

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

DARNELL JACKSON,

Petitioner,

v.

WILLIAM POLLARD,

Respondent.

ORDER

11-cv-737-wmc

Darnell Jackson, an inmate at the Waupun 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 and he has filed a motion for appointment of counsel. *See* dkt. 3.

Petitioner is challenging a disciplinary proceeding in which he was found guilty of inciting a riot at the New Lisbon Correctional Institution. As a result of this finding, petitioner's mandatory release date was extended 179 days. Petitioner argues that he is entitled to relief because he was denied a hearing before an impartial decision maker. In several related claims, petitioner argues further that he was denied exculpatory evidence in the form of surveillance video footage and that there was insufficient evidence to support the guilty finding. These claims were rejected by the Wisconsin Supreme Court in a decision issued on December 14, 2010. *See Jackson v. Buchler*, 330 Wis. 2d 279, 793 N.W.2d 826, 2010 WI 135 (2010). Doc. # 1, Exh. E.

It appears that petitioner has exhausted his state court remedies and that he has filed his petition within the one-year limitations period. Therefore, the court will order the state to respond.

The court notes that petitioner has filed a motion for appointment of counsel. Under 18 U.S.C. § 3006A(2)(B), a district court may appoint counsel to represent an indigent

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.

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, William Pollard, in his official capacity as warden of the Waupun 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 motion.** Petitioner's motion for appointment of counsel, dkt. 3, is DENIED without prejudice to his renewing his request at a later time.

Entered this 5th day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge