

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

ERIC HENDRICKSON,

Petitioner,

ORDER

v.

05-C-0106-C

STEVE WATTERS,
Institute Director,
Sand Ridge Treatment Center,

Respondent.

Eric Hendrickson has filed a notice of appeal from this court's judgment entered November 28, 2005 denying his application for a writ of habeas corpus. He has paid the appellate filing fee. The case is before the court for determination whether to issue a certificate of appealability to petitioner pursuant to 28 U.S.C. § 2253(c)(1)(A) and Fed. R. App. P. 22.

Petitioner's request for a certificate of appealability will be denied. A certificate of appealability shall issue "only if the applicant has made a substantial showing of the denial of a constitutional right." Id.; see also 28 U.S.C. § 2253(c)(2). In order to make this showing, a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" Slack v.

McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893, n.4 (1983)).

Petitioner contends that the trial judge deprived him of his right to a fair hearing when it stated to the jury panelists that they did not have to “listen” to expert opinions. This court agreed with the state appellate court that the court’s single misstatement could not have prejudiced petitioner because it 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. I am confident that reasonable jurists reviewing petitioner’s claim would agree that the likelihood that any juror took the court’s remark literally was *de minimis*. Petitioner’s claim has merit only if the court’s remark is viewed in isolation. Placed in the context of the entire hearing, the court’s misstatement early on in the proceedings fails to provide substantial support for petitioner’s claim that he was denied his right to a fair hearing.

ORDER

IT IS ORDERED that petitioner’s request for a certificate of appealability is DENIED. Pursuant to Fed. R. App. P. 22(b), if a district judge denies an application for

a certificate of appealability, the defendant may request a circuit judge to issue the certificate.

Entered this 27th day of December, 2005.

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