

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

DAVID L. CALDWELL,

Petitioner,

v.

JOSEPH SCIBANA, Warden,

Respondent.

ORDER

04-C-723-C

In an order entered in this case on October 4, 2004, I stayed the proceedings in this case pending a decision from the Court of Appeals for the Seventh Circuit on the appeal filed in White v. Scibana, 03-C-581. However, I noted that petitioner's petition for a writ of habeas corpus was not verified as it must be pursuant to 28 U.S.C. § 2242. Therefore, I gave petitioner until October 18, 2004, in which to submit a copy of his habeas corpus petition that had been verified to be true under penalty of perjury. Now petitioner has submitted a second copy of his unverified petition, together with a paper titled, "Certificate of Service," in which he "swears that a true and correct copy of [his] writ of habeas corpus" was mailed to this court on October 12, 2004. Clearly, petitioner misunderstands what it means to verify a petition.

The verification required by § 2242 is a declaration, certification, or statement *made*

under penalty of perjury that the factual assertions in the petition are true and correct. The declaration must be dated and signed by the petitioner. See, for example, “Model Form for Use in Applications for Habeas Corpus under 28 U.S.C. § 2254,” Appendix of Forms, pp. 346-348, Federal Civil Judicial Procedure and Rules, 2004 Edition. Petitioner Caldwell’s petition for a writ of habeas corpus comprises only 2 pages of assertions. Nowhere in his petition does petitioner declare, certify or state under penalty of perjury that the factual assertions made in the petition are true and correct. Thus, he has not yet satisfied his obligation under § 2242 to verify the statements made in his petition.

ORDER

IT IS ORDERED that petitioner David L. Caldwell may have an enlargement of time to November 8, 2004, in which to submit for filing in this case a copy of his habeas corpus petition that has been verified in compliance with 28 U.S.C. § 2242. A copy of petitioner’s petition is enclosed with this order. No final ruling in this action will be taken until the the court’s record includes a properly verified petition.

Entered this 21st day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge