

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

JOHN LEE MILLS,

Plaintiff,

ORDER

v.

05-C-0014-C

WISCONSIN DEPARTMENT OF
CORRECTIONS,

Defendant.

Petitioner John Lee Mills, an inmate at the New Lisbon Correctional Institution, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, along with a motion for temporary restraining order or preliminary injunction. He has paid the five dollar filing fee. The petition is before the court for preliminary consideration pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

The most cogent explanation of petitioner's claim is set forth on one of the attachments to the petition, which is titled "Petition for Parole Discharge Upon Successfully Reaching State Imposed Mandatory Release." In that document, petitioner alleges that he has served his mandatory release time and that the state is violating his constitutional rights by requiring him to serve his statutorily-granted credit time on parole. It appears that the petition is a boilerplate petition that might have been filed by other inmates in other cases, as it contains several blanks that have not been filled in. For example, petitioner does not state when he reached his mandatory release date.

In any case, it is unnecessary to consider the merits of petitioner's claim that it is unlawful for the state to require a mandatory release inmate to serve the remainder of his sentence on parole. It is clear from the petition that petitioner is not subject to Wisconsin's mandatory release provision, Wis. Stat. § 302.11. Petitioner asserts that he was sentenced on October 18, 2001 in the Circuit Court for Lafayette County to a sentence of "4/3 out probation" in case 00-CF-51. On the date petitioner was sentenced, Wisconsin's first truth-in-sentencing act, 1997 Wis. Act 283, was in effect. See State v. Crochiere, 273 Wis. 2d 57, 62-63, 681 N.W. 2d 524, 527 (2004) (noting that first of two truth-in-sentencing laws became effective December 31, 1999). The statute is codified at Wis. Stat. § 973.01(4) and (6). The statute provides that "all felony sentences except life imprisonment are bifurcated, with at least one year of confinement in prison followed by a term of extended supervision in the community. [It] eliminated reduction in confinement time based on an inmate's good behavior, and it abolished parole." Id. at 64, 681 N.W. 2d at 528. Thus, inmates sentenced pursuant to Wisconsin's truth-in-sentencing provisions are not eligible for parole after serving two-thirds of their sentence, as provided by the mandatory release statute, but must serve each day of the sentence imposed. Id.

Petitioner's assertion that he was given a "4/3 out probation" sentence indicates that he received a bifurcated sentence under the truth-in-sentencing law. Furthermore, my independent search of Wisconsin's Circuit Court Access Program (CCAP), <http://wcca.wicourts.gov>, confirms that petitioner was sentenced in Lafayette County Case

Number 00CF51 on October 18, 2001 to a bifurcated sentence of four years confinement and three years extended supervision. Because he is neither subject to the mandatory release provision nor entitled to discharge on parole, petitioner has no basis for contending that the state is attempting unlawfully to require him to serve his good time on parole.

In sum, because it is plain from the petition that petitioner is not entitled to relief on his claim that the state is attempting unlawfully to require him to serve his good time on parole, the petition will be dismissed pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

ORDER

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the petition is DISMISSED because it fails to allege a claim upon which relief can be granted. Petitioner's motion for a temporary restraining order or preliminary injunction is DENIED.

Entered this 4th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge