

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

BENNY BRIDGES,

Petitioner,

OPINION AND ORDER

v.

06-C-398-C

DEIRDRE MORGAN, Warden,
Oakhill Correctional Institution,

Respondent.

Benny Bridges, an inmate at the Oakhill Correctional Institution, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the five dollar filing fee. The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

ALLEGATIONS OF FACT

According to the petition and its attachments, petitioner was convicted on August 20, 1987 in the Circuit Court for Taylor County for six counts of burglary in case 87-CF-19. Petitioner alleges that he was sentenced to consecutive five-year prison terms on counts 2 and 3, and a six-year term on each of counts 1, 4, 5 and 6. The court ordered the six-year terms to run concurrently with each other but consecutively to the sentences on counts 2

and 3. Petitioner's concurrent sentences on counts 1, 4, 5 and 6 were imposed but stayed, and petitioner was placed on probation for those counts.

After completing his sentences on counts 2 and 3, petitioner was discharged and began serving probation on the remaining four counts. In April 1998, the Department of Corrections issued a discharge certificate indicating that petitioner had satisfied the judgment in the "A" case of 87-CF-19. On October 25, 2001, petitioner's probation was revoked and he began serving the four stayed six-year prison terms.

PETITIONER'S CLAIMS

Petitioner contends that the April 1998 discharge certificate extended to the sentences he began serving (unlawfully, says petitioner) after his probation was revoked in 2001. Petitioner alleges that his confinement on those sentences violates the United States Constitution's prohibitions against double jeopardy, cruel and unusual punishment and the deprivation of liberty without due process of law.

Petitioner's constitutional claims stem from his contention that the April 1998 discharge certificate issued by the Wisconsin Department of Corrections applied not only to the two five-year prison terms on counts 2 and 3 but also to the imposed and stayed six-year terms on counts 1, 4, 5 and 6. The state court of appeals rejected petitioner's claim, finding that state law prohibited the department from discharging petitioner before his probation term expired. In addition, the court determined from the language of the

discharge certificate and the department's continued supervision of petitioner's probation after it had issued the certificate that the department's intent was to discharge petitioner from his five-year consecutive prison terms only and not from the stayed six-year terms. State ex rel. Bridges v. Karlen, 2004 AP 1901, ¶¶ 7-8 (Wis. Ct. App. April 21, 2005) (attached to petition).

OPINION

Relief under § 2254 is available only to a person who is in custody “in violation of the Constitution or laws or treaties of the United States.” § 2254(a). Although this petition raises various constitutional questions, they may be addressed only if I determine that the discharge certificate issued by the state department of corrections extended to petitioner's stayed six-year sentences. However, determining whether the state department of corrections had authority to discharge petitioner from a sentence that petitioner had never served or whether the department had intended to do so when it issued the certificate is purely a matter of state law. To serve the interests of comity and federalism, federal courts are precluded from reviewing a question of federal law decided by a state court “if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment.” Coleman v. Thompson, 501 U.S. 722, 729-30 (1991). Because the state court of appeals disposed of petitioner's claims on state law grounds that essentially took the federal questions out of the case, its decision is independent

of the federal question and adequate to support the judgment. Accord Fox Film Corporation v. Muller, 296 U.S. 207, 210-11 (1935) (state court’s determination that invalid arbitration clause of contract was not severable and therefore made entire contract invalid “automatically took the federal [antitrust] question out of the case if otherwise it would be there”). Accordingly, this court is barred from reviewing the federal claims in the petition. Coleman, 501 U.S. at 729 (independent and adequate state law rule applies whether state law ground is substantive or procedural).

ORDER

IT IS ORDERED that the petition of Benny Bridges for a writ of habeas corpus is DISMISSED WITH PREJUDICE because his claims are barred by the independent and adequate state ground doctrine.

Entered this 7th day of August, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge