

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ERIC SUTTON,

Petitioner,

vs.

TY BATES,

Respondent.

Case No. 11-cv-908-DRH

MEMORANDUM AND ORDER

HERNDON, Chief Judge:

Pending before the Court is petitioner Eric Sutton's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1). Petitioner, currently incarcerated in the Big Muddy River Correctional Center, was convicted of first degree murder and attempted first degree murder. In his petition, he alleges actual innocence based upon newly discovered evidence (Doc. 1).

Petitioner alleges he directly appealed his conviction and subsequently sought leave to appeal the Illinois Appellate Court's decision affirming his conviction to the Illinois Supreme Court. His request was denied. He further relates that he filed a state post-conviction petition which was dismissed. He appealed that dismissal to the Illinois Appellate Court and the case was remanded back to the Illinois circuit court. On remand, the petition was again dismissed. Petitioner again appealed the dismissal to the Illinois Appellate Court, and his

dismissal was affirmed. Petitioner then filed a petition for leave to appeal with the Illinois Supreme Court, which was denied on March 30, 2011. *Illinois v. Sutton*, 949 N.E.2d 664 (2011). Petitioner did not file a petition for certiorari with the United States Supreme Court.

It appears that petitioner has exhausted his state law remedies and timely filed his petition. Accordingly, **IT IS HEREBY ORDERED** that respondent shall answer the petition or otherwise plead within thirty (30) days of the date this order is entered. This preliminary order to respond does not, of course, preclude the State from making whatever waiver, exhaustion or timeliness arguments it may wish to present. Service upon the Illinois Attorney General, Criminal Appeals Bureau, 100 West Randolph, 12th Floor, Chicago, Illinois 60601 shall constitute sufficient service.

IT IS FURTHER ORDERED that pursuant to Local Rule 72.1(a)(2), this cause is referred to a United States Magistrate Judge for further pre-trial proceedings.

IT IS FURTHER ORDERED that this entire matter be **REFERRED** to a United States Magistrate Judge for disposition, as contemplated by Local Rule 72.2(b)(2) and 28 U.S.C. § 636(c), *should all the parties consent to such a referral*.

Petitioner is **ADVISED** of his continuing obligation to keep the Clerk (and each opposing party) informed of any change in his whereabouts during the pendency of this action. This notification shall be done in writing and not later

than seven days after a transfer or other change in address occurs. Failure to provide such notice may result in dismissal of this action. See FED. R. CIV. P. 41(b).

IT IS SO ORDERED.

Signed this 9th day of August, 2012.

David R. Herndon



David R. Herndon

2012.08.09

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**Chief Judge
United States District Court**