

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

MAX OHLMANN,

Petitioner,

ORDER

v.

07-C-494-C

JOHN CLARK, Superintendent,
Flambeau Correctional Center,

Respondent.

Max Ohlmann, an inmate at the Flambeau Correctional Center in Hawkins, Wisconsin, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the five dollar filing fee. The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

Petitioner challenges his July 8, 2005 judgment of conviction in the Circuit Court for Lincoln County for three counts related to his manufacture and possession of methamphetamine. He contends that incriminating evidence obtained during a search of his home should have been suppressed under Franks v. Delaware, 438 U.S. 154 (1978), because the investigating agent made deliberate misrepresentations of material facts in the affidavit of probable cause used to obtain the search warrant. Petitioner raised this same challenge in the state trial and appellate courts.

It appears that petitioner has exhausted his state court remedies with respect to his Fourth Amendment claim and has filed his petition within the one-year limitations period prescribed by 28 U.S.C. § 2244(d)(1). However, he may not obtain federal relief on his claim. To be entitled to federal habeas relief, a state prisoner must show that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). In Stone v. Powell, 428 U.S. 465, 493-95 (1976), the Supreme Court reasoned that because the exclusionary rule is a social device for deterring official wrongdoing, not a personal right of defendants, a person imprisoned following a trial that relies in part on unlawfully seized evidence is not *in custody* in violation of the Constitution even though the seizure might have been unlawful. Thus, federal courts will not consider Fourth Amendment claims on habeas corpus review in cases where the state has provided the petitioner with “an opportunity for full and fair litigation” of the Fourth Amendment claim. Id. A defendant receives a full and fair opportunity to litigate if

(1) he has clearly informed the state court of the factual basis for that claim and has argued that those facts constitute a violation of his fourth amendment rights and (2) the state court has carefully and thoroughly analyzed the facts and (3) applied the proper constitutional case law to the facts.

Hampton v. Wyant, 296 F.3d 560, 563 (7th Cir. 2002).

Under these criteria, “full and fair” means the right to *present* the Fourth Amendment claim. So long as the state court gives a claim adequate and unbiased consideration, it is irrelevant whether the court ultimately reaches the correct decision. Cabrera v. Hinsley, 324

F.3d 527, 531-32 (7th Cir. 2003). Therefore, to establish that his hearing was not full and fair, a petitioner must show that it was a “sham” because it had been subverted in some obvious and disturbing way. Id.

In his federal habeas petition, petitioner has not alleged that he was deprived of the opportunity to present his Fourth Amendment claim to the state courts or that the state courts did not adjudicate his claim in an unbiased manner. At most, petitioner contends that the state courts erred in denying his suppression motion. However, “errors in adjudicating Fourth Amendment claims are not an exception to Stone’s bar.” Moreno v. Dretke, 450 F.3d 158, 168 (5th Cir. 2006).

Accordingly, because “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court,” the petition will be dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

ORDER

IT IS ORDERED that pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the petition of Max Ohlmann for a writ of habeas corpus is DISMISSED WITH PREJUDICE.

Entered this 18th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge