IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

BILL P. MARQUARDT,

Petitioner,

v.

MEMORANDUM and ORDER
06-C-684-S

DIRECTOR< MENDOTA MENTAL HEALTH INSTITUTE.

Respondents.

Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state court convictions was reopened on January 19, 2007. Respondents filed their response on February 12, 2007. Petitioner filed his reply on February 13, 2007.

FACTS

Petitioner Bill Marquardt is currently in the custody of the Mendota Mental Health Institute by an order of commitment entered in the Eau Claire County Circuit Court. The Court found petitioner not guilty by reason of mental disease or defect for six counts of mistreatment of animals, two counts of possession of a firearm by a felon and one count of aggravated burglary. The order of commitment was for 75 years.

On March 13, 2000 petitioner's father discovered the body of his wife, petitioner's mother, in their Chippewa County home. She

had been shot and stabbed. On March 15, 2000 officers obtained and executed a search warrant for an Eau Claire County cabin in which petitioner had been staying.

As a result of the search the officers found three dog carcasses and three rabbit carcasses, sections of blood stained carpet, a blood stained quilt, a blood stained tarp, two rifles and a large knife with a sheath. Petitioner was charged in Eau Claire County with mistreatment of an animal resulting in the animal's death and a warrant was issued for his arrest.

On March 18, 2000 officers arrested petitioner outside his cabin and found a folding knife. They noticed blood spatters on petitioner's shoes and jacket. Subsequent tests indicted that the DNA found in the blood on petitioner' folding knife and one of his shoes was a match for his mother's DNA. A search of a vehicle parked at the cabin revealed blood which later tests indicated matched petitioner's mother's DNA.

Petitioner was charged with first degree intentional homicide and possession of a firearm by a felon in Chippewa County. Petitioner was acquitted of the homicide charge and the possession of a firearm by a felon charge was dismissed. In that case petitioner moved to suppress the evidence seized in the search of his cabin because the warrant did not establish probable cause. The trial court denied petitioner's motion but the Wisconsin Court of Appeals reversed and remanded to the trial court to address

whether the good faith exception to the exclusionary rule would apply to the search. See State v. Marquardt, 247 Wis 2d 765, 635 N.W. 2d. 188 (Ct. App. 2001).

On remand the Chippewa County Circuit Court suppressed the evidence found in the search of petitioner's cabin after concluding that the good faith exception did not apply. The Court found that the search warrant was so lacking in indicia of probable cause that no officer could have reasonably believed the warrant contained probable cause to search petitioner's cabin. The state appealed this decision.

Petitioner also moved in the Eau Claire County Circuit Court case to suppress the evidence contained in the search of his cabin. The Eau Claire County Circuit Court denied petitioner's motion to suppress the evidence concluding that the state had met the good faith exception for the search.

Before his trial in Eau Claire County petitioner sought to represent himself. The trial court denied petitioner's request. After the Court found petitioner not guilty by reason of mental disease and defect and committed him to the Department of Health and Family services for 75 years, petitioner challenged the search of his cabin in a post-commitment motion. The circuit court denied the motion.

Petitioner appealed the order denying his motion to suppress evidence and his commitment order to the Wisconsin Court of

Appeals. The Wisconsin Court of Appeals consolidated the Eau Claire and Chippewa County appeals and certified the Fourth Amendment issue to the Wisconsin Supreme Court.

The Wisconsin Supreme Court concluded that the Chippewa County Court had erred in finding the good faith exception did not apply and that the Eau Claire County Court had properly found that good faith exception applied because the State had shown that the process by which it obtained the search warrant included a significant investigation.

The Wisconsin Supreme Court further concluded that the Eau Claire County Circuit Court had properly found that petitioner was not competent to represent himself at trial. The Court concluded that the record, particularly expert testimony about petitioner's mental illness, supported the trial court's decision not to allow petitioner to represent himself.

The United States Supreme Court denied petitioner's petition for a writ of certiorari.

MEMORANDUM

Petitioner claims in his petition for a writ of habeas corpus that the search of his cabin violated the Fourth Amendment. In Stone v. Powell, 428 U.S. 465 (1976) the United States Supreme Court held that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the

ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."

This Court only need determine whether petitioner had a full and fair opportunity to litigate his Fourth Amendment claim and not whether the result was correct. Cabrera v. Hinsley, 324 F.3d 527, 530 (7th Cir. 2003). In this case the record indicates that the Wisconsin Supreme Court carefully addressed petitioner's Fourth Amendment claim concerning the search of his cabin finding that the good faith exception applied according to United States v. Leon, 468 U.S. 897, 923 (1984), because the State had shown that the process by which it obtained the search warrant included a significant investigation. Petitioner had a full and fair opportunity to litigate his Fourth Amendment claims in state court. Accordingly, petitioner's petition for a writ of habeas corpus must be dismissed pursuant to Stone v. Powell.

Petitioner also claims that he was improperly denied his right to self representation in his Eau Claire County Case.

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 Supreme Court found that the trial court's record, particularly expert testimony about petitioner's mental illness, supported its decision not to allow petitioner to represent himself. A review of the record shows that this finding was neither an unreasonable application of clearly established federal law or an unreasonable determination of the facts. Accordingly, petitioner is not entitled to habeas relief on this ground

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 (7th Cir. 1997).

ORDER

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

Entered this 14th day of February, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ
District Judge