

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARLIN D. LONG,

Petitioner,

v.

CASE NO. 07-3009-SAC

RAY ROBERTS,

Respondent.

MARLIN D. LONG,

Petitioner,

v.

CASE NO. 07-3044-SAC

RAY ROBERTS,

Respondent.

O R D E R

Petitioner herein, Marlin D. Long, is an inmate of the El Dorado Correctional Facility, El Dorado, Kansas. On January 19, 2007, this court entered an Order in Case No. 07-3009, requiring Mr. Long to satisfy the filing fee in this action and to submit his petition for writ of habeas corpus, 28 U.S.C. 2254, upon forms. Petitioner thereafter paid the filing fee in Case No. 07-3009 and filed Motions for Leave to Proceed Without Prepayment of Fees (Doc. 3 & 5). He also submitted his habeas claims upon forms provided by the court as ordered. However, petitioner did not put the case number on his 2254 form Petition; and it was filed as a new case, Case No. 07-3044¹. The court finds that these two actions are the

1

Mr. Long's submissions to the court that had Case No. 07-3009 at the top were filed in that case. Materials submitted without a case number were filed in the new case, No. 07-3044.

same and should be consolidated. All pleadings filed by Mr. Long to date in the two cases should be considered as filed in Case No. 07-3009. In the future Mr. Long is directed to write Case No. 07-3009 at the top of the first page of all pleadings submitted by him in this action.

The court has considered petitioner's two Motions for Leave to Proceed in forma pauperis (Docs. 3 & 5). Therein petitioner states he has paid the fee, but does not have funds for an attorney. The court finds the motions should be denied, without prejudice, at this time since petitioner's inmate account statement indicates he has an available balance of over \$150.00.

The court has considered petitioner's "Motion to Exceed Page Limitations and Stay the Brief During the Pendency of this Motion" (Doc. 3) filed in Case No. 07-3044. The court notes a 51-page "Memorandum of Law in Support" of Mr. Long's 2254 Petition with pages of a transcript attached was filed in Case No. 07-3009. The court denies petitioner's Motion to exceed page limitations and stay (Doc. 3), as no clear factual or legal basis for the motion is presented. The court has, however, accepted Mr. Long's Memorandum in Support and will consider it and the attachments in full.

Having examined the materials filed in this case, the court finds:

1. Petitioner is presently a prisoner in the custody of the State of Kansas; and
2. petitioner demands his release from such custody, and as grounds therefore alleges that he is being deprived

of his liberty in violation of his rights under the Constitution of the United States, and he claims that he has exhausted all remedies afforded by the courts of the State of Kansas.

The court concludes a response to the Petition is required.

IT IS THEREFORE ORDERED Long v. State, Case No. 07-3009 and Long v. State, Case No. 07-3044 are hereby consolidated for all further proceedings.

IT IS FURTHER ORDERED that petitioner's motions for leave to proceed in forma pauperis (Docs. 3 & 5) are denied, without prejudice; and petitioner's Motion to exceed and stay (Doc. 3) is denied.

IT IS FURTHER ORDERED THAT:

1. Respondents herein are hereby required to show cause within twenty (20) days from the date of this order why the writ should not be granted.

2. The response should present:

- (a) the necessity for an evidentiary hearing on each of the grounds alleged in petitioner's pleadings; and
- (b) an analysis of each of said grounds and any cases and supporting documents relied upon by respondents in opposition to the same.

3. Respondents shall cause to be forwarded to this court for examination and review the following:

the records and transcripts, if available, of the criminal proceedings

complained of by petitioner, if a direct appeal of the judgment and sentence of the trial court was taken by petitioner, respondents shall furnish the records, or copies thereof, of the appeal proceedings.

Upon termination of the proceedings herein, the clerk of this court will return to the clerk of the proper state court all such state court records and transcripts.

4. The petitioner is granted ten (10) days after receipt by him of a copy of the respondents' answer and return to file a traverse thereto, admitting or denying under oath all factual allegations therein contained.

5. The clerk of this court then return this file to the undersigned judge for such other and further proceedings as may be appropriate; and that the clerk of this court transmit copies of this order to petitioner and to the office of the Attorney General for the State of Kansas.

IT IS SO ORDERED.

Dated this 2nd day of March, 2007, at Topeka, Kansas.

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