

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

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HARRY L. GANT,

Petitioner,

v.

JEFFREY ENDICOTT, Warden,  
Redgranite Correctional Institution,

Respondent.  
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ORDER

04-C-0953-C

Petitioner Harry L. Gant has filed objections to the report and recommendation entered herein by the United States Magistrate Judge on May 20, 2005. The magistrate judge found that petitioner had defaulted all but two of the claims he raised in this petition for a writ of habeas corpus and that the state court had resolved the two exhausted claims in a way that was neither unreasonable nor contrary to federal law.

Petitioner takes issue with the magistrate judge's conclusions but his objections are simply reiterations of the same arguments he raised in support of his petition. He continues to argue, for example, that the magistrate judge erred in finding that petitioner had not presented a confrontation clause claim to the state supreme court but petitioner has still not

shown either that he made an adequate reference to this claim in his petition for review or that he submitted supplemental authority on this point to the supreme court that the court accepted as an amended petition for review. Petitioner submitted no new evidence in connection with his objections to support his position that he gave the state supreme court the opportunity to consider his confrontation clause claim.

As the magistrate judge found, petitioner failed to show that the state court of appeals' decision was unreasonable or contrary to federal law on the two claims that he did exhaust. The state court concluded that petitioner had not shown that his lawyer gave him constitutionally inadequate representation when he failed to file a motion for *in camera* review of his victim's mental health records. The court held that petitioner had not made the showing necessary for obtaining such records and that, even if he had, he had not shown in his post-trial motions that not having the mental health records made any difference to the outcome of the trial. Petitioner was arguing self-defense and wanted the records as support for his defense. The court of appeals was unpersuaded that the records would have been of any value to petitioner; they would not have shed any light on what petitioner knew *before* the attack that might have mitigated the actions he took against his victim. Petitioner did not need the records to show that his victim had lied about an attack by petitioner because petitioner acknowledged that he had attacked the victim.

The court of appeals reached the correct decision about petitioner's claim that his

lawyer was ineffective for failing to object to the prosecutor's statements in closing argument. However, petitioner has not shown that any of the allegedly improper remarks by the prosecutor "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Darden v. Wainwright, 477 U.S. 168, 181 (1986).

#### ORDER

IT IS ORDERED that the report and recommendation entered by the United States Magistrate Judge on May 20, 2005 is ADOPTED by the court. FURTHER, IT IS ORDERED that petitioner Harry L. Gant's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 is DENIED.

Entered this 13th day of June, 2005.

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