

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

JAMES ROBINSON,

Petitioner,

v.

LIZZIE TEGELS, Warden,
Jackson Correctional Institution,

Respondent.

ORDER

13-cv-116-wmc

Petitioner James Robinson is currently in custody of the Wisconsin Department of Corrections at the Jackson Correctional Institution. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging a state court conviction. Robinson also has filed a brief in support of his petition and has paid the five dollar filing fee. This case now is pending before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

Robinson is challenging a conviction for armed robbery and other offenses charged in Eau Claire County Case No. 06CF888. On May 24, 2007, the circuit court sentenced Robinson to ten years of initial confinement followed by eight years' extended supervision. The Wisconsin Court of Appeals summarily affirmed the conviction in an unpublished opinion on March 23, 2010, and the Wisconsin Supreme Court denied Robinson's petition for review on July 21, 2010. *See State v. Robinson*, 2009AP2244. Thereafter, on February 14, 2011, the circuit court denied Robinson's motion for postconviction relief under Wis. Stat. 974.06. The Wisconsin Court of Appeals summarily affirmed that decision on February 22, 2012, and the Wisconsin Supreme Court denied his petition for review on August 2, 2012. *See State v. Robinson*, 2011AP462.

In this federal habeas petition executed on February 6, 2013, Robinson raises multiple claims of prosecutorial misconduct in connection with his trial in Eau Claire County Case No. 06CF888. Robinson also raises several grounds for relief based on ineffective assistance of counsel. Robinson alleges that these claims were raised in his post-conviction motion and direct appeal. It appears that Robinson has exhausted his state court remedies and that the petition is timely. The court reserves a determination on any other procedural issue until after it has received an answer or appropriate dispositive motion 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 Jackson 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.** In the event that the respondent does not file a motion to dismiss as outlined above, the court will proceed to consider the merits. Petitioner has already filed a brief in support of his grounds for relief. Dkt. 2. Therefore, the parties shall adhere to the following briefing schedule with respect to the merits of petitioner's claims:

- (a) Petitioner shall file any additional brief in support of his petition or give written notice that he intends to rest on his initial brief within 30 days after respondent files its answer.
- (b) Once petitioner submits additional briefing or gives written notice that he does not intend to do so, respondent shall file a brief in opposition within 30 days.
- (c) Once respondent files a brief in opposition, petitioner shall have 20 days to file a reply if he wishes to do so.

Entered this 1st day of July 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge