

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

RYON STACY REESE,

Petitioner,

v.

GREGORY GRAM,

Respondent.

ORDER

16-cv-83-bbc

Pro se prisoner Ryon Stacy Reese has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging the revocation of his probation for allegations that he sexually assaulted a child. Petitioner lists four “grounds” in his petition, but three of them relate to his counsel’s alleged failure to provide effective assistance at the revocation hearing. In addition, petitioner says that the state court erred by refusing to appoint counsel for him to litigate his state habeas petition. Petitioner has paid the \$5 filing fee, so the petition is ready for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases.

I am dismissing petitioner’s claim regarding the state court’s refusal to appoint counsel for his state habeas petition because petitioner does not have a constitutional right to counsel during postconviction proceedings. Wilson v. United States, 413 F.3d 685, 687 (7th Cir. 2005) (“[T]he sixth amendment does not guarantee quality (or any) counsel in post-conviction proceedings.”).

With respect to petitioner's claim that counsel provided ineffective assistance at his revocation hearing, I understand petitioner to contend that counsel was deficient for the following reasons: (1) she failed to call the victim to testify; (2) she failed to investigate the witnesses she did call; and (3) she delegated the responsibility of gathering evidence to petitioner's daughter. In addition, petitioner says that counsel was inexperienced, but I do not understand petitioner to be raising a separate claim on that issue. Rather, I understand petitioner to be alleging that counsel's inexperience contributed to the failures listed above.

A person has a right to effective assistance of counsel at a revocation hearing under some circumstances. Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973). Further, it appears that petitioner has exhausted his state court remedies with respect to his ineffective assistance claim. State ex rel. Reese v. Grams, 2014 WI App 120, ¶ 1, 358 Wis. 2d 709, 856 N.W.2d 345, review denied sub nom. Reese v. Grams, 2015 WI 24, ¶ 1, 862 N.W.2d 602. Accordingly, I will direct the state to respond to the petition.

ORDER

1. Petitioner Ryon Stacy Reese's claim that he was denied counsel for his state habeas petition is DISMISSED.

2. I will direct the state to respond to petitioner's claim that he received ineffective assistance of counsel at his revocation hearing because counsel failed to call the victim to testify, failed to investigate the witnesses she did call and allowed petitioner's daughter to gather evidence.

3. Pursuant to an informal service agreement between the Attorney General for the State of Wisconsin and the court, copies of the petition and this order are being sent today to the Attorney General for service on Warden Gram.

4. Within 30 days of the date of service of this order, respondent must file an answer. The answer must comply with Rule 5 of the Rules Governing Section 2254 Cases and must show cause, if any, why this writ should not issue.

5. **Dispositive motions.** If the state contends that the petition is subject to dismissal on grounds such as the statute of limitations, an unauthorized successive petition, lack of exhaustion or procedural default, it is authorized to file a motion to dismiss, a supporting brief and any documents relevant to the motion, within 30 days of this order, either with or in lieu of an answer. If the state contends that the petition presents a mix of exhausted and unexhausted claims, then it must address in its supporting brief whether petitioner meets the criteria for a stay announced in Rhines v. Weber, 544 U.S. 269 (2005), in the event he opts to pursue his unexhausted claims in state court. 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.

If the court denies the motion to dismiss in whole or in part, it will set a deadline within which the state must file an answer, if necessary, and establish a briefing schedule regarding any claims that have not been dismissed.

6. **When no dispositive motion is filed.** If respondent does not file a dispositive

motion, then the parties shall adhere to the following briefing schedule regarding the merits of petitioner's claims:

- Petitioner shall file a brief in support of the petition within 30 days of the date of service of the answer. Petitioner bears the burden to show that his conviction or sentence violates the federal Constitution, United States Supreme Court case law, federal law or a treaty of the United States. With respect to any claims that were adjudicated on the merits in a state court proceeding, petitioner bears the burden to show that the state court's adjudication of the claim:
 1. resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or,
 2. resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). Petitioner should keep in mind that in a habeas proceeding, a federal court is required to accept the state court's determination of factual issues as correct, unless the petitioner rebuts the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

NOTE WELL: If petitioner already has submitted a memorandum or brief in support of his petition that addresses the standard of review set out above, then he does not need to file another brief. However, if petitioner's initial brief did not address the standard of review set out in § 2254(d), then he should submit a supplemental brief. If he fails to do so, then he risks having some or all of his claims dismissed for his failure to meet his burden of proof.

- Respondent shall file a brief in opposition within 30 days of the date of service of petitioner's brief.
- Petitioner shall have 20 days after service of respondent's brief in which to file a reply brief.

7. For the time being, petitioner must serve by mail 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. Petitioner should note on each of his submissions whether he has served a copy of that document upon the state.

8. If petitioner is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and respondent or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 9th day of March, 2016.

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