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

RALPH H. JURJENS, III,

OPINION & ORDER

Petitioner,

v. 14-cv-462-jdp

MIKE DITTMANN,[1]

Respondent.

In this case, petitioner Ralph Jurjens III, a prisoner currently housed at the Columbia Correctional Institution, seeks a writ of habeas corpus under 28 U.S.C. § 2254 to challenge a conviction entered in the Circuit Court for La Crosse County, Wisconsin. Petitioner has paid the $5 filing fee. The next step is for the court to conduct a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Under this rule, I must dismiss the petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." In reviewing this pro se petition, I must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). After review of the petition with this principle in mind, I conclude that the state should be served with the petition.

The following facts are drawn from the petition and state court records available electronically. Petitioner is appealing his conviction and sentence in La Crosse County case no. 2010CF188. Petitioner pleaded guilty to and was convicted of child abuse by

[1] Petitioner named former Wisconsin Attorney General J.B Van Hollen as the respondent. Dkt. 1. I have amended the caption to reflect petitioner's current custodian, the warden of the Columbia Correctional Institution.

intentionally causing harm, criminal damage to property in a domestic abuse situation, intimidation of a victim in a domestic abuse situation by threat or use of force, battery in the course of a burglary, and intimidation of a witness, all as a repeat offender.

Petitioner was convicted on April 29, 2011. He filed a postconviction motion to withdraw his plea, but that motion was denied on January 23, 2012. Petitioner appealed his conviction and denial of the postconviction motion to the Wisconsin Court of Appeals, which affirmed the conviction on October 28, 2013. He then appealed that decision to the Wisconsin Supreme Court, which denied review on June 12, 2014. Petitioner filed the current habeas petition on June 25, 2014.

I understand petitioner to be raising the following claims

- Petitioner did not make a knowing and intelligent plea because of the ineffective assistance of counsel he received (as detailed below) and the failure of the court to inform him about the consequences of making a guilty plea, particularly that he was waiving his ability to appeal various non-jurisdictional defects in the proceedings.

- Petitioner's Sixth Amendment right to counsel of his choosing was violated when the court refused to consider his request to proceed pro se after the court refused to allow his counsel to withdraw.

- Petitioner's original trial counsel was ineffective by failing to inform petitioner that he could "challenge each count in a multiple count criminal complaint," and inform petitioner about a prior plea deal offered by the district attorney.

- Petitioner's third trial lawyer was ineffective by failing to properly inform petitioner of the consequences of his guilty plea, investigate the prior plea deal offered to petitioner, and raise the issue of competency given that petitioner was taking narcotic pain medication and psychotropic drugs at the time of the plea.

- The court violated petitioner's right to familial association by issuing an order forbidding petitioner from having contact with his daughter (whom I understand to have been two years old at the time of conviction).

- The court's total sentence of 45 years (27 years of initial confinement and 18 years of extended supervision) was unconstitutionally excessive.

One of these grounds is plainly without merit—petitioner's claim regarding his right to familial association. Habeas corpus relief is limited to challenging the "fact or length of custody." *Zimmerman v. Davis*, 90 F. App'x 157, 159-60 (7th Cir. 2004); *see also Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973). The challenge to the court order restricting petitioner's contact with his daughter is not a challenge to the fact or length of his custody, so it cannot be raised in this habeas action. *See Zimmerman*, 90 F. App'x at 159-60 (challenge to restriction on visitation not cognizable in habeas action). That challenge more properly belongs in a civil rights action under 42 U.S.C. § 1983, which petitioner is free to pursue in a separate lawsuit.

As for the remainder of petitioner's claims, petitioner alleges that he raised each of these claims in his post-conviction motions and on direct appeal. So it appears that petitioner has exhausted his state court remedies, his petition is timely, and it is not plainly without merit. Accordingly, I will direct service of the petition on respondent.

ORDER

IT IS ORDERED that this case shall proceed under the following schedule:

1. **Service of petition**. Pursuant to an informal service agreement between the Attorney General and the court, copies of the petition and this order are being sent today to the Attorney General for service on respondent.

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. **Motion to dismiss**. If the state contends that the petition is subject to dismissal on grounds such as the statute of limitations, an unauthorized

successive petition, lack of exhaustion, or procedural default, it is authorized to file a motion to dismiss, a supporting brief, and any documents relevant to the motion, within 30 days of this order, either with or in lieu of an answer. 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.

If the court denies the motion to dismiss in whole or in part, it will set a deadline within which the state must file an answer, if necessary, and establish a briefing schedule regarding any claims that have not been dismissed.

4. **Briefing on the merits**. If respondent does not file a dispositive motion, 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 the respondent's answer is filed.

   b. 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.

Entered December 7, 2015.

BY THE COURT:

/s/

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JAMES D. PETERSON
District Judge