

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

TIMOTHY SCOTT BAILEY SMITH,

Petitioner,

OPINION AND ORDER

v.

05-C-0653-C

STATE OF WISCONSIN,

Respondent.

Petitioner Timothy Scott Bailey Smith seeks federal habeas relief from a judgment of conviction entered by the Circuit Court for Green County, Wisconsin, finding petitioner guilty of two felony counts of failure to pay child support, contrary to Wis. Stat. § 948.22(2). The child support order that formed the basis for the charges was issued by a superior court in the state of Maine. Petitioner argues that the Maine order was invalid under Maine law and therefore his resulting conviction for violating that order is unlawful.

On November 15, 2005, I entered an order dismissing summarily petitioner's application for a writ of habeas corpus after finding that it did not present any plausible constitutional claims. Now before the court is petitioner's motion for reconsideration pursuant to Fed. R. Civ. P. 59(e). He also asks the court to appoint a lawyer to represent him and for the issuance of a temporary restraining order or preliminary injunction. For the reasons set forth below, the motions will be denied.

OPINION

As grounds for his motion for reconsideration, petitioner asserts that he was not aware that the court could dismiss the petition without requiring a response from the state or reviewing the record of the state court proceedings; if he had been aware of this, petitioner asserts, he would have provided more documentation with his petition to support his claims. Petitioner has included that documentation with his motion for reconsideration and asks this court to consider it as a basis for vacating the judgment and reinstating his petition.

Having carefully reviewed petitioner's latest submissions, I am convinced that it was proper to dismiss the petition under Rule 4 of the Rules Governing Section 2254 Cases. That dismissal was not the result of the failure by petitioner to adequately document or support his claims. Rather, dismissal was proper because it was clear from the petition that petitioner's claims lacked the constitutional foundation necessary to obtain relief under 28 U.S.C. § 2254. I drew this conclusion not from petitioner's failure to provide adequate support for his claims, but from the nature of the claims themselves, the Wisconsin Supreme Court's published decision adjudicating the claims and relevant federal case law. As explained in the order, petitioner's challenges to his extradition, the admission at trial of the Maine child support order and the state supreme court's construction of its own state's child support statute are at most state law claims that do not give rise to any constitutional deprivation cognizable in a federal petition for a writ of habeas corpus. As for petitioner's allegation of ineffective assistance of appellate counsel, I noted that the state supreme court's

decision showed that petitioner's lawyer had raised the issues petitioner wanted raised and I concluded that a mere disagreement about how those issues were presented was insufficient to establish a Sixth Amendment violation. Nothing in petitioner's new submissions convince me that any of those conclusions were incorrect.

Petitioner's additional submissions do suggest the existence of a fifth claim not mentioned in the November 15 order. Petitioner challenges the refusal of the state courts to allow him to raise a collateral attack on the validity of the Maine child support order. Petitioner sought to defend against the charges in Wisconsin by showing that the Maine support order on which the charges were based was invalid under Maine law because (1) the order was issued by a court in Sagadahoc County, rather than a court in Waldo County; therefore, it was not issued by a court of competent jurisdiction; (2) his agreement to pay \$68 per week in child support was the result of his meeting with an employee of the Maine Department of Human Services, whom petitioner contended had no authority to "prosecute" the URESA petition; therefore, the order was invalid; and (3) the Maine court order did not state under which provision of Maine or federal law it was proceeding upon. In asserting that the trial court erred in refusing to consider these claims or allow petitioner to present them to the jury, petitioner might state a claim that he was deprived of his right to present a defense, as recognized by cases such as Crane v. Kentucky, 476 U.S. 683 (1986) and Chambers v. Mississippi, 410 U.S. 284 (1973). See United States v. Kramer, 225 F.3d 847, 857 (7th Cir. 2000) (defendant charged with violating federal Child Support Recovery Act

was entitled to defend by challenging underlying state support obligation on ground that it was imposed by court lacking personal jurisdiction over defendant).

However, petitioner's submissions show that he is not entitled to habeas relief on this claim. Petitioner ignores the fact that the Wisconsin Supreme Court found that he was barred by the doctrine of claim preclusion from attacking the Maine order. The supreme court found that after Maine began enforcing the child support order, petitioner had challenged the order in the Maine courts and lost; after losing, he did not complete an appeal. State v. Smith, 2005 WI 104, ¶ 7, 699 N.W. 2d 508. The supreme court found that the determination of the Maine court that the support order was enforceable included a determination that the court had had subject matter jurisdiction to issue the order. Id. at ¶ 22. Thus, although the Wisconsin Supreme Court agreed with petitioner's contention that an order entered without jurisdiction is void and may be challenged at any time, it found that petitioner had already waged such a challenge in Maine. Id. Accordingly, it found that petitioner was barred by the principle of *res judicata* from waging that challenge a second time in the context of the Wisconsin criminal prosecution. Id.

Nowhere in his petition or in his more recent voluminous submissions does petitioner attack either the legal or factual foundation of the Wisconsin Supreme Court's ruling on *res judicata*. However, to be entitled to habeas relief, petitioner must show that the state courts' adjudication of his claims rested upon an unreasonable application of clearly established federal law or an unreasonable determination of the facts in light of the evidence presented

in the state court proceeding. 28 U.S.C. § 2254(d). In his submissions, petitioner places great stock on the Seventh Circuit's decision in Kramer, 225 F.3d 847, a case in which the court found nothing in the federal Child Support Recovery Act to negate the general rule that default judgments that are void for want of jurisdiction can be attacked on that basis. Id. at 853-857. However, nothing in Kramer alters the long-established rule that a party who has "fully and fairly litigated" and received a final decision on a jurisdictional issue in a prior proceeding is precluded from relitigating that matter in a subsequent proceeding. Durfee v. Duke, 375 U.S. 106, 111 (1963); see also Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 n.9 (1982) ("principles of res judicata apply to jurisdictional determinations -- both subject matter and personal"). Thus, the Wisconsin Supreme Court did not unreasonably apply federal law when it determined that petitioner's attempt to attack the Maine judgment collaterally was subject to ordinary rules of claim preclusion.

Therefore, petitioner's only hope for obtaining habeas relief depends upon his showing that the supreme court's determination was based upon an unreasonable determination of the facts. To do this, he must present "clear and convincing" evidence to counter the factual findings of the state court. 28 U.S.C. § 2254(e)(1). Petitioner's latest submissions show conclusively that he cannot meet this burden. One of the documents is a transcript from a hearing before the Circuit Court for Green County at which the court found that the matter of the validity of the child support order had been "fully litigated [by

petitioner] . . . in the State of Maine over a number of years.” Dkt. #8, Exh. DC-E-183. Other documents submitted by petitioner corroborate this finding and show that the propriety of the court’s exercise of jurisdiction was among the challenges he raised in Maine. Id., Exh. DC-B-55-68. At the hearing in Green County, petitioner did not disagree that he had exhausted his judicial remedies in Maine, but argued that because he had represented himself in the Maine litigation, he should not be precluded from waging a second attack in Wisconsin. Id., Exh. DC-E-179-180. Thus, petitioner’s own submissions show an adequate evidentiary basis for the state supreme court’s finding that petitioner had fully and fairly litigated the validity of the Maine order in the courts of Maine.

Rule 4 of the Rules Governing Section 2254 Cases gives district courts the power to review and summarily dismiss habeas petitions, before the respondent files an answer, “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief.” Rules Governing § 2254 Cases, Rule 4. The purpose of the rule is to screen out frivolous applications and “eliminate the burden that would be placed on the respondent by ordering an unnecessary answer.” Advisory Committee’s Note to Rule 4. Although there is a federal core to petitioner’s claim that he should have been allowed to bring a collateral attack on the validity of the Maine child support order, nothing would be gained by ordering respondent to answer. Petitioner’s claim that he is in custody in violation of the laws or Constitution of the United States depends mostly upon his misunderstanding of the law, not upon any factual dispute requiring review of the state court

proceedings or an evidentiary hearing. Having construed petitioner's submissions broadly and in the light most favorable to petitioner, I am convinced that he is not entitled to federal habeas relief on any of his claims and that his custody is lawful.

In sum, nothing in the additional materials that petitioner has submitted in support of his motion convince me that I was wrong to deny the petition. Accordingly, his motion for reconsideration is denied. In light of this, petitioner's motions for the appointment of counsel and for a preliminary injunction/temporary restraining order are denied as moot.

ORDER

IT IS ORDERED that:

1. Petitioner's motion for reconsideration is DENIED.
2. His motions for the appointment of counsel and for a preliminary injunction/temporary restraining order are DENIED as moot.

Entered this 13th day of December, 2005.

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