

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

LUIS A. ESTRADA-JIMENEZ,

Petitioner,

v.

MICHAEL BAENEN, Warden,
Green Bay Correctional Institution,

Respondent.

ORDER

13-cv-570-wmc

Petitioner Luis A. Estrada-Jimenez has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge a state court conviction. He has paid the filing fee and he also has filed a motion for appointment of counsel. The petition is currently before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

On March 18, 2007, a jury found Estrada-Jimenez guilty of first-degree intentional homicide as a party in Dane County Case Number 2005CF2616. As a result, the circuit court sentenced him to life imprisonment. On direct appeal, Estrada-Jimenez argued that the circuit court erred by denying his post-judgment motion for new trial based on “newly discovered evidence” that two key witnesses for the prosecution received favorable treatment in exchange for their testimony. On November 19, 2009, the Wisconsin Court of Appeals rejected that argument and affirmed the conviction in an unpublished opinion. *State v. Estrada-Jimenez*, 2010 WI App 1, 322 Wis. 2d 735, 778 N.W.2d 171 (per curiam). The Wisconsin Supreme Court summarily denied his petition for review on March 16, 2010.

On October 29, 2010, Estrada-Jimenez filed a post-judgment motion in the circuit court pursuant to Wis. Stat. § 974.06, raising the following grounds: (1) there was insufficient evidence to support the jury verdict; (2) an unsworn, out-of court statement was admitted at trial in violation of due process; (3) the conviction was based on perjured and coerced testimony; (4) the jury observed that he was in restraints during trial; and (5) he was denied effective assistance of counsel. The circuit court denied that motion following a hearing on the ineffective-assistance claim. The Wisconsin Court of Appeals affirmed that decision and the Wisconsin Supreme Court denied further review on August 1, 2013. *State v. Estrada Jimenez*, No. 2011AP2866.

On August 12, 2013, Estrada-Jimenez executed the pending petition for a writ of habeas corpus under 28 U.S.C. § 2254 in this court, raising all of the same claims that he presented during his direct appeal and his motion for post-judgment relief in state court. It appears that he has exhausted all available state court remedies and that the petition is timely. Therefore, the court will authorize service of the petition on the respondent.

The court notes that Estrada-Jimenez has filed a motion for appointment of counsel on the grounds that he is incarcerated and untrained in the law. (Dkt. 2). Habeas corpus proceedings in federal court are civil actions for which there is no absolute constitutional right to the assistance of counsel. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) (“Our cases establish that the right to appointed counsel extends to the first appeal of right, and no further.”). A federal habeas corpus court may appoint counsel for a financially eligible petitioner where “the interests of justice so require.” 18 U.S.C. § 3006A(g); *Johnson v. Chandler*, 487 F.3d 1037, 1038 (7th Cir. 2007). Appointment of counsel in this context is discretionary “unless

denial would result in fundamental unfairness impinging on due process rights.” *Wilson v. Duckworth*, 716 F.2d 415, 418 (7th Cir. 1983) (quoting *LaClair v. United States*, 374 F.2d 486, 489 (7th Cir. 1967)); *Winsett v. Washington*, 130 F.3d 269, 280 (7th Cir. 2007).

Estrada-Jimenez has not provided a certified copy of his inmate trust fund account statement for purposes of establishing his status as an indigent litigant or his financial eligibility for appointed counsel. *See* 28 U.S.C. §§ 1915(a)(2), 1915(e)(1). He does not otherwise demonstrate that the appointment of counsel is required here. In that respect, the pleadings are neatly typed and articulate. The issues that Estrada-Jimenez presents presumably were briefed in connection with his state court proceedings and, in the context of collateral review under 28 U.S.C. § 2254, his petition does not appear unusually complex. Other than citing his status as an inmate without formal legal training, Estrada-Jimenez references no particular reason that counsel is required in this case and the pleadings do not disclose any. Under these circumstances, his motion for appointment of counsel will be denied.

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, Michael Baenen, in his official capacity as warden of the Green Bay 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.** In the event that the respondent does not file a motion to dismiss as outlined above, the court will proceed to consider the merits. Petitioner has already filed a statement or initial brief in support of his grounds for relief. Therefore, the parties shall adhere to the following briefing schedule with respect to the merits of petitioner's claims:

- (a) Petitioner shall file any additional brief in support of his petition or give written notice that he intends to rest on his initial brief within 30 days after respondent files its answer.
- (b) Once petitioner submits additional briefing or gives written notice that he does not intend to do so, respondent shall file a brief in opposition within 30 days.
- (c) Once respondent files a brief in opposition, petitioner shall have 20 days to file a reply if he wishes to do so.

6. **Motion for Appointment of Counsel.** Petitioner's motion for appointment of counsel (Dkt. 2) is DENIED WITHOUT PREJUDICE at this time.

Entered this 3rd day of September, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge