

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

MARK ALLAN CAMPBELL,

Petitioner,

v.

WARDEN LIZZIE TEGELS,

Respondent.¹

ORDER

12-cv-225-wmc

Petitioner Mark Allan Campbell, an inmate at the New Lisbon 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. The petition is before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Proceedings in the United States District Courts.

Petitioner is confined as the result of a conviction in Pierce County Case No. 07-CF-45. Petitioner pleaded guilty to charges of first-degree sexual assault of a child in that case. Under the terms of the plea agreement, the State recommended a total sentence of 20 years, with no more than five-to-seven years of initial confinement. The Circuit Court for Pierce County accepted the guilty plea and, after considering the results of a pre-sentence investigation, sentenced petitioner to a 30-year term of initial confinement, followed by 10 years of extended supervision. This sentence was vacated by the Wisconsin Court of Appeals, which held that the circuit court erred by failing to consider the applicable sentencing guidelines. *See State v. Campbell*, 2009 WI App 110, 320 Wis.2d 704, 771 N.W.2d 929 (May 5, 2009).

¹ Petitioner, who was confined at the Wisconsin Resource Center when he filed the petition on March 30, 2012, lists Superintendent Bryan Bartow as the respondent. Because public records reflect that petitioner is now confined at the New Lisbon Correctional Institution, the court substitutes Warden Lizzie Tegels as the proper respondent under Rule 2(a) of the Rules Governing Section 2254 Cases in the District Courts.

On remand, the circuit court sentenced petitioner to a 34-year term of initial confinement, followed by 10 years of extended supervision. Petitioner challenged the sentence with a post-conviction motion, arguing that the State violated his right to due process because the prosecutor breached the terms of the plea agreement. Although the prosecutor recommended a total sentence of no more than 20 years at the re-sentencing proceeding, which was consistent with the original plea agreement, petitioner noted that the prosecutor did not expressly include in that recommendation a sentence of no more than five-to-seven years of initial confinement. The trial court denied that motion following an evidentiary hearing.

On direct appeal, petitioner argued that he was denied due process because the State breached the terms of its plea agreement at his re-sentencing. The Wisconsin Court of Appeals affirmed the conviction on December 7, 2010, in an unpublished opinion. *State v. Campbell*, 2011 WI App 18, 331 Wis.2d 91, 794 N.W.2d 276. The Wisconsin Supreme Court summarily denied further review on April 12, 2011. *State v. Campbell*, 2011 WI 29, 332 Wis.2d 281, 797 N.W.2d 525.

Petitioner now seeks relief from his conviction under 28 U.S.C. § 2254. Petitioner argues, as he did on direct appeal, that the State violated his right to due process by breaching the terms of its plea agreement. Petitioner argues further that, by denying relief on this claim, “the Wisconsin Court of Appeals’ decision was contrary to, or was an unreasonable application of clearly established Federal law, as determined by the United States Supreme Court in *Santobello v. New York*, 404 U.S. 257 (1971) and subsequent cases.” It appears that petitioner has exhausted his state court remedies and that he has filed his petition within the one-year limitations period. Accordingly, the court will request an answer from the respondent.

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, Lizzie Tegels, in her official capacity as warden of the New Lisbon 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 claim

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.

Entered this 27th day of July, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge