

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

ANDRE WINGO,

Petitioner,

MEMORANDUM and ORDER

v.

07-C-163-S

WAYNE LUNDQUIST,

Respondent.

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Respondent filed a motion to dismiss the petition for failure to state a federal constitutional claim. Petitioner responded on May 14, 2007.

FACTS

In 1997 petitioner Andre Wingo was convicted of battery and third degree sexual assault in Milwaukee County Circuit Court. When he was released from prison he was committed to a residential treatment facility. When petitioner was reincarcerated he sought sentence credit for the time he had been in the residential treatment facility.

The Milwaukee County Circuit Court denied petitioner's request for this credit. Petitioner appealed the decision to the Wisconsin Court of Appeals.

On January 17, 2007 the Wisconsin Court of Appeals affirmed the trial court's decision. The Court held that petitioner's time in the treatment residential treatment facility was not considered time "in custody", pursuant to §973.155(1)(a), Wis. Stats.

Petitioner filed a petition for review with the Wisconsin Supreme Court which was denied on March 14, 2007. Petitioner filed this petition for a writ of habeas corpus on March 21, 2007.

MEMORANDUM

Petitioner claims that he is entitled to credit against his state sentence for time he spent in a residential treatment facility. Respondent moves to dismiss petitioner's petition for failure to state a federal constitutional claim.

Petitioner claims the trial court erred in finding that his time spent at the residential treatment facility should not be credited to his state sentence. The Wisconsin Court of Appeals affirmed the trial court decision finding that he was not entitled to the credit pursuant to state law. Petitioner's claim that he was denied credit under state law does not rise to the level of federal constitutional violations which is cognizable in federal petitions for writs of habeas corpus. Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Because this is the only claim petitioner raised in the state court, petitioner's petition for a writ of habeas corpus on these grounds 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 petition for a writ of habeas corpus is DISMISSED with prejudice.

Entered this 29th day of May, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge