

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

JOSEPH AWE,

Petitioner,

v.

GARY BOUGHTON,

Respondent.

ORDER

11-cv-329-wmc

Joseph Awe, an inmate at the Prairie du Chien Correctional Institution, by his lawyer, 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 conviction in the Circuit Court for Marquette County for arson of a building with intent to defraud, Case No. 2007-CF-54. Petitioner filed a motion for post conviction relief in the trial court, which was denied. On March 4, 2010, the Wisconsin Court of Appeals affirmed petitioner's conviction. On May 14, 2010, the Wisconsin Supreme Court declined to review petitioner's case.

Petitioner alleges that his conviction was obtained in violation of his right to be provided exculpatory evidence and his right to the effective assistance of counsel. These allegations are sufficient to state constitutional claims. It appears that petitioner has exhausted his state court remedies and has filed his petition within the one-year limitations period.

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 Gary Boughton.

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 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 19th day of May, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge