

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

DA VANG,

Petitioner,

ORDER

v.

06-C-0093-C

JUDGE MICHAEL W. HOOVER,
Wisconsin Court of Appeals, Dist. III,

Respondent.

Da Vang, an inmate at the Columbia Correctional Institution in Portage, Wisconsin, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is serving two consecutive life terms without parole on convictions entered by the Circuit Court for Marathon County on May 22, 1997 for two counts of murder. Petitioner alleges that respondent, one of the appellate judges who presided over petitioner's appeal of his conviction, interfered with his right to appeal by construing his appeal as a collateral attack instead of a direct appeal and by denying his request for the appointment of appellate counsel.

As an initial matter, I note that Judge Hoover is not the proper respondent in this action. The proper respondent to a habeas corpus petition filed under § 2254 is the state officer having custody over petitioner, in this case, the warden of the Columbia Correctional Institution. Rule 2 of the Rules Governing Section 2254 Cases.

In any event, petitioner's failure to name the proper respondent is immaterial because the petition must be dismissed. This is petitioner's second habeas petition attacking his murder convictions. On February 19, 2003, this court entered judgment dismissing petitioner's first petition with prejudice after determining that none of his various substantive attacks on his conviction had any merit. Vang v. Litscher, 00-C-0298-C, dkt. #21. Under 28 U.S.C. § 2244(b)(3)(A), a petitioner filing a second or successive petition must first request permission to do so from the court of appeals. Petitioner's failure to do so before filing the instant petition means that this court lacks jurisdiction over it.

ORDER

IT IS ORDERED that the petition of Da Vang for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for his failure to obtain prior authorization from the Court of Appeals for the Seventh Circuit, as required by 28 U.S.C. § 2244(b)(3)(A).

Entered this 27th day of February, 2006.

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