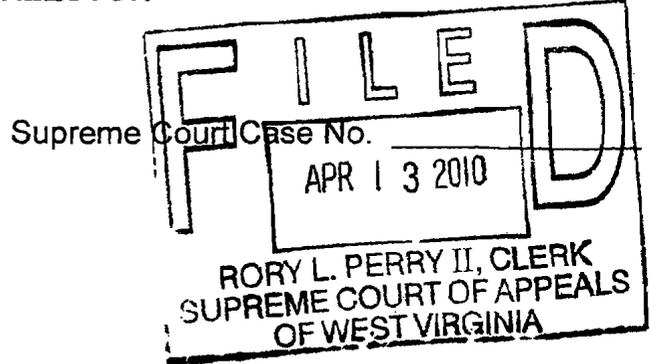


**100494**

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
AT CHARLESTON**



**GREGORY IVAN SETTLE,**  
Petitioner

v.

Underlying Case No. 09-Misc-319  
*Settle v. Ballard*

**THE HONORABLE JENNIFER ANN BAILEY,**  
KANAWHA COUNTY CIRCUIT COURT JUDGE,  
Respondent.

**PETITION FOR A WRIT OF MANDAMUS**

Comes now the Petitioner, **Gregory Ivan Settle**, acting *pro se*, to move this Honorable Court to issue a rule against Respondent directing her to respond to Petitioner's application for a writ of habeas corpus in the underlying case. More specifically, Petitioner requests that Respondent be directed to either appoint counsel to file an amended habeas petition or summarily dismiss Petitioner's habeas action, supported by findings of fact and conclusions of law as set forth in the West Virginia rules governing post-conviction habeas corpus.

## **FACTS AND PROCEEDINGS**

Petitioner filed his application for habeas corpus relief on September 3, 2009. See the docket sheet in **Exhibit A**. This application included a request for appointment of habeas counsel.

On October 26, 2009, Petitioner filed another motion (**Exhibit B**) for appointment of habeas counsel.

On January 22, 2010, Petitioner inquired about the status of his motion, receiving a response from the circuit clerk. See **Exhibit C**.

On February 8, 2010, Petitioner sent a letter directly to Respondent, inquiring about the status of his motion for appointment of counsel and urging Respondent to appoint counsel. See **Exhibit D**.

Finally, Petitioner sent a March 1, 2010, letter to Respondent (**Exhibit E**) asking that she act on his application for habeas relief and motion for appointment of counsel.

As can be seen from the docket sheet (**Exhibit A**), Respondent has not acted on Petitioner's habeas application, nor has she responded to any of his letters.

## **POINTS OF LAW**

This Court has held that a writ of mandamus will not issue unless three elements co-exist: (1) Petitioner's clear legal right to the relief sought; (2) Respondent's legal duty to provide that relief; and (3) the absence of another adequate remedy. *Arneault v. Arneault*, 216 W. Va. 215, 605 S.E.2d 590 (2004). Petitioner argues that these three elements co-exist in support of this petition.

## ARGUMENT

(1) Petitioner has a clear legal right to the relief sought. Petitioner filed his application for habeas relief eight months ago. That is more than enough time for the Respondent to either deny the application with findings of fact and conclusions of law, or appoint habeas counsel to perfect an amended habeas petition. She has done neither. The West Virginia rules governing post-conviction habeas corpus clearly state (Rule 4(b)) that the “circuit court shall *promptly* conduct an initial review of the petition ...” (italics added for emphasis). The rules go on to say that if the initial review determines that the petitioner may have grounds for relief and the petition as filed is not adequate, that habeas counsel will be appointed if Petitioner is indigent (which he is).

Rule 4(c) of the W. Va. Habeas Corpus rules also states that the petition “shall be examined *promptly* by the judge ...” (italics added) in the event of summary dismissal, and that such a dismissal shall contain “specific findings of fact and conclusions of law” addressing how each ground has been previously and finally adjudicated.

In either case, the rules state that the judge shall *promptly* act on the application for habeas relief, and either appoint counsel or prepare a summary dismissal with findings of fact and conclusions of law. Respondent has not been prompt. Respondent has failed to act on Petitioner’s habeas application for the past eight months. The W. Va. Habeas Corpus rules confer upon Petitioner a clear legal right for such action.

(2) Respondent has legal duty to provide relief. This, too, is evident from the rules cited *supra*. The rules state that the judge shall *promptly* act on the application for habeas relief.

(3) There is no other adequate remedy. The facts and proceedings show that Petitioner has patiently tried every avenue available to him to induce Respondent to act. She has ignored all of his motions, requests and letters. There is no other remedy to induce Respondent to act.

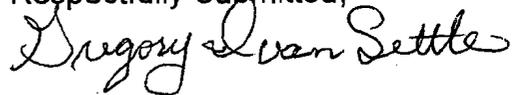
#### **CONCLUSION AND PRAYER FOR RELIEF**

Petitioner has shown *supra* the three elements that must co-exist in order for a writ of mandamus to be issue.

WHEREFORE Petitioner prays that this Court issue a rule against Respondent directing her to either (a) appoint counsel to file an amended habeas petition in the case below or (b) summarily dismiss Petitioner's application for habeas relief with appropriate findings of fact and conclusions of law.

Petitioner also prays for any other relief which this Court deems just and appropriate.

Respectfully Submitted,



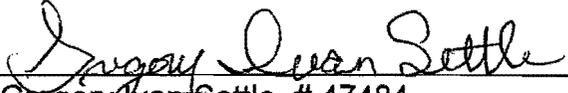
Gregory Ivan Settle, # 47484  
Mount Olive Correctional Complex  
One Mountainside Way  
Mt. Olive, WV 25185

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing PETITION FOR  
A WRIT OF MANDAMUS was sent via the United States mail to

The Honorable Jennifer Bailey  
Judge, Kanawha County Circuit Court  
111 Court Street, Judicial Annex  
Charleston, WV 25301

on this 12<sup>th</sup> day of April, 2010.

  
Gregory Van Settle, # 47484  
Mount Olive Correctional Complex  
One Mountainside Way  
Mt. Olive, WV 25185

GREGORY IVAN SETTLE (#47484) vs. DAVID BALLARD, WARDEN.

## LINE DATE ACTION

|   |          |  |
|---|----------|--|
| 1 | 09/03/09 | # DOCKETING STATEMENT; PET FOR WRIT OF HABEAS CORPUS W/EXH'S |
| 2 |          | # & W/COS  |
| 3 | 09/09/09 | # COV LET; PRINTOUT OF STATEMENT OF INSTITUTIONAL ACCOUNTS   |
| 4 | 10/29/09 | # MOT FOR APPT OF CNSL                                       |
| 5 | 01/26/10 | *LETTER FR D; LTR TO D FR CLK                                |
| 6 | 02/11/10 | SM LET FR GREGORY SETTLE TO JUDGE BAILEY DTD 2/8/10; COV LET |
| 7 | 03/03/10 | # COV LET; LET FR GREGORY SETTLE TO JUDGE BAILEY DTD 3/1/10  |

← Need my copy  
of these letters

\* Please include your Doc # if not your mail  
gets returned

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GREGORY IVAN SETTLE

Petitioner,

v.

CIVIL ACTION NO. 09-MISC-319

DAVID BALLARD, Warden

Respondent.

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MOTION FOR APPOINTMENT OF COUNSEL

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NOW COMES, the petitioner Gregory I. Settle, appearing through pro se representation and respectfully moves this Honorable Court to appoint counsel for the purpose of representing the petitioner's Petition Under §2254 For Writ Of Habeas Corpus By A Person In State Custody.

Wherefore, the petitioner Gregory I. Settle, prays this Honorable Court will appoint counsel to represent him in the above action.

RESPECTFULLY SUBMITTED

  
GREGORY IVAN SETTLE, pro se  
MOCC  
ONE MONNTAINSIDE WAY  
MOUNT OLIVE, WV 25185

---

EXHIBIT E

Gregory I. Settle  
MOCC  
1 Mountainside Way  
Mount Olive, WV 25185

January 22, 2010

Cathy Gatson, Clerk  
kanawha County Circuit Clerk  
111 Court St., Judicial Annex  
Charleston, WV 25301

Civil Action Number: 09-MISC-319

Dear Ms. Gatson:

On or about 10/26/09 I filed a Motion, requesting appointment of counsel to assist with my writ of habeas corpus. At this time I'm requesting the status of said motion for appointment of counsel.

Thank you in advance for your time in this matter.

Sincerely,

  
Gregory I. Settle, Pro Se  
MOCC  
1 Mountainside Way  
Mount Olive, WV 25185

GIS/lae  
encl  
cc: file

EXHIBIT C

09-Misc-319 Bailey

STATE OF WEST VIRGINIA  
CLERK OF KANAWHA COUNTY CIRCUIT COURT

111 COURT STREET  
CHARLESTON, WEST VIRGINIA 25301

CATHY S. GATSON  
CIRCUIT CLERK



TELEPHONE  
(304) 357-0440  
FACSIMILE  
(304) 357-0473

January 26, 2010

Gregory I. Settle  
M.O.C.C.  
1 Mountainside Way  
Mt. Olive, WV 25301

Re: Attorney Appointment

Dear Mr. Settle:

I am in receipt of your letter dated January 22, 2010, in which you inquire as to the status of your request for appointment of counsel to assist you with your petition for writ of habeas corpus. I have forwarded a copy to Judge Bailey.

Sincerely,

Darla G. Hodges  
Administrative Assistant

c: file

EXHIBIT C

Gregory I. Settle  
MOCC  
1 Mountainside Way  
Mount Olive, WV 25185

February 8, 2010

Judge Jennefer Ann Bailey  
111 Court St., Judicial Annex  
Charleston, WV 25301

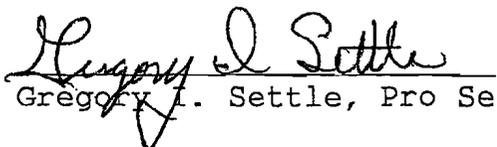
Civil Action No: 09-Misc-319

Your Honor:

This letter is for the purpose of requesting that you grant my Motion for Appointment of Counsel, which was submitted to the Court on or about 10/26/09. I need to have further investigation done on my case, before individuals forget very important details concerning my appearance on certain dates after the alleged crime.

Thank you for your time in this matter. And if my Motion has already been acted on please disregard this letter.

Sincerely,

  
Gregory I. Settle, Pro Se

GIS/lae  
cc: file

EXHIBIT

Gregory Ivan Settle  
M.O.C.C. DOC # 47484  
1 Mountainside Way  
Mount Olive, WV 25185

March 1, 2010

Court Administrator's Office  
Attn: Judge Jennifer Bailey  
Kanawha County Judicial Building  
111 Court St. Room 100  
Charleston, WV 25301

In Re: 09-Misc-319

Dear Judge Bailey:

Please consider this letter as a request to make a prompt decision upon my Writ of Habeas Corpus filed Sept. 3rd 2009. More than two terms of court has past sense the filing of my writ.

In my writ I clearly express my innocents, and I provided an affidavit showing that there is a mis-identification, that I had a beard and long hair at the time of the alleged crime. The victim claimed that her attacker was clean shaven and had short hair at trial.

I realize that twelve jurors found me guilty but, if they were provided with a credible witness as shown in the writ, the out come of my trial would have been different.

In sum, I have a right to due process just like anyone else. I believe that I am entitled to a prompt decision on my writ.

If I do not receive a response to this letter within 30 days, I will be forced to file a Mandamus to compel you to make a ruling to the West Virginia Supreme Court.

Sincerely *Gregory Ivan Settle*

cc: WV Supreme Court  
Kanawha County Circuit Court Clerk  
file

EXHIBIT