

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

JUAN A. ORENGO,

Petitioner,

ORDER

v.

12-cv-890-wmc

WARDEN LIZZIE TEGELS,

Respondent.¹

State inmate Juan A. Orengo has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction for possession with intent to deliver THC and cocaine in Milwaukee County Case No. 03CF3178. A jury found Orengo guilty in that case and, on November 9, 2005, the circuit court sentenced him to serve a total of 12 years' imprisonment, followed by a 6-year term of extended supervision. Orengo has paid the five dollar filing fee and he has filed a motion for appointment of counsel, which is accompanied by a motion for leave to proceed *in forma pauperis*. His petition is now before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases.

Orengo contends that he is entitled to relief under 28 U.S.C. § 2254 because he was denied effective assistance of counsel at his trial. He argues, in particular, that his trial attorney failed to sever charges accusing him of unlawful possession of a firearm as a felon and that counsel failed to object to "prejudicial hearsay." The Wisconsin Court of Appeals rejected these claims in an unpublished decision and the Wisconsin Supreme Court denied review on June 16, 2009. *See State v. Orengo*, 2007AP1954. Orengo argues further that he is entitled to relief because he was denied effective assistance of counsel during his direct appeal. The circuit court denied relief on this claim, which was presented initially in a post-conviction motion under Wis. Stat. § 974.06. The Wisconsin Court of Appeals affirmed that decision and the Wisconsin

¹ At the time he filed his petition, Orengo was in custody at the Columbia Correctional Institution in Portage. Because records reflect that Orengo has been transferred to the Jackson Correctional Institution in Black River Falls, the court substitutes Warden Lizzie Tegels as the proper respondent pursuant to Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts.

Supreme Court denied review on November 14, 2012. *See State v. Orengo*, 2011AP137 (unpublished).

It appears that Orengo 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.

Orengo has filed a motion for appointment of counsel. Under 18 U.S.C. § 3006A(2)(B), a district court may appoint counsel to represent an indigent petitioner seeking relief under § 2254 if the court determines that “the interests of justice so require.” It is too early in this case to determine whether the appointment of counsel is required. The motion will be denied at this time, but Orengo may renew his request for counsel after the respondent has filed an answer.

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 Jackson 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.
- © Petitioner shall have 20 days after respondent files its brief in which to file a reply brief.

6. **Petitioner's pending motions.** Petitioner's motion for appointment of counsel, dkt. 4, and his corresponding motion for leave to proceed *in forma pauperis*, dkt. 2, are DENIED without prejudice to reconsideration at a later time.

Entered this 7th day of May, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge