

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

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ANDREW TORSTENSON,

Petitioner,

ORDER

v.

06-C-0720-C

STATE OF WISCONSIN DEPARTMENT  
OF CORRECTIONS, DIVISION OF  
COMMUNITY CORRECTIONS,

Respondent.

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Petitioner Andrew Torstenson has filed a motion for reconsideration of this court's order dismissing his petition for a writ of habeas corpus. In an order entered January 4, 2007, this court found that petitioner had procedurally defaulted his challenges to the department's decision to revoke his parole by failing to file a state court petition for certiorari. Further, the court found that petitioner could not establish cause for or prejudice from that default or that a fundamental miscarriage of justice would result if the court did not hear the claims.

In his motion for reconsideration, petitioner asserts that he could not file a petition for certiorari within Wisconsin's 45-day time limit because he was incarcerated at the Walworth County jail, where he had no legal materials. However, he does not explain what legal materials he needed in order to file his petition. Petitioner's submissions make it clear

that he was advised by his lawyer after his administrative appeal was denied that the next step was to file a certiorari petition and that she would not be filing that petition. So petitioner knew that he would have to file *something* in order to preserve his right to review. Yet petitioner did not even make an attempt to alert the state circuit court to his desire to file a petition or the lack of legal materials at the county jail and he did not seek an extension of the time in which to file his certiorari petition. Moreover, even if time could be tolled during petitioner's incarceration at the Walworth County jail, petitioner offers no explanation why he did not file his petition as soon as he gained access to a law library. According to one of petitioner's previous submissions, this occurred in early September 2006.

In sum, petitioner has not made any convincing argument that some objective factor external to the defense prevented him from complying with the state's rules governing the filing of certiorari petitions. Accordingly,

#### ORDER

Petitioner's motion for reconsideration is DENIED.

Entered this 11<sup>th</sup> day of January, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge