

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

ANTHONY GAY,)	
)	
Petitioner,)	
)	
v.)	Case No. 10-cv-1112
)	
YOLANDE JOHNSON, and)	
ATTORNEY GENERAL OF ILLINOIS)	
)	
Respondents.)	

OPINION & ORDER

This matter is before the Court on Petitioner's Petition for habeas corpus pursuant to 28 U.S.C. § 2254 and his Motion for Leave to Proceed in forma pauperis.¹ (Docs. 1 & 2). For the reasons stated below, Respondent will be ordered to respond to the Petition, and the Motion for Leave to Proceed in forma pauperis is granted.

PETITION FOR WRIT OF HABEAS CORPUS UNDER § 2254

Petitioner was convicted in Livingston County of aggravated battery on November 7, 2005, and sentenced to a term of six years' imprisonment. His conviction was affirmed on direct appeal, and his state post-conviction petition was denied. In his instant habeas petition, Petitioner claims that his due process and speedy trial rights were violated by the trial court's unnecessary questioning of his fitness. He also claims that his counsel on direct appeal was ineffective for failing

¹ The Court notes that Petitioner has filed several other § 2254 Petitions, and that each relates to a separate conviction around the same time period.

to raise this issue on direct appeal. Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the District Courts, the Court has examined the Petition and cannot find on the basis of it that Petitioner's claims have no merit. Therefore, the Petition will be served upon Respondent, and Respondent will be ordered to submit an answer, motion, or other responsive pleading.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner submitted a Motion to Proceed in forma pauperis concurrently with his § 2254 Petition. (Doc. 2). Under 28 U.S.C. § 1915, the Court may authorize a prisoner to proceed with a lawsuit without prepayment of fees. Petitioner has submitted the required affidavit and certified statement of his prison trust fund account for the last six months. In his affidavit, Petitioner asserts that he has no income or property, and his prison trust fund account statement reflects a negative balance of \$1,843.69 as of April 16, 2010; it appears that, throughout the past six months, Petitioner has had a negative balance and no deposits to his account. Therefore, in accordance with § 1915, this Court finds that Petitioner is indigent and incapable of paying the full filing fee at this time.

However, § 1915(b) requires Petitioner to pay an initial filing fee that equals 20% of his average deposits or 20% of his average monthly balance for the preceding 6 months, whichever is greater, and to thereafter make monthly payments of 20% of his monthly income until his full filing fee is paid. As discussed above, Petitioner's account has had a negative balance for the past six months, and he has had no deposits in that period. As such, Petitioner is excused from paying an initial

filing fee under § 1915(b)(1). Pursuant to § 1915(b)(2), each time the balance in Petitioner's account exceeds \$10.00, Petitioner's custodian shall forward to the Clerk, in monthly payments, 20% of the preceding month's income credited to Petitioner's account, until the full \$5.00 filing fee is paid.

IT IS THEREFORE ORDERED:

1. The Clerk SHALL serve a copy of the Petition (Doc. 1) upon Respondent.
2. Respondent SHALL file an answer, motion, or other responsive pleading within sixty 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 responsive pleading within thirty days of being served with Respondent's responsive pleading.
4. Petitioner SHALL serve upon Respondent a copy of every further pleading or other document submitted for consideration by the Court.
5. Petitioner's Motion for Leave to Proceed in forma pauperis (Doc. 2) is GRANTED, and Petitioner is EXCUSED from paying an initial filing fee.
6. Each time the balance in Petitioner's account exceeds \$10.00, Petitioner's custodian SHALL forward to the Clerk, in monthly payments, 20% of the preceding month's income credited to Petitioner's account, until the full \$5.00 filing fee is paid.

Entered this 29th day of April, 2010.

s/ Joe B. McDade

JOE BILLY McDADE
United States Senior District Judge