

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

---

EDWARD MAX LEWIS,

Petitioner,

v.

ORDER

10-cv-466-wmc

MICHAEL DITTMANN, Warden,  
Red Granite Correctional Institution,

Respondent.<sup>1</sup>

---

Edward Max Lewis, an inmate at Red Granite Correctional Institution, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his 2004 conviction for repeated first-degree sexual assault of the same child. (Forest County Circuit Court, cause no. 03CF00127). On February 17, 2011, the district court granted equitable tolling of the statute of limitations on federal habeas corpus review and entered a stay to allow petitioner an opportunity to exhaust state court remedies with respect to all of his claims. Now petitioner has moved to lift the stay. *See* dkt. 13. Petitioner also has moved for leave to proceed *in forma pauperis*, dkt. 11, a motion for leave to amend, dkt. 14, an amended version of the petition, dkt. 15, a motion for a competency evaluation, dkt. 17, a motion for appointment of counsel, dkt. 18, and a motion for discovery, dkt. 19.

According to the amended pleadings, dkt. 15, petitioner alleges that his conviction violates the constitution and that he is entitled to relief under 28 U.S.C. § 2254 for the following reasons: (1) he was not competent to stand trial; (2) he was denied a fair trial before an impartial jury; (3) the circuit court lacked jurisdiction because - - (a) his arrest was not based

---

<sup>1</sup> When petitioner filed this case originally, he was incarcerated at a different correctional facility. Because petitioner now is in custody at the Red Granite Correctional Institution, the court substitutes Warden Michael Dittmann as the appropriate respondent under Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts.

on probable cause; (b) a bond hearing was held before the state filed a criminal complaint; (c) he was not accorded a timely initial appearance; (d) he was denied a prompt preliminary hearing; (e) he was denied an inpatient competency evaluation; (f) there was no finding of cause (to arrest, to detain, or to find him competent) at a preliminary hearing; (4) his conviction violates the Fourth and Fifth Amendment because he was arrested without a warrant and not given *Miranda* warnings for two hours; (5) he was denied the right to confront several witnesses at trial; (6) the trial court lacked personal jurisdiction because his arrest was not supported by probable cause; (7) the conviction violates due process because the state did not prove every element beyond a reasonable doubt; and (8) he was denied effective assistance of counsel at trial and on appeal.

Petitioner alleges that he raised his proposed claims on direct appeal or on state post-conviction review. According to the amended petition and the exhibits, dkt. 15, it appears that petitioner has exhausted his state court remedies. Therefore, the court will lift the stay, grant leave to amend the petition, and order the state to respond.

Petitioner has filed several other motions. Petitioner requests leave to proceed *in forma pauperis*, but this request is moot because he has already paid the filing fee. To the extent that petitioner requests appointment of counsel, 18 U.S.C. § 3006A(2)(B) authorizes a district court to appoint counsel to represent a petitioner seeking relief under § 2254 if the court determines that “the interests of justice so require.” It is too early in this case to determine whether the appointment of counsel is required. Petitioner’s motion will be denied at this time, but he may renew his request for counsel after the respondent has filed an answer. Petitioner’s motions for a competency examination and for discovery also will be denied as premature, subject to reconsideration after an answer has been filed.

## 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, Michael Dittmann, in his official capacity as warden of the Red Granite Correctional Institution.

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.** If respondent does not file a motion to dismiss, 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 respondent files its answer. With respect to claims adjudicated on the merits in state court, petitioner must show either that (1) the state court contravened a controlling opinion of the United States Supreme Court; (2) the state court applied a controlling opinion of the United States Supreme Court in an unreasonable manner; or (3) the state court's decision rested upon an unreasonable determination of the facts. 28 U.S.C. § 2254(d).
- (b) Respondent shall file a brief in opposition within 30 days after petitioner files his initial brief.
- (c) Petitioner shall have 20 days after respondent files its brief in which to file a reply brief.

6. **Petitioner's pending motions.** Petitioner's motion for leave to proceed *in forma pauperis*, dkt. 11, is MOOT. Petitioner's motion to lift the stay, dkt. 13, and to amend the petition, dkt. 14, are GRANTED. Petitioner's motion for a competency examination, dkt. 17, for appointment of counsel, dkt. 18, and for discovery, dkt. 19, are DENIED without prejudice to his renewing these requests at a later time.

Entered this 8<sup>th</sup> day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge