

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

RICHARD A. DODSON,

Petitioner,

v.

DANIEL BENIK, WARDEN,
STANLEY CORRECTIONAL
INSTITUTION,

Respondent.

ORDER

04-C-0679-C

Petitioner Richard A. Dodson has filed objections to the report and recommendation entered by the United States Magistrate Judge on March 1, 2005. The magistrate judge recommended denial of petitioner's petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, because he found that petitioner had failed to show that the state court had concluded unreasonably that petitioner had not been deprived of his right to a speedy trial.

Petitioner argues that the magistrate judge's recommendation is flawed because he did not have the entire circuit court record available to him. This argument is puzzling; petitioner does not identify any portions of the state court record that are not part of the record in this court and the file contains what appears to be a full record of all of the state

circuit court proceedings. Petitioner argues that the magistrate judge should have made an independent review of the case and that he should have held an evidentiary hearing or at the least, allowed the parties to expand the record. (He does not explain what he would have submitted had he been given an opportunity to expand the record.) In making this argument, petitioner overlooks the standard that federal courts are required to apply when reviewing decisions by state courts. The federal court is not supposed to make an independent review of the case; in fact, it is prohibited from doing so. All it can do is review the state courts' determinations to decide whether they are "contrary to or involved an unreasonable application of, clearly established federal law," or whether they are based upon an unreasonable determination of the facts. Petitioner has not shown that the magistrate judge erred in finding that the state court determinations did not meet this statutory standard.

If petitioner believed that there were factual discrepancies between the state courts' summary of the relevant facts and the facts in the record, it was his obligation to bring those discrepancies to the attention of this court and establish by clear and convincing evidence that the state courts' factual findings were erroneous. § 2254(e)(1). He has not identified any factual errors that the state court made.

With no facts in dispute, it was not necessary for the magistrate judge to hold an evidentiary hearing. It was proper for him to rely upon the state court record in making his

recommendation.

ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge is ADOPTED as this court's own; FURTHER, IT IS ORDERED that petitioner Richard A. Dodson's petition for a writ of habeas corpus is DENIED.

Entered this 8th day of April, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge