

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

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ERIC JAMES HENDRICKSON,

ORDER

Petitioner,

12-cv-354-bbc

v.

DEBORAH McCULLOCH, Director,  
Sand Ridge Secure Treatment Center,

Respondent.  
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The petitioner, Eric James Hendrickson, is currently confined at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin. He seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge an October 30, 2009 judgment from the Circuit Court for Marathon County, which denied his petition for discharge under Wis. Stat. § 980.09 from a civil commitment order designating him a sexually violent predator under Wis. Stat. ch. 980. Petitioner contends that his continued confinement is unlawful, and that he is being held in violation of his constitutional right to due process, because the evidence at the discharge hearing was insufficient to prove that he was still a sexually violent person. He has paid the filing fee and he is represented by counsel.

## ORDER

In accordance with Rule 4 of the Rules governing Section 2254 Cases in the United States District Courts, this court has examined the petition and determined that dismissal prior to submission of an answer and the record is not warranted. Therefore,

IT IS ORDERED that the clerk shall serve the petition by mailing a copy of it, along with a copy of this order, via certified mail to Director McCulloch and to the Wisconsin Attorney General.

The state shall file a response to petitioner's claims not later than thirty days from the date of service of the petition, showing cause, if any, why the writ of habeas corpus should not issue.

If the state contends that petitioner's claims are subject to dismissal with prejudice on grounds such as procedural default or the statute of limitations, it should file a motion to dismiss and all supporting documents within its thirty-day deadline. The state must address the issue of cause and prejudice in its supporting brief. Petitioner shall have twenty days following service of any such motion within which to file and serve his responsive brief and any supporting documents. The state shall have ten days following service of the response within which to file a reply.

If at this time the state wishes to argue petitioner's claims on their merits, either directly or as a fallback position in conjunction with any motion to dismiss, then within its thirty-day deadline the state must file and serve not only its substantive legal response to

petitioner's claims, but also all documents, records and transcripts that commemorate the findings of fact or legal conclusions reached by the state courts at any level relevant to petitioner's claims. The state also must file and serve any additional portions of the record that are material to deciding whether the legal conclusions reached by state courts on these claims were unreasonable in light of the facts presented. *See* 28 U.S.C. § 2254(d)(2). If the necessary records and transcripts cannot be furnished within thirty days, the state must advise the court when such papers will be filed.

Petitioner shall have twenty days from the service of the state's response within which to file a substantive reply.

If the state chooses to file only a motion to dismiss within its 30-day deadline, it does not waive its right to file a substantive response later, if its motion is denied in whole or in part. In that situation, the court would set up a new calendar for submissions from both sides.

The court notes that petitioner is represented by counsel. Once the state has filed its answer or other response, petitioner must serve a copy of every letter, brief, exhibit, motion or other submission that he files with this court upon the assistant attorney general who appears on the state's behalf. The court will not docket or consider any submission that has not been served upon the state. Thus, consistent with the federal rules, petitioner should include a certificate with each of his submissions indicating that he served a copy of that

document upon the state.

Entered this 22d of May, 2012.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge