

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JEFFREY ALAN HERRICK,)	
)	
Petitioner)	
)	
v.)	Civil No. 96-288-B
)	
STATE OF MAINE,)	
)	
Respondent)	

***RECOMMENDED DECISION TO DENY
PETITION FOR WRIT OF HABEAS CORPUS***

The petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (1994) following his convictions in the Superior Court (Hancock County) on eight counts of theft in violation of 17-A M.R.S.A. § 353 (1983). Herrick contends that he was denied the constitutional right to a speedy trial because the state failed to bring him to trial within the 180-day time limit provided in the Interstate Compact on Detainers (ICD), 34-A M.R.S.A. §§ 9601-9609 (1988). Having unsuccessfully appealed the denial of his motion to dismiss some of the original indictments against him based on the same contention to the Law Court, *State v. Herrick*, 686 A.2d 602 (Me. 1986), Herrick has exhausted his state remedies.

A federal court may not grant a petition for a writ of habeas corpus if the claim was adjudicated on the merits in a state court proceeding unless the adjudication: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court; or (2) resulted in an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254(d) (1996).

The Law Court expressly rejected the petitioner's claim that he was denied the right to a speedy trial pursuant to the time limit set forth in the ICD. Specifically, the court found that "Herrick's attempts to invoke his rights under the ICD prior to May 1995 did not trigger the 180-day time limit contained in Article III [of the ICD] because there was no effective detainer lodged against him at that time." *Herrick*, 686 A.2d at 604. The court based its conclusion in part on *Fex v. Michigan*, 507 U.S. 43 (1993), a case in which the United States Supreme Court held that the 180-day time period of Article III of ICD did not commence until a prisoner's request for final disposition of the charges against him had actually been delivered to the court and the prosecuting officer of the jurisdiction that lodged the detainer against him. *Herrick*, 686 A.2d at 604 (citing *Fex*). The Law Court concluded that Herrick was, in fact, brought to trial within the appropriate time frame after the effective detainer was lodged against him and he invoked his rights. *Id.*

Because Herrick's claim has been adjudicated in the state courts, and such adjudication (1) did not result in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, and also (2) did not result in an unreasonable determination of the facts in light of the evidence presented in the state court proceeding, the Court may not grant the petition. 28 U.S.C. § 2254(d). Accordingly, the Court recommends that the petition be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine, on March 25, 1997.