

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

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GILBERT PEREZ,

Petitioner,

v.

WARDEN JEFFREY PUGH,

Respondent.<sup>1</sup>

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ORDER

12-cv-92-wmc

Petitioner Gilbert Perez, a state inmate at the Stanley 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. The petition is before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Proceedings in the United States District Courts.

Petitioner indicates that he was convicted in 2008 of repeated sexual assault of a child in Case No. 08-CF-83. Petitioner received a ten-year prison sentence from the Circuit Court for Brown County in that case, followed by a term of extended supervision. Petitioner filed a post-conviction motion for new trial, arguing that his trial attorney was ineffective for failing to file a motion to suppress his inculpatory statements or to present expert testimony about interrogation tactics used by the police. The trial court denied that motion.

On direct appeal, Perez raised several allegations that he was denied effective assistance of counsel at his trial. The Wisconsin Court of Appeals affirmed the conviction on October 5, 2010, in an unpublished opinion. *State v. Perez*, 2010 WI App 159, 330 Wis.2d 498, 792

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<sup>1</sup> The petition lists the State of Wisconsin as the respondent. The court substitutes Warden Jeffrey Pugh, who is the state official having custody of petitioner, as the proper respondent under Rule 2(a) of the Rules Governing Section 2254 Cases in the District Courts.

N.W.2d 240 (2009AP2773-CR). The Wisconsin Supreme Court summarily denied further review on February 7, 2011. *State v. Perez*, 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 a petition that is dated February 5, 2012, dkt. 1, petitioner appears to present the same ineffective-assistance claims that he raised on direct appeal. Therefore, 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, Jeffrey Pugh, in his official capacity as warden of the Stanley 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 26<sup>th</sup> day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge