

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

JOSE D. FUENTES,

Petitioner,

ORDER

v.

04-C-763-C

DANIEL BENIK, Warden, Stanley
Correctional Institution,

Respondent.

On January 4, 2005, this court entered judgment dismissing the petition of Jose D. Fuentes for his failure to file it within the one-year limitations period under 28 U.S.C. § 2244. Petitioner has now filed a motion to alter or amend the judgment “remanding” the case back to the Circuit Court for Columbia County so that he may present some of the claims raised in his petition to that court. In the alternative, petitioner requests a certificate of appealability.

Petitioner’s motion to alter or amend the judgment will be denied. This court has no power to “remand” this case to the state circuit court. The habeas proceeding in this court was independent of any state court proceeding. Petitioner remains free to attempt to convince the state courts to hear his claims; however, this court lacks the authority to order the state courts to do so.

The court will take no action on petitioner's request for a certificate of appealability at this time. Petitioner has not paid the \$255 filing and docketing fee required by the Court of Appeals for the Seventh Circuit, nor has he filed a request to proceed in forma pauperis on appeal. (Petitioner paid the five dollar filing fee in this court, so there is no affidavit of indigency to which this court could now refer).

Petitioner may have until February 7, 2005 either to pay \$255 to the clerk of this court as his appellate filing and docketing fee, or to file his motion for leave to proceed in forma pauperis on appeal. If petitioner fails to exercise one of these options by this deadline, then this court will deem his appeal abandoned.

Entered this 27th day of January, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge