

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

ERIC JAMES HENDRICKSON,

Petitioner,

ORDER

v.

12-cv-354-bbc

DEBORAH McCULLOCH, Director,
Sand Ridge Secure Treatment Center,

Respondent.

Petitioner Eric James Hendrickson is confined at the Sand Ridge Secure Treatment Center as a “sexually violent person” under Wis. Stat. ch 980. He sought a writ of habeas corpus under 28 U.S.C. § 2254 to challenge a ruling by the Circuit Court for Marathon County, denying his petition for discharge from confinement under Wis. Stat. § 980.09. The Wisconsin Court of Appeals affirmed that decision, concluding that the evidence was constitutionally sufficient to support his continued confinement and that petitioner’s contention to the contrary was foreclosed by existing precedent. In re Commitment of Hendrickson, 2011 WI App 58, 332 Wis. 2d 806, 798 N.W.2d 320 (Wis. App. March 10, 2011) (unpublished). On December 4, 2012, I denied his petition for a writ of habeas corpus and dismissed this case after concluding that the state court’s decision was neither contrary to, nor an unreasonable application of, clearly established federal law.

Petitioner has now filed a motion for relief from the judgment under Fed. R. Civ. P.

60(b)(6), which authorizes relief from a final judgment when “extraordinary circumstances” are present. West v. Schneider, 485 F.3d 393, 395 (7th Cir. 2007). Petitioner argues that he is entitled to relief because (1) the state circuit court erred by failing to properly consider his eligibility for supervised release from confinement under Wis. Stat. § 980.08; and (2) his appointed appellate counsel was ineffective for failing to press this issue during his state court appeal.

Petitioner does not take issue with the merits of my decision and he does not advance any valid reason to set aside the final judgment under any portion of Fed. R. Civ. P. 60(b). Rather, petitioner’s proposed claims constitute new substantive grounds for relief from the underlying state court judgment and for that reason, his Rule 60(b)(6) motion constitutes a second or successive petition for purposes of 28 U.S.C. § 2244(b). Gonzalez v. Crosby, 545 U.S. 524, 530-31 (2005). Petitioner must obtain permission to file a successive petition from the Court of Appeals for the Seventh Circuit before he can proceed with his proposed claims in district court. 28 U.S.C. § 2244(b)(3). Absent prior authorization from the Seventh Circuit, this court has no jurisdiction to consider petitioner’s proposed claims.

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 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). Where denial of relief is based on procedural grounds, the petitioner also must show that jurists of reason “would find it debatable whether the district court was correct in

its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). Because it is plain that petitioner contemplates a successive collateral attack on a state court judgment, reasonable jurists would not likely disagree that review is barred for lack of prior authorization under 28 U.S.C. § 2244(b). Therefore, no certificate of appealability will issue.

ORDER

IT IS ORDERED that

1. Petitioner Eric James Hendrickson’s motion for relief from the judgment under Fed. R. Civ. P. 60(b)(6) is construed as an unauthorized second or successive habeas corpus application and is DISMISSED without prejudice for lack of subject matter jurisdiction.
2. Petitioner is DENIED a certificate of appealability. If petitioner wishes he may seek a certificate from the court of appeals under Fed. R. App. 22.

Entered this 25th day of April, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge