

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

RODNEY WASHINGTON,

Petitioner,

v.

TIMOTHY HAINES, Warden,
Wisconsin Secure Program Facility,

Respondent.

ORDER

14-cv-208-wmc

Petitioner Rodney Washington is presently incarcerated by the Wisconsin Department of Corrections at the Wisconsin Secure Program Facility in Boscobel. Washington seeks a writ of habeas corpus under 28 U.S.C. § 2254 to challenge a state court conviction from Milwaukee County. He has paid the \$5.00 filing fee and he has submitted a memorandum in support of his petition. After conducting a preliminary review of the petition and supplemental memorandum pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the court concludes that an answer is needed from the respondent.

FACTS

A jury found Washington guilty in Milwaukee County Case No. 00CF1310, of four counts of first-degree sexual assault with the use of a dangerous weapon and three counts of second-degree sexual assault of a child. Subsequently, the circuit court sentenced Washington to serve 100 years' imprisonment.

On direct appeal, Washington argued that his trial counsel was ineffective for failing to file a motion to dismiss the complaint. In particular, Washington argued that the trial court lacked personal jurisdiction because the criminal complaint and arrest warrant that were filed

in 2000 did not identify him with reasonable certainty, and thereby failed to toll the statute of limitations. In the alternative, Washington argued that the trial court erred when it denied his request to represent himself at trial and his request for substitution of counsel. The Wisconsin Court of Appeals rejected all of Washington's arguments on the merits and affirmed the conviction. *See State v. Washington*, 2013 WI App 55 347 Wis. 2d 550, 830 N.W.2d 723 (unpublished). The Wisconsin Supreme Court denied Washington's petition for review on September 17, 2013. *See State v. Washington*, 2013 WI 87, 350 Wis. 2d 729, 838 N.W.2d 637 (unpublished). Thereafter, the United States Supreme court denied a writ of certiorari on February 24, 2014. *See Washington v. Wisconsin*, 134 S. Ct. 1313 (2014).

In his pending habeas corpus application, Washington contends that he is entitled to relief pursuant to 28 U.S.C. § 2254 for reasons similar to those raised on direct appeal. Thus, it appears that he has exhausted all available state court remedies. Although Washington was convicted in Milwaukee County, which is located in the Eastern District of Wisconsin, venue is arguably proper because Washington is incarcerated in Grant County, which is within the Western District. *See* 28 U.S.C. §§ 130, 2241(d). Therefore, the court will authorize service of the petition on 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, Timothy Haines, in his official capacity as warden of the Wisconsin Secure Program Facility.

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 memorandum in support of his grounds for relief. 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 file further briefing, 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 9th day of April, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge