

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DONCHII MALONE,)	
)	
Petitioner,)	
)	
v.)	No. 04 C 8008
)	
SCOTT McKEE, Acting Warden, Western Illinois Correctional Center,)	The Honorable
)	George W. Lindberg,
Respondent.)	Judge Presiding.

MOTION FOR ENTRY OF A RULE 58 JUDGMENT

Pursuant to Fed. R. Civ. P. 58(d), respondent SCOTT McKEE moves this Court to enter its judgment denying habeas corpus relief on a separate document as required by Fed. R. Civ. P. 58(a). In support, respondent states as follows:

1. On October 21, 2009, this Court entered a memorandum opinion and order denying habeas corpus relief on petitioner Donchii Malone's claim that his trial counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984). See Doc. 207. The same day, a minute order stating that petitioner's "ineffective assistance of counsel claims in his amended petition for writ of habeas corpus are denied" was entered on the Court's docket. See Doc. 206.

2. Previously, in minute orders entered on December 5, 2005 and March 13, 2006, this Court disposed of the additional grounds for habeas corpus relief that petitioner raised in his amended petition. See Docs. 27 & 71.

3. Because this Court has denied all of petitioner's claims for habeas corpus relief, it should set out its judgment to that effect on a separate document.

4. Federal Rule of Civil Procedure 58 provides, with immaterial exceptions, that "[e]very judgment or amended judgment must be set out in a separate document[.]" Fed. R. Civ. P. 58(a). The rule further provides that "[a] party may request that judgment be set out in a separate document as required by Rule 58(a)." Fed. R. Civ. P. 58(d).

5. The Seventh Circuit recently "remind[ed] litigants that if the [district] court has not entered a proper Rule 58 judgment on a separate document, the parties should ask the court to do so." *Perry v. Sheet Metal Workers' Local No. 73 Pension Fund*, No. 08-2024, 2009 WL 3428898, at *3 (7th Cir. October 27, 2009). "[T]here is good reason" to request the entry of a Rule 58 judgment, the court of appeals explained, because that document "clarifies what the ultimate result is, benefiting both the parties (for purposes of enforcement and clarity of legal obligation) and the judicial system (for providing a clear time period for taking an appeal)." *Id.* (quoting *Kunz v. DeFelice*, 538 F.3d 667, 673 (7th Cir. 2008)).

6. For these reasons, this Court should set out its judgment denying habeas corpus relief on a separate document as required by Fed. R. Civ. P. 58(a).

November 5, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 5, 2009, I electronically filed the foregoing **Motion For Entry Of A Rule 58 Judgment** with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, using the CM/ECF system, which will serve notice upon the following CM/ECF users: Chris C. Gair, Barry Levenstam, Michael H. Margolis, and Andrew W. Vail, attorneys for petitioner Donchii Malone.

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