

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

MICHAEL SHAWN ELKINS,

Petitioner,

v.

KARL HELD, Supervisor,
SALLEY TESS, Regional Supervisor,
DENISE SYMON, Administrator,

Respondents.

ORDER

11-cv-170-bbc

Michael Shawn Elkins has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He alleges that he is being kept on parole illegally because respondents Karl Held, Salley Tess and Denise Symon, agents of the Wisconsin Department of Community Corrections, have knowingly refused to credit him with eleven months of good time to which he is entitled. Petitioner says that he is in federal prison but that he is challenging only the actions of the state respondents and their failure to follow state law. Because petitioner is not contending that he is in custody in violation of the Constitution, laws or treaties of the United States, his petition must be dismissed.

BACKGROUND

In the early 90's, petitioner was charged in state court in Wisconsin with various counts of passing worthless checks, with disorderly conduct by telephone and bail jumping, for which he was given sentences of short terms in prison, stayed sentences and outright probation. Petitioner spent time in custody awaiting sentencing on his worthless checks charges and again on a probation hold that went into effect after his probation was revoked because of his disorderly conduct. He believes that the state courts and respondents have never given him proper credit for this time in custody, despite his lengthy efforts to convince them of the proper way to apply the credit. State officials have advised him that he has been given the credit he is seeking, dkt. #1-2 at 18; he disagrees. The state courts have accepted the assertions of the state officials and have refused to grant him any further relief. *Id.* at 24 (*State v. Elkins*, 2005AP1947; 2005AP1948, 2005AP1949 (unpublished); 72 (*State v. Elkins*, 2010AP606-CR unpublished)).

OPINION

Although it is not easy to make out petitioner's claim, it appears that he is not arguing that the state failed to give him credit for time he spent in custody but that it applied it incorrectly to the wrong sentences. It is not necessary to pin down his claim any more precisely; whichever it is, is not one that a federal court can entertain. A federal court may

grant relief to a state prisoner only if the prisoner can show that his rights under the United States Constitution or federal law have been violated. Petitioner's only complaint is that he did not receive proper sentence credit under state law. He does not say that this failure by the state violates any right he has under the Constitution. Therefore, his only remedies are those that state law can provide. The fact that he has exhausted those remedies without obtaining the relief he wants does not make the federal courts available to him.

Under Rule 11 of the Rules Governing Section 2254 Proceedings, the court must issue or deny a certificate of appealability when entering a final order adverse to a defendant. 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). Defendant has not made a substantial showing of a denial of a constitutional right so no certificate will issue.

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 a close one.

ORDER

IT IS ORDERED that the petition for a writ of habeas corpus filed by petitioner Michael Shawn Elkins is DISMISSED for petitioner's failure to allege that his custody is the result of any violation of his rights under the United States Constitution or federal law. Further, it is ordered that no certificate of appealability shall issue.

Entered this 7th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge