

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LISA JANE GRAHAM,

Petitioner,

v.

CASE NO. 06-3317-SAC

RICHARD KOERNER, et al.,

Respondents.

O R D E R

Petitioner proceeds pro se and in forma pauperis on a petition for writ of habeas corpus filed under 28 U.S.C. § 2254. Before the court is respondents' motion for an extension of time to file an answer and return, and petitioner's opposition thereto. Having reviewed the record, the court finds sufficient good cause exists for granting respondents' request for additional time.

Also before the court is petitioner's motion for default judgment and for her release. Petitioner contends default judgment is warranted because respondents have not filed a timely answer and return. This argument is defeated by respondents' motion for an extension of time filed prior to expiration of the previous deadline set by the court, and the court's granting of that motion on this date. Additionally, default judgment against the State in a habeas corpus proceeding is extremely disfavored, and wholly inappropriate when no default by the State is intended.

See Bleitner v. Welborn, 15 F.3d 652, 653 (7th Cir. 1994). See also Stines v. Martin, 849 F.2d 1323m 1324 (10th Cir. 1988)(default judgment may be appropriate in habeas case if delay in responding to a request for relief violates due process).

Petitioner also seeks an immediate furlough and "supervised release" from her present confinement so that she can seek medical and dental treatment she claims is being denied during her current confinement. Petitioner cites her seven month compliance on a release on her own recognizance, and suggests release conditions that include electronic monitoring. The court denies this request. Petitioner is serving a sentence imposed for a presumptively valid conviction, and fails to demonstrate that release pending resolution of the instant habeas action is either warranted or appropriate under the circumstances.

IT IS THEREFORE ORDERED that respondents' motion for an extension of time (Doc. 17) is granted, and that respondents are granted to and including March 11, 2007 to file an answer and return.

IT IS FURTHER ORDERED that petitioner's motion for default judgment (Doc. 18) and motion for release (Doc. 18) are denied.

IT IS SO ORDERED.

DATED: This 21st day of February 2007 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge