

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

JACK JORDAN,

Petitioner,

v.

RICARDO MARTINEZ, Warden,
FCI Oxford,

Respondent.

OPINION and ORDER

06-C-748-C

On January 5, 2007, Jack Jordan filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a judgment entered in 1993 by the Circuit Court for Wayne County, Michigan in Case No. 92-8097. (Because petitioner is incarcerated at the Federal Correctional Institution in Oxford, Wisconsin, venue is proper in this court.) In his petition, petitioner contends that his trial lawyer was ineffective because the lawyer failed to investigate witnesses who would have provided “exculpatory evidence” to aid in petitioner’s defense. Because petitioner’s allegations suggested strongly that his petition was untimely and because petitioner had provided no information regarding the kind of exculpatory evidence his proposed witnesses would have proffered, I directed him to answer

the following three questions:

1. Have you served your sentence in Wayne County Case No. 92-8097, including any parole revocation time you may have been required to serve?
2. Did you or your lawyer file an appeal of your conviction in Case No. 92-8097? When? What happened to each one? Be sure to list each attempt you have made to file a direct appeal or postconviction motion.
3. Who were the witnesses you asked your lawyer to interview? What evidence would each one of them have offered that would have helped your case?

Order dated Jan. 31, 2007, dkt. #3, at 11-12.

In an affidavit dated February 13, 2007, petitioner answered the questions in the following manner:

- 1) Yes.
- 2) Delayed App. filed 12/6/93 #92-8097
 Affirmed 12/27/95
 Mich App. filed 3/19/93
 Affirmed 11/30/94 #162669
 Mich Spr. App. 12/4/94
 Denied 7/25/95 #101664
 Relief of Judgment Denied 4/21/06 #92-8097 (opinion given)
 Mich App. Denied 6/15/06 #271087 (opinion given)

In answer to question number three, petitioner identified six proposed witnesses whom he alleged would have testified that another man was “the shooter” in the armed burglary of which petitioner summarized was convicted.

Federal district courts have jurisdiction to entertain petitions for habeas relief only

from persons who are “*in custody* in violation of the laws or treaties of the United States.” 28 U.S.C. § 2254(a) (emphasis added). In his supplemental affidavit, petitioner avers that he has served the entirety of the sentence in Wayne County Case No. 92-8097, including any parole revocation time he was required to serve pursuant to that judgment. Although petitioner is in federal custody on unrelated charges, he is not “in custody” as a result of his lawyer’s alleged ineffectiveness in Case No. 92-8097.

Although petitioner has set forth facts giving rise to a colorable claim that his Michigan trial lawyer may have been ineffective, petitioner has finished serving the sentence for his crime. Because the sentence has been served, his petition is moot. Any constitutional errors that may have occurred in connection with petitioner’s Michigan state case can no longer serve as a ground for granting his petition for a writ of habeas corpus in connection with that case. Maleng v. Cook, 490 U.S. 488, 492 (1989); Martin v. Deuth, 298 F.3d 669, 671 (7th Cir. 2002). Consequently, petitioner’s request for a writ of habeas corpus must be denied.

ORDER

IT IS ORDERED that petitioner Jack Jordan’s petition for a writ of habeas corpus

is DENIED WITH PREJUDICE.

Entered this 12th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge