

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES H. ANDERSON,

Petitioner,

Case N^o 1:10-CV-676

v

Hon. Janet T. Neff

GRAND TRAVERSE BAND OF OTTAWA AND
CHIPPEWA INDIANS TRIBAL COURT,

Respondent.

Charles H. Anderson

819 VanBuren NW
Grand Rapids, MI 49504

William Rastetter (P26170)

Of Counsel

OLSON, BZDOK & HOWARD, P.C.

Counsel for Respondent

420 East Front Street

Traverse City, MI 49686

Telephone: (231) 946-0044

**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS
AND MOTION REQUESTING DISMISSAL FOR
FAILURE TO EXHAUST TRIBAL REMEDIES**

Respondent Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court, by undersigned counsel pursuant to Rule 5 of Rules Governing Section 2254 Cases and this Court's August 3, 2010 Order To File Answer Or Other Pleadings, submits this answer and motion requesting dismissal for failure to exhaust tribal remedies. In support of this motion, Respondent alleges:

MOTION TO DISMISS

1. Petitioner's claim is barred by his failure to exhaust tribal remedies.
2. Attached as Exhibit 1 is Petitioner's Notice of Appeal dated "9-14-2010" (and related documents) filed September 15, 2010 with the Tribal Court of the Grand Traverse Band of Ottawa and Chippewa Indians ("Tribal Court").

3. The Tribal Court has docketed Petitioner's appeal, which will proceed according to the Tribal Court's rules.

4. Because Exhibit 1 clearly demonstrates Petitioner's failure to exhaust all judicial remedies available in Tribal Court, Respondent will not address (but does not waive) other procedural issues, such as whether the petition complies with the requirements of Rule 2 of the Rules Governing Section 2254 Cases.

ANSWER TO PETITION

5. As required by Rule 5(b), Respondent briefly addresses the allegations in the petition by providing the following summary (that would have been expanded had the "failure to exhaust" bar not existed):

Petitioner was convicted of domestic violence ("DV") via jury trial. He was represented by counsel during the proceedings. He was sentenced to 1 year (based on his history of DV as well as other aggravating factors, including the extent of injury to the victim and his lack of remorse). He was given credit for time served in jail up to the issuance of a PR/\$ bond in April 2009. The original sentencing order reported a DV2nd, but, upon motion by the Defense attorney, it was changed to "Domestic Violence." Subsequently, he was in jail due to his parole violation and for subsequent misbehavior while there. He asked for an attorney to appeal and counsel finally was appointed after a long search (no one would take his case due to the fact that he'd threatened his previous defense attorney). His case was set for hearing on his Motion to Amend Sentence in early 2010, but his attorney moved to reschedule twice and the matter wasn't heard until August. His motion was denied. He chose not to be present during the hearing (although his attorney was) and his attorney was instructed to advise him of his right to appeal. (Which he did via letter and a copy of same was forwarded to the Court). The appeal was filed on September 15, 2010. He was released from jail on 9/1/10.

6. With respect to the requirements of Rule 5(c) of the Rules Governing Section 2254 Cases, Respondent states: that no transcripts are available. The attached summary shows recorded hearings for which transcripts could be obtained per the Tribal Court's customary practice. See Exhibit 2.

WHEREFORE, Respondent moves for dismissal of this habeas corpus action on the grounds that Petitioner has failed to exhaust all remedies available in the Tribal Court.

Dated: September 24, 2010

Respectfully submitted,

s/ William Rastetter
William Rastetter (P26170)
Of Counsel
Olson, Bzdok & Howard, P.C.
420 East Front Street
Traverse City, MI 49686
231-946-0044
rastetter@envlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2010, I electronically filed an Answer to Petition for Writ of Habeas Corpus and Motion Requesting Dismissal for Failure to Exhaust Tribal Remedies with the Clerk of the Court using the ECF system which will send notification of each filing to Charles H. Anderson.

Dated: September 24, 2010

s/ William Rastetter
William Rastetter (P26170)
Of Counsel
Olson, Bzdok & Howard, P.C.
420 East Front Street
Traverse City, MI 49686
231-946-0044
rastetter@envlaw.com

EXHIBIT 1

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS - TRIBAL COURT	NOTICE OF APPEAL	CASE NO. 2009-316-CR
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Court Address

2605 N. WEST BAYSHORE DR., SUTTONS BAY, MI 49682

Court telephone no.

(231) 534-7050

Petitioner: ____ Plaintiff OR ____ Defendant Charles H Anderson 11192 O-de-to-min Suttons bay, MI 49682	Vs.	Respondent: ____ Plaintiff OR ____ Defendant GTBTC Grand Traverse Band Tribal Court
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1. I, Charles Anderson, claim an appeal from a judgment or final order entered
NAME

on OCT 20, 2009, in the Grand Traverse Band Tribal Court, by Judge thompson
DATE NAME
Sept 18 - 2010 *need more room ran out of space*

2. I am requesting an oral argument on this appeal: YES NO *space*

Ran out of space

3. Statement of the reason and grounds for appeal: Court violated Defendants rights
to speedy trial, jury trial for said charge, Judge denied defendant right to appeal case, Judge gave defendant more than 365 days and she didn't care, Judge denied defendant or due process of law, denied defendant of transcripts, to be present at court dates, everything on the judgment of sentence was not on record by Judge Thompson, Judge Thompson violated defendant's rights

4. Relief requested from the Tribal Appellate Court:

Overturn conviction would need lawyer to answer the ?

5. Filing Fee of \$150.00 for Notice of Appeal has been paid. If not, then a Petition for Waiver of Filing Fees must accompany this notice with a copy of your DHS benefits letter or a copy of your Bridge Card.

6. A transcript may be ordered by the Court, if so, Respondent is responsible for the cost unless indigent.

File motion to appeal conviction and sentence already, see motion 11-09-2009 attached

Date

9-14-2010

Signature

Charles Anderson



FOR COURT USE ONLY

NOTES:

Date Filed: _____

Filing Fee Paid: _____

Transcript Fee Paid: _____

Clerk Signature: _____

Copy of Court Fee Schedule and Court Appellate Rules Attached.

Marked Original

Charles Henry Anderson Sr. #458061
E.C. Brooks Correctional Facility
2500 S. Sheridan Drive
Muskegon Heights, MI 49444

Clerk Of The Tribal Court
Criminal Division
2605 NW Bayshore Dr.,
Suttons Bay, MI 49628

RE: THE GRAND TRAVERSE BAND OF OTTAWA
& CHIPPEWA INDIANS v. CHARLES ANDERSON SR.,
CASE NO.: 2009-000316-CR

MOTION FOR APPOINTMENT OF APPELLATE COUNSEL

Dear Clerk:

Enclosed are two copies, one is marked Original and the other is marked Clerks Copy. Please file these documents in the normal manner. Note that the Prosecutor's Office has been served by the appropriate Proof of Service, via first class mail.

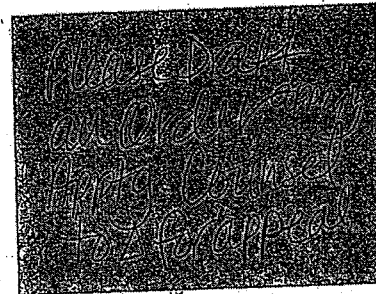
I would like to thank you in advance for filing this Motion on my behalf, if there are any questions regarding this motion please contact me at the address above.

Respectfully submitted,


Charles Henry Anderson Sr.,

Dated 11/09/2009

cc/file: Personal file.



SEP 15 PM3:50

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

THE GRAND TRAVERSE BAND OF
OTTAWA AND CHIPPEWA INDIANS

CASE NO.: 2009-000316-CS
HON. HOLLY K. THOMPSON

Plaintiff,

-v-

CHARLES HENRY ANDERSON, SR. #458061

Defendant,

* * * * MOTION FOR APPOINTMENT OF APPELLANT COUNSEL * * * *

NOW COMES, Defendant Charles Henry Anderson Sr, in pro se moves this Honorable Court for appointment of appellate counsel for the following reasons:

In a case involving a conviction following a trial, immediately after imposing sentence, the court must advise the defendant on the record that;

(a) the defendant is entitled to appellate review of the conviction and sentence,

(b) If the defendant is financially unable to retain a lawyer, the court will appoint a lawyer to represent the defendant on appeal, and

(c) the request for a lawyer must be made within 42 days after sentencing.

Here Mr. Anderson is entitled to appeal his sentence by right and therefore states other reasoning in support of this request.

1. Defendant was found guilty of one count of Domestic Violence on Tuesday October 20, 2009 and Sentence to 365 days in jail with 49 days credited.

SEP 13 AM 9:40

SEP 15 PM 3:50

2. Defendant is indigent as a prisoner in the Michigan Department of Corrections.

3. Mr. Anderson wishes to Appeal his conviction based on his right a speedy trial of 120 days.


4. Defendant believes he is also entitled to time served while incarcerated in the MDOC.

Defendants financial situation has not chagned since he was lodged in the tribal county jail. He also has a family that depend on his per capita distribution check which this court should consider in appointing counsel.

Furthermore, Defendant request this court to Order the transcribing of the Court Transcripts on the trial proceedings as well as sentencing related to case No. 2009-000316-CR. (Including Sentencing Transcripts). Defendant also respectfully seeks to obtain a copy of the Court file including all discovery. Witheut these documents it will be impossible for the defendant to properly appeal his conviction.

However, if this Court requires other documents to be submitted, the Defendant request that those documents be forward to the provided address.

Respectfully Submitted,


Charles Henry Anderson Sr.,

SEP 15 2010

SEP 15 2010

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

THE GRAND TRAVERSE BAND OF
OTTAWA AND CHIPPEWA INDIANS

Plaintiff,

CASE NO.: 2009-000316-CS
HON. HOLLY K. THOMPSON

-v-


CHARLES HENRY ANDERSON, SR. #458061

Defendant,

MOTION FOR WAIVER OF FEES AND COST

NOW COMES Defendant Charles Anderson Sr., in pro se and pursuant to MCR 2.002(d), hereby moves the Honorable Court to waive the fees and cost for this Motion and waive fees that may arise from this Motion, Court cost, ect... Due to the Defendant's inability to prepay the same because of his indigency and status as a prisoner, with no real income and because he is proceeding in pro se. This Motion is based upon the pleadings and affidavit of indigency filed herewith made part hereof.

respectfully submitted,


Charles Anderson Sr.,

Dated 11/09/2009

SEP 13 AM 8:42

SEP 15 PM 3:50

4.

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

THE GRAND TRAVERSE BAND OF
OTTAWA AND CHIPPEWA INDIANS

Plaintiff,

CASE NO.: 2009-000316-CS
HON. HOLLY K. THOMPSON

-v-

CHARLES HENRY ANDERSON, SR. #458061

Defendant,

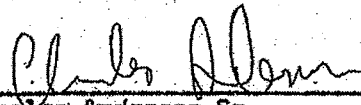
AFFIDAVIT OF INDIGENCY

I Charles Anderson, being duly sworn deposes and say the following:

1. That I am the Defendant in the Motion pursuant to MCR 7.212.
2. That because of my status as a prisoner I have no other way to pay fees and cost of this filing, and the only income I receive is from my family and occasional gifts. This money I need and use for my own personal necessities while I am in prison to cover basic health care needs.
3. That I own no bank account, stocks, bonds, real or personal property of any value, I only receive per capita disbursements monthly which supports my family and their personal debts.
4. Therefore, I believe I am legally entitled to the relief that I seek and all the above stated matters are true and correct to the best of my knowledge, information and belief, and I make this affidavit in good faith.

Dated: 11/09/2009

Respectfully submitted,


Charles Anderson Sr.,
Defendant/In pro se

NOV 13 AM 9:42

SEP 15 PM 3:50

5

IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

THE GRAND TRAVERSE BAND OF
OTTAWA AND CHIPPEWA INDIANS

Plaintiff,

CASE NO.: 2009-000316-CS
HON. HOLLY K. THOMPSON

-v-

CHARLES HENRY ANDERSON, SR. #458061


Defendant,

VERIFICATION

I Charles Anderson, do hereby under the penalty of perjury affirm that I have read the within Motion to Amend The Original Judgment of Sentence and attest to all matters of fact as set forth by Court documents, and believe them to be absolutely true. As to matters of case law authority, constitutional mandates, (Amendments and Articles). I believe them to be truthful and hereby place my reliance there upon.

Dated 11/04/2009

Respectfully submitted,


Charles Anderson Sr.

NOV 18 AM 8:42
SEP 15 PM 3:50

6.

EXHIBIT 2

**Tribal Court, Grand Traverse Band of Ottawa and Chippewa Indians
2009-316-CR, GTB vs. CHARLES ANDERSON, SR.**

DATE	TYPE OF PROCEEDING	
02/23/09	Arraignment via Video Conference from LCJ	Hearing on the record
02/23/09	Petition & Order for Court Appointed Attorney, Bond Order, S&OTA (PTC 3/2/09)	Orders
03/02/09	Pre-Trial Conference held, PTCM, N & O sent out (FC 3/23/09)	Not on the record, Order
03/23/09	Final Conference held, FCM, N&O (cont FC 4/13/09)	Not on the record, Order
03/27/09	Order on Defendant's Emergency Motion to Show Cause Why Prosecuting Atty Should Not Be Held In Contempt Of Court	Hearing on the record
04/07/09	Motion Hearing held on Defendant's Motion to Dismiss	Hearing on the record
04/13/09	Arraignment held, Record of Arraignment on Amended Complaint	Hearing on the record
04/20/09	Final Conference held	Hearing on the record
05/07/09	Contempt Order (for James Aprea FTA)	Hearing on the record, Order
06/17/09	Order Adjourning Jury Trial	Hearing on the record
08/04/09	Final Conference held, FCM, N&O (cont FC 9/29-30/09 jury trial)	Not on the record, Order
08/04/09	Order Following Motion Hearing (on Motion to Withdraw as Counsel for Defendant)	Hearing on the record
09/28/09	Order Following Motion Hearing (on Defense Attorney's Motion In Limine)	Hearing on the record
09/30/09	Jury Trial held, Order (found guilty by jury)(order signed 10/2/09)	Hearing on the record, Order
10/14/09	1st Amended Order Following Jury Trial	Order, not on the record
10/20/09	Sentencing Hearing held, Sentencing Order done (order signed 10/22/09)	Hearing on the record, Order
03/02/10	Order After Motion Hearing (on Defendant's Motion to Modify the Original Judgment of Sentence)	Hearing on the record, Order
04/27/10	Order After Motion (on Defendant's Motion for Transcripts)	Order, not on the record
08/10/10	Record of Motion Hearing	Hearing on the record
08/18/10	Order After Motion Hearing (on Defendant's Motion to Modify the Original Judgment of Sentence, Plaintiff's Motion for Psychological & Psychiatric Evaluations, Defendant's Motion to Fire Attorney No Longer Wishes to Be Represented by David Becker, and Plaintiff's Verbal Motion to Amend Motion for Psychological & Psychiatric Evaluations)	Hearing on the record