

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

PASCHALL L. SANDERS,

Petitioner,

v.

DEBORAH MCCULLOUGH,

Respondent.

ORDER

12-cv-230-wmc

Petitioner Paschall L. Sanders is in custody of the Wisconsin Department of Health Services at the Sand Ridge Secure Treatment Center. Sanders has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge his continued confinement under a civil commitment order. Sanders has paid the five dollar filing fee and this case is pending before the court on preliminary review under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

Preliminary review of the petition shows that Sanders is challenging a state court judgment and commitment order entered on a jury verdict finding that he was “a sexually violent person,” as defined by Wis. Stat. § 980.01(7).¹ That order was entered in the Circuit Court for Milwaukee County on December 15, 2009. The circuit court denied Sanders’s post-conviction motion on October 14, 2010. The Wisconsin Court of Appeals affirmed the commitment order on August 23, 2011, *see In re Commitment of Sanders*, 2011 WI App 125, 337 Wis.2d 231, 806

¹ A “sexually violent person” is:

a person who has been convicted of a sexually violent offense, has been adjudicated delinquent for a sexually violent offense, or has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence.

Wis. Stat. § 980.01(7).

N.W.2d 250 (2011), and the Wisconsin Supreme Court denied his petition for review on December 1, 2011. *State v. Sanders*, 2012 WI 2, 338 Wis.2d 322, 808 N.W.2d 714 (2012).

Sanders now seeks relief from the civil commitment order under 28 U.S.C. § 2254. In a petition that is dated March 30, 2012, Sanders raises four grounds for relief regarding the validity of the jury instructions, which he contends were constitutionally defective. Sanders maintains that he was denied due process at his trial as a result of the defective instructions. It appears that Sanders has exhausted his state court remedies by raising them on direct appeal all the way to the Wisconsin Supreme Court. It further appears that he has filed his petition within the one-year limitations period on federal review.

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, Deborah McCullough, in her official capacity as Director of the Sand Ridge Secure Treatment Facility.

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 respondent 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 the respondent 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 respondent 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 respondent 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 his 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 his brief in which to file a reply brief.

Entered this 27th day of August, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge