

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

DANIEL Z. MALDONADO,

Petitioner,

v.

RICK RAEMISCH, Secretary,
Wisconsin Department of Corrections,
and AMY WARD, Supervising Agent,

Respondents.

ORDER

10-cv-90-bbc

On September 21, 2010, judgment was entered in this case denying Daniel Z. Maldonado's petition for a writ of habeas corpus relief under 28 U.S.C. § 2254. Now before the court is plaintiff's motion to alter or amend judgment under Fed. R. Civ. P. 59(e). In his motion, petitioner asserts that his petition was denied improperly because, contrary to this court's conclusion, he presented his federal claims to the state court of appeals.

DISCUSSION

Petitioner raised three challenges to his probation revocation proceedings: (1) the state violated both his Fifth Amendment right not to incriminate himself and his Sixth

Amendment right to counsel when it did not allow his lawyer to be present during his polygraph examination on May 22, 2007; (2) he was denied the right to present witnesses and documentary evidence at his revocation hearing; and (3) the Department of Corrections lacked sufficient evidence upon which to base its decision. I found that petitioner had procedurally defaulted the first two of his challenges and showed neither cause nor prejudice for this default. Specifically, I found that petitioner did not raise in the state court of appeals his claimed denial of his Fifth and Sixth Amendment rights or the denial of his request to present witnesses and documentary evidence at his revocation hearing and that, therefore, he did not fairly present his claims to the state court of appeals. Baldwin v. Reese, 541 U.S. 27, 33 (2004) (no fair presentment of federal claim when petitioner did not state claim explicitly, did not cite case that might have alerted court to federal nature of claim and did not include in his petition any factual description supporting claim); Picard v. Connor, 406 U.S. 270, 275-76 (1971) (state prisoner who seeks federal habeas relief must present to state court same claim he urges upon federal courts in order to exhaust his state court remedies). I denied the third ground of his petition because I found that the Wisconsin Court of Appeals' decision upholding the revocation decision was supported by substantial evidence and not contrary to clearly established federal law.

Now petitioner argues that he filed these claims in a "motion to amend certiorari" in the Wisconsin Court of Appeals. Had the court of appeals addressed this motion, petitioner

would have a basis on which to claim that he had presented his claims in that court. However, the court of appeals refused to accept this motion, finding that it was an attempt to file two briefs. Therefore, I find that he has not presented his federal law claims to the state court and is barred from raising them in this court. Petitioner's motion to alter or amend judgment will be denied.

ORDER

IT IS ORDERED that petitioner Daniel Maldonado's motion to alter or amend judgment under Fed. R. Civ. P. 59(e), dkt. #44, is DENIED.

Entered this 8th day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge