

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

DENNIS GAGE,

Petitioner,

ORDER

v.

06-C-0442-C

DEIDRE MORGAN, Warden,
Oakhill Correctional Institution,

Respondent.

Dennis Gage, an inmate the Oakhill Correctional Institution in Oregon, Wisconsin, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner filed his petition on August 8, 2006; however, preliminary review of his petition was stayed until petitioner submitted either the \$5 filing fee or an application for leave to proceed *in forma pauperis*. After some delay that appears to have been caused by confusion on the part of the institution's financial office, petitioner submitted the filing fee on August 31, 2006.

From the documents attached to the petition, I find the following allegations of fact.

ALLEGATIONS OF FACT

Petitioner has served more than 29 years of a life sentence for first degree murder and burglary. On May 11, 2006, his eligibility for release on parole was reviewed by Wisconsin Parole Commissioner Steven Landreman. Landreman signed a Parole Commission Action

recommending that petitioner be released on parole on June 15, 2006. However, on June 30, 2006, petitioner was informed in a new Parole Commission Action that the commission had rescinded his grant of parole. On or about July 5, 2006, petitioner wrote to Alf Graham, chairperson of the parole commission, requesting a hearing. On July 27, 2006, petitioner received a letter from the parole commission stating that petitioner's grant had been withdrawn and that he had been given a 12-month deferment. According to the letter, the reasons for the withdrawal and deferment had been explained on the Parole Commission Action dated June 30, 2006. However, no reasons were stated on that document.

DISCUSSION

Under 28 U.S.C. § 2254, the remedy of habeas corpus is available to a state prisoner in custody pursuant to the judgment of a state court only on the ground that the prisoner is in custody in violation of the Constitution or laws or treaties of the United States. § 2254(a). Although petitioner contends that the actions of the parole commission have violated his rights under the First and Eighth Amendments, his claims arguably state a viable claim that the parole commission violated his rights to due process when it rescinded his grant of parole without reason and refused to grant him a hearing.

In any event, determining the precise nature of petitioner's claims is not critical at this point because it appears that petitioner has not pursued any state court remedies with respect to his challenge to the parole commission action. Pursuant to § 2254(b)(1)(A),

federal courts cannot entertain an application for a writ of habeas corpus filed by a state prisoner unless the prisoner has first exhausted the remedies available in the state courts. In Wisconsin, an inmate may challenge a decision by the parole commission to deny parole by filing an action for a writ of certiorari under Wis. Stat. § 893.735. State ex rel. Purifoy v. Malone, 2002 WI App 151, ¶ 9, 256 Wis. 2d 98, 103-04, 648 N.W. 2d 1, 4. Because it appears that petitioner has not yet pursued this remedy, this court must dismiss the petition.

To preserve his claim, petitioner should act promptly: a state court petition for a writ of certiorari must be filed within 45 days “after the cause of action accrues.” Wis. Stat. § 893.735(3). Petitioner’s cause of action arguably accrued on July 27, 2006, when he received the letter from the parole commission in response to his request for a hearing. See Purifoy, 2002 WI App at ¶11, 256 Wis. 2d at 105, 648 N.W. 2d at 4 (petitioner’s cause of action accrued on date he was informed by parole commissioner that he would not receive hearing on decision by commissioner to rescind parole grant).

ORDER

IT IS ORDERED that the application of Dennis Gage for a writ of habeas corpus is
DISMISSED WITHOUT PREJUDICE for his failure to exhaust his state court remedies.

Entered this 7th day of September, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge