

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. Now petitioner has filed a motion for reconsideration of that decision, but he fails to raise any arguments persuading me that I was incorrect in dismissing his petition. Accordingly, I will deny the motion for reconsideration.

Petitioner again argues that his state court remedies are unavailable because of the financial burden of initiating proceedings at each level of the state court system, but he provides no evidence suggesting that I was incorrect when I noted that he has repeatedly been granted leave to proceed in forma pauperis in the state courts, so he fails to show that these remedies are unavailable.

Also, petitioner seems to raise an argument that his appellate or postconviction counsel was ineffective by failing to raise various arguments in state court, and it is true that ineffective assistance of counsel can establish “cause” for a procedural default. However, in

Edwards v. Carpenter, 529 U.S. 446 (2000), the Supreme Court held that because the assertion of ineffective assistance as a cause to excuse a procedural default in a § 2254 petition is itself a constitutional claim, the petitioner must have raised this claim first to the state court or he has procedurally defaulted it. Id. at 452-53. Petitioner does not provide any evidence suggesting he presented a claim of ineffective assistance of appellate or postconviction counsel to the state courts. He must raise this issue in state court before bringing a federal habeas petition, and as I have already stated above, there do not appear to be any financial barriers to his doing so.

ORDER

IT IS ORDERED that petitioner Michael Weston's motion for reconsideration of the court's September 1, 2011 order dismissing his petition for a writ of habeas corpus, dkt. #11, is DENIED.

Entered this 17th day of October, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge