

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

TIMOTHY J. GOYETTE,

Petitioner,

ORDER

v.

12-cv-80-wmc

WARDEN JEFF PUGH,

Respondent.

Petitioner Timothy J. Goyette, an inmate at the Stanley Correctional Institution, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* *dk.* 1. Petitioner supplied a statement of facts along with his petition and has paid the five dollar filing fee. Petitioner also has filed a motion for leave to file a supplemental memorandum after the court completes its initial review of the petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. *See* *dk.* 2.

Initial review of the petition shows that petitioner is challenging his July 17, 2002 conviction from the Circuit Court for La Crosse County for second-degree reckless homicide (count 1) and aggravated battery (count 2) in Case No. 2001-CF-00479. Petitioner pleaded no contest to both of those charges and received a twenty-five year prison sentence, followed by a ten-year term of extended supervision.

On direct appeal, petitioner argued that the circuit court failed to comply with Wis. State. § 971.08(1) by sufficiently inquiring into the voluntariness of his plea, which was part of a “package agreement” with two or more co-defendants. Petitioner argued further that the circuit court erred by concluding that his plea was voluntary. On August 31, 2006, the Wisconsin Court of Appeals agreed that petitioner’s plea was voluntarily made and affirmed the conviction. *See State v. Goyette*, 2006 WI App 178, 296 Wis.2d 359, 722 N.W.2d 731. On January 10, 2007, the Wisconsin Supreme Court denied further review. *See State v. Goyette*, 2007 WI 59, 299 Wis.2d 325, 731 N.W.2d 635.

On April 7, 2008, petitioner filed a motion for post-conviction review under Wis. Stat. § 974.06, arguing that his conviction for second-degree reckless homicide and aggravated battery violates the double jeopardy clause. In addition, petitioner argued that his trial counsel was ineffective for advising him to enter a no contest plea to those charges. The circuit court denied the motion and the Wisconsin Court of Appeals affirmed that decision on August 23, 2011. *State v. Goyette*, 2010 AP 1704. The Wisconsin Supreme Court denied further review on January 24, 2012.

Petitioner now seeks relief from his conviction under 28 U.S.C. § 2254. Petitioner contends that his conviction violates the double jeopardy clause and that he was denied effective assistance of counsel in connection with his plea. It appears that petitioner has exhausted his state court remedies and has filed his petition within the one-year limitations period on federal review.

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, Jeff Pugh, in his official capacity as warden of the Stanley Correctional 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 respondent 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 he 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 respondent 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 respondent 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 his 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 his brief in which to file a reply brief.

6. **Petitioner's motion:** Petitioner's motion for leave to file a supplemental memorandum is GRANTED. Petitioner shall submit his memorandum in compliance with the briefing schedule outlined in section 5(a) of this order within 30 days after respondent files his answer.

Entered this 27th day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge