

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

ANTWAN B. MANUEL,

Petitioner,

ORDER

v.

05-C-0701-C

WILLIAM POLLARD, Warden,
Green Bay Correctional Institution,

Respondent.

Before the court is Antwan Manuel's request for leave to proceed in forma pauperis on appeal and request for a certificate of appealability from this court's judgment entered June 1, 2006 denying his petition for a writ of habeas corpus under 28 U.S.C. § 2254. (Although petitioner filed his appeal on June 14, consideration was delayed until petitioner submitted a completed application for leave to proceed in forma pauperis, which he has now done.)

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 seeks a certificate of appealability with respect to the two claims he raised in his habeas petition: 1) the state trial court violated his rights under the confrontation clause when it allowed into trial the out-of-court statements of Derrick Stamps, who was a witness to the shooting that formed the basis of the charges of which petitioner was convicted; and 2) petitioner's trial lawyer was ineffective for failing to impeach Stamps's credibility with evidence of prior convictions. This court reviewed the two claims on their merits. I adopted the magistrate judge's report, agreeing with his conclusion that the Wisconsin Supreme Court had not applied unreasonably the then newly-decided case of Crawford v. Washington, 541 U.S. 36 (2006), when it determined that the admission of Stamps's statements did not violate petitioner's rights under the confrontation clause. I also agreed that the state supreme court had made a reasonable decision when it found that petitioner's ineffective assistance of counsel claim failed because petitioner could not show a reasonable probability that the result of his trial would have been different had counsel impeached Stamps with prior convictions.

Having reviewed the report and recommendation and my order adopting it, I am convinced that petitioner has not made a substantial showing of the denial of a constitutional right with respect to either of his claims. Although in state court the outcome of petitioner's claims might have been debatable, on federal habeas review the standard is

much stricter: petitioner bears the burden of showing that the state supreme court's decision on his claims was unreasonable. 28 U.S.C. § 2254(d). Reasonable jurists reviewing petitioner's claims through the lens of § 2254(d) would not debate the seriousness of the state supreme court's consideration of petitioner's claims, its application of the proper Supreme Court rule or the reasonableness of its decision as one that was "within the range of defensible positions." In other words, reasonable jurists would conclude that the state court reached a decision that was reasonable. Mendiola v. Schomig, 224 F.3d 589, 591 (7th Cir. 2000). Accordingly, petitioner's request for a certificate of appealability will be denied.

The next question is whether petitioner is entitled to proceed in forma pauperis on appeal. In addition to finding that petitioner is indigent, this court must find that petitioner is taking his appeal in good faith. 28 U.S.C. § 1915(a)(3). To find that an appeal is in good faith, a court need find only that a reasonable person could suppose the appeal has some merit. Walker v. O'Brien, 216 F.3d 626, 631-32 (7th Cir. 2000). Although this is a less demanding standard than that for determining whether to issue a certificate of appealability, I find that petitioner is unable to meet it. Petitioner's sole basis for his claim that the state supreme court decided his case unreasonably is his disagreement with the court's legal conclusions. He does not identify any mistakes of law that the court made or attempt to explain why they are wrong. As explained in the report and recommendation, this falls far short of the showing petitioner needs to make in order to be entitled to federal habeas relief. In light of this, no reasonable person could suppose petitioner's appeal has any merit.

Because I have found that petitioner's appeal is not taken in good faith, it is not necessary to decide whether he is indigent for purposes of appeal or whether he must prepay a portion of the fee.

ORDER

IT IS ORDERED that:

1. 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.

2. Petitioner's request for leave to proceed in forma pauperis is DENIED because I certify that his appeal is not taken in good faith. If petitioner wishes to appeal this decision, he must follow the procedure set out in Fed. R. App. P. 24(a)(5).

Entered this 26th day of July, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge