

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

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STATE OF WISCONSIN,

Plaintiff,

v.

ADAMA F. SHEICKNER,

Defendant.

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ORDER

06-C-717-C

Defendant Adama F. Sheickner (a.k.a. Fanny Adama) has filed a document entitled "Petition for Removal from State Court to Federal Court," in which he appears to be attempting to remove from the Dane County Circuit Court a criminal action filed against him charging him with a violation of Wis. Stat. § 301.45(4)(a), failure to provide updated sex offender information as a second or greater offense. The petition must be denied because removal is improper.

When it clearly appears from the face of a petition and any attached exhibits that the petition for removal should not be granted, a court must summarily dismiss the petition. 28 U.S.C. §1446(c)(4). Here, the only possible basis for removal is found in 28 U.S.C. § 1443(1), which allows a criminal prosecution commenced in state court to be removed to

federal court where it appears “that the right allegedly denied the removal petitioner arises under a federal law providing for specific civil rights stated in terms of racial equality.” Johnson v. Mississippi, 421 U.S. 213, 219 (1975) (internal citations omitted). Section 1443(1) provides for removal of any state proceeding in which the defendant “is denied or cannot enforce . . . a right under any law providing for the equal civil rights of citizens of the United States.”

The United States Supreme Court has established a two part test for section 1443 removal petitions. State of Colorado v. Lopez, 919 F.2d 131, 132 (10th Cir. 1990). First, it must appear that “the right allegedly denied the removal petitioner arises under a federal law ‘providing for specific civil rights stated in terms of racial equality.’” Id. (quoting Johnson, 421 U.S. at 219). Second, it must appear “that the removal petitioner is ‘denied or cannot enforce’ the specified federal rights ‘in the courts of [the] State.’” Id.; State v. Haws, 131 F.3d 1205, 1209 (7th Cir. 1997). Ordinarily, to make such a showing, a petitioner must show that he cannot enforce his federal right due to some formal expression of state law, such as a state legislative or constitutional provision, as opposed to a denial that is first made manifest in the course of litigation. Johnson, 421 U.S. at 219; Georgia v. Rachel, 384 U.S. 780, 792 (1966); Haws, 131 F.3d at 1209.

Application of that two-prong test to the present case leads to the conclusion that remand is necessary. Petitioner, a convicted sex offender, is being prosecuted for failing to

register as he is required to do under Wisconsin law. Although he asserts that he has been “denied due process and equal protection solely because of his race and because he is from another country,” such a generalized claim is insufficient to establish the propriety of removing this case from state court.

As the court of appeals explained in State of Wisconsin v. Glick, 782 F.2d 670, 672 (7th Cir. 1986),

it has been established since City of Greenwood v. Peacock, 384 U.S. 808, 827 (1966), that a person may not obtain removal just by alleging that “federal equal civil rights have been illegally and corruptly denied by state administrative officials in advance of trial, that the charges against the defendant are false, or that the defendant is unable to obtain a fair trial in a particular state court.” Unless a federal statute provides “that no State should even attempt to prosecute [defendants] for their conduct,” they may not remove.

See also Johnson, 421 U.S. at 219 (“[c]laims that prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability . . . will not suffice”). Petitioner has suggested no adequate ground for his belief that the Wisconsin court will not vindicate any federal rights at stake in petitioner’s pending trial. Because petitioner has failed to satisfy the requirements of § 1443(1), the case will be remanded to state court.

ORDER

IT IS ORDERED that this case is REMANDED to the Circuit Court for Dane County for lack of subject matter jurisdiction.

Entered this 14th day of December, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge