

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

MICHAEL J. TOOLEY,

Petitioner,

ORDER

v.

06-C-583-S

JUDY SMITH,

Respondent.

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He requests leave to proceed in forma pauperis.

From an examination of the affidavit of indigency that petitioner has submitted, the Court finds he is unable to prepay the costs and fees of commencing this action. Accordingly, petitioner's request to proceed in forma pauperis will be granted.

Petitioner alleges that his state court conviction is unconstitutional. He alleges that he has exhausted his state court remedies.

Accordingly,

ORDER

IT IS ORDERED that petitioner's request to proceed in forma pauperis is GRANTED.

IT IS FURTHER ORDERED that the respondent shall file and serve upon petitioner a response to the petition to include the state court record and any supporting brief not later than 20 days from

the date of service this petition, showing cause, if any, why this writ should not issue. Affidavits may accompany the response. Petitioner may have 20 days from the service of the response to file and serve upon counsel for respondent a reply to the allegations of the response submitted by the respondent and any supporting brief. Affidavits may accompany the reply. Such affidavits shall raise no issues which have not already been raised in the petition and response. Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served and filed therewith.

Entered this 16th day of October, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge