

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

THOMAS GIEGLER,

Petitioner,

ORDER

v.

04-C-0199-C

LENARD WELLS, Chairperson, Wisconsin
Parole Commission,

Respondent.

Petitioner Thomas Giegler has filed a document titled “Writ of Habeas [sic] Corpus Declaratory Injunction Order” and has paid the five dollar fee that is required for filing a petition for a writ of habeas corpus. In his papers, petitioner contends that the Wisconsin Parole Commission is violating his rights under the Constitution and state law by refusing to release him on parole even though he has completed a substance abuse program. Petitioner states that his action is brought pursuant to both 28 U.S.C. § 2254, the statute governing federal habeas petitions by state prisoners, and 42 U.S.C. § 1983, the statute governing federal civil rights actions. In his prayer for relief, petitioner seeks immediate release on parole, an award of damages against the parole commission chairperson and an injunction prohibiting defendant from retaliating against petitioner for bringing this action.

Because petitioner wants to get out of custody, habeas corpus is the sole federal remedy he may use to attack the alleged refusal of the parole commission to release him on

parole. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). He cannot sue for damages unless he first convinces this court or a state court that he is in custody in violation of his constitutional rights, as he contends. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Accordingly, I will consider his petition solely as a petition for a writ of habeas corpus brought under § 2254.

Petitioner contends that he is entitled to be released on parole under Wis. Stat. 302.05(3)(b). In 1989, the Wisconsin legislature enacted a statute calling for the Wisconsin Department of Corrections and Department of Health and Family Services to designate a correctional treatment facility “for the treatment of substance abuse of inmates transferred from Wisconsin state prisons.” Wis. Stat. § 302.05(1). In July 2003, the legislature amended the statute to provide that eligible inmates who are not serving a bifurcated sentence imposed under Wis. Stat. 973.01 and who complete the treatment program successfully are entitled to be released on parole by the parole commission. Wis. Stat. § 302.05(3)(b).

In support of his contention that he is entitled to be released under Wis. Stat. § 302.05(3)(b), petitioner has submitted documentation that shows that he has completed substance abuse programming while serving his current prison term. However, Wis. Stat. § 302.05(3)(b) does not call for immediate release on parole of any inmate who completes standard drug abuse programming that is available within the correctional facility; rather, it establishes a special substance abuse program through which eligible inmates can earn

early release. Nothing in petitioner's submissions shows that the substance abuse programming that he received was pursuant to this statute. In fact, petitioner completed his substance abuse programming in December 2000, before the early release program was enacted. Therefore, the treatment he received could *not* have been treatment entitling him to early release under Wis. Stat. 302.05(3)(b).

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the district court may dismiss a habeas petition summarily if "it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court." Petitioner's submissions show plainly that the substance abuse programming that he completed was different from the early release program established by Wis. Stat. § 302.05(3)(b). Because his petition does not assert any other basis for his claim that he is entitled to immediate release on parole, it must be dismissed.

ORDER

IT IS ORDERED that the petition of Thomas Giegler for a writ of habeas corpus is DISMISSED WITH PREJUDICE under Rule 4 of the Rules Governing Section 2254 Cases.

Dated this 7th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge