

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 has filed a motion for reconsideration in which he asks this court to reconsider its order of February 22, 2005, dismissing this case for lack of jurisdiction. In the order, I found that because petitioner's challenge to the department's opposition to his name change did not implicate the fact or duration of his sentence, his lawsuit was not properly filed under 28 U.S.C. § 2254. In his motion for reconsideration, petitioner now asserts that I should have construed his complaint as a request for declaratory judgment under 28 U.S.C. § 2201.

Even if petitioner's complaint is so construed, it affords no basis to reconsider the dismissal of his petition. It appears that petitioner might have misunderstood the February 22 order as finding that this court cannot hear petitioner's claim, no matter how it is styled. However, in the February 22 order, I found merely that the court did not have jurisdiction

over petitioner's claim *under* § 2254; I did not consider whether jurisdiction might exist under some other federal statute. The nub of the order was that to present his claim to a federal court, petitioner had to do so by filing a civil complaint, not a petition for a writ of habeas corpus. Petitioner's current assertion that he seeks declaratory judgment does not change that conclusion because a request for declaratory relief is a civil action, not an action for habeas corpus. If petitioner wants his action to go forward as a request for declaratory judgment, then he must refile his complaint as a civil action. As indicated in the February 22 order, this will subject petitioner to the requirements of the Prison Litigation Reform Act, including payment of the \$250 filing fee.

ORDER

IT IS ORDERED that the motion of Terrance J. Shaw for reconsideration of this court's order of February 22, 2005 is DENIED.

Dated this 9th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge