

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

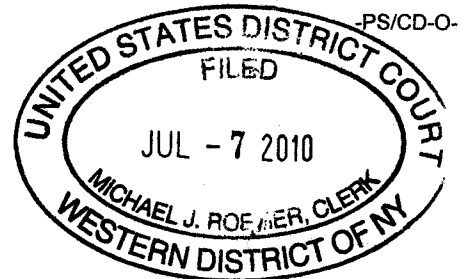
RONELL AGEE, 05B0626,

Petitioner,

-v-

J. BRANDT,

Respondent.



DECISION AND ORDER
10-CV-6303L

Petitioner Ronell Agee, acting *pro se*, an inmate of the Elmira Correctional Facility, seeks relief pursuant to 28 U.S.C. § 2254, alleging that his conviction in Supreme Court, Monroe County, State of New York, was unconstitutionally obtained, as set forth more precisely in the petition. Petitioner has paid the \$5.00 filing fee. Petitioner has also applied to the Court for poor person status and appointment of counsel.

The Court has not yet determined whether petitioner can be granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 because he has not provided the completed prison certification as explained in the Court's Order of June 15, 2010. Unless the Court grants petitioner poor person status, petitioner cannot request appointment of counsel. Therefore, petitioner's requests for poor person status and appointment of counsel are denied without prejudice to their renewal once petitioner submits the prison certification as described in the Court's previous Order.

Accordingly, IT HEREBY IS ORDERED as follows:

1. Petitioner's request to proceed as a poor person is denied without prejudice.
2. Petitioner's request for appointment of counsel is denied without prejudice.

3. Respondent shall file and serve an **answer** to the petition, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases in the United States District Courts, no later than **August 13, 2010**. Further, the answer shall state whether a trial or any pre-trial or post-trial evidentiary proceeding was conducted. If any such proceeding was conducted, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court the transcript of the proceeding, together with any record(s) of, and documents relating to, such proceeding, and such documents will be filed in the official record of this case.

Respondent also shall file and serve by the above date a **memorandum of law** addressing each of the issues raised in the petition and including citations of relevant supporting authority.

Within thirty (30) days of the date this order is served upon the custodian of the records, the Clerk of Court or any other official having custody of the records of the proceedings in Supreme Court at issue now before this Court shall submit such records to the respondent or respondent's duly authorized representative.

If petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, under the authority of Rule 4, the Court hereby directs respondent to provide to the Court a copy of the briefs and record on appeal and the opinions of the appellate courts, if any, and such documents will be filed in the official record of this case.

Petitioner shall have thirty (30) days upon receipt of the answer to file a written response to the answer and memorandum of law.

Within thirty (30) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the petition, accompanied by appropriate exhibits which demonstrate that an answer to the petition is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

4. The Clerk of Court shall serve a copy of the petition, together with a copy of this order upon respondent Superintendent of Elmira Correctional Facility and upon the Assistant Attorney General in Charge, 144 Exchange Street, Rochester, New York 14614. To advise appropriate Monroe County officials of the pendency of this proceeding, the Clerk of Court shall also mail a copy of this order to the District Attorney of Monroe County.

**PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND
CORRESPONDENCE TO THE ATTORNEY APPEARING FOR RESPONDENT.**

SO ORDERED.

Dated: July 6, 2010
Rochester, New York



CHARLES J. SIRAGUSA
United States District Judge