

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

ERIC J. HENDRICKSON,

Petitioner,

v.

STEVE WATTERS,
Institute Director,
Sand Ridge Treatment Center,

Respondent.

ORDER

05-C-0106-C

Petitioner Eric J. Hendrickson has filed objections to the report and recommendation entered by the United States Magistrate Judge on October 31, 2005. After reviewing the objections, the report and the record, I am persuaded that the magistrate judge made the correct recommendation to deny the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254.

Petitioner is challenging the jury determination that he is a sexually violent person within the meaning of Wis. Stat. ch. 980. He contends that the trial judge deprived him of his right to a fair hearing when it stated to the jury that it did not have “listen” to expert opinions. However, as the magistrate judge explained, this was one lapse by the court early

in the trial that was never repeated. Any adverse effect that it might have had on the jury was cured by the many references that the court and counsel made thereafter to the effect that the jury's determination would turn on the expert testimony and that the jurors would need to pay close attention to the expert witnesses.

The state appellate court found that petitioner had insufficient grounds for overturning the jury's determination. I cannot say that in making this finding, the appellate court acted unreasonably, either in applying the law or determining the facts. Under 28 U.S.C. § 2254, a federal court cannot overturn a state court judgment as to any claim that has been adjudicated on its merits in the state courts unless the adjudication resulted in a decision based on an unreasonable application of the law to the facts or on an unreasonable determination of the facts.

ORDER

IT IS ORDERED that the petition for a writ of habeas corpus filed by petitioner Eric J. Hendrickson is DENIED for petitioner's failure to show that his state custody is unlawful.

Entered this 28th day of November, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge