

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DONNELL GARRETT,

Petitioner,

v.

Case No. 06-C-659

GREGORY GRAMS,

Respondent.

ORDER

Donnell Garrett filed this petition pursuant to 28 U.S.C. § 2254, asserting that his state court conviction and sentence were imposed in violation of the Constitution. I must give the case prompt initial consideration pursuant to Rule 4 of the Rules Governing § 2254 Cases, which reads:

If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified. Otherwise the judge shall order the respondent to file an answer.

Rule 4, Rules Governing § 2254 Cases. During my initial review of habeas petitions, I look to see whether the petitioner has set forth cognizable constitutional or federal law claims and exhausted available state remedies.

Petitioner claims, among other things, that his appellate counsel was ineffective. Ineffective assistance of counsel is clearly a constitutional ground for habeas relief under *Strickland v. Washington*, 466 U.S. 668 (1984). Yet the petition is obviously untimely. The petitioner was convicted in 1995 and did not have any state postconviction proceedings pending between his direct

appeal and 2004. The one-year statute of limitations under 28 U.S.C. § 2244(d) was not, therefore, tolled by any properly filed state actions, and this petition is therefore too late by several years.

THEREFORE, IT IS ORDERED that this petition is summarily dismissed pursuant to Rule 4 of the Rules Governing § 2254 Cases. Petitioner's motion for appointment of counsel is denied as moot. Petitioner's application for leave to proceed in forma pauperis is granted, and the filing fee is waived.

Pursuant to Rule 4 of the Rules Governing § 2254 Cases, copies of the petition and this order will be mailed to respondent and to the Attorney General for the State of Wisconsin, c/o Gregory M. Weber, Assistant Attorney General, P.O. Box 7857, Madison, WI 53707.

Dated this 9th day of June, 2006

s/ William C. Griesbach

William C. Griesbach

United States District Judge