

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

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GEORGE H. SERGENT,

Petitioner,

v.

WARDEN LIZZIE TEGELS,

Respondent.

ORDER

12-cv-810-wmc

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State inmate George H. Sergent has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction in Green County Case No. 06CF15. A jury found Sergent guilty of the following charges in that case: (1) attempted second-degree sexual assault; (2) attempted third-degree sexual assault; (3) misdemeanor battery; and (4) disorderly conduct. On April 17, 2007, the Green County circuit court sentenced Sergent to serve a total of seven years in prison followed by a ten-year term of extended supervision. Sergent has paid the five dollar filing fee and his habeas corpus petition is now before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases.

Sergent contends that he is entitled to relief from his conviction under 28 U.S.C. § 2254 for the following reasons: (1) he was denied a fair trial by an impartial jury; (2) the evidence was insufficient to support his conviction for attempted second or third-degree sexual assault; (3) he was denied effective assistance of counsel at trial; (4) he was charged and convicted of attempted second and third-degree sexual assault in violation of the double jeopardy clause; (5) he was denied the right to counsel when the state amended the charging instrument; and (6) the circuit court erred by denying him an evidentiary hearing on his ineffective-assistance claims. The Wisconsin Court of Appeals rejected these claims under one theory or another, *see State v. Sergent*, 2012 WI App. 62, 341 Wis.2d 489, 815 N.W.2d 406 (April 19, 2012) (unpublished),

and the Wisconsin Supreme Court denied review on September 28, 2012. *See State v. Sergeant*, 2010AP3136. Thus, it appears that Sergeant has exhausted his state court remedies and that he has filed his petition within the one-year limitations period. Therefore, the court will order the state to respond.

## 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, Lizzie Tegels, in her official capacity as Warden of the New Lisbon 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 claims 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 8<sup>th</sup> day of May, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge