

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

ANDREW TORSTENSON,

Petitioner,

ORDER

v.

06-C-0720-C

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

Respondent.

Petitioner Andrew Torstenson has filed his second motion for reconsideration of this court's order dismissing his petition for a writ of habeas corpus on grounds of procedural default. This motion will be denied. Petitioner has submitted documents that he contends show that he attempted to file a petition for certiorari to challenge the revocation of his probation. However, the documents that petitioner has submitted show that he did not initiate any action to file his certiorari petition until late August 2006, after the 45-day time limit for filing the petition had already expired. (Even then, petitioner still ultimately did not file any certiorari petition.) These documents fail to refute this court's finding that petitioner did not take diligent steps to pursue his claims while he was incarcerated at the Walworth County Jail.

Petitioner also contends that his default was caused by his parole officer, who never sent petitioner all of the revocation paperwork that petitioner asserts was necessary to file the petition. However, as noted in the order denying petitioner's previous motion for reconsideration, petitioner made no effort to alert the state circuit court of this fact or ask the court for more time to file his petition. Because he did not diligently pursue his rights, his failure to file his certiorari petition on time cannot be attributed to an external factor beyond petitioner's control. Further, petitioner's failure to realize that he could have asked for an extension does not amount to cause sufficient to excuse his default.

Nothing else in petitioner's submissions convinces me that I was wrong to dismiss his petition. Accordingly,

ORDER

Petitioner's motion for reconsideration (dkt. #s 12 and 13) is DENIED.

Entered this 29th day of January, 2007.

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