

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ADRIAN LOPEZ,

Petitioner,

v.

CASE NO. 07-3326-SAC

DAVID McKUNE,
Warden, et al.,

Respondents.

O R D E R

This petition for writ of habeas corpus, 28 U.S.C. § 2254, was filed by an inmate of the Lansing Correctional Facility, Lansing, Kansas (LCF). Petitioner seeks to challenge his conviction by a jury in the District Court of Shawnee County, Kansas, on April 29, 1999, of first degree murder. He was sentenced to life, hard 40, but is serving a sentence imposed for a conviction other than the one under attack. His main claims are that he was incompetent at the time of trial, and that he was denied effective assistance of counsel in that his attorney had notice that his competency to stand trial was questionable but failed to adequately investigate and present the issue of his competency to the trial court. Petitioner alleges that all grounds raised in the Petition have been presented to the highest state court.

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 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 29th day of April, 2008, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge