

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

-----  
ANDREW MATTHEW OBRIECHT,

Petitioner,

v.

BYRAN BARTOW, Director,  
Wisconsin Resource Center,

Respondent.  
-----

ORDER

05-C-0489-C

Petitioner Andrew Matthew Obriecht has filed objections to the report and recommendation entered by the United States Magistrate Judge on November 21, 2005, recommending denial of his petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Petitioner contends that the magistrate judge erred in finding that the state courts acted reasonably in denying his challenges to his state court conviction.

Petitioner raised six claims in this court. First, he argued that his trial attorney was ineffective because he did not object when the district attorney handed a copy of the information to petitioner's attorney and not to petitioner and did not read the information aloud in court. As the magistrate judge explained, the district attorney's actions might be

a violation of state law but they are not a violation of the United States Constitution. Therefore, they are not matters that this court can address.

Petitioner asserted four additional claims: (1) his plea of no contest was unknowing and involuntary because the trial court failed to insure that he understood the nature of the charge; (2) his plea was unknowing and involuntary because his attorney gave him inaccurate information, failed to explain the nature of the charge and failed to conduct any pretrial investigation; (3) the criminal charge against him was void because it charged no offense and was jurisdictionally defective and (4) his post-conviction attorney had a direct conflict of interest and failed to exercise due diligence. He added a final claim that the state did not file a response to his post-conviction motion, but this is another claim that does not rise to constitutional proportions.

As the magistrate judge explained, all of petitioner's federal constitutional claims are tied to his belief that had he been given a chance and the correct information, he could have convinced the trial court that the sentence he was serving when he escaped was unlawful and therefore, the state would have been unable to show that he was guilty of the charge of escape. He refuses to accept the determinations of the state court or of the magistrate judge that the premise for his belief is erroneous. It is unlikely that he will accept my determination to the same effect but I make it nevertheless. The legality of a person's underlying conviction and sentence is not an element that the state must prove to establish

guilt of an escape from custody.

It is true that the state court did not tell petitioner that he could not be found guilty if the state failed to prove that the custody from which he had escaped was lawful. That would not have been a correct statement of the law. The state court instructed petitioner properly and therefore did not violate his rights. For the same reason, his attorneys did not violate his rights when they failed to argue the illegality of his custody or his lack of opportunity to make that argument.

For the reasons that the magistrate judge explained with care and at length, none of the claims that petitioner has raised support a challenge to his sentence.

#### ORDER

IT IS ORDERED that the report of the United States Magistrate Judge is ADOPTED; FURTHER, IT IS ORDERED that petitioner Andrew Matthew Obrecht's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED.

Entered this 1st day of December, 2005.

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