

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

JOHN R. BRUNETTE,

Petitioner,

ORDER

v.

03-C-008-C

BYRON BARTOW, Director, Wisconsin
Resource Center,

Respondent.

This is an action for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Petitioner John Brunette claims that he was entitled to be released from custody instead of retried after the state court of appeals reversed his 1996 Chapter 980 commitment in October 2002. He also contends that the state committed the same constitutional errors in his second Chapter 980 trial that it did in the first trial. In a series of orders, the magistrate judge explained why he thought petitioner had not exhausted his state court remedies with respect to the claims raised in his habeas petition, but he allowed petitioner to supplement his petition with information that might lead to a different conclusion.

Petitioner has now filed his response to the magistrate judge's latest order. The response confirms that petitioner has not exhausted his state court remedies with respect to his challenges to his retrial under Chapter 980. Petitioner admits that he asked his trial attorney to appeal his second Chapter 980 commitment, although he says he has not yet

received confirmation that any appeal was filed. In any case, it is clear that petitioner has state appellate remedies still available to him.

Further, this court cannot entertain petitioner's contention that he should have been released from his Chapter 980 detention instead of retried. As noted in the magistrate judge's order of March 3, 2003, because petitioner has now been recommitted under Chapter 980, any challenges to his confinement from the date of his preceding civil commitment to the date of his recommitment are moot. In addition, petitioner's claim that he should have been released in accordance with Marberry v. Macht, 254 Wis. 2d 690, 648 N.W. 2d 522 (Ct. App. 2002) presents an issue of state law that is not cognizable in a federal habeas petition. See, e.g., Rivera v. Sheriff of Cook County, 162 F.3d 486, 488 (7th Cir. 1998) ("Federal judges may not issue writs of habeas corpus based on interpretations of state law that depart from the views the state courts themselves hold"); Koo v. McBride, 124 F.3d 869, 876 (7th Cir. 1997) (federal court had no authority to question a state supreme court's interpretation of state law).

ORDER

Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, IT IS ORDERED that petitioner John R. Brunette's petition for a writ of habeas corpus is DISMISSED. Petitioner's claim that he was entitled to release under Marberry v. Macht,

254 Wis. 2d 690, 648 N.W. 2d 522 (Ct. App. 2002), is DISMISSED WITH PREJUDICE.

Insofar as petitioner contends that the state committed errors in connection with his retrial under Chapter 980, those claims are DISMISSED WITHOUT PREJUDICE for petitioner's failure to exhaust his state court remedies.

Dated this 13th day of March, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge