

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

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TONY B. OLIVER,

Petitioner,

v.

DAN BENIK, Warden, Stanley  
Correctional Institution,

Respondent.  
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ORDER

03-C-0433-C

On December 3, 2003, the United States Magistrate Judge issued a report and recommendation in which he recommended that the court deny petitioner Tony B. Oliver's petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254. On December 29, 2003, petitioner filed a one-page letter in which he objected to the report and recommendation and renewed his previous request for appointment of counsel. The magistrate judge denied the request and deemed the petition for the writ ready for decision on the recommendation.

From my review of the record, petitioner's objections and the magistrate judge's report, I am persuaded that the magistrate judge's recommendation is correct. Petitioner has failed to show that the state courts erred in their consideration of petitioner's challenges to

his conviction for one count of delivery of cocaine. Petitioner based his challenges on what he alleges was the court's refusal to let him fire his court-appointed counsel eleven days before trial and his counsel's ineffectiveness in cross-examining witnesses. Neither of the challenges is well-founded. The court had good reasons for denying petitioner's motion to change his counsel a second time when granting the motion would have necessitated rescheduling the trial and inconveniencing witnesses and prospective jurors and petitioner had shown no strong reason for firing his court-appointed counsel. Court-appointed counsel was not ineffective in his representation of petitioner. The only deficiencies petitioner can come up with are without merit. As the state trial court determined, counsel had good reason not to continue to question the law enforcement officer about his knowledge of the source of the funds in petitioner's apartment. Doing so would have given the officer an opportunity to introduce additional proof that the money he found was the buy money used in the drug transaction. Petitioner thinks that counsel was ineffective in failing to object to certain hearsay statements. Two of them do not matter because they related to a charge on which the trial court directed a verdict in petitioner's favor. The third was helpful to petitioner; he had no reason to object to it. The fourth statement was not hearsay but a prior inconsistent statement to which a hearsay objection would have been improper.

Petitioner's challenges would not entitle him to the vacation of his sentence even if this court had initial jurisdiction over them. Applying the federal habeas corpus standard

of review, they cannot survive. Petitioner has failed to show that the state courts' adjudication of his claims

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254.

#### ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge is ADOPTED and petitioner Tony B. Oliver's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED.

Entered this 7th day of January, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge