

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

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DANIEL HARR,

Petitioner,

v.

MATTHEW J. FRANK,

Respondent.<sup>1</sup>

ORDER

02-C-0316-C

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Petitioner Daniel Harr has filed objections to the report and recommendation entered by the United States Magistrate Judge, in which the magistrate judge recommended dismissal of petitioner's petition for a writ of habeas corpus, brought pursuant to 28 U.S.C. § 2254.

Having reviewed the petition, the record and petitioner's objections, I agree with the magistrate judge that petitioner has failed to establish that he is entitled to a writ of habeas corpus. In order to prevail on the claims he is pursuing in this proceeding, petitioner would

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d)(1), the new Secretary of the Department of Corrections is substituted for the former secretary, Jon Litscher.

have to show that when the state courts denied his claims, they applied federal law unreasonably or based their decision on an unreasonable determination of the facts in light of the evidence petitioner presented the state court proceedings. He has produced no evidence or argument that would prove such a claim.

The state court of appeals applied the proper legal standard when it reviewed the record of petitioner's disciplinary hearing and considered specifically the limitation on the witnesses petitioner was allowed to call, the denial of his request to produce the videotape of the disciplinary incident and the sufficiency of the evidence to support the disciplinary committee's determination of guilt. (Petitioner takes issue with the magistrate judge's criticism of petitioner for not listing the witnesses he wanted to call in order of their importance to his defense. He fails to recognize that this was an observation, not a basis for upholding the state court's decision.)

The magistrate judge was correct in determining that the state courts had acted properly in holding that petitioner had waived his claim of bias on the part of the hearing officer because he did not raise the claim until he appealed from the denial of his petition for certiorari in the Circuit Court for Dodge County, Wisconsin. It is the regular procedure for Wisconsin's appellate courts to find waiver when a party raises a new issue for the first time on appeal. Therefore, it was proper for the court of appeals to rely on its finding of waiver in dismissing petitioner's claim of bias. Finally, the state courts acted properly in

dismissing petitioner's claim of a denial of equal protection. Petitioner failed to show that the state acted irrationally or arbitrarily in deciding not to bring disciplinary charges against inmates scheduled for out-of-state transfers that were involved in the same incident that gave rise to the charges against petitioner.

In his cover letter accompanying his objections, petitioner asked that the court consider sealing the record in his case because it contains information that petitioner believes could jeopardize his safety. The request will be denied. Petitioner's filing is a matter of public record. Anyone seeking to restrict the public's access to public records bears the burden of demonstrating strong reasons for the restriction. It is not enough merely to allege in general terms that the record or references might raise safety concerns.

#### ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge is ADOPTED. FURTHER, IT IS ORDERED that the motion to dismiss this petition filed by respondent Matthew J. Frank is GRANTED and petitioner Daniel Harr's petition for a writ

of habeas corpus is DISMISSED. Petitioner's request to seal the record is DENIED.

Entered this 18th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge