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

WALTER LANNET,

Petitioner, OPINION AND ORDER

v. 04-C-522-C

MATTHEW FRANK, Secretary, Wisconsin Department of Corrections,

Respondent.

Walter Lannet has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. I have granted his petition for leave to proceed in forma pauperis in a separate order. The petition is before the court for preliminary consideration under Rule 4 of the Rules Governing Section 2254 cases. Because I conclude that petitioner is no longer in custody for the conviction that he seeks to challenge, I am dismissing the petition for lack of jurisdiction.

The petition is confusing. From the petition and my independent review of electronic records maintained on the Wisconsin Circuit Court Access Program (CCAP), I surmise that petitioner is alleging the following facts.

ALLEGATIONS OF FACT

Petitioner was convicted in 1997 in the Circuit Court for Oneida County of one count of false imprisonment after he entered an Alford plea to the charge. In January 1998,

the court sentenced him to two years in prison, but withheld his sentence and placed him on probation. Petitioner did not appeal his conviction.

In October 1998, petitioner was ordered to begin serving the two-year prison sentence. (I assume that his probation was revoked, but that is not clear from the petition or CCAP.) On January 11, 1999, while petitioner was still in custody, the state filed a sexually violent persons petition against him under Chapter 890 of the Wisconsin Statutes. On August 5, 1999, the Circuit Court for Oneida County denied the state's petition and granted petitioner's petition for a writ of habeas corpus. In its order granting the writ, the court ordered that petitioner be released and it discharged him from the sentence imposed on the false imprisonment charge.

At some point, petitioner was ordered to register as a sex offender in accordance with Wis. Stat. § 301.45. (For purposes of this opinion, I have assumed that the requirement that petitioner register as a sex offender was a direct result of his 1997 conviction for false imprisonment, although that fact is not clear from the petition.) Under Wisconsin's sex offender registration rules, a person subject to the statute must provide the Department of Corrections with his current address, place of employment or school, and other personal information, notify the department of any changes within 10 days of the change and verify the information on an annual basis. Wis. Stat. § § 301.45(2)(a), (3) & (4). An individual who seeks to move out of state must notify the department 10 days before the move, see Wis. Stat. § 301.45(4m), but otherwise the statute imposes no restrictions on where the

individual lives, works or goes to school so long as the individual is not on parole or extended supervision. Pursuant to Wis. Stat. § 301.45(5), a person to whom the statute applies must comply with the sex offender registry rules for 15 years after release from his conviction. Failure to comply with the notification requirements is, with some exceptions, a felony. Wis. Stat. § 301.45(6).

Petitioner is now in prison in Michigan. There is nothing in the petition to suggest that his current custody is related to his false imprisonment conviction. However, he still is subject to Wisconsin's sex offender registration requirement. Petitioner attacks his 1997 conviction on numerous grounds, asserting ineffective assistance of counsel, double jeopardy and various violations of his rights under the Fourth and Fifth Amendments. However, it is unclear whether petitioner is contending that he was wrongly convicted of false imprisonment or merely that he should not have to comply with the sex offender registration requirements.

OPINION

A federal court has jurisdiction to consider a petition for a writ of habeas corpus on "behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is *in custody* in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254 (emphasis added). The Supreme Court has not interpreted the "in custody" requirement of 28 U.S.C. § 2254 as requiring "that a prisoner be physically confined in order to challenge his sentence on habeas corpus." Maleng v. Cook, 490 U.S.

488, 491 (1989). For example, the Court has recognized that a petitioner released on parole is still "in custody" insofar as his release is conditioned upon his reporting regularly to his parole officer, remaining in a particular community, residence and job, and refraining from certain activities. Jones v. Cunningham, 371 U.S. 236, 242 (1963). However, "once the sentence imposed for a conviction has completely expired, the collateral consequences of that conviction are not themselves sufficient to render an individual "in custody" for the purposes of a habeas attack upon it." Maleng, 490 U.S. at 491.

Although petitioner is presently incarcerated, he is not seeking relief from the conviction or sentence upon which his confinement is based. Rather, he appears to seek relief from the 1997 Wisconsin conviction insofar as it is that conviction that gave rise to the requirement that he register as a sex offender. Petitioner has been discharged and released from his sentence on the Wisconsin conviction. The question is whether the requirement that he continue to comply with Wisconsin's sex offender registration program rules satisfied the "in custody" requirement of § 2254.

Other courts reviewing similar sex offender registration statutes have concluded that sex offender registration requirements are more akin to the loss of the right to vote or own firearms than to conditional probation or parole. See Leslie v. Randle, 296 F.3d 518, 522-523 (6th Cir. 2002) (dismissing habeas petition after concluding that Ohio's sex-offender statute does not place an offender "in custody" for purposes of 28 U.S.C. § 2254); McNab v. Kok, 170 F.3d 1246, 1247 (9th Cir. 1999) (same conclusion for Oregon statute); Henry

v. Lungren, 164 F.3d 1240, 1241-42 (9th Cir. 1999) (same conclusion for California statute); Williamson v. Gregoire, 151 F.3d 1180, 1184 (9th Cir. 1998) (same conclusion for Washington statute).

In Williamson, the court reviewed the Supreme Court's cases interpreting the custody requirement and concluded that "[t]he precedents that have found a restraint on liberty rely heavily on the notion of a physical sense of liberty - - that is, whether legal disability in question somehow limits the putative habeas petitioner's movement." 151 F.3d at 1183. The court concluded that Washington's sex offender registration statute did not restrain petitioner's movement insofar as the registration and notification provisions "apply to Williamson whether he stays in the same place or whether he moves." Id. at 1184. Further, the law allowed Williamson to register by mail, did not demand his physical presence at any particular place and did not specify any place where he could not go. Id. (distinguishing situation from that of alien denied entry into United States). Accordingly, because petitioner had already served the sentence that gave rise to the sex offender registration requirement, the court concluded that he was not "in custody" under § 2254.

Although not directly on point, the Seventh Circuit's decision in Bunn v. Conley, 309 F.3d 1002 (7th Cir. 2002) is reasoned along these same lines. In that case, the petitioner challenged a Federal Bureau of Prisons rule that required prison officials to notify local law enforcement personnel upon his release of the fact that he was convicted of a crime of violence. The court of appeals concluded that the action was properly filed as a civil action

for declaratory relief rather than as a habeas action, and therefore the district court had erred in recasting it as a habeas petition. Id. At 1008. Noting that habeas corpus is the proper remedy if the prisoner is seeking to challenge the "fact or duration" of his confinement, the court found that Bunn's challenge to the notification requirement could not be characterized as such. Id. The court explained:

> The notification scheme in no way affects the duration, much less the fact, of confinement. His supervised release will still be in place, and it will last just as long. It does not make his period of incarceration any more extensive, unlike something like a revocation of eligibility for parole. At this juncture, Bunn's claim, if he has one at all (and we make no comment on that question), looks much more like one challenging a civil disability that outlasts his prison sentence. It is not something that concerns his confinement.

Id. (citations omitted).

Following the reasoning of these cases, I conclude that the constraints of Wisconsin's sex offender registration program, at least as applied to petitioner in this case, do not satisfy the "in custody" requirement of § 2254. Like Washington's sex-offender registration law, Wisconsin's law does not impose any constraints upon petitioner's movement, require him to report to any particular place or extend his period of incarceration. It merely requires him to inform the Wisconsin Department of Corrections of any changes in his address, employment, school or motor vehicle information. These requirements are arguably less restrictive than loss of a driver's or professional license, consequences which have been deemed insufficient to meet the in custody requirement. See e.g., Lefkowitz v. Fair, 816

F.2d 17, 20 (1st Cir. 1987) (revocation of medical license); Harts v. Indiana, 732 F.2d 95, 96-97 (7th Cir. 1984) (suspension of driver's license). In short, the sex offender registration requirements are simply not the "severe restraint [] on individual liberty" for which habeas corpus relief is reserved. Hensely v. Municipal Court, 411 U.S. 345, 349 (1973). Accordingly, the petition must be dismissed for lack of jurisdiction.

ORDER

Accordingly, IT IS ORDERED that the petition of Walter Lannet for a writ of habeas corpus under 28 U.S.C. § 2254 be DISMISSED WITHOUT PREJUDICE for lack of jurisdiction.

Entered this 4th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge