

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

STANLEY E. MARTIN, JR.,

ORDER

Petitioner,

08-cv-518-bbc

v.

BYRAN BARTOW, Director,
Wisconsin Resource Center,

Respondent.

On June 24, 2011, I denied petitioner Stanley Martin's petition for a writ of habeas corpus under 28 U.S.C. § 2254 because he had not shown that Wisconsin denied him his right to due process when it continued his civil confinement under Wis. Stat. ch. 980. However, I did not address whether to grant a certificate of appealability to petitioner.

Under Rule 11 of the Rules Governing Section 2254 Cases, I must issue or deny a certificate of appealability when entering a final order adverse to petitioner. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues

presented were adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) (internal quotations and citations omitted).

Although the rule allows a court to ask the parties to submit arguments on whether a certificate should issue, it is not necessary to do so in this case because the question is not close. No reasonable jurists would conclude that the state violated petitioner’s right to due process by breaching its plea agreement with petitioner or by relying on unproved criminal conduct to continue his confinement. Thus, petitioner has failed to make a substantial showing of the denial of a constitutional right.

ORDER

IT IS ORDERED that the June 24, 2011 order denying petitioner’s petition for a writ of habeas corpus, dkt. #61, is AMENDED to DENY petitioner a certificate of appealability. Petitioner may seek a certificate from the court of appeals under Fed. R. App. P. 22.

Entered this 28th day of June, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge