

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

PAUL B. MEY,

Petitioner,

ORDER

v.

11-cv-147-wmc

WILLIAM POLLARD,

Respondent.

Paul B. Mey, an inmate at the Green Bay Correctional Institution, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the five dollar filing fee.

Petitioner is challenging his Dane County convictions for three counts of first degree intentional homicide and three counts of endangering safety by reckless use of a firearm in Case No. 2005-CF-1878. Petitioner filed a post-conviction motion in the trial court, asserting that his trial counsel was ineffective. The trial court held an evidentiary hearing and denied his motion.

Petitioner appealed the denial of his post-conviction motion and his convictions to the Wisconsin Court of Appeals. On July 16, 2009, the court of appeals affirmed his judgment of convictions and the denial of his post-conviction motion, finding that petitioner's trial counsel did not provide him ineffective assistance.

Petitioner alleges that he was denied effective assistance of trial counsel. This allegation is sufficient to state a valid constitutional claim. In addition, it appears that petitioner has exhausted his state court remedies and filed his petition within the one-year limitations period.¹

Accordingly,

¹Although petitioner's petition was not filed in this court until February 28, 2010, he certifies that he put it in the institution mail on February 2, 2011, which would render it timely. *Houston v. Lack*, 487 U.S. 266 (1988).

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 respondent William Pollard.

2. **Answer deadline.** Within 30 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 substantive 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:

- Petitioner shall file a brief in support of his petition within 30 days after respondent files its answer. With respect to claim adjudicated on the merits by the Wisconsin Court of Appeals, petitioner must show either that (1) the state appellate court contravened a controlling opinion of the United States Supreme Court;(2) the state appellate court applied a controlling opinion of the United States Supreme Court in an unreasonable manner; or (3) the state appellate court's decision rested upon an unreasonable determination of the facts. 28 U.S.C. § 2254(d).
- Respondent shall file a brief in opposition within 30 days after petitioner files his initial brief.
- Petitioner shall have 20 days after respondent files its brief in which to file a reply brief.

Entered this 9th day of March, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge