

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Chad Evans, Petitioner

v.

Warden, New Hampshire State
Prison, Respondent

No. 1:08-cv-105-JD

**RESPONDENT'S ANSWER TO RESPONDENT'S
PETITION FOR A WRIT OF HABEAS CORPUS**

NOW comes the Warden, Northern New Hampshire Correctional Facility, respondent, by and through counsel, the Attorney General of the State of New Hampshire, and, pursuant to Rule 5 of the Rules Governing § 2254 Cases, provides the following answer to Petitioner Chad Evans's petition for a writ of habeas corpus.

By order dated January 20, 2010, this Court ordered service of the instant petition for a writ of habeas corpus on the Attorney General, and ordered the Attorney General to answer or otherwise plead within thirty days in compliance with Rule 5 of the Rules Governing § 2254 Proceedings. D. 15: 6.¹ The respondent filed a motion for summary judgment and supporting memorandum on February 19, 2010. D. 16, 16-2. By Order dated March 4, 2010, at the request of

¹ "D. :_" refers to this Court's document and page number.

the respondent, this Court graciously clarified a docket entry and ordered the respondent to file an answer by March 10, 2010. D.18, 19.

The respondent's answers to the petition are as follows:

1. In response to paragraph 1, the respondent admits the allegation.
2. In response to paragraph 2, the respondent admits the allegation.
3. In response to paragraph 3, the respondent admits the allegation.
4. In response to paragraph 4, the respondent admits the allegation.
5. In response to paragraph 5, the respondent admits the allegation.
6. In response to paragraph 6 through 8, the respondent finds no factual errors in the recitation of facts. The facts are consistent with those recounted in *State v. Evans*, 150 N.H. 416, 839 A.2d 9 (2003) and *Petition of Evans*, 154 N.H. 142, 908 A.2d 796 (2006).
7. In response to paragraph 9, the opinion of the New Hampshire Supreme Court, cited by the petitioner, affirmed his convictions.
8. In response to paragraph 10, the respondent admits the allegation.
9. In response to paragraph 11 through 13, the respondent admits the allegations.
10. In response to paragraph 14, the respondent has insufficient information to know if the petition for a writ of certiorari was timely filed in the United States Supreme Court, and so the respondent denies that part of the allegation. The respondent admits the allegation that a petition for a writ of

certiorari was filed with the United States Supreme Court and denied on March 26, 2007.

11. In response to paragraph 15, the respondent is aware of no other petitions or writs filed in the federal courts by the petitioner with regard to the *ex post facto* claim. In the absence of any information, with the exception of the representation in the pleading filed by the petitioner, the respondent denies the allegation.

12. Paragraphs 16 through 30 contain legal argument already addressed in the respondent's motion for summary judgment and memorandum of law in support of the motion. The respondent asks this Court to consider that motion and memorandum as the response to the allegations contained in those paragraphs. By way of general answer, the respondent disagrees with the conclusions that the petitioner has drawn from the cases cited. The New Hampshire Supreme Court's opinions are neither contrary to, nor an unreasonable application of, United States Supreme Court precedent. 28 U.S.C. 2254(d)(1). .

13. The respondent does not dispute this court's assessment that the petitioner has presented his claims in some form to the New Hampshire courts.

14. The respondent believes that an evidentiary hearing is unnecessary because the petition can be appropriately resolved on the current record, assisted by the pleadings of counsel.

Respectfully Submitted,

Warden, New Hampshire State Prison,
Respondent.

By his attorneys,

Michael A. Delaney
Attorney General

/s/ Elizabeth C. Woodcock

Elizabeth C. Woodcock

N.H. Bar # 18837

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March 9, 2010

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served the petitioner through his counsel, by electronic filing. Defense counsel is: David M. Rothstein, Deputy Chief Appellate Defender, Appellate Defender Program, 2 White Street, Concord, NH 03301.

/s/ Elizabeth C. Woodcock
Elizabeth C. Woodcock