

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

DERYL B. BEYER,

Petitioner,

v.

STEVE WATTERS,

Respondent.

MEMORANDUM and ORDER
07-C-024-S

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging the delay of the review of his commitment as a sexually violent person. Respondent filed his response on February 12, 2007. Petitioner filed his reply on February 21, 2007.

Petitioner renews his motion for appointment of counsel which was denied on February 21, 2007. This second motion will be denied because the interests of justice do not require appointment of counsel. 18. U.S.C. §3006A(a)(2)(b).

FACTS

Petitioner Deryl N. Beyer is currently confined at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin as a sexually violent person based on a judgment and commitment entered in Green County Circuit Court on November 18, 1999.

In January 2001 the Department of Health and Family Services (DHFS) filed its first periodic examination report concerning petitioner's mental condition to Green County Circuit Court. In March 2002 DHFS filed its second period examination report on petitioner to the Court. The Court had a statutory obligation to schedule a probable cause hearing. §980.09(2), Wis. Stats.

Petitioner filed a petition for a writ of habeas corpus in Green County Circuit Court demanding release based on the untimely preparation of this first periodic examination report in January 2001. On June 6, 2002 petitioner's petition was dismissed because the proper venue for the petition was in Juneau County where petitioner was confined.

On February 3, 2003 DHFS filed its third periodic examination report on Beyer. On January 9, 2004 petitioner received his probable cause hearing in Green County Circuit Court. The Court held that probable cause to conduct a release hearing did not exist.

Petitioner appealed the decision claiming that the extraordinary delay in conducting the probable cause hearing violated his due process rights. The Wisconsin Court of Appeals certified the appeal to the Wisconsin Supreme Court to determine the scope of due process and statutory rights and remedies available to a committed person who is unable to obtain a prompt probable cause hearing under §980.09(2).

In State v. Beyer, 287 Wis.2d 1, 707 N.W.2d 509 (2006), the Wisconsin Supreme Court held that due process requires that a person committed under Chapter 980 be granted a probable cause hearing within a meaningful time period after the Department of Health and Family Services provides a copy of the annual periodic examination report to the Court. The Court found that the delay in holding the probable cause hearing in petitioner's case violated his due process rights. The Court concluded that release from petitioner's commitment was not a remedy for this violation. State ex rel. Marberry v. Macht, 262 Wis.2d 720, 665 N.W. 2d 155 (2003).

MEMORANDUM

Petitioner claims that his due process rights and equal protection rights were violated when his probable cause hearing concerning his commitment was delayed. He seeks to be discharged from his commitment.

A federal court may grant relief on a petition for a writ of habeas corpus of a person in state custody only if the state court's adjudication of the claim was on the merits and:

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding.

28 U.S.C. §§ 2254(d)(1) and (2).

The Wisconsin Supreme Court found that petitioner's due process rights were violated but that he was not entitled to discharge from his commitment because he is a sexually violent person. Petitioner has not shown that this decision was contrary to, or an unreasonable application of clearly established law. In addition, he has not shown that the Wisconsin Supreme Court's decision was based on an unreasonable determination of the facts. Accordingly, petitioner's petition for a writ of habeas corpus on his due process claim must be dismissed.

Petitioner also argues that his equal protection rights were violated by the delay of his probable cause hearing. The Wisconsin Supreme Court did not address this issue.

Petitioner's argument appears to be that persons confined under Wisconsin Statutes Chapters 51 and 55 are entitled to release from commitments when statutory time limits are violated. Chapter 980 commitments are not the same as Chapter 51 and 55 commitments because persons committed under Chapter 980 are considered more dangerous. Further, the initial commitment procedures under Chapter 980 are more stringent.

Petitioner has not shown that his equal protection rights were violated. Accordingly, petitioner's petition for a writ of habeas corpus on this claim must be dismissed.

Petitioner's petition for a writ of habeas corpus will be dismissed with prejudice. 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. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that petitioner's second motion for appointment of counsel is DENIED.

IT IS FURTHER ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED with prejudice.

Entered this 23rd day of February, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge