

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

Jael K. Speights,

Petitioner,

v.

Matthew J. Frank, Secretary,
Wisconsin Department of Corrections,

Respondent.

ORDER

03-C-0057-C

Petitioner Jael K. Speights has filed objections to the United States Magistrate Judge's report and recommendation entered on May 14, 2003. The magistrate judge recommended denial of petitioner's petition for a writ of habeas corpus on the ground that he had failed to show that he is custody illegally.

The principal claim petitioner raises is that his appointed appellate counsel was ineffective because she allowed his direct appeal deadline to expire without filing a no merit brief. As the magistrate judge explained, the record demonstrates that petitioner cannot succeed on this claim because the state court found that petitioner made a knowing and intelligent waiver of his right to continued representation by appointed counsel. This court

must defer to this finding by the state trial court because it was not contrary to clearly established federal law, did not involve an unreasonable application of such law and was not based on an unreasonable determination of the facts. 28 U.S.C. § 2254. As to the remaining claim that petitioner raised, the ineffectiveness of his trial counsel, the state courts concluded that even if his allegations about counsel's conduct were accurate, he could not show any resulting prejudice. In reaching this conclusion, the state courts relied properly upon controlling Supreme Court precedent.

In his objections, petitioner does little more than repeat his disagreement with the conclusion that he made a valid waiver of his right to counsel on appeal. I am not persuaded from the objections or by my review of the record that the magistrate judge erred in any respect in recommending denial of the petition for a writ of habeas corpus.

ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge is ADOPTED; petitioner Jael K. Speights's petition for a writ of habeas corpus is DENIED for his failure to show that he is in custody in violation of the Constitution or laws of the United

States.

Entered this 30th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge