

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BERNARD J. DOBRANSKI, 80C0628,

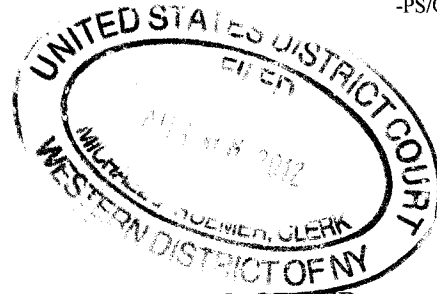
Petitioner,

-v-

MARK L. BRADT, Supt.,

Respondent.

-PS/CD-O-



DECISION AND ORDER
12-CV-6331Fe

Petitioner Dobranski filed a Petition for habeas corpus relief pursuant to 28 U.S.C. § 2241 alleging that he is in state custody as a result of the unconstitutional denial of parole by the New York State Parole Board (Docket # 1). Petitioner was notified that the Court is required to convert the petition to one brought under § 2254 and petitioner was advised of consequences of such recharacterization and provided opportunity to withdraw petition (Docket # 4). Petitioner has responded that he does not wish to withdraw the § 2241 Petition instead of having it recharacterized as a Petition brought under § 2254 and he does not consent to recharacterization of the petition. The basis for his objection is that he asserts he is requesting a declaratory judgement as to the unconstitutionality of the basis for the decision of three parole board members, rather than challenging the validity, execution or imposition of his sentence (Docket # 5). To the contrary, however, petitioner clearly requests an immediate de novo parole board hearing (Docket # 1, wherefore clause).

IT HEREBY IS ORDERED as follows:

1. The Court hereby recharacterizes this Petition as one brought pursuant to § 2254.

2. 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 **September 21, 2012**. The answer shall address petitioners arguments regarding the recharacterization of the petition, exhaustion of the grounds for the petition through appeal of the parole denial or otherwise, and the timeliness of the petition. 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 respondent or the 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.

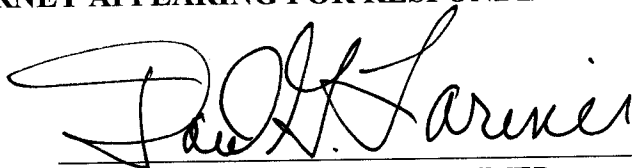
Petitioner shall have thirty (30) days upon receipt of the answer to file a written response to the answer and memorandum of law.

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.

3. The Clerk of Court shall serve a copy of the petition, together with a copy of this order, by certified mail, upon respondent Superintendent of Clinton Correctional Facility and upon the Office of the Attorney General, Federal Habeas Unit, 120 Broadway, 12th Floor, New York, New York 10271-0332. To advise appropriate Erie 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 Erie County.

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

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

DATED: August 8, 2012
Rochester, New York