

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

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MATTHEW TYLER,

Petitioner,

v.

GERALD BERGE, Warden,  
Wisconsin Secure Program Facility,

Respondent.

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ORDER

04-C-0525-C

Petitioner Matthew Tyler has filed objections to the report and recommendation entered on December 17, 2004, by United States Magistrate Judge Stephen L. Crocker. The magistrate judge recommended denial of petitioner's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Having reviewed that recommendation, along with petitioner's objections and attached materials, I am persuaded that the magistrate judge was correct.

Although petitioner contends that he is in state custody in violation of the United States Constitution, he has failed to support his contention. He alleges that his plea of guilty to a charge of second degree sexual assault of a child was unknowing and involuntary

and that the state court failed to conduct a proper plea colloquy. However, the state court of appeals considered his allegations and rejected them on their merits. Under federal law, this court cannot consider the same allegations unless petitioner can show that the state courts adjudicated his claims in a manner that was unreasonable or contrary to controlling Supreme Court precedent. 28 U.S.C. § 2254(d) (barring federal courts from granting any application for writ of habeas corpus “with respect to any claim that was adjudicated on its merits in State court” unless state court decision was unreasonable application of clearly established federal law or was based on unreasonable determination of facts). As the magistrate judge explained in detail, the state court decision was neither unreasonable nor out of step with controlling Supreme Court precedent. Therefore, this court is not in a position to reconsider petitioner’s claims. It was reasonable for the state court to conclude (1) that petitioner understood the nature of the charge against him and what he was giving up by pleading guilty; (2) that he entered his plea voluntarily; and (3) that he was not prejudiced by his lawyer’s failure to try to obtain a stipulation from the prosecution as a means of keeping “other acts” evidence from the jury.

#### ORDER

IT IS ORDERED that the magistrate judge’s recommendation is ADOPTED and Matthew Tyler’s petition for a writ of habeas corpus is DENIED for petitioner’s failure to

show that the state court's rejection of his challenge to his conviction was unreasonable.

Entered this 4th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge