

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

JAMES LAMMERS,

Petitioner,

v.

WARDEN McCAUGHTRY, Warden,
Waupun Correctional Institution,

Respondent.

ORDER

10-cv-345-bbc

On August 10, 2010, I dismissed James Lammers’s petition for a writ of habeas corpus with prejudice because he is not in custody as a result of his conviction in case 95-CF-412, which is the conviction he is challenging. Now before the court is his motion for reconsideration of this decision. Dkt. #12.

In his motion, petitioner has not presented any evidence that he is custody as a result of his conviction in 95-CF-412. Therefore, his motion for reconsideration will be denied.

As a final matter, in my decision dismissing petitioner’s petition, I failed to issue or deny a certiffical of appealabililty as I am now required to do under Rule 11 of the Rules Governing Section 2254 Cases. 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 Lammers’s petition should be dismissed because he is no longer in custody pursuant to the conviction he is challenging. Therefore, no certificate of appealability will issue.

ORDER

IT IS ORDERED that:

1. James D. Lammers’s motion for reconsideration, dkt. #12, 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 30th day of August, 2010.

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