpublished opinion that trial counsel was not ineffective and that the circuit court properly exercised its discretion in admitting the flight evidence. *See State v. Marinez*, 2010 WI App 159, 330 Wis.2d 498, 792 N.W.2d 240. On January 11, 2011, the Wisconsin Supreme Court denied review. *See State v. Marinez*, 2011 WI 15, 331 Wis.2d 47, 794 N.W.2d 901.

Petitioner now seeks relief from his conviction under 28 U.S.C. § 2254. In an amended petition that is dated January 2, 2012, dkt. 4, petitioner argues in two related grounds that the circuit court erred by admitting “unduly prejudicial” evidence of his flight from the police. In three other related grounds, petitioner argues further that he was denied effective assistance of counsel because his defense attorney failed to present evidence that another suspect could have infected one of the victims with chlamydia, that counsel was unprepared, and that his trial strategy was deficient. 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, William Pollard, in his official capacity as warden of the Waupun Correctional Institution.

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 25th day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge