

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

BILL P. MARQUARDT,

Petitioner,

ORDER

v.

08-cv-0386-bbc

GREG VAN RYBROEK, Director,
Mendota Mental Health Institution,

Respondent.

Petitioner Bill Marquardt, a patient at the Mendota Mental Health Institution, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also seeks leave to proceed *in forma pauperis*. The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

On February 5, 2003, the Circuit Court for Eau Claire County found petitioner not guilty by reason of mental disease or defect on seven counts of mistreatment of animals resulting in death, two counts of possession of a firearm by a felon and one count of aggravated burglary. He was committed to the Department of Health and Family Services for 75 years. Petitioner alleges that his custody resulting from that commitment is in violation of the laws or Constitution of the United States because 1) the warrant application for the search of his residence contained material misstatements and omissions, resulting in

the improper seizure of evidence in violation of the Fourth Amendment and 2) his appellate counsel was ineffective for failing to raise this Fourth Amendment claim on appeal in the Wisconsin Supreme Court.

Petitioner's claims cannot be entertained. Petitioner filed an earlier petition for habeas corpus relief, Marquardt v. State of Wisconsin, 06-cv-0684-jcs. The petition was dismissed with prejudice on February 14, 2007, on a finding that there was no merit to his claims. Id. at dkt. #14. According to 28 U.S.C. § 2244(b)(3)(A), a petitioner may not file a second or successive application for habeas relief in the district court unless he first seeks and obtains an order from the appropriate court of appeals authorizing the district court to consider the application. Petitioner has not obtained an order from the Court of Appeals for the Seventh Circuit authorizing him to file his petition. Therefore, this court has no authority to entertain this petition. Petitioner's motion for leave to proceed *in forma pauperis* will be denied as moot.

ORDER

IT IS ORDERED that Bill Marquardt's second petition for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for his failure to obtain the authorization required by 28 U.S.C. § 2244(b)(3)(A) for filing such a petition. IT IS ALSO ORDERED that petitioner's motion for leave to proceed *in forma pauperis* is DENIED as moot.

Entered this 10th day of July, 2008.

BY THE COURT:

Barbara B. Crabb

BARBARA B. CRABB
District Judge