

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

CHILDERIC MAXY,

Petitioner,

v.

WILLIAM POLLARD, Warden,
Green Bay Correctional Institution,

Respondent.

ORDER

05-C-0479-C

Petitioner Childeric Maxy filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, contending that his convictions for attempted first-degree intentional homicide, burglary-battery and bail jumping were obtained unconstitutionally because of the ineffectiveness of his trial and post-conviction counsel and the prosecution's failure to disclose a report from the crime laboratory. The United States Magistrate Judge reviewed the petition and issued a report and recommendation on April 3, 2006, in which he recommended denial of the petition.

Petitioner filed lengthy objections to the report, which are now before the court. He continues to believe that he would not have committed the acts charged against him had he

not been impaired by a potent drug or by a fearsome and unusual interaction of drugs within his system. One can understand why he believes this. His behavior was bizarre. He broke into a private residence at night and tore apart a guest room. The noise he made woke the homeowner, who came to check the room and found a stranger at the foot of the bed, wearing no shirt. Petitioner attacked the homeowner, who tried unsuccessfully to fight him off and was rescued only when his wife appeared and hit petitioner over the head with an empty bottle and a decorative totem pole. Petitioner's noisy behavior does not sound like a person breaking into a home to commit a burglary, but strange behavior does not prove drug poisoning and lack of intent.

Unfortunately for petitioner, this court is not authorized to determine whether he was guilty of the crimes charged against him or to find the reason for his behavior. Its task is limited to determining first, whether petitioner exhausted all remedies available to him in the state courts and fairly presented to those courts all of the claims he wishes to raise in federal court and second, whether petitioner has shown that the state courts adjudicated his claims erroneously and unreasonably.

In the report and recommendation, the magistrate judge explained cogently and persuasively why petitioner had not presented many of his federal claims in state court in a way that would have alerted the state courts to the federal constitutional issues they raised. After determining which claims had been raised properly and were therefore before the

federal court for review, the magistrate judge addressed the state courts' disposition of those claims and found that they did not result in a decision based upon an unreasonable application of established Supreme Court law to the facts or a decision based upon an unreasonable determination of the facts. Although petitioner disagrees with the magistrate judge's conclusions, he has not shown that the magistrate judge erred in any respect in reaching the conclusions he did. For the most part, he simply renews his protestations of innocence. I am satisfied that the magistrate judge's conclusions are correct, as is his recommendation to deny petitioner's claims and dismiss his habeas petition.

ORDER

IT IS ORDERED that the magistrate judge's report is ADOPTED as the court's own. FURTHER, IT IS ORDERED that petitioner Childeric Maxy's petition for a writ of habeas corpus is DISMISSED with prejudice for petitioner's failure to show that he is in custody in violation of the laws, treaties or Constitution of the United States.

Entered this 1st day of May, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge