

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

MICHAEL S. ZIEGLER,

Petitioner,

v.

ORDER

14-cv-73-wmc

DEBORAH McCULLOCH, Director,
Sand Ridge Secure Treatment Center,

Respondent.

Petitioner Michael S. Ziegler is presently in state custody of the Wisconsin Department of Health Services at the Sand Ridge Secure Treatment Center in Mauston. Ziegler seeks a writ of habeas corpus under 28 U.S.C. § 2254 to challenge his civil commitment at Sand Ridge as a sexually violent person pursuant to Chapter 980 of the Wisconsin Statutes. After conducting a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the court concludes that an answer is needed from the respondent.

FACTS

In 1994, Ziegler was convicted of one count of first-degree sexual assault of one child and two counts of second-degree sexual assault of a second child. When Ziegler was nearing the end of his sentence in 2007, the State filed a petition alleging that he was a sexually violent person under Wis. Stat. ch. 980. After a jury found that Ziegler qualified as a sexually violent person as defined in Chapter 980, the circuit court entered a judgment of civil commitment. *See State v. Ziegler*, Fond du Lac County Case No. 07CI02 (March 3, 2012).

On direct appeal, Ziegler argued that the circuit court erred when deciding which expert reports the jury would be allowed to see during deliberations. The Wisconsin Court of Appeals found no abuse of discretion and affirmed the commitment order in an unpublished opinion. *See State v. Ziegler*, 2013 WI App 128, 351 Wis. 2d 225, 838 N.W.2d 866 (per curiam). On January 13, 2014, the Wisconsin Supreme Court denied Ziegler's petition for review.

In his pending habeas corpus petition, Ziegler contends that he is entitled to relief pursuant to 28 U.S.C. § 2254 for the same reason that he raised on direct appeal. In particular, Ziegler contends that the circuit court erred by allowing the jury to see an expert report presented by the State, but excluding a report prepared by a defense expert. It appears that petitioner has exhausted all available state court remedies with respect to his claims and that his petition is timely. Therefore, the court will authorize service of the petition on the respondent.

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, Deborah McCulloch, in her official capacity as Director of the Sand Ridge Treatment Center.
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. The parties shall adhere to the following briefing schedule with respect to the merits of petitioner's claims:
 - a. If petitioner wishes to file a brief in support of his petition he must do so within 30 days after respondent files an answer.
 - b. Once petitioner submits his brief or his time to submit a brief expires, respondent shall file a brief in response to the petition 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 this 5th day of March, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge