

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

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ANDREW MATTHEW OBRIECHT,

Petitioner,

v.

BYRAN BARTOW, Director,  
Wisconsin Resource Center,

Respondent.

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ORDER

06-C-0253-C

Petitioner has filed a motion asking this court to stay proceedings in this case so that he may return to state court to exhaust his claim that the state trial court abused its discretion and rendered an illegal sentence. The motion will be denied. As noted in the order entered November 21, 2006 and in other orders in this case, the trial court's alleged sentencing errors did not deprive petitioner of any right guaranteed by the United States Constitution or other federal law. Accordingly, that claim is not cognizable in an action under 28 U.S.C. § 2254, whether petitioner has exhausted his state court remedies or not. In other words, it would be pointless to issue a stay so that petitioner may exhaust a claim for which he cannot obtain federal habeas relief.

ORDER

IT IS ORDERED that the motion of Andrew Obrieht for a stay in the proceedings so that he may pursue state court remedies with respect to his claim that the trial court abused its sentencing discretion is DENIED.

Entered this 27th day of November, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge