

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

CHARLES J. HOMESLEY aka
Charles Mayberry,

Petitioner,

v.

MICHAEL MEISNER
and HAZEL BROWN,

Respondents.

ORDER

12-cv-835-bbc

In an order dated January 7, 2013, I dismissed this petition for a writ of habeas corpus under 28 U.S.C. § 2254 because petitioner Charles J. Homesley also known as Charles Mayberry had failed to exhaust his administrative remedies in state court. Dkt. #2. Petitioner has filed what I construe as motion for relief from judgment under Fed. R. Civ. P. 60.

The motion is difficult to understand, but petitioner seems to be arguing that he cannot complete the exhaustion process because the circuit court has not issued a ruling on his postconviction motion. However, documents attached to the petition show that petitioner did not seek relief in state court until November 8, 2012, so it is not surprising that the case was pending when petitioner filed his Rule 60 motion in this court on February 21, 2013. Even if there had been an undue delay in resolving petitioner's case, petitioner's

remedy is with the Wisconsin Court of Appeals, not with this court. Mount Horeb Community Alert v. Village Bd. of Mt. Horeb, 2003 WI 100, ¶ 9, 263 Wis. 2d 544, 665 N.W.2d 229 (Wisconsin appellate court may issue writ of mandamus if petitioner shows: 1) clear legal right to relief; 2) positive and plain legal duty on part of official or body to whom writ is directed; 3) substantial damage due to nonperformance of the duty; and 4) no adequate remedy at law).

ORDER

IT IS ORDERED that petitioner Charles J. Homesley's motion for relief under Fed. R. Civ. P. 60, dkt. #6, is DENIED.

Entered this 26th day of March, 2013.

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