

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

LAWRENCE NORTHERN,

Petitioner,

MEMORANDUM and ORDER

v.

05-C-163-S

WARDEN, NEW LISBON CORRECTIONAL INSTITUTION,

Respondent.

On April 21, 2005 respondent moved to dismiss petitioner's petition for failure to exhaust his state remedies. This motion has been fully briefed and is ready for decision.

FACTS

Petitioner was convicted in Eau Claire County Circuit Court on January 11, 2002 after a jury verdict of possession of cocaine with intent to deliver, more than 100 grams and possession of cocaine with intent to deliver, between 15 and 40 grams, both as a party to a crime. On June 17, 2002 he was sentenced to 30 years in prison. Petitioner's appeal was denied on March 23, 2004.

The one year filing period for filing a petition for a writ of habeas corpus began to run 90 days later on June 24, 2004. On March 1, 2005 petitioner filed a motion pursuant to Wis. Stat.

§ 974.06 in Eau Claire County Circuit Court which stayed the statute of limitations. See 28 U.S.C. §2244(d) (2).

Petitioner filed this petition on March 15, 2005 and concedes he has not exhausted his state court remedies on all claims raised in this petition.

MEMORANDUM

Respondent moves to dismiss petitioner's petition without prejudice for his failure to exhaust his state remedies. Petitioner sought to have this petition stayed until he exhausted his state court remedies. In his reply, however, he agrees to have this petition dismissed without prejudice if it does not jeopardize his refiling of his petition.

Federal district courts are required by statute, for reasons of comity, to defer to state courts in proceedings for writs of habeas corpus. A stay is only appropriate when dismissal would jeopardize any refiled petition's timeliness. See Freeman v. Page, 208 F.3d 572, 577 (7th Cir. 2000). In this case petitioner will have the opportunity to file a timely petition in this Court after his state court proceedings are concluded. Accordingly, a stay is not necessary, and the Court will dismiss petitioner's petition without prejudice to petitioner's refiling his petition after he has exhausted his state court remedies within the meaning of 28 U.S.C. §2254.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed without prejudice for his failure to exhaust his state remedies. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED without prejudice.

IT IS FURTHER ORDERED that judgment be entered DISMISSING petitioner's petition for a writ of habeas corpus without prejudice.

Entered this 5th day of May, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge