IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHARLES ANDERSON,

Petitioner, OPINION AND ORDER

v. 12-cv-578-bbc

DEBORAH McCULLOCH, Director,
Sand Ridge Secure Treatment Center,

Respondent.

- -

Petitioner Charles Anderson is confined at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin, as a "sexually violent person" under Wis. Stat. ch. 980. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging the ruling of the Circuit Court for Portage County, denying his petition for supervised release under Wis. Stat. § 980.08. Petitioner contends that his continued confinement is unlawful and that he was denied supervised release without due process because the evidence was insufficient to prove that he remains a sexually violent person as defined in Wis. Stat. § 980.01(7).

Documents in the record show that petitioner raised a similar challenge on direct appeal in the state courts. In rejecting petitioner's argument, the Wisconsin Court of Appeals concluded that petitioner did not satisfy all of the statutory criteria for supervised release found in Wis. Stat. § 980.08(4)(cg) and that the evidence was sufficient to support the circuit court's decision. State v. Anderson, 2011 WI App 1004, 340 Wis. 2d 742, 813

N.W.2d 248 (Wis. App. March 22, 2012) (unpublished). Petitioner filed this federal habeas corpus petition after the Wisconsin Supreme Court denied his request for further review.

From my review of the record, I conclude that the state court's decision was neither contrary to nor an unreasonable application of clearly established federal law. Therefore, the petition for a writ of habeas corpus must be denied.

The following facts are drawn from the pleadings and the state court record.

RECORD FACTS

A. Background

Petitioner was convicted in the Circuit Court for Portage County of first-degree sexual assault of a child and sentenced to a term of imprisonment in the Wisconsin Department of Corrections. Shortly before his release from prison, the state petitioned for an indefinite period of civil commitment, alleging that petitioner was a "sexually violent person" as defined in Wis. Stat. ch. 980. Under Chapter 980, the state may subject to indefinite commitment "a person who has been convicted of a sexually violent offense . . . and who is dangerous because he or she suffers a mental disorder that makes it likely that the person will engage in acts of sexual violence." Wis. Stat. § 980.01(7).

During a commitment proceeding in the Circuit Court for Portage County, petitioner conceded that he met the definition of a sexually violent person set out in Wis. Stat. § 980.01(7). The circuit court agreed and entered judgment on November 9, 2005, committing petitioner to the Wisconsin Department of Health Services "for control, care

and treatment until such time as [he] is no longer a sexually violent person." In re Commitment of Anderson, Portage County Case No. 05CI4. Since that time, petitioner has been confined at either the Sand Ridge Secure Treatment Center or the Wisconsin Resource Center for treatment and evaluation.

B. Release from Confinement Under Chapter 980

Once a circuit court enters a judgment of civil commitment is entered, it must place the sexually violent person in a secure, institutional setting. Wis. Stat. 980.065. The primary purposes of institutional commitment under Chapter 980 are (1) "protection of the public," and (2) "treatment of convicted sex offenders who are at a high risk to reoffend in order to reduce the likelihood that they will engage in such conduct in the future." State v. Carpenter, 197 Wis. 2d 252, 271, 541 N.W.2d 105, 112 (1995). The Wisconsin Supreme Court has characterized commitment under Chapter 980 as both non-punitive and remedial in nature. Id. 197 Wis. 2d at 271-72, 541 N.W.2d at 112-13. Consistent with this characterization, Wis. Stat. § 980.07 requires the state to reexamine each committed individual on an annual basis and issue a written report, saying whether the individual is eligible for supervised release under Wis. Stat. § 980.08(4)(cg) or discharge from confinement under § 980.09, depending on the individual's progress in treatment.

In addition to recommendations made by state examiners, a committed individual may file his own motion for discharge from confinement at any time under Wis. Stat. § 980.09, arguing that he no longer meets the criteria for commitment as a sexually violent

person. A person seeking discharge under Wis. Stat. § 980.09 must allege facts that would allow a court or jury to conclude that his condition has changed since the date of initial confinement so that he does no longer meets the criteria for commitment as a sexually violent person. Martin v. Bartow, 628 F.3d 871, 875 (7th Cir. 2010) (citing Wis. Stat. § 980.09(1); In re Commitment of Kruse, 296 Wis. 2d 130, 150, 722 N.W.2d 742, 752 (2006)). If the petitioner meets his pleading burden, the circuit court will hold a hearing to determine whether a jury could conclude that the petitioner is no longer a sexually violent person. Martin, 628 F.3d at 875 (citing Wis. Stat. § 980.09(2)). The burden then shifts to the state to demonstrate by clear and convincing evidence that the petitioner's continued confinement remains justified. Id. (citing Wis. Stat. § 980.09(3)).

Short of discharge, a committed individual who has made significant progress in treatment may file a motion for supervised release from confinement under Wis. Stat. § 980.08(4)(cg). In contrast to a discharge proceeding under Wis. Stat. 980.09, where the state has the burden of proof to show that the petitioner continues to meet the criteria for indefinite confinement, the petitioner seeking supervised release from confinement has the burden to meet all of the following criteria by clear and convincing evidence:

1. The person has made significant progress in treatment and the person's progress can be sustained while on supervised release.

2. It is substantially probable that the person will not engage in an act of sexual violence while on supervised release.

3. Treatment that meets the person's needs and a qualified provider of the treatment are reasonably available.

4. The person can be reasonably expected to comply with his or

her treatment requirements and with all of his or her conditions or rules of supervised release that are imposed by the court or by the department.

5. A reasonable level of resources can provide for the level of residential placement, supervision, and ongoing treatment needs that are required for the safe management of the person while on supervised release.

Wis. Stat. § 980.08(4)(cg); State v. West, 2011 WI 83, ¶¶ 55-59, 81, 336 Wis. 2d 578, 604-05, 614, 800 N.W.2d 929, 942-43, 947. If a petitioner meets all five factors for supervised release, the circuit court will order the Department of Health Services to propose terms and conditions for the petitioner to follow. State v. Thiel, 2012 WI App 48, ¶ 3, 340 Wis. 2d 654, 657, 813 N.W.2d 709, 711.

C. Petitioner's Motion for Supervised Release

After the judgment of commitment was entered against petitioner in 2005, he failed to achieve his release from confinement in any of his subsequent evaluations under Wis. Stat. 980.07. In late 2008, petitioner filed a motion for supervised release from confinement under Wis. Stat. § 980.08(4)(cg). The Circuit Court for Portage County appointed counsel to represent him and conducted a hearing on July 19, 2010, to determine whether he met all of the criteria for supervised release, as required by § 980.08(4)(cg). Noting that petitioner was college educated and reasonably articulate, the circuit court granted petitioner leave to conduct some of the questioning on his own, with the assistance of his appointed counsel on a stand-by basis, with the condition that petitioner comply with the rules of evidence and the court's rulings.

The state presented testimony from a psychologist at the Sand Ridge Secure Treatment Facility regarding petitioner's treatment history and the results of his periodic examinations under Wis. Stat. § 980.07. Dr. Richard McKee testified that petitioner had failed to successfully complete the earliest phase of the sex offender treatment program and had been demoted several times. Dr. McKee reported further that petitioner was disruptive, that he was combative and frequently antagonized other patients and that he had an unusually high number of behavioral conduct reports for violating rules. Dr. McKee testified that, in his opinion, petitioner had not made significant progress in treatment and had not met other criteria for supervised release under § 980.08(4)(cg).

The state also presented testimony from a psychologist at Sand Ridge who had examined petitioner previously under Wis. Stat. § 980.07. Dr. Lori Pierquet testified that petitioner had failed to advance beyond the introductory phase of the sex offender treatment program at Sand Ridge. Dr. Pierquet observed that petitioner had a lengthy record of sex offenses involving prepubescent boys and that he operated with a high degree of psychopathy that included the ability to charm and manipulate his victims. Dr. Pierquet said that petitioner continued to harbor intense sexual fantasies of a deviant nature and that he had not demonstrated a willingness to change.

On cross-examination by petitioner, Dr. Pierquet acknowledged that advanced age (petitioner was nearly 68 at the time of the hearing) was a "static" factor that could reduce a sexually violent person's risk of re-offending. Dr. Pierquet emphasized, however, that age alone would not reduce the risk of re-offending where petitioner was concerned. She

explained that other "dynamic risk factors" made petitioner reasonably certain ("more likely than not") to re-offend if released to the community, pointing to his lengthy record of sex offenses, his lack of progress in treatment, his lack of interpersonal skills and his frequent refusal to follow rules at Sand Ridge, among other things. Relying on these factors, Dr. Pierquet concluded that petitioner did not meet the criteria for supervised release from an institutional setting because he had not made significant progress in treatment.

Petitioner presented testimony from an institutional supervisor (Richard Kriz) and a nursing instructor (Charlotte Messenger) employed at the Wisconsin Resource Center, regarding the types of programs available at that facility and his general behavior. Although these witnesses described the programs offered at the Wisconsin Resource Center and their opinion of petitioner as a patient, neither one had formal training in sex offender treatment. Neither witness addressed petitioner's progress in treatment or any of the statutory requirements for supervised release under Wis. Stat. § 980.08(4)(cg).

Petitioner testified on his own behalf, arguing that his level of dangerousness was low and that he should be released because he had been in treatment for more than four years. Petitioner admitted that he was a pedophile with an unnatural sexual attraction to prepubescent boys and that this condition was unlikely to change, although it could be managed. Petitioner admitted that he had had to repeat introductory programs, that he lacked motivation in treatment at times and that he had received numerous conduct reports for violating rules with which he disagreed. Nevertheless, he maintained that he would do well on supervised release and that he was unlikely to re-offend because he did not wish to

return to prison at his age. Petitioner argued that the circuit court should consider whether he was entitled to outright discharge from civil commitment because he no longer met the legal definition of a sexually violent person under Wis. Stat. ch. 980.

The district attorney noted in his summation that this was not a discharge proceeding under Wis. Stat. 980.09 and that supervised release required proof that petitioner met all five criteria listed in Wis. Stat. 980.08(4)(cg). He argued that supervised release was not available to petitioner because he had refuted the evidence presented by Dr. McKee and Dr. Pierquet, who testified that petitioner had not made significant progress in treatment and had difficulty following rules imposed by his treatment providers, among other considerations militating against his release.

After considering all of the testimony and evidence presented during the hearing, the circuit court agreed with the state and announced a series of findings in open court. Dkt. 6, Ex 2, Transcript: Chapter 980 Hearing, July 19, 2010, at 167-74. The circuit court found that petitioner was a pedophile with a substantial record of sex offenses involving young boys, for which he had been convicted in California, Arizona and Wisconsin. From the testimony and written reports in the record, the court found that petitioner had not made "significant progress in treatment" that would suggest that he could sustain any improvement in his condition "while on supervised release." The circuit court added that petitioner posed a "medium risk" of engaging in acts of sexual violence if he were released to the community and, moreover, he could not "reasonably be expected to comply with treatment" outside an institutional setting. The circuit court concluded that petitioner was

not entitled to supervised release because he did not meet all of the statutory criteria set out in Wis. Stat. § 980.08(4)(cg).

D. Petitioner's Direct Appeal

On direct appeal, petitioner argued that the circuit court's ruling was arbitrary and that the presiding judge had interfered with his efforts to cross-examine the witnesses by interrupting his questions. He asserted that one of the state's expert witnesses (Dr. Pierquet) had made a misstatement about petitioner's criminal record and that she had "used faulty and sub-standard judgment in her testimony" regarding his suitability for release. Petitioner also argued that Wis. Stat. ch. 980 was unconstitutional on its face and unconstitutional as applied to him because the state failed to prove that he posed a risk of re-offending if discharged.

The Wisconsin Court of Appeals observed that petitioner did not meet his burden to establish all of the criteria for supervised release under Wis. Stat. § 980.08(4)(cg) and affirmed the circuit court's decision after finding that it was supported by sufficient evidence. State v. Anderson, 2011 WI App 1004, ¶¶ 7-8, 340 Wis. 2d 742, 813 N.W.2d 248 (Wis. App. March 22, 2012) (unpublished). The court of appeals rejected petitioner's remaining arguments, holding that the circuit court did not interfere improperly with petitioner's right to examine witnesses and that there were no material mistakes in Dr. Pierquet's testimony and no error in her ultimate conclusion. Id. at ¶¶ 9-10. Finally, the court of appeals held that appellate review of petitioner's constitutional arguments was barred because he had not

raised those arguments before the circuit court. Id. at ¶ 11. The Wisconsin Supreme Court denied further review in summary fashion on August 2, 2012. Petitioner filed this federal petition for a writ of habeas corpus on August 13, 2012.

OPINION

Review of the pending federal habeas corpus petition is governed by the terms of the Antiterrorism and Effective Death Penalty Act, codified at 28 U.S.C. § 2254(d), which "tightly constrains the availability of the writ." Winston v. Boatwright, 649 F.3d 618, 625 (7th Cir. 2011) (citing Stock v. Rednour, 621 F.3d 644, 649 (7th Cir. 2010)); see also Duncan v. Walker, 533 U.S. 167, 176 (2001) (explaining that review under 28 U.S.C. § 2254 is not limited to state court criminal convictions, but can include a state court order of civil commitment or civil contempt). If a petitioner's claims have been adjudicated on the merits in state court, a federal habeas corpus court may grant relief only if the state court's adjudication of the claims "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Alternatively, relief is available if the state court's adjudication resulted in a decision that was "based on an unreasonable determination of the facts in light of the evidence" presented in the state court proceeding. 28 U.S.C. § 2254(d)(2).

A state court decision is contrary to clearly established precedent if the state court applies a rule that contradicts the governing law set forth by the Supreme Court. Williams

v. Taylor, 529 U.S. 362, 405 (2000). A state court decision also will be contrary to clearly established precedent if the state court is addressing a set of facts materially indistinguishable from those in a decision of the Supreme Court and arrives at a different result. Id. at 406. In this context, "clearly established" law refers to "the holdings, as opposed to the dicta," of the Supreme Court's decisions as of the time of the relevant state court decision. Carey v. Musladin, 549 U.S. 70, 74 (2006) (citing Williams, 529 U.S. at 412); see also Howes v. Fields, — U.S. —, 132 S. Ct. 1181 (2012).

A federal court may grant relief under the "unreasonable application" clause "if the state court correctly identifies the governing legal principle from [Supreme Court] decisions but unreasonably applies it to the facts of the particular case." Bell v. Cone, 535 U.S. 685, 694 (2002). The focus of the reasonableness inquiry is on whether the state court's application of clearly established federal law is "objectively unreasonable," not whether the court applied clearly established federal law correctly. Id.

The Supreme Court has cautioned that, in conducting federal habeas review, state court decisions must be treated with "deference and latitude." Harrington v. Richter, — U.S. —, 131 S. Ct. 770, 787 (2011); Renico v. Lett, 559 U.S. —, 130 S. Ct. 1855, 1862 (2010) (The AEDPA "imposes a 'highly deferential standard for evaluating state-court rulings, . . . and 'demands that state-court decisions be given the benefit of the doubt.") (citations omitted). The AEDPA standard is "difficult to meet" because it was meant to limit relitigation of claims already rejected in state proceedings and to preserve the extraordinary nature of federal habeas review as "a 'guard against extreme malfunctions in the state

criminal justice systems,' not a substitute for ordinary error correction through appeal." Richter, 131 S. Ct. at 786 (quoting Jackson v. Virginia, 443 U.S. 307, 332, n.5 (1979) (Stevens, J., concurring)).

A. Petitioner's Claims

Petitioner's central argument is that his continued confinement is unconstitutional because the state failed to meet its burden of proof at the supervised release hearing. He also raises a constitutional challenge to Chapter 980 "in toto." In deciding whether a habeas corpus petition merits relief, a reviewing court looks to the "last reasoned state-court opinion" to address the petitioner's claims. Ylst v. Nunnemaker, 501 U.S. 797, 805 (1991); Jefferson v. Welborn, 222 F.3d 286, 288 (7th Cir. 2000). The last state court to issue a written opinion concerning the petitioner's claims was the Wisconsin Court of Appeals, which affirmed the circuit court's decision to deny supervised release. State v. Anderson, 2011 WI App 1004, 340 Wis. 2d 742, 813 N.W.2d 248 (Wis. App. March 22, 2012) (unpublished).

1. Sufficiency of the evidence

Petitioner starts out with a misplaced assertion that he should have been discharged from confinement, because the state failed to prove that his continued commitment was required. The fact is that he bore the burden of proving that he was entitled to supervised released. The Wisconsin Supreme Court has held that Wis. Stat. § 980.08(4)(cg)

unambiguously imposes the burden of proof on the committed individual to show that supervised release is appropriate. State v. West, 2011 WI 83, ¶ 81, 336 Wis. 2d 578, 614, 800 N.W.2d 929, 947; State v. Nordberg, 2011 WI 84, ¶ 10, 336 Wis. 2d 634, 638, 800 N.W.2d 926, 928 (noting that Wis. Stat. § 980.08(4)(cg) "unambiguously places the burden of proof on the committed individual, and that policy considerations dictate that the individual bear his burden of persuasion by clear and convincing evidence"). Consistent with this precedent, the Wisconsin Court of Appeals rejected petitioner's contention that the state was obligated to show that he was not eligible for supervised release. Anderson, 2011 WI App at ¶ 7. It noted that petitioner had not addressed the factors listed in Wis. Stat. § 980.08(4)(cg), most notably the finding that he had not made significant progress in treatment and affirmed the circuit court's decision after concluding that it was supported by the record. Id. at ¶¶ 7-8.

Liberally construed, petitioner's argument seems to be that the state court's decision to deny his petition for supervised release is contrary to and an unreasonable application of federal law because the evidence was insufficient under Jackson v. Virginia, 443 U.S. 307 (1979), and could not support his continued confinement under Chapter 980. Respondent contends that petitioner cannot prevail because the evidence was more than sufficient to support the circuit court's decision and the Wisconsin Court of Appeals did not reach an unreasonable result when it concluded otherwise. I agree for reasons explained briefly below.

In the context of a criminal prosecution, the due process clause "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to

constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364 (1970). The evidence is sufficient to support a criminal conviction if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson, 443 U.S. at 319. Where civil commitment proceedings are concerned, the standard of proof must be higher than a preponderance of the evidence, but may be lower than beyond a reasonable doubt. Addington v. Texas, 441 U.S. 418, 430-33 (1979).

As outlined above, petitioner had the burden to prove by clear and convincing evidence that he met all of the statutory criteria for supervised release under Wis. Stat. § 980.08(4)(cg). State v. West, 2011 WI 83, ¶¶ 55-59, 81, 336 Wis. 2d 578, 604-05, 614, 800 N.W.2d 929, 942-43, 947. He did not carry his burden. This is dispositive of his claim.

Under the express terms of the statute, a circuit court "may not authorize supervised release of a sexually violent person" unless the petitioner satisfies all five of the criteria listed in Wis. Stat. § 980.08(4)(cg). The circuit court found that petitioner failed to meet at least two of the statutory criteria because he failed to demonstrate "significant progress in treatment" and he also failed to demonstrate that he could comply with prescribed treatment or rules while on supervised release. Hrg. Trans., July 19, 2010, at 173, 174. The Wisconsin Court of Appeals agreed and observed, in particular, that petitioner had not refuted testimony from the state's expert witnesses regarding his lack of progress in treatment. Anderson, 2011 WI App 1004, ¶¶ 7-8, 340 Wis. 2d 742, 813 N.W.2d 248. The

court of appeals also noted that the petitioner did not address any of the other statutory criteria for supervised release under Wis. Stat. § 980.08(4)(cg).

The state court's findings and conclusions are supported by the hearing record. Both Dr. McKee and Dr. Pierquet gave their opinions that petitioner had not made significant progress in treatment and had difficulty complying with rules at the treatment facility. Petitioner did not dispute the evidence of his poor performance in treatment and he admitted having trouble obeying rules that did not make sense to him. Thus, he failed to meet all of the criteria for supervised release as required in Wis. Stat. § 980.08(4)(cg) and the state court could not authorize his supervised release.

Petitioner does not address any of the relevant statutory factors for supervised release here and he makes no effort to show that the state court's decision was objectively unreasonable. Under these circumstances, a federal habeas corpus court may not overturn a state court decision that turns on the sufficiency of the evidence. Cavazos v. Smith, — U.S. —, 132 S. Ct. 2, 4 (2011). Accordingly, I conclude that the state court's decision was neither contrary to nor an unreasonable application of Jackson and that petitioner is not entitled to relief on this claim.

2. Petitioner's remaining arguments

In addition to his claim of insufficient evidence, petitioner raises several constitutional arguments in his supporting brief. Dkt. #7. He contends that Wis. Stat. ch. 980 is unconstitutional because, by shifting the burden to the committed person, the

statutory scheme is impermissibly punitive, arbitrary, and "overly vague," in violation of his rights to due process and equal protection, among other things.

First, petitioner's constitutional challenges were rejected by the Wisconsin Court of Appeals because petitioner failed to present his arguments to the circuit court. As respondent points out, this constitutes a procedural default that bars federal habeas corpus review. O'Sullivan v. Boerckel, 526 U.S. 838 (1999); Moore v. Bryant, 295 F.3d 771, 774 (7th Cir. 2002). Petitioner makes no argument to the contrary and makes no effort to fit his case within a recognized exception to the procedural bar. Accordingly, I agree that federal habeas corpus review is not available for these claims.

Second, and in the alternative, the respondent maintains that petitioner's constitutional claims lack merit. He notes that claims such as those raised by petitioner have been rejected repeatedly by the Wisconsin Supreme Court, which has upheld the constitutionality of Chapter 980 in general and its provision for supervised release in particular. State v. Carpenter, 197 Wis. 2d 252, 541 N.W.2d 105 (1995); State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995); State v. Rachel, 2002 WI 81, 254 Wis. 2d 215, 647 .W.2d 762; State v. Laxton, 2002 WI 82, 254 Wis. 2d 185, 647 N.W.2d 784; State v. West, 2011 WI 83, ¶¶ 82-102, 336 Wis. 2d 578, 614-621, 800 N.W.2d 929; State v. Nordberg, 2011 WI 84, ¶ 10, 336 Wis. 2d 634, 638-69, 800 N.W.2d 926.

The United States Supreme Court also has rejected similar constitutional challenges raised by petitioner, while upholding a similar state civil commitment statute from Kansas. Kansas v. Hendricks, 521 U.S. 346 (1997), and Kansas v. Crane, 534 U.S. 407 (2002). The

United States Court of Appeals for the Seventh Circuit has held that Wis. Stat. ch. 980 comports with due process. Laxton v. Bartow, 421 F.3d 565, 571-72 (7th Cir. 2005) (holding that petitioner's continued confinement under Chapter 980 comported with constitutional standards of due process articulated in Kansas v. Hendricks and Kansas v. Crane). Any constitutional challenge by petitioner to the supervised release portion of Chapter 980 fails ultimately because there is no general constitutional right to discretionary parole or supervised release from custody. Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 7-11 (1979); West, 2011 WI at ¶¶ 83-89, 336 Wis. 2d at 616-17, 800 N.W.2d at 947-48 (analogizing supervised release under Wis. Stat. 980.08 to criminal parole and finding no protected liberty interest). Petitioner does not show otherwise.

What is more important, the Wisconsin Court of Appeals' adjudication in petitioner's case rests on its interpretation of state law, meaning that its decision is not subject to review in a federal habeas corpus proceeding. McCloud v. Deppisch, 409 F.3d 869, 874-75 (7th Cir. 2005) (citing Estelle v. McGuire, 502 U.S. 62, 67-68 (1991)). It is well established that "[s]tate courts are the ultimate expositors of their own states' laws and federal courts entertaining petitions for writs of habeas corpus are bound by the construction placed on a state's criminal statutes by the courts of that state except in extreme circumstances . . . ." McCloud, 409 F.3d at 875 (quoting Lechner v. Frank, 341 F.3d 635, 641 (7th Cir. 2003) (citation omitted)). Petitioner does not demonstrate that his case fits within an exception to the limits on federal habeas corpus review. Lechner, 341 F.3d at 642 ("Violations of state

laws are cognizable only if they resulted in fundamental unfairness and consequently violate a petitioner's constitutional rights."). For all of these reasons, he has not established that the Wisconsin Court of Appeals unreasonably applied clearly established federal law and he is not entitled to relief on his constitutional claims.

In summary, petitioner has not established that the state court issued a decision that was contrary to or an unreasonable application of clearly established federal law when it denied his request for discharge from confinement. Therefore, his habeas corpus petition must be denied.

B. Certificate of Appealability

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). 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 above, reasonable jurists would not debate whether the

decision of the Wisconsin Court of Appeals was objectively reasonable or contrary to clearly established Supreme Court precedent. Therefore, no certificate of appealability will issue.

ORDER

IT IS ORDERED that

1. Petitioner Charles G. Anderson's petition for a writ of habeas corpus under 28 U.S.C. § 2254 is DENIED.

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 8th day of February, 2013.

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