

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

---

JAMES A. SMITH,

Petitioner,

ORDER

v.

06-C-375-S

RICHARD SCHNEITER,

Respondent.

---

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Respondent filed a response to the petition on October 2, 2006 moving to dismiss petitioner's petition for failure to exhaust his state court remedies. Petitioner replied on October 12, 2006. He also filed a motion for appointment of counsel.

FACTS

On August 29, 2006 the Wisconsin Court of Appeals affirmed petitioner's judgment of conviction and the trial court's order denying him post-conviction relief. He has yet to seek discretionary review in the Wisconsin Supreme Court although he has filed an extension of time to do so. Petitioner has not exhausted his state court remedies.

MEMORANDUM

Federal district courts are required by statute, for reasons of comity, to defer to state courts in proceedings for writs of

habeas corpus. Petitioner is still litigating his case in state court and has not completely exhausted his state court remedies. Accordingly, petitioner's petition for a writ of habeas corpus will be dismissed without prejudice to petitioner's refiling his petition after he has exhausted his state court remedies within the meaning of 28 U.S.C. §2254.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed without prejudice for his failure to exhaust his state remedies. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED without prejudice.

IT IS FURTHER ORDERED that judgment be entered DISMISSING petitioner's petition for a writ of habeas corpus without prejudice.

IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel is DENIED as moot.

Entered this 16<sup>th</sup> day of October, 2006.

BY THE COURT:

S/

---

JOHN C. SHABAZ  
District Judge