

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

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ANDREW MATTHEW OBRIECHT,

Petitioner,

ORDER

v.

03-C-0004-C

DARREN SWENSON, Warden, Prairie  
Correctional Facility,

Respondent.

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In late 2002, petitioner Andrew Obriecht filed an application for habeas corpus seeking to challenge a 1999 judgment entered in the Dane County Circuit Court convicting him of one count of attempted second-degree sexual assault of a child, five counts of fourth-degree sexual assault and one count of disorderly conduct, all as a repeat offender. On January 23, 2003, I entered an order dismissing the petition without prejudice on the ground that petitioner had failed to exhaust his state court remedies with respect to his claim that his postconviction/appellate lawyer was ineffective. In that order, I declined to grant petitioner's request to stay the federal habeas petition, finding that petitioner had adequate time (approximately 60 days) within which to pursue his state court remedies with respect to his unexhausted claims without jeopardizing the timeliness of a federal habeas challenge.

Petitioner has now filed a motion titled "Motion to Preserve Petitioner's Right to 28 U.S.C. § 2254 Writ of Habeas Corpus." Petitioner is currently an inmate at the Wisconsin

Resource Center, having been transferred there on March 19, 2005. Petitioner asserts that he was unable to pursue his state court remedies within the 60 days remaining on his federal habeas clock because during that time period, the facility in which he was incarcerated was on lock down, petitioner was placed in medical segregation and he did not have access to the law library. Petitioner asserts that he was unable to pursue his state court remedies until June 2005, shortly after he was transferred to the Wisconsin Resource Center. He asks for an order finding that these facts constitute "good cause to preserve petitioner's right to 28 U.S.C. § 2254" with respect to the judgment of conviction at issue in this case (Dane County Case 98-CF-271).

Petitioner's motion will be denied as premature. Until petitioner has exhausted his state court remedies, he has no claim to bring before this court. It is possible that the state courts would grant him relief or that they would deny him relief but find that his petition for state relief was timely. In either event, the state court action would affect his need for a federal court remedy or for a determination of equitable tolling. If petitioner obtains no relief from the state courts after exhausting his state court remedies, he can file a new federal habeas petition that includes an explanation of why the petition is untimely. The court will then decide whether the circumstances are sufficient to allow the petition under the doctrine

of equitable tolling. See, e.g., Owens v. Boyd, 235 F.3d 356, 359 (7th Cir. 2000); Taliani v. Chrans, 189 F.3d 597, 597 (7th Cir. 1999).

Entered this 27th day of September, 2005.

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