

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

CARSON COMBS,

Petitioner,

v.

MEMORANDUM and ORDER
06-C-705-S

CHERI MAPLES replaced by
QUALA CHAMPAGNE,

Respondent.

On December 5, 2006 petitioner Carson Combs filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming that his Monroe County Wisconsin convictions were unconstitutional. On January 16, 2007 respondent filed a response and a motion to dismiss the petition. Petitioner's reply was filed on February 6, 2007.

FACTS

On April 30, 2004 after a jury trial petitioner was convicted on one count each of bail jumping and criminal trespass to a dwelling in Monroe County Circuit Court. He was sentenced to two years probation on each count to be served concurrently. As a condition of his probation he was ordered to repay Monroe County for his attorney's fees. In February 2006 petitioner agreed to extend his probation term for one year to allow him to repay the fees.

Petitioner appealed his conviction for criminal trespass to a dwelling to the Wisconsin Court of Appeals. The Court affirmed his conviction on July 7, 2005. Petitioner did not file his petition for review with the Wisconsin Supreme Court before his 30-day time period for doing so expired. The Court denied his request for an extension on August 11, 2005.

Petitioner filed a 974.06 post conviction motion in the trial court on November 9, 2004. The trial court did not issue a decision on this motion. On December 30, 2004 petitioner also moved the trial court for a new trial on which the trial court did not rule. On January 25 and February 10, 2005 petitioner filed motions for relief from this judgment in the trial court. These motions were denied by the trial court.

On August 22, 2005 petitioner filed a petition for a writ of habeas corpus which this Court dismissed because he had failed to exhaust his state court remedies.

On April 25, 2006 petitioner filed a petition for a writ of habeas corpus in the Wisconsin Supreme Court. The Court denied this motion on June 14, 2006.

On July 7, 2006 petitioner filed a motion to modify the conditions of his probation which the Court denied on July 21, 2006. On December 5, 2006 petitioner filed a circuit court motion for modification of sentence which the Court denied on January 2, 2007.

Petitioner filed this petition for a writ of habeas corpus on December 5, 2006.

MEMORANDUM

Respondent moves to dismiss petitioner's petition for a writ of habeas corpus as untimely. Pursuant to 28 U.S.C. § 2244(d) a one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to judgment of a state court. The period commences from the date on which judgment becomes final on direct review. The statute further provides that the time during which a properly filed application for state post-conviction review concerning the pertinent judgment is pending shall not be counted toward this period of limitation. This statute took effect on April 24, 1996.

Petitioner's state court judgment became "final" within the meaning of 28 U.S.C. §2244(d) (1) (A) upon the conclusion of direct review or the expiration of the time for seeking such review. Petitioner's time for filing a petition for review with the Wisconsin Supreme Court expired on August 8, 2005. Accordingly, the one year period in which petitioner could file a petition for a writ of habeas corpus in this Court expired on August 8, 2006.

During this one year period the time during which petitioner had a properly filed application for state post conviction review concerning the pertinent judgment pending is not counted towards the one year period of limitation. Between August 8, 2005 and

August 8, 2006 petitioner had a state petition for a writ of habeas corpus pending for fifty-one days. He also had a motion to modify his probation conditions pending for fifteen days. These sixty-six days are added to his one year period of limitation. Petitioner had sixty-six days after August 8, 2006 or October 13, 2006 to file his petition for a writ of habeas corpus in this Court. Petitioner had no other properly filed postconviction motions pending during this period.

His petition for a writ of habeas corpus was not filed until December 5, 2006. Accordingly, petitioner's petition for a writ of habeas corpus is untimely pursuant to 28 U.S.C. § 2241(d)(1) and must be dismissed.

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 as untimely. See Newlin v. Helman, 123 F.2d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED with prejudice as untimely pursuant to 28 U.S.C. § 2244(d).

IT IS FURTHER ORDERED that petitioner's motion for an injunction is DENIED as moot.

Entered this 8th day of February, 2007.

BY THE COURT:
S/

JOHN C. SHABAZ
District Judge