

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

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JERMAINE W. SHUTTLESWORTH,

Petitioner,

v.

REED RICHARDSON,

Respondent.

ORDER

14-cv-567-jdp

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Pro se petitioner Jermaine W. Shuttlesworth filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state court convictions for second-degree sexual assault of a child and attempted second-degree sexual assault of a child. Dkt. 1. I denied the petition and dismissed the case after concluding that (1) there was no reason to stay the case while Shuttlesworth exhausted state-court remedies concerning a newly found SANE report; and (2) Shuttlesworth failed to show that the Wisconsin Court of Appeals unreasonably applied federal law regarding his ineffective assistance of counsel or due process claims. Dkt. 24. Shuttlesworth now moves to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). Dkt. 26.

To prevail on a motion for reconsideration under Rule 59, a petitioner must present newly discovered material evidence or establish a manifest error of law or fact. *Oto v. Metro. Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000). “Rule 59 is not a vehicle for rearguing previously rejected motions . . . .” *Id.* Here, Shuttlesworth contends that I erred in denying his petition because I failed to consider how the newly found SANE report could have been used by Shuttlesworth’s counsel to impeach the victim’s sworn statements.

In my order denying Shuttlesworth's petition, I considered the SANE report for the limited purpose of determining whether to stay Shuttlesworth's petition to allow him to exhaust his state court remedies concerning the new evidence and associated claim under *Brady v. Maryland*, 373 U.S. 83 (1963), because the SANE report was not in the record before the Wisconsin Court of Appeals when it considered Shuttlesworth's claims. I determined that Shuttlesworth's *Brady* claim based on the SANE report was plainly meritless, so there was no reason to stay the case to allow him to pursue the claim in the Wisconsin state courts. In making this determination, I noted that Shuttlesworth pleaded guilty and that "the Due Process Clause does not require the government to disclose impeachment information before the entry of a criminal defendant's guilty plea." Dkt. 24, at 9 (citing *United States v. Ruiz*, 536 U.S. 622, 630 (2002)).

I agree with Shuttlesworth that his trial counsel could have used the SANE report, if the state had given it to him, to impeach the victim, but this simply does not matter. In *Ruiz*, the United States Supreme Court made clear that Shuttlesworth's allegation that the state withheld impeachment evidence from him, causing him to plead guilty, does not present a violation of a federal constitutional right.

Without opining on the merits of such a claim, I note that Shuttlesworth may bring a state law claim in Wisconsin state court under Wis. Stat. § 971.23(1)(h) (requiring a district attorney to disclose any exculpatory evidence to a defendant a reasonable time before trial). *See State v. Harris*, 2004 WI 64, ¶¶ 24-40, 272 Wis. 2d 80, 680 N.W.2d 737 (holding that § 971.23(1)(h) required the disclosure of impeachment evidence when the defendant entered a plea within two weeks of trial). But such a claim would not provide a basis for federal habeas relief, *Estelle v. McGuire*, 502 U.S. 62, 68 (1991) ("In conducting habeas review, a

federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States.”), and so this court cannot stay the remainder of his habeas petition while Shuttlesworth brings the claim because a state law claim does not present a potentially meritorious federal constitutional claim. *Cunningham v. Conway*, 717 F. Supp. 2d 339, 368 (W.D.N.Y. 2010).

I stand on my previous analysis. For these reasons, I will deny Shuttlesworth’s motion.

ORDER

IT IS ORDERED that petitioner Jermaine W. Shuttlesworth’s motion to alter or amend the judgment, Dkt. 26, is DENIED.

Entered January 4, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON  
District Judge