

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

DOUGLAS DEBRUIN,

Petitioner,

ORDER

v.

04-C-744-C

STATE OF WISCONSIN,

Respondent.

Douglas DeBruin has filed a document that appears to be a petition for a writ of habeas corpus under 28 U.S.C. § 2254. I have granted his application for leave to proceed in forma pauperis in a separate order. The petition is before the court for preliminary consideration under Rule 4 of the Rules Governing Section 2254 Cases. I am dismissing the petition without prejudice because it fails to allege facts sufficient to show that petitioner has a viable claim under § 2254.

Relief under § 2254 lies for “a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” § 2254(a). The petition is defective because it does not make clear where petitioner is in custody or even whether he is in custody. Petitioner asserts that he is incarcerated in a county jail in Iowa and his submissions bear an Iowa return address. However, a letter dated September 29, 2004 from the jail administrator for Jackson County,

Iowa, suggests that petitioner is no longer in custody there. Furthermore, at another place in the petition, petitioner mentions a maximum security prison in Terre Haute, Indiana.

Also, it is unclear from the petition what state court judgment petitioner seeks to challenge. It appears that petitioner seeks to challenge a 1969 conviction entered by the Circuit Court for Kenosha County for robbery. Petitioner appears to be contending that the conviction is constitutionally invalid because he did not execute a valid waiver of his right to counsel. However, it is unclear how the 1969 conviction bears on his present custody (assuming that he is, in fact, in custody). Petitioner asserts only that the 1969 conviction is “the sole basis” for his current incarceration. I doubt that petitioner still owes time to the State of Wisconsin on a robbery conviction that old, but that is one possibility. Another possibility is that the old conviction has been used by a different court, presumably in Iowa, as a basis for imposing an enhanced sentence on a new charge.

Assuming petitioner has no time left to serve on the 1969 Kenosha County conviction, he cannot bring a federal habeas action directed solely at that conviction because petitioner is not “in custody” pursuant to that conviction. Lackwanna County Dist. Attorney v. Coss, 532 U.S. 394, 401 (2001). However, petitioner could challenge that conviction indirectly if, for example, a state court relied upon it as a basis for imposing an enhanced sentence on a conviction for which petitioner is currently in custody. Maleng v. Cook, 490 U.S. 488, 493 (1989) (per curiam). To be entitled to federal habeas review of such a claim, petitioner must show that the 1969 conviction actually had an effect on his

current confinement. Coss, 490 U.S. at 406 (“Whatever such a petitioner must show to be eligible for review, the challenged prior conviction must have adversely affected the sentence that is the subject of the habeas petition”).

Petitioner has not provided any details about why he is in custody or explained how the 1969 conviction relates to that custody. Absent such details, I am unable to conclude that the petition states a viable claim under § 2254. Accordingly, I am dismissing the petition without prejudice to petitioner’s filing a new petition that provides the necessary missing details. Any new petition should name as the respondent the person who has custody of petitioner.

If petitioner decides to amend and refile his petition, he would be wise to use a standard § 2254 form, a blank one of which is enclosed with this order. In addition, petitioner would be better to file his petition in the federal district court in the district in which petitioner is in custody or in the district in which sits the state court that imposed the conviction that petitioner seeks to challenge. See 28 U.S.C. § 2241(d) (habeas application may be filed in district court for district where petitioner is in custody or in district court for district within which state court of conviction is located). Otherwise, his petition is likely to be dismissed on the ground that he filed it in the wrong court (improper venue) or that the court lacks jurisdiction over petitioner’s custodian.

ORDER

IT IS ORDERED that the petition of Douglas DeBruin for a writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED WITHOUT PREJUDICE because it fails to allege facts sufficient to state a viable claim under § 2254.

Dated this 13th day of October, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge