IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RONALD P. LANE,

ORDER

Petitioner,

11-cv-458-bbc

v.

WILLIAM POLLARD,

Respondent.

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Petitioner Ronald Lane has responded to this court's order dated July 22, 2011, directing him to explain whether he received a full and fair hearing in state court on his claim that police violated his Fourth Amendment rights when stopping him on suspicion that he committed a burglary. Because petitioner has failed to make that showing, I am denying his petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Originally, petitioner asserted two claims: (1) police seized him in violation of the Fourth Amendment and evidence obtained as a result of that seizure should have been suppressed; and (2) the trial court held a restitution hearing without giving him an adequate opportunity to be heard, in violation of the due process clause. I dismissed the second claim in the July 22 order because a restitution order cannot be challenged in a habeas petition.

Washington v. Smith, 564 F.3d 1350, 1350-51 (7th Cir. 2009).

With respect to the second claim, I noted that federal courts cannot consider Fourth Amendment claims on habeas corpus review in cases in which the state courts allowed the defendant a full and fair opportunity to litigate those claims. Stone v. Powell, 428 U.S. 465 (1976). A defendant receives a full and fair opportunity to litigate if (1) he has clearly informed the state court of the factual basis for that claim and has argued that those facts constitute a violation of his Fourth Amendment rights and (2) the state court has carefully and thoroughly analyzed the facts and (3) applied the proper constitutional case law to the facts. Hampton v. Wyant, 296 F.3d 560, 563 (7th Cir. 2002) (citing Pierson v. O'Leary, 959 F.2d 1385, 1391 (7th Cir. 1992)). Under these criteria, "full and fair" means the right to present the Fourth Amendment claim. So long as the state court gives a claim adequate and unbiased consideration, it is irrelevant whether the court ultimately reaches the correct decision. Cabrera v. Hinsley, 324 F.3d 527, 531-32 (7th Cir. 2003).

In his response, petitioner says that he did not receive a full and fair opportunity because the Wisconsin Court of Appeals "did not apply any constitutional case law . . . to [his] facts." Dkt. #3, at 2. However, a review of the decision of the court of appeals shows that it articulated the proper standard for considering the reasonableness of a traffic stop under the Fourth Amendment, that is, whether the officers had reasonable suspicion of a crime, supported by specific and articulable facts. State v. Lane, 2008 WL 3863864, *1

(Wis. Ct. App. 2008) (citing State v. Waldner, 206 Wis. 2d 51, 55, 556 N.W.2d 681 (1996)). The court concluded that the officer had reasonable suspicion because he had received a report of a burglary at a particular address, he discovered petitioner leaving the parking lot of an unlighted nearby restaurant and a criminal history check on petitioner's license plate showed that he had been convicted of burglary twelve times. Id. Although the court of appeals did not rely on other cases with similar facts to justify its conclusion, citation of particular cases is not required. Ben-Yisrayl v. Buss, 540 F.3d 542, 552 (7th Cir. 2008) (petitioner not denied full and fair opportunity simply because state court filed to cite particular case); Watson v. Hulick, 481 F.3d 537, 542 (7th Cir. 2007) (state court's failure to correctly apply Supreme Court case law did not deny petitioner full and fair opportunity). Because the court applied the proper standard and considered the relevant facts, petitioner's claim fails.

In the alternative, petitioner says that the rule of Stone is not "jurisdictional." Dkt. #3, at 2 (citing Withrow v. Williams, 507 U.S. 680 (1993), and United States ex rel. Bostick v. Peters, 3 F.3d 1023 (7th Cir. 1993)). Petitioner is correct, but that does not mean that district courts are free to ignore the rule in any case. Petitioner identifies no special circumstances in this case that would warrant disregarding Stone in his case.

Even if I agreed with petitioner that Stone should not apply, he could not prevail. He has not shown that the state court of appeals's decision was wrong, much less that it was "so

lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement," Harrington v. Richter, 131 S. Ct. 770, 786-87 (2011), as he must to obtain relief under § 2254(d). Petitioner says that "[r]easonable suspicion cannot be established on knowledge that the suspect has had prior criminal conduct," dkt. #3, at 2, but the decision of the court of appeals is clear that the stop was supported by more than just petitioner's criminal history:

> We do not suggest that, standing alone, a reasonable officer would have a reasonable suspicion to stop a person for investigative purposes after learning that the suspect had been previously convicted of crimes similar to the crime being investigated. Here, we consider the totality of the circumstances, as we must, and conclude that, taken together, knowledge that Lane had been convicted of burglary 12 times along with being observed leaving the parking lot of a closed and darkened restaurant in the middle of the night near the location of a recent late-night robbery provided reasonable suspicion for the police to stop Lane to investigate possible criminal activity.

Lane, 2008 WL 3863864, at *1 n.1. Accordingly, petitioner is not entitled to relief.

Under Rule 11 of the Rules Governing Section 2254 Cases, the court must issue or deny a certificate of appealability when entering a final order adverse to a petitioner. To obtain a certificate of appealability, the applicant must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tennard v. Dretke, 542 U.S. 274, 282 (2004). This means that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell,

537 U.S. 322, 336 (2003) (internal quotations and citations omitted).

Although the rule allows a court to ask the parties to submit arguments on whether a certificate should issue, it is not necessary to do so in this case because the question is not a close one. For the reasons stated, reasonable jurists would not debate the decision that the petition should be dismissed denied. Therefore, no certificate of appealability will issue.

ORDER

IT IS ORDERED that

1. Petitioner Ronald Lane's petitioner for a writ of habeas corpus under 28 U.S.C. § 2254 is DENIED.

2. Petitioner is DENIED a certificate of appealability. Petitioner may seek a certificate from the court of appeals under Fed. R.App. P. 22

Entered this 1st day of September, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge