

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

RAZZIE WATSON, SR.,

Petitioner,

ORDER

v.

03-C-309-C

MATTHEW FRANK, Secretary, Wisconsin
Department of Corrections,

Respondent.

Petitioner Razzie Watson, Sr. has filed a motion for a certificate of appealability so that he may challenge this court's dismissal of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner also seeks leave to proceed in forma pauperis on appeal. For the reasons stated below, I am denying both motions.

Because petitioner seeks leave to proceed in forma pauperis on appeal, this court must determine whether petitioner is taking his appeal in good faith. See 28 U.S.C. § 1915(a)(3). Then, pursuant to 28 U.S.C. § 2253(c)(1)(A) and Fed. R. App. P. 22, this court must determine whether to issue a certificate of appealability to petitioner. To find that an appeal is in good faith, a court need only find that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). However, a certificate of appealability shall issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” Id.; see also 28 U.S.C. § 2253(c)(2). In order to make this showing,

a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack, 529 U.S. at 484.

Petitioner indicates that he seeks to appeal this court's rulings on all of his claims, which are as follows:

- 1) the prosecutor engaged in misconduct when he presented to the court photographs of the victim that preceded the date of the battery for which petitioner was charged, failed to substantiate that the victim sustained a ruptured eardrum, and vouched for the victim's credibility;
- 2) the prosecutor withheld exculpatory evidence, namely photographs taken of the victim on or shortly after the battery, in violation of petitioner's rights under *Brady v. Maryland*, 373 U.S. 83, 87 (1963);
- 3) the prosecutor breached the plea agreement by arguing that the court should impose the maximum sentence;
- 4) the state denied petitioner's right to due process and a speedy trial by holding him without bond pursuant to a "governor's warrant" and failing to extradite him from Chicago in a timely manner;
- 5) one of the numerous lawyers who represented him in the state circuit court had a conflict of interest because he also had represented the victim's fiancé;

- 6) the state violated petitioner's right to due process by improperly sentencing him as a repeater;
- 7) the state improperly relied upon an uncounseled prior conviction as a basis for the repeater portion of his February 12, 2001 conviction;
- 8) the state unlawfully denied petitioner credit for time served in custody in Chicago; and
- 9) ineffective assistance of appellate counsel.

As set forth in detail in the report and recommendation issued by the magistrate judge and adopted by this court, several of petitioner's claims do not even rise to the level of a constitutional violation, some are unsupported by any facts in the record and some are directed at proceedings not relevant to petitioner's current confinement. With respect to the two issues that the state courts had ruled on (the alleged conflict of interest of trial counsel and the alleged ineffectiveness of appellate counsel), petitioner failed to present any evidence or to even come close to meeting his burden to show that the courts' conclusions of facts and law were unreasonable as required by 28 U.S.C. § 2254(d). For these reasons, I cannot find that reasonable people could suppose petitioner's appeal has some merit, much less that petitioner has made a substantial showing of the denial of a constitutional right. Accordingly, I must deny petitioner's requests for leave to proceed in forma pauperis on appeal and for a certificate of appealability.

Because petitioner was able to file his appeal on time, the motion for extension of time that he filed on February 17, 2004, is moot. Additionally, I note although petitioner complains in that motion that prison officials have refused to allow him to make and mail

copies of his legal materials, he was able to file his 100-page notice of appeal, along with two copies. Petitioner's ability to copy and mail his legal documents indicate that he is not being deprived of access to the court.

ORDER

It is ORDERED that petitioner Razzie Watson's petition for leave to proceed in forma pauperis and his motion for a certificate of appealability are both DENIED.

Dated this 19th day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge