

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

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JAMES A. SMITH,

Petitioner,

v.

RICHARD SCHNEITER,

Respondent.

MEMORANDUM and ORDER  
06-C-375-S

Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state court conviction was reopened on February 21, 2007. Respondent filed his response on March 13, 2007. Petitioner filed his reply and supplemental reply on March 20, 2007.

On March 21, 2007 petitioner filed a request for an order appointing counsel and a request for the full record. On March 26, 2007 petitioner moved to amend his petition. Petitioner's motion for appointment of counsel has been previously denied. The record necessary to decide this petition has been provided to the Court and petitioner. His motion to amend his petition is untimely and will be denied.

FACTS

Petitioner was incarcerated at the Wisconsin Secure Program Facility but has recently been transferred to the Waupun Correctional Institution. He was convicted of armed robbery in Milwaukee County Circuit Court on July 15, 1994.

Petitioner appealed his judgment of conviction to the Wisconsin Court of Appeals. He contended that the trial court erred in allowing him to proceed pro se at trial and denied him an arraignment. The Wisconsin Court of Appeals affirmed his conviction On August 29, 2006 finding that he waived his right to counsel and that the denial of arraignment was harmless error. The Court specifically found that by refusing to waive his speedy trial demand in order that the Court might appoint him a third attorney, he essentially elected to defend himself at his jury trial.

The Court of Appeals denied petitioner's motion for reconsideration on October 4, 2006. The Wisconsin Supreme Court denied petitioner's petition for review on February 12, 2007.

#### MEMORANDUM

Petitioner pursues the following grounds in this petition: 1) an inordinate delay in reinstating his direct appeal rights, 2) a failure to arraign him before trial; 3) double jeopardy violation, 4) prosecutorial misconduct in not amending the charge; 5) improperly impaneled jury, 6) denial of counsel at trial and 7) denial of a right to a speedy trial.

Grounds 2, 4 and 7 must be dismissed because they concern only issues of state law. Petitioner is procedurally barred from raising grounds 1, 3, 4, 5 and 7 because he did not present them to

the Court of Appeals and has not shown cause or prejudice to excuse the default. Page v. Frank. 343 F.3d 901, 905 (7<sup>th</sup> Cir. 2003).

The only ground properly before this Court is Ground 6 in which he claims he was denied his right to counsel at trial. The Wisconsin Court of Appeals found that he had waived his right to counsel.

A federal court may grant relief on a petition for a writ of habeas corpus of a person in state custody only if the state court's adjudication of the claim was on the merits and:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding.

28 U.S.C. §§ 2254(d) (1) and (2).

The Wisconsin Court of Appeals decision was not based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. The decision was consistent with federal law that allows a defendant to waive his right to counsel and to represent himself. Faretta v. California, 422 U.S. 806, 819, 834-35 (1975); Brooks v. McCaughtry, 380 F. 3d 1009, 1011-1023 (7<sup>th</sup> Cir. 2004). Accordingly, petitioner's claim that he was denied his right to counsel at trial will be denied.

Petitioner's petition for a writ of habeas corpus will be dismissed with prejudice. Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his petition must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that petitioner's motion for appointment of counsel is DENIED as duplicative.

IT IS FURTHER ORDERED that petitioner's motions for a full copy of the record and to amend his petition are denied.

IT IS FURTHER ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED with prejudice.

Entered this 28<sup>th</sup> day of March, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge