

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

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ROGER DALE GODWIN,

Petitioner,

v.

PHIL KINGSTON, Warden,  
Waupun Correctional Institution,

Respondent.

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ORDER

06-C-0655-C

Roger Godwin, an inmate at the Waupun Correctional Institution, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. According to the petition, petitioner is serving a 10-year bifurcated sentence imposed by the Circuit Court for Grant County on January 30, 2003. Petitioner asks this court to order his early release from prison into a halfway house or other community-based setting so that he may complete treatment that he has been unable to obtain in prison. In addition, he asks this court to order the Department of Corrections to allow him to serve the extended supervision portion of his sentence in Alabama.

Under 28 U.S.C. § 2254(a), a federal court shall entertain an application for a writ of habeas corpus in behalf of a person in state custody “only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” Petitioner’s contention that long wait lists have prevented him from completing certain

treatment programs in prison fails to state a constitutional claim. Petitioner has not alleged that his inability to participate in prison programming will extend his release date and even if he had, he has no constitutional right to a particular custody classification or to participate or refrain from participation in rehabilitative programs. Moody v. Daggett, 429 U.S. 78, 88 n. 9 (1976) (rejecting claim by federal prisoner that “prisoner classification and eligibility for rehabilitative programs” invoked due process protections). State ex rel. Matlouck v. Hepp, 2006 WL 2772684, ¶ 6 (Ct. App. Sept. 28, 2006) (publication pending) (state prisoner had no liberty interest in avoiding designation that he needed certain treatment programs because prisoner’s refusal to participate in those programs would not change his release date or subject him to atypical or significant restrictions beyond ordinary incidents of prison life, citing Sandin v. Conner, 515 U.S. 472, 484 (1995)).

To the extent that petitioner is alleging that his inability to participate in prison programs undermines the basis for the length of the sentence imposed by the circuit court, he is free to make that argument to the state court judge in a motion for sentence modification. However, a prisoner suffers no constitutional violation merely because a judge’s assumptions about a prisoner’s likelihood of obtaining treatment in prison prove to be incorrect. United States v. Addonizio, 442 U.S. 178, 186-87 (1979) (where sentence imposed was within statutory limit and judge did not commit any “fundamental” error of law or fact, judge’s incorrect assumption about when defendant would be released on parole did not amount to constitutional violation).

Finally, this court has no authority or control over where state inmates serve any portion of their sentence. Where a state inmate serves either the confinement or extended supervision portion of his sentence is a decision within the authority of the Wisconsin Department of Corrections.

Absent some type of constitutional violation, this court lacks authority to hear the petition. Accordingly, because the instant petition fails to allege any fact that provides a basis for habeas relief, it must be dismissed. Rule 4 of the Rules Governing Section 2254 Cases (district court must dismiss petition if “it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court”).

#### ORDER

IT IS ORDERED that, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the application for a writ of habeas corpus filed by Roger Godwin is DISMISSED WITHOUT PREJUDICE.

Entered this 20th day of November, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge