

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

SCOTT A. CLEMONS,

Petitioner,

v.

CATHERINE J. FARREY, Warden,
New Lisbon Correctional Institution,

Respondent.

ORDER

04-C-230-C

United States Magistrate Judge Stephen L. Crocker entered a report and recommendation in this case on September 10, 2004. The magistrate judge recommended denial of petitioner Scott A. Clemons's petition for a writ of habeas corpus on the ground that petitioner had not shown that he is in custody in violation of the United States Constitution. Petitioner filed an objection but did not identify any error of fact or law in the magistrate judge's report.

In his petition, petitioner contended that the state had used evidence against him at trial that was the product of an unreasonable arrest, search and seizure. As the magistrate judge explained, the State of Wisconsin provided petitioner an opportunity for full and fair

litigation of his Fourth Amendment claim. It has been established since the decision of the United States Supreme Court in Stone v. Powell, 428 U.S. 465 (1976), that federal courts cannot consider Fourth Amendment claims on habeas corpus review in cases in which the state has provided an opportunity to the petitioner to litigate his Fourth Amendment claim fully and fairly. In this case the state court held an evidentiary hearing at which petitioner's lawyer thoroughly questioned the officers who had provided the information they relied upon in stopping petitioner's car. The trial court and the court of appeals analyzed the facts brought out at the evidentiary hearing and applied the law properly to those facts. Petitioner cannot show that he was denied a full and fair opportunity to challenge the allegedly unconstitutional seizure of the evidence used against him at trial. Therefore, I will adopt the magistrate judge's proposal to dismiss petitioner's motion for a writ of habeas corpus.

ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge to dismiss petitioner Scott A. Clemons's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is ADOPTED. The petition for a writ of habeas corpus is DISMISSED.

Entered this 29th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge