

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

BRIAN K. BROWN,

Petitioner,

v.

Case No. 09-C-0723

JODINE DEPPISCH, Warden
Fox Lake Correctional Institution,

Respondent.

RULE 4 ORDER

The petitioner, Brian K. Brown, who is currently incarcerated at Fox Lake Correctional Institution, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitioner also filed a motion to proceed in forma pauperis. The petitioner paid the \$5.00 filing fee. The petition states that the petitioner was convicted of first degree sexual assault of a child in violation of Wis. Stat. § 948.02(1). By his petition, the petitioner challenges the June 12, 2006, judgment of conviction on the ground of ineffective assistance of counsel. The petitioner also raises due process and equal protection claims arising out of counsel's representation of him.

Upon review of the petition, this court is satisfied the petitioner is "in custody" pursuant to the conviction he now challenges. The court is also satisfied that the grounds stated by the petitioner in the petition translate, at least colorably, into a violation of his rights under the United States Constitution. Moreover, it appears from the petition that the petitioner either exhausted his state court remedies or there is no available state corrective process from which the petitioner can still seek a remedy.

Therefore, the court concludes that summary dismissal under Rule 4, Rules Governing Habeas Corpus Cases, is not appropriate since it does not plainly appear from "the face of the petition" that the petitioner is not entitled to relief. Consequently, the respondent will be called upon to serve and file an answer, motion or other response to the petition for a writ of habeas corpus. After the respondent's answer, motion or other response has been served and filed, the court will enter orders as necessary to facilitate the orderly progression of the action to disposition.

ORDER

NOW, THEREFORE, IT IS ORDERED that the respondent be and hereby is directed to serve and file an answer, motion or other response to the petition for a writ of habeas corpus no later than **August 31, 2009**.

IT IS FURTHER ORDERED that the petitioner's motion to proceed in forma pauperis be and hereby is **denied as moot**.

The petitioner is hereby notified that, from now on, he is required, under Fed. R. Civ. P. Rule 5(a), to send a copy of every paper or document filed with the court to the respondent or the respondent's attorney. The petitioner should also retain a personal copy of each document. If the petitioner does not have access to a photocopy machine, the petitioner may send out identical handwritten or typed copies of any documents. The court may disregard any papers or documents which do not indicate that a copy has been sent to each respondent or to the respondent's attorney.

IT IS FURTHER ORDERED that the Clerk of Court shall send a copy of this order and the file contents via the United States mail to Gregory M. Weber, Assistant Attorney General,

Wisconsin Department of Justice, Office of Attorney General, P. O. Box 7857, Madison,
Wisconsin 53701.

IT IS ALSO ORDERED that a copy of this order shall be mailed to the respondent.

Dated at Milwaukee, Wisconsin this 30th day of July, 2009.

BY THE COURT:

s/ Patricia J. Gorence
PATRICIA J. GORENCE
United States Magistrate Judge