

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

---

DANIEL ANDREOLA,

Petitioner,

v.

DEIRDRE MORGAN,

Respondents.

---

MEMORANDUM and ORDER  
07-C-35-S

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. §2254 claiming that his state court conviction is unconstitutional. Respondent filed her response on March 5, 2007. Petitioner filed his reply on April 2, 2007.

FACTS

Petitioner Daniel Andreola is currently incarcerated at the Oakhill Correctional Institution, Oregon, Wisconsin. On October 27, 2003 petitioner was convicted in Rock County Circuit Court of two counts of theft and one count of issuing worthless checks. He was sentenced to 8 years in prison. These sentences were imposed consecutive to nine-month county jail sentences imposed at the same time for two misdemeanor charges.

Petitioner appealed his conviction and the denial of his post-conviction motion to the Wisconsin Court of Appeals. On March 26, 2006, the Wisconsin Court of Appeals affirmed petitioner's judgment of conviction on the denial of his postconviction motion.

The Wisconsin Court of Appeals held that the search of the premises occupied by petitioner did not exceed the scope of the search warrant. The Court found that the evidence seized in the search was not suppressed by the trial court pursuant to the law.

The Appeals Court also found that the prosecutor did not fail to disclose prosecutorial evidence in petitioner. The Court of Appeals also found that the evidence was sufficient to support petitioner's conviction.

Petitioner filed a petition for review with the Wisconsin Supreme Court which was denied on June 14, 2006. Petitioner filed this petition for a writ of habeas corpus on January 16, 2007.

#### MEMORANDUM

Petitioner raises the following grounds in this petition for a writ of habeas corpus: 1) his conviction was obtained by the use of evidence obtained pursuant to an unconstitutional search and seizure; 2) his conviction was obtained by a violation of privilege against self-incrimination; 3) denial of effective assistance of stand-by counsel; 4) failure of prosecutor to disclose exculpatory evidence; 5) denial of due process; 6) abuse of judicial discretion; 7) insufficiency of evidence and 8) denial of access to the court.

Petitioner claims in his petition for a writ of habeas corpus that the search of premises occupied by him violated the Fourth

Amendment. In Stone v. Powell, 428 U.S. 465 (1976) the United States Supreme Court held that "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial."

This Court only need determine whether petitioner had a full and fair opportunity to litigate his Fourth Amendment claim and not whether the result was correct. Cabrera v. Hinsley, 324 F.3d 527, 530 (7<sup>th</sup> Cir. 2003). In this case the Wisconsin Court of Appeals addressed petitioner Fourth Amendment claim and found that the search did not exceed the scope of the warrants. Petitioner had a full and fair opportunity to litigate his Fourth Amendment claims in state court. Accordingly, petitioner's petition for a writ of habeas corpus on his Fourth Amendment ground must be dismissed pursuant to Stone v. Powell.

Petitioner also claims that he was denied exculpatory evidence by the prosecutor. The Wisconsin Court of Appeals found that he was not denied exculpatory evidence.

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 the prosecutor had not failed to provide petitioner exculpatory evidence. Petitioner has not shown that this finding was either an unreasonable application of clearly established federal law or an unreasonable determination of the facts. Accordingly, petitioner is not entitled to habeas relief on this ground.

Petitioner also contends that his conviction was based on insufficient evidence. The Wisconsin Court of Appeals found that there was sufficient evidence to support his conviction. Petitioner has not shown that this finding was either an unreasonable application of clearly established federal law or an unreasonable determination of the facts. Accordingly, petitioner is not entitled to habeas relief on this ground.

Petitioner's remaining claims were not considered by the Wisconsin Court of Appeals. Accordingly, they are not properly before this Court. Petitioner's petition for a writ of habeas on these grounds will be denied.

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 (7<sup>th</sup> Cir. 1997).

ORDER

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

Entered this 4<sup>th</sup> day of April, 2007.

BY THE COURT:

S/

---

JOHN C. SHABAZ  
District Judge