

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

MICHAEL E. HENDRICKS,

Petitioner,

v.

ROBERT HUMPHREYS, Warden,
Racine Correctional Institution,

Respondent.

ORDER

06-C-0564-C

In this proceeding for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254, petitioner Michael E. Hendricks is seeking relief from his conviction and sentence on the ground that the guilty pleas he entered in state court in 2003 were invalid. He alleges that (1) the trial court failed to advise him of the elements of each charge and failed to ask him whether anyone had threatened him or promised him anything to cause him to plead guilty and (2) he lacked the mental ability to enter voluntary and intelligent pleas. In his petition, he alleges that he is illiterate and that he suffers from some degree of mental retardation and disorganized thought patterns.

On January 2, 2007, the United States Magistrate Judge recommended denial of the

petition, after finding that the state court adjudicated petitioner's claims in a manner that was neither contrary to clearly established federal law or reflective of an unreasonable application of such law. Petitioner has filed objections to the recommendation but they provide no reason to reject the magistrate judge's recommendation.

The Wisconsin Court of Appeals found that the trial court had complied with state law in taking petitioner's plea in most respects, but it questioned the trial court's failure to ask petitioner whether any promises or threats had been made to him to persuade him to plead guilty. As to this failure, however, the court found it unnecessary to determine whether the plea questionnaire that petitioner had signed was an adequate substitute for oral questioning by the court because it found that petitioner had not alleged that in fact any promises or threats were made.

The court of appeals did not agree with petitioner that his pleas were the illegal products of his low intellectual capacity and mental impairments. Again, it based its decision on petitioner's failure to allege that he was unable to understand anything that had occurred in connection with his plea. The court rejected his assertion that his trial lawyer was ineffective for ignoring possible defenses or mitigating circumstances because he never alleged that there were any such defenses or circumstances that she could have investigated.

As the magistrate judge explained in his comprehensive report and recommendation, the court of appeals' decision was a reasonable one, given the record before it. Petitioner did

not show that he did not understand the charges against him or the rights he was waiving by pleading guilty. He represented to the trial court that his lawyer had read him the waiver of rights form and the plea questionnaire. He asserted that he understood everything on the form, that he understood what the state would have to prove if he went to trial and that he understood the consequences of his plea.

In an excess of caution, the magistrate judge allowed petitioner extra time to file his objections to the report and recommendation so as to allow him an opportunity to obtain and submit a psychological evaluation report prepared in connection with petitioner's state criminal proceeding. Petitioner submitted the report together with his objections. I have read over the report carefully, but have found nothing in it that suggests that petitioner was incapable of understanding his lawyer's explanations to him either because of his limited intellectual functioning or because he suffers from a psychiatric disorder that would prevent him from processing information in a coherent fashion or making an informed decision. It is questionable whether petitioner alerted the state court to a claim of mental incompetence to understand his plea, but even if he did, he has not shown that he could have sustained such a claim. Certainly, the psychological report would not support the claim.

Finally, as the magistrate judge explained, it was reasonable for the state court of appeals to find that petitioner's claims of ineffectiveness of trial and appellate counsel were without merit in light of petitioner's failure to adduce any evidence that would support those

claims.

ORDER

IT IS ORDERED that the recommendation of United States Magistrate Judge Stephen L. Crocker issued on January 2, 2007, is ADOPTED as the court's own. FURTHER, IT IS ORDERED that petitioner Michael E. Hendricks's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED for petitioner's failure to show that he is in custody in violation of the laws or Constitution of the United States.

Entered this 31st day of January, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge