

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

KURT W. MEYER,

Petitioner,

ORDER

v.

03-C-0589-C

BYRON BARTOW, Director, Wisconsin
Resource Center,

Respondent.

This is a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Kurt Meyer, who is presently confined at the Wisconsin Resource Center in Winnebago, Wisconsin, challenges his conviction in the Circuit Court for Sauk County for robbery, substantial battery, burglary and disorderly conduct, all as party to a crime. Petitioner contends that he is in custody in violation of the laws and Constitution of the United States for the following reasons: 1) his trial lawyer was ineffective for failing to ensure that the jury did not see petitioner in shackles during the trial and failing to ensure that jail officials allowed petitioner's family to deliver civilian clothing to petitioner to wear at trial; 2) the trial court denied his right to a fair trial by denying his motion for a continuance for the purpose of locating a witness; and 3) the trial court erroneously denied his motion for a new trial based upon newly-discovered evidence that establishes petitioner's innocence.

From a preliminary review of the petition, it appears that petitioner has exhausted his state court remedies and filed his federal petition within the one year statute of limitations set forth in 28 U.S.C. § 2244(d). Furthermore, each of petitioner's claims is sufficient to require a response from the state.

Because petitioner paid the five dollar filing fee, it is his obligation to serve his petition by mailing a copy of it, along with a copy of this order, to Director Bartow and to the Wisconsin Attorney General, c/o Assistant Attorney General Gregory M. Weber. Petitioner also must send a letter to this court certifying the date on which he accomplished this service. Once the state has filed a motion to dismiss or other response, petitioner must serve a copy of every letter, brief, exhibit, motion or other submission that he files with this court upon the assistant attorney general who appears on the state's behalf. The court will not docket or consider any submission that has not been served upon the state. It is petitioner's obligation to certify that he has served the state with each submission to the court.

ORDER

IT IS ORDERED that the state shall file a response to petitioner's claims not later than thirty days from the date of service of the petition, showing cause, if any, why this writ should not issue.

If the state contends that all of petitioner's claims are subject to dismissal with prejudice on grounds such as procedural default or the statute of limitations, it should file a motion to dismiss and all supporting documents within its thirty-day deadline. The state must address the issue of cause and prejudice in its supporting brief. Petitioner shall have twenty days following service of any such motion within which to file and serve his responsive brief and any supporting documents. The state shall have ten days following service of the response within which to file a reply.

If at this time the state wishes to argue petitioner's claims on their merits, either directly or as a fallback position in conjunction with any motion to dismiss, then within its thirty-day deadline the state must file and serve not only its substantive legal response to petitioner's claims, but also all documents, records and transcripts that commemorate the findings of fact or legal conclusions reached by the state courts at any level relevant to petitioner's claims. The state also must file and serve any additional portions of the record that are material to deciding whether the legal conclusions reached by state courts on these claims were unreasonable in light of the facts presented. *See* 28 U.S.C. § 2254(d)(2). If the necessary records and transcripts cannot be furnished within thirty days, the state must advise the court when such papers will be filed. Petitioner shall have twenty days from the service of the state's response within which to file a substantive reply.

If the state chooses to file only a motion to dismiss within its 30-day deadline, it does not waive its right to file a substantive response later, if its motion is denied in whole or in

part. In that situation, the court would set up a new calendar for submissions from both sides.

The federal mailbox rule applies to all submissions in this case.

Dated this 27th day of October, 2003.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge