

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

MAGDALENO GONZALEZ,)
)
Petitioner,)
)
v.)
)
KEVIN GILSON, *Warden, Illinois River*)
Correctional Center,)
)
Respondent.)

Case No. 10-cv-1068

OPINION & ORDER

This matter is before the Court on Petitioner’s Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Doc. 1) and his Motion to Proceed in forma pauperis (Doc. 2). The Motion to Proceed in forma pauperis is denied, and Respondent will be ordered to respond to the Petition.

PETITION FOR HABEAS CORPUS RELIEF UNDER § 2254

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the District Courts, the Court has examined the Petition and has determined that Petitioner’s claim could have merit. On March 7, 2006, Petitioner pled guilty in Will County, Illinois, to a charge of criminal sexual assault and was sentenced to four years’ imprisonment. (Doc. 1 at 1, 11). Petitioner argues that he should have been released on February 9, 2009, but is still incarcerated and has been informed that he will be released on October 21, 2010. He argues that his current incarceration is illegal because the Illinois legislature has unconstitutionally added a term of mandatory supervised release to the court-imposed sentence, and that the Illinois

Department of Corrections unconstitutionally denies mandatory supervised release to those convicted of sex crimes, such as Petitioner, by applying certain conditions to determine that the site to which a releasee would be released is inappropriate. (Doc. 1 at 12-13). The Court cannot determine that Petitioner's claim is without merit, and will therefore order Respondent to respond to the Petition.

MOTION TO PROCEED IN FORMA PAUPERIS

Petitioner has filed a Motion to Proceed in forma pauperis.¹ (Doc. 2). Under 28 U.S.C. § 1915, the Court may allow a litigant to proceed without prepayment of fees or costs. The Motion is supported by an affidavit, and contains the information that is required by 28 U.S.C. § 1915(a)(1). In addition, the Court has received a copy of Petitioner's trust fund account ledger for the last six months from the Illinois River Correctional Center, as required by 28 U.S.C. § 1915(a)(2). In his affidavit, Petitioner asserts that he has no income or other property, other than prison income of \$10.00 per month. However, the certification from an officer of the Illinois River Correctional Center and his trust fund account ledger belie the assertion that Petitioner cannot pay the \$5.00 filing fee. Both indicate that Petitioner has \$82.50 in his prison trust fund account. (Doc. 2 at 6, 8). Therefore, the Court finds that Petitioner is able to pay the \$5.00 filing fee.

¹ Petitioner has submitted his Motion to Proceed in forma pauperis on the form intended for use when applying to appeal in forma pauperis. As this form contains all the information required by 28 U.S.C. § 1915(a)(1), the Court construes it as a Motion to Proceed in forma pauperis in the district court.

IT IS THEREFORE ORDERED:

1. The Clerk SHALL cause a copy of the Petition (Doc. 1) to be served upon Respondent.
2. Respondent SHALL file an answer or other response within sixty (60) days after service of the Petition. Respondent should address any facts which would establish whether Petitioner's claims are untimely or procedurally barred. In addition, Respondent should address the merits of Petitioner's constitutional claims and otherwise fully comply with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts.
3. Petitioner MAY file a reply to Respondent's response within thirty (30) days of being served with Respondent's response.
4. Petitioner SHALL serve upon the Respondent a copy of every further pleading or other document submitted for consideration by the Court.
5. Petitioner's Motion to Proceed in forma pauperis (Doc. 2) is DENIED.
6. Petitioner SHALL submit the applicable filing fee within 28 days of the date of this Order, or his Petition will be dismissed.

Entered this 6th day of April, 2010.

s/ Joe B. McDade

JOE BILLY McDADE
United States Senior District Judge