

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

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TERRANCE J. SHAW,

Petitioner,

ORDER

v.

05-C-0096-C

WISCONSIN COURT OF APPEALS and  
MATTHEW J. FRANK, Secretary,  
Wisconsin Department of Corrections,

Respondent.

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Terrance J. Shaw, an inmate at the Oshkosh Correctional Institution, has filed an action in this court designated a petition for a writ of habeas corpus under 28 U.S.C. § 2254 and has paid the habeas corpus filing fee of \$5. In his complaint, petitioner contends that the Wisconsin Department of Corrections is restraining him under conditions of confinement that violate his First Amendment right to the free exercise of his religion and the Religious Land Use and Institutionalized Persons Act by opposing his petition to change his name to “Reverend Terrance James Shaw, D.B..S., Ph.D., D.D.”. For relief, petitioner asks this court to declare that the department’s opposition to his name change violates these two federal laws.

This court does not have jurisdiction to hear petitioner’s complaint under 28 U.S.C. § 2254. Habeas corpus is a remedy for prisoners who are contesting the fact or duration of

their custody. Preiser v. Rodriguez, 411 U.S. 475 (1973). Shaw is not seeking immediate or more speedy release from custody or even transfer to a less restrictive form of custody, but is seeking declaratory relief that has nothing to do with the propriety of his underlying conviction or sentence. The department's opposition to his name change petition in no way affects the duration, much less the fact of, confinement. Thus, petitioner's action cannot properly be entertained as a petition for a writ of habeas corpus.

There is no merit to petitioner's suggestion that this court has jurisdiction to hear his claim under the All Writs Act, 28 U.S.C. § 1651. That statute provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The language of the statute makes plain that the Act does not establish an independent basis for the court's jurisdiction, as petitioner suggests, but allows the court to issue writs "in aid of" jurisdiction that already exists. Moreover, petitioner is not even seeking a writ; he is seeking declaratory judgment.

Finally, the case cited by petitioner, Gibson v. Puckett, 82 F. Supp. 2d 992 (E.D. Wis. 2000), is inapposite. In that case, the prisoner was challenging his impending transfer to a private prison facility that were not equipped to accommodate his spinal bifida, a congenital disability. The court found that the prisoner had adequately alleged that he was facing a "quantum of increased restriction" that was significant enough to bring his claims within the ambit of § 2254. Id. at 996. In contrast, petitioner here does not challenge a past or

impending transfer to a more restrictive facility. He simply wants to be able to change his name. The refusal of the department to allow him to do so has no bearing on the location or restrictiveness of his confinement or on the length of his sentence.

Accordingly, because habeas corpus relief is not a proper remedy for petitioner's claims, his action must be dismissed. I express no opinion whether an alternative basis for this court's jurisdiction might exist or whether petitioner's underlying claims have any merit. Petitioner should be aware, however, that if he refiles his complaint as a civil action, he will be subject to the requirements of the Prison Litigation Reform Act, including payment of the \$250 filing fee.

#### ORDER

IT IS ORDERED that the petition of Terrance J. Shaw for a writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED for lack of jurisdiction.

Dated this 22nd day of February, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge