

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

MICHAEL WESTON,

Petitioner,

v.

GARY HAMBLIN,

Respondent.

ORDER

11-cv-481-bbc

In a September 1, 2011 order, I dismissed the petition of Michael Weston for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 because petitioner failed to exhaust his state court remedies. On September 12, 2011, petitioner filed a motion for reconsideration, which I denied in a October 17 order because petitioner failed to raise any arguments persuading me that I was incorrect in dismissing his petition.

Now petitioner has filed another motion for reconsideration. He again raises the argument that his appellate counsel was ineffective, but he fails to show that he has litigated this ineffectiveness issue in the state courts. Edwards v. Carpenter, 529 U.S. 446, 452-53 (2000) (because assertion of ineffective assistance as cause to excuse procedural default in § 2254 petition is itself a constitutional claim, petitioner must raise this claim first in state court or he has procedurally defaulted it.)

Also, petitioner argues that his state court remedies are unavailable because of the

financial burden of challenging his conviction and sentence in state court, but now acknowledges that he would be allowed to proceed without prepaying the full filing fees for pursuing his remedies in state court. He says that the financial burden is too great because it would take him a very long time to pay off the filing fees given his current income of less than \$8 a month. This new argument is unpersuasive; a litigant always has the responsibility to eventually pay filing fees assessed by a court. And in any case, it is unclear whether there is even a mechanism for Wisconsin courts to recover the balance of these filing fees for an indigent inmate like petitioner; the Wisconsin version of the Prisoner Litigation Reform Act does not include a provision for automatically deducting the balance of filing fees for prisoners who seek relief from a judgment of conviction or sentence. Wis. Stat. §§ 801.02(7)(a)(2) (definition of prisoner); 814.29 (proceeding in forma pauperis). Accordingly, IT IS ORDERED that petitioner's second motion for reconsideration, dkt. #13, is DENIED. Moreover, because I consider this matter closed, any further motions for reconsideration submitted by petitioner will be routed directly to chambers for review and deemed rejected, without the need for judicial action, on the 30th day following receipt, unless the court orders otherwise.

Entered this 30th day of January, 2012.

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