

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

BENJAMIN WALKER,

Petitioner,

v.

PETER HUIBREGTSE, Warden,

Respondent.

ORDER

10-cv-692-bbc

In this petition for a writ of habeas corpus under 28 U.S.C. § 2254, Benjamin Walker, a prisoner at the Wisconsin Secure Program Facility, is challenging convictions for stalking and burglary. He has paid the \$5 filing fee, making his petition ready for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases.

An immediate red flag raised by the petition is the recency of the convictions, which petitioner identifies as June 2010 and July 2010, because it suggests that petitioner has not exhausted his available remedies in state court, as required by 28 U.S.C. § 2254(b)(1)(A). O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Perruquet v. Briley, 390 F.3d 505, 514 (7th Cir. 2004). To comply with the exhaustion requirement, "the prisoner must 'fairly present' his claim in each appropriate state court (including a state supreme court with

powers of discretionary review)." Baldwin v. Reese, 541 U.S. 27, 29 (2004).

Petitioner says in his petition that he has not appealed his conviction to the Wisconsin Court of Appeals. He says that the reason is that the Circuit Court for Outagamie County has refused to rule on his motion for a new trial and the Wisconsin Court of Appeals has declined to issue a writ of mandamus. However, according to the public records available electronically through the Wisconsin Supreme Court and Court of Appeals Access website, <http://wscca.wicourts.gov>, petitioner filed a notice of appeal with the Wisconsin Court of Appeals five days after he filed his petition in this court and the court of appeals has set a briefing schedule. State v. Walker, 2010AP2854-CR (Wis. Ct. App.). This shows that petitioner is still in the process of exhausting his state court remedies. If petitioner does not obtain relief from the Wisconsin Court of Appeals or the Wisconsin Supreme Court, only then may he file a petition under § 2254 in this court.

ORDER

IT IS ORDERED that petitioner Benjamin Walker's petition for a writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED without prejudice for his failure to exhaust

his state court remedies.

Entered this 10th of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge