

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

BENJAMIN WALKER,

Petitioner,

v.

WILLIAM POLLARD,

Respondent.

ORDER

11-cv-618-bbc

In this petition for a writ of habeas corpus under 28 U.S.C. § 2254, Benjamin Walker contends that his convictions for stalking and burglary are unconstitutional. This is the second time petitioner has challenged these convictions in this court. The first time I dismissed the petition for his failure to exhaust his remedies in state court. Walker v. Huibregtse, No. 10-cv-692-bbc (W.D. Wis. Jan. 10, 2011).

It is not clear why petitioner has filed another petition at this time. He admits in his petition that his direct appeal is pending in the Wisconsin Court of Appeals. The online docket for the Wisconsin courts confirms this. <http://wcca.wicourts.gov> (Outagamie County, Case No. 06CF969). Until petitioner completes his direct appeals with the Wisconsin Court of Appeals *and* the Wisconsin Supreme Court, any petition in this court is premature.

Baldwin v. Reese, 541 U.S. 27, 29 (2004).

Under Rule 11 of the Rules Governing Section 2254 Cases, the court must issue or deny a certificate of appealability when entering a final order adverse to a 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 a close one. For the reasons stated, reasonable jurists would not debate the decision that the petition should be dismissed for petitioner's failure to exhaust his state court remedies. Therefore, no certificate of appealability will issue.

ORDER

IT IS ORDERED that

1. Petitioner Benjamin Walker's petition for a writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED WITHOUT PREJUDICE to his refileing it after he exhausts his state

court remedies.

2. Petitioner is DENIED a certificate of appealability. Petitioner may seek a certificate from the court of appeals under Fed. R. App. P. 22

Entered this 8th day of November, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge