

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

DONNA KIKKERT,

Petitioner,

v.

SUZANNE SCHMITT, Superintendent,
Robert E. Ellsworth Correctional Center,

Respondent.

ORDER

07-cv-705-bbc

Petitioner Donna Kikkert has filed objections to a report and recommendation filed by the United States Magistrate Judge on March 14, 2007. The magistrate judge recommended denial of petitioner's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 because petitioner has not shown she is in custody illegally.

Having reviewed the magistrate judge's report and petitioner's lengthy objections, I am persuaded that the magistrate judge's recommendation is correct. Petitioner has not shown that it was unconstitutional for the Wisconsin Department of Corrections not to give adequate consideration to revocation before revoking her probation or for the family court to employ the "methodologies" it did in the proceeding that led ultimately to petitioner's

criminal conviction. (Petitioner lost custody of her daughter as a result of the family court proceeding and later took the child from her father surreptitiously; she was convicted in the Circuit Court for Oneida County of one count of interference with child custody. She was placed on probation; the probation was revoked and she was sentenced to prison.)

In addition, petitioner has not shown that the state courts erred in applying clearly established federal law or in determining the facts underlying her claim when they denied her appeal from the revocation of her probation. Petitioner argues that the federal courts have the power to consider the merits of her situation, particularly in light of the moral and ethical importance the judicial system places on the mother-child bond, but she is wrong. Federal courts have only the jurisdiction that Congress grants them. Congress has decided that when federal courts address petitions for writs of habeas corpus challenging the actions of state courts, the federal courts may not grant relief unless they can find that the state courts applied clearly established federal law unreasonably or they made an unreasonable determination of the facts. Therefore, whatever opinion a federal court has about the validity of a state court proceeding, it cannot hold that proceeding invalid unless the petitioner makes the showing that Congress has said she must. Because petitioner has not shown that the state court applied established federal law unreasonably or made unreasonable determinations of the facts, the court has no authority to grant her any relief from the revocation of her probation.

ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge is ADOPTED as the court's own and petitioner Donna Kikkert's petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254, is DENIED.

Entered this 15th day of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge