

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

EDWARD J. EDWARDS,

Petitioner,

v.

JOHN BETT, Warden,
Dodge Correctional Institution,

Respondent.

ORDER

04-C-0781-C

Petitioner Edward J. Edwards has filed objections to the United States Magistrate Judge's March 18, 2005 report and recommendation in this case. The magistrate judge recommended denial of petitioner's petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, on the grounds that defendant had procedurally defaulted the first three of his four claims and that the state appellate court had not decided his fourth claim in a manner that was contrary to or involved an unreasonable application of federal law.

Although petitioner has filed a number of objections to the report, I am not persuaded that the magistrate judge erred in his recommendation. Petitioner's objections go to the merits of his claims; he does not even attempt to argue that the magistrate judge erred in finding that the first three claims had been defaulted procedurally. Instead, he says only that

he assumed his lawyer was taking care of “the paperwork.” I assume from this that he means he thought his lawyer was doing whatever was necessary to preserve his claims for federal habeas review. Unfortunately, petitioner’s counsel failed to frame the issues raised in petitioner’s state court appeal in terms that would have alerted the appellate court to the federal nature of those claims. Unless the state courts have a fair opportunity to consider a petitioner’s federal claims, that petitioner cannot show that he has exhausted his available state court remedies. The whole point of exhaustion is to give the state courts the first chance to correct any errors that may have been made in a criminal prosecution; if the state courts do not know the full dimensions of the challenges to their proceedings, they cannot rule on them. § 2254(b)(1)(A); Baldwin v. Reese, 541 U.S. 27, 29 (2004).

Whether petitioner knew or understood that his appellate counsel was not doing what was necessary to preserve the federal claims, he is bound by the consequences of counsel’s work. Although petitioner may think that this is unfair, the truth is that the outcome of his petition would be no different had his appellate counsel framed the issues in a way that would have allowed petitioner to raise them in his federal proceeding because petitioner cannot show that the state courts misapplied federal law.

As for his fourth claim, that the prosecutor’s closing argument was improper because he referred to facts outside the record and appealed to the jury’s religious beliefs, I agree with the magistrate judge that in deciding this claim, the state appellate court was acting well within the confines of federal law.

ORDER

IT IS ORDERED that the recommendation of the United States Magistrate Judge is ADOPTED as this court's own. FURTHER, IT IS ORDERED that petitioner Edward J.Edwards's petition for a writ of habeas corpus is DENIED.

Entered this 11th day of April, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge