

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

MICHAEL J. TOOLEY,

Petitioner,

MEMORANDUM and ORDER

v.

06-C-583-S

JUDY SMITH,

Respondent.

Petitioner Michael J. Tooley filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Respondent filed a motion to dismiss petitioner's petition for failure to state a federal constitutional claim. Petitioner's response to respondent's motion was to be filed not later than December 17, 2006 and has not been filed to date.

FACTS

On May 20, 1996 petitioner was convicted of armed robbery, party to a crime, which he committed on January 23, 1996 and sentenced to 12 years in prison. The Wisconsin Parole Commission determined that petitioner was subject to the presumptive mandatory release provision of Wis. Stat. § 302.11(1g)(a)2. The Commission then decided to delay petitioner's release beyond his presumptive mandatory release date of December 17, 2004.

MEMORANDUM

Wisconsin Law provides that for an inmate who committed a serious felony on or after April 21, 1994 but before December 31, 1999 the Parole Commission may deny petitioner's presumptive parole date for protection of the public or because an inmate refuses treatment while incarcerated. Wis. Stat. §302.11(1g)(b).

Petitioner is subject to the presumptive mandatory release provision of this statute. This statute does not create a protected liberty interest because the Wisconsin Parole Commission has unlimited discretion to deny mandatory release when it decided the requirements of the statute are met. See State ex. rel Gendrich v. Litscher, 246 Wis. 2d 814, 632 N.W. 2d 878 (Wis. Ct. App. 2001).

Petitioner does not have an entitlement to release on his presumptive mandatory release date pursuant to Wisconsin law. Accordingly, he was not entitled to any due process protections when he was denied release pursuant to the statute.

Petitioner has not stated a federal constitutional claim. Accordingly, his petition for a writ of habeas corpus must 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 (7th Cir. 1997).

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ORDER

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

IT IS FURTHER ORDERED that judgment be entered DISMISSING petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2241 with prejudice.

Entered this 21st day of December, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge