UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JACK DANIEL VESS II,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. 3:17-cv-05700-RBL-JRC

ORDER TO SHOW CAUSE OR AMEND

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner filed the petition pursuant to 28 U.S.C. § 2254.

Petitioner Jack Daniel Vess II challenges his convictions for rape in the second degree and incest in the first degree. He claims that his sentence violated the Fourth Amendment and that the State produced insufficient and contradictory evidence that cannot sustain his conviction. However, petitioner has only included the State of Washington as the defendant, rather than the

state officer who has custody of him. Having reviewed the petition, the Court declines to serve the petition because the petition does not comply with the Rules Governing Section 2254 Cases. The Court, however, provides petitioner leave to file an amended petition by October 27, 2017 to cure the deficiencies identified herein.

BACKGROUND

Petitioner was convicted of second degree rape and first degree incest in 2009. Dkt. 3 at 2. He filed a direct appeal with the Court of Appeals claiming that the State improperly introduced testimony, the trial court abused its discretion, the State mischaracterized its burden of proof, and the trial court violated his due process rights when he was sentenced as a persistent offender. *Id*. at 2-3. The Court of Appeals denied him relief. *Id*. He brought identical claims before the Washington Supreme Court, who similarly denied him relief. *Id*. at 3. It appears prisoner has not filed a state personal restraint petition before filing the current habeas action.

DISCUSSION

Petitioner has included the incorrect defendant on his habeas petition. Under Rule 2(a) of the Rules Governing Section 2254 Cases, "the petition must name as respondent the *state officer who has custody*." (emphasis added). Further,

> [t]he petition must: (1) specify all the grounds for relief available to the petitioner; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the petitioner or person authorized to sign it for the petitioner under 28 U.S.C. §2242.

Id. at Rule 2(c). The petition must "substantially follow" a form prescribed by the local district court or the form attached to the Rules Governing Section 2254 Cases. *Id.* at Rule 2(d).

Here, petitioner has named the State of Washington as the sole respondent in violation of Rule 2(a). If petitioner intends to pursue this habeas action, he must file an amended petition

naming the correct defendant in compliance with Rule 2(a) of the Rules Governing Section 2254 Cases on the form provided by the Court. The amended petition must also be legibly rewritten or retyped in its entirety, it should be an original and not a copy, it should contain the same case number, and it may not incorporate any part of the original petition by reference. The amended petition will act as a complete substitute for the original petition, and not as a supplement. Included as the defendant should be the superintendent of the prison where petitioner's resides. Because petitioner currently resides at the Washington State Penitentiary, the appropriate defendant is Superintendent Donald Holbrook.

CONCLUSION

If petitioner fails to adequately address the issues raised herein and file an amended petition **on or before October 27, 2017**, the undersigned will recommend dismissal of this action.

The Clerk is directed to provide petitioner with the forms for filing a petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. The Clerk is further directed to provide copies of this Order to petitioner.

Dated this 25th day of September, 2017.

J. Richard Creatura
United States Magistrate Judge