

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

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MELVIN SHELTON,

Petitioner,

ORDER

v.

03-C-0351-C

JUDY SMITH, Warden, Oshkosh  
Correctional Institution,

Respondent.

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Melvin Shelton, an inmate at the Oshkosh Correctional Institution, has filed a document that he has titled “Petition for Writ of Habeas Corpus” and “42 § 1983 Civil Action.” In this document, petitioner alleges that in 1987, Milwaukee police knocked down the door of his home, entered and arrested petitioner without a warrant, in violation of his Fourth Amendment rights. Petitioner alleges that because the police lacked a warrant, his subsequent arrest, prosecution and conviction were all invalid. He also contends that the state lacked sufficient evidence to prove that he committed any offense. In the “request for relief” section of his petition, petitioner seeks immediate release from prison, as well as monetary damages. He has paid the \$5 fee required for filing habeas petitions.

Although petitioner has not specified the state court conviction to which he refers in his documents, this court knows from previous petitions filed by petitioner that he is contesting a 1987 conviction in the Circuit Court for Milwaukee County for sexual assault.

Petitioner first brought a habeas action challenging that conviction in this court in 1996. See Shelton v. Gudmanson, 96-C-0192-C. On September 13, 1996, this court dismissed that petition. On July 11, 1997, the Court of Appeals for the Seventh Circuit affirmed this dismissal and dismissed petitioner's appeal.

On March 13, 2000, petitioner filed a second petition challenging his 1987 conviction in which he raised a new Fourth Amendment issue that he did not raise in his previous petition. This court dismissed that petition, explaining that in order to bring a successive challenge to his 1987 conviction, petitioner would first have to obtain permission from the Court of Appeals for the Seventh Circuit pursuant to § 2244(b)(3). This court also advised petitioner that because he was in custody in an institution located in the Eastern District, any future habeas petitions challenging his Milwaukee County conviction would have to be brought in the United States District Court for the Eastern District of Wisconsin.

On April 9, 2003, petitioner filed another habeas corpus petition challenging his 1987 conviction. In an order entered June 9, 2003, I advised petitioner once again that because he was attacking his conviction and had previously filed a petition attacking his conviction pursuant to 28 U.S.C. § 2254, he could not proceed in federal court unless he obtained permission from the Court of Appeals for the Seventh Circuit to file a second § 2254 petition. Also, I explained once again that in the event that the court of appeals granted such permission, petitioner would have to proceed in the United States District Court for

the Eastern District of Wisconsin because he is in custody at the Oshkosh Correctional Institution, which is in the Eastern District.

A mere 21 days later, on June 30, 2003, petitioner filed the instant petition in this court, without any authorization from the Court of Appeals for the Seventh Circuit granting him permission to do so.

I believe that petitioner is capable of understanding the repeated instruction I have given him about what he needs to do before he can file a challenge to his 1987 conviction and where he needs to file his petition if he is granted permission to do so. His persistence in filing habeas petitions in this court is nothing more than sport. Petitioner may not avoid compliance with this court's previous rulings merely by adding a claim for damages and a "civil rights action" title to his petition. Furthermore, even if it reasonably appeared that petitioner was really bringing a civil rights action and not just attempting to "disguise" his habeas petition, such an action would be barred by Heck v. Humphrey, 512 U.S. 477 (1994). The Heck court held that:

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus.

Heck, 512 U.S. at 486-87. Because petitioner's underlying conviction and sentence have not been called into question by any court, he cannot bring a § 1983 action to recover damages for his allegedly unlawful conviction.

The judicial resources of this court are insufficient to allow petitioner's game to continue. Accordingly,

#### ORDER

IT IS ORDERED that petitioner's petition is construed as a petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 and is DISMISSED for lack of jurisdiction.

Further, IT IS ORDERED that if petitioner files any further documents in this case, the clerk of court is directed to forward them to me before filing. If I determine that the document includes a challenge to defendant's 1987 conviction or sentence and is not accompanied by an order of the Court of Appeals for the Seventh Circuit permitting the filing, then I will place the document in the file of this case and make no response to it.

Entered this 3<sup>rd</sup> day of July, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge