

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

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STANLEY MARTIN,

ORDER

Petitioner,

08-cv-518-bbc

v.

BYRAN BARTOW, Director,  
Wisconsin Resource Center,

Respondent.

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Stanley Martin, who is serving an indefinite term of confinement under Wisconsin's sexually violent person civil commitment provision, Chapter 980, at the Wisconsin Resource Center located in Mauston, Wisconsin, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. This case was remanded recently by the Court of Appeals for the Seventh Circuit. On January 19, 2010, I ordered respondent Byran Bartow to show cause why the petition should not be granted. Now before the court are two motions filed by petitioner.

First, petitioner's counsel, David Gossett, has moved to withdraw as counsel for petitioner and for appointment of new counsel, dkt. #43. Gossett was appointed to represent petitioner by the court of appeals for purposes of petitioner's appeal. Now that the case has been remanded, Gossett avers that he can no longer represent petitioner because

Gossett lives in Washington D.C. and practices appellate litigation only. Petitioner does not oppose Gossett's motion to withdraw and states that he does not want counsel at this stage in the proceedings, dkt. #49. Thus, Gossett's motion to withdraw will be granted, but the motion for appointment of counsel will be denied.

Second, petitioner has filed a motion seeking money damages to help him reintegrate into society, dkt. #46. However, petitioner may not obtain money damages in a petition for a writ of habeas corpus. Habeas corpus is the vehicle used to seek a shortening of the duration of a person's confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 488-90 (1973). Only if petitioner is successful in obtaining his release through a petition for a writ of habeas corpus would he be permitted to file a civil action to recover money damages for his alleged wrongful confinement. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Therefore, petitioner's motion for money damages will be denied.

Finally, petitioner has filed notices with the court expressing concern that the January 19 show cause order requires respondent to address only two out of the three claims he raised in his original petition. In the order to show cause, I directed the state to respond to petitioner's contentions that the state's decision to continue his commitment as a chapter 980 patient violated his constitutional rights because it was based in part on (1) sexual assault charges that were dismissed pursuant to a plea agreement and (2) the opinions of medical experts who considered those dismissed charges in forming their opinions. Petitioner

is concerned that the show cause order does not cover his three original arguments, which he frames as (1) his plea agreement encompassed a meeting of the minds on all of its essential terms; (2) the expert witnesses' reliance on dismissed charges violated the plea agreement; and (3) chapter 980 patients have a constitutional right to enforce plea agreements. However, I have not dismissed any of petitioner's claims and the order to show cause directs the state to respond to the claims made in petitioner's original petition. Petitioner's claim that the plea agreement was a "meeting of the minds" is encompassed by the show cause order because it is not an independent claim for relief; the validity of the plea agreement is relevant only if it was violated in some way by the state's decision to continue petitioner's confinement. Therefore, there is no need for the court to amend its order to show cause. The briefing on the petition should proceed as scheduled.

## ORDER

IT IS ORDERED that

1. The motion to withdraw and for appointment of counsel, dkt. #43, filed by petitioner Stanley Martin's counsel, David Gossett, is GRANTED with respect to Gossett's motion to withdraw. The motion for appointment of counsel is DENIED.

2. Petitioner's motion for money damages, dkt. #46, is DENIED.

Entered this 14th day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge