

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

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WALLACE BURKS,

Petitioner,

v.

RANDALL HEPP,

Respondent.

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MEMORANDUM and ORDER  
07-C-271-S

Petitioner filed his petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his parole revocation on his state sentence. Respondent filed a motion to dismiss the petition on the grounds that petitioner had procedurally defaulted on his challenge to the revocation by not properly exhausting his state court remedies. Petitioner replied on June 25, 2007.

FACTS

Petitioner Wallace Burks is currently confined in the Jackson Correctional Institution, Black River Falls, Wisconsin. He was convicted in Milwaukee County Circuit Court on March 14, 2002 to one count of felony fleeing an officer and one count of resisting or obstructing an officer as a habitual criminal.

Petitioner was sentenced to a term of two years and six months on the resisting/obstructing count and to a consecutive three year term on the fleeing count. He was eligible for parole only on the resisting/obstructing sentence.

Petitioner was paroled on April 19, 2005. On November 28, 2006 a revocation hearing was held because petitioner had violated the conditions of his release. His parole was revoked on January 4, 2007 and he was returned to prison.

Petitioner did not challenge his revocation in state court.

#### MEMORANDUM

Petitioner is challenging the revocation of parole on his state sentence. Under Wisconsin law, petitioner was required to challenge the revocation order by filing a petition for a writ of certiorari in state circuit court. §893.735, Wis. Stats. The certiorari petition must be filed within forty-five days of the date of revocation. Petitioner failed to file a petition for a writ of certiorari in the state court.

A state prisoner may obtain federal habeas review of his claim only if he has exhausted his state remedies. Thomas v. McCaughtry, 201 F. 3d 995 (7<sup>th</sup> Cir. 2000). Where a prisoner no longer has any state avenue for litigating a claim, he remains unable to obtain federal habeas review unless he demonstrates both cause for the procedural default and actual prejudice resulting from the alleged constitutional violation. See Wainwright v. Sykes, 433 U.S. 72, 87 (1977).

Petitioner can no longer challenge his revocation in state court. He cannot, however, obtain federal habeas review unless he

proves cause and prejudice. Petitioner has not shown that some external impediment prevented him from challenging his revocation in state court. Further he has not shown prejudice. Pursuant to Perruquet v. Briley, 390 F.3d 505, 514 (7<sup>th</sup> Cir. 2004), petitioner cannot obtain federal habeas review of his challenge to his parole revocation. Accordingly, petitioner's petition for a writ of habeas corpus must 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 27<sup>th</sup> day of June, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ  
District Judge