

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

CHARLES G. ANDERSON,

Petitioner,

v.

ORDER

12-cv-578-bbc

DEBORAH McCULLOCH, Director,
Sand Ridge Secure Treatment Center,

Respondent.¹

Petitioner Charles G. Anderson seeks a writ of habeas corpus under 28 U.S.C. § 2254 to challenge his continued confinement at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin. Anderson proceeds pro se and he has paid the five dollar filing fee. This case is pending before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases.

Preliminary review of the petition shows that Anderson is in custody pursuant to a civil commitment order entered under the state sexually violent persons law, Wis. Stat. ch. 980. Anderson provides scant detail about his commitment proceedings or his efforts to obtain relief in state court. He appears to challenge a judgment from the Circuit Court for Portage County, which denied his petition for discharge under Wis. Stat. § 980.09. Public records confirm that this judgment was affirmed on direct appeal, *State v. Anderson*, 2012 WI App 52, 340 Wis.2d 742, 813 N.W.2d 248 (Wis. App. March 22, 2012) (unpublished), and the Wisconsin Supreme Court has denied further review.

¹ The petition lists Secretary Dennis Smith of the Wisconsin Department of Health and Human Services as the respondent. The court substitutes the official having custody, Sand Ridge Director Deborah McCulloch, as the proper respondent under Rule 2(a) of the Rules Governing Section 2254 Cases.

Liberally construed, Anderson contends that his continued confinement is unconstitutional because the state failed to prove that he remains a sexually violent person as defined by Wis. Stat. 980.01(7). Anderson has not alleged any facts in support of this claim. Nevertheless, it appears that Anderson has exhausted his state court remedies with respect to this issue and that he has filed his petition within the one-year limitations period on federal review. Therefore, at this early stage of the case, Anderson may proceed with this claim.

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 McCulloch, in her official capacity as director of the Sand Ridge Secure Treatment Center.

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 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 20 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 an 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 any 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 22nd day of August, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge