

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JONATHAN C. SEGNER,

Petitioner,

OPINION AND  
ORDER

v.

00-C-569-C

GERALD BERGE, Warden,  
Supermax Correctional Institution,

Respondent.

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Petitioner Jonathan C. Segner, a prisoner at the Supermax Correctional Institution, has applied for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is serving seventy years at the Supermax Correctional Institution following his 1997 trial and conviction in Circuit Court for Green County on myriad charges of armed robbery, armed burglary, theft, unlawful possession of a firearm and habitual criminality.

Petitioner raises two grounds for relief. Claim 1 is that the state withheld from petitioner and his attorney exculpatory evidence that would have impeached the trial testimony of Jason Kotte, one of the state's key witnesses. Claim 2 is that trial counsel was ineffective because he did not properly impeach another prosecution witness, Jail Sergeant Reyne Phillips.

Petitioner has exhausted his state court remedies with respect to both of these claims. In a January 13, 2000 opinion, the Wisconsin Court of Appeals analyzed petitioner's two claims, found them meritless and affirmed petitioner's convictions. As to petitioner's second claim, the court found that a) the additional evidence would not have impeached Kotte's testimony significantly at trial; and b) even if the jury had disbelieved Kotte as a result of the additional evidence, the outcome at trial would have been no different because there was other sufficient evidence of Segner's guilt. As to petitioner's second claim, the court applied the second prong of the two-part test of Strickland v. Washington, 466 U.S. 668 (1984), and determined that petitioner had not been prejudiced by his lawyer's failure to impeach the jail sergeant. Subsequently, the Wisconsin Supreme Court denied petitioner's petition for review.

Petitioner's application for a writ of habeas corpus must be denied. When Congress enacted the Antiterrorism and Effective Death Penalty Act, it intended to restrict the scope of a federal court's review of state convictions in order to give effect to state convictions to the greatest extent possible under law. Williams v. Taylor, 120 S. Ct. 1495, 1518 (2000) (O'Connor, J., writing for the majority with respect to Part II of the opinion, concurring in part and in the judgment). This goal is reflected in 28 U.S.C. § 2254(d), which allows a federal court to grant relief on the petition of a person in state custody only if the state court's adjudication of the claim on its merits:

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

Under the “contrary to” clause of § 2254(d)(1), federal habeas relief may be granted only if the state court arrived at a conclusion opposite to that reached by the United States Supreme Court on a question of law or if the state court decided a case differently from the United States Supreme Court on a set of materially indistinguishable facts. Williams v. Taylor, 120 S. Ct. at 1523. Under the “unreasonable application” clause, federal habeas relief may be granted only if the state identified the correct governing legal principle from the Supreme Court's decisions and then unreasonably applied that principle to the facts of petitioner's case.

Id.

In his order to show cause, the magistrate judge predicted that petitioner would be unable to satisfy his burden under § 2254(d) because the Wisconsin Court of Appeals analyzed petitioner's claims thoroughly and referred to the appropriate United States Supreme Court cases. Having had an opportunity to review the record and consider the parties' arguments, I now find conclusively what the magistrate judge surmised: petitioner is not entitled to habeas relief. Petitioner does not contend that the state courts determined the facts unreasonably or applied Supreme Court precedents unreasonably and a review of the record does not support such a finding. Instead, petitioner simply resubmits the arguments he made to the court of appeals in his effort to show why the errors he complains of prejudiced his right to a fair trial. As the magistrate judge recognized, this strategy is futile in light of the substantial burden

imposed by § 2254(d). The remedy of habeas corpus is not a substitute for a direct appeal, but is reserved for those extraordinary cases in which the state courts have failed to correct an error so severe that fundamental fairness would be violated if the conviction were allowed to stand. See Brecht v. Abrahamson, 507 U.S. 619, 633-34 (1993). This is not such a case. The Wisconsin Court of Appeals properly determined the facts adduced in the trial court proceedings, cited the appropriate Supreme Court precedents and reasonably applied those precedents to the facts. As the Supreme Court recognized in Brecht, “[s]tate courts are fully qualified to identify constitutional error and evaluate its prejudicial effect on the trial process . . .”. Id. at 636. Where, as here, the state courts fully and properly evaluated petitioner’s claim, habeas relief is unavailable.

ORDER

For the foregoing reasons, IT IS ORDERED that petitioner Jonathan Segner’s petition for a writ of habeas corpus is DENIED.

Dated this 27<sup>th</sup> day of December, 2000.

BY THE COURT:

Barbara B. Crabb  
District Judge