

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

TYSON EUGENE MARSHEK,

Petitioner,

v.

JOSEPH SCIBANA, Warden,
Federal Correctional Institution,

Respondent.

ORDER

04-C-261-C

This petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 was dismissed on June 1, 2004, for lack of jurisdiction. Petitioner then filed a notice of appeal and a request for leave to proceed in forma pauperis on appeal. In an order dated June 11, 2004, I denied petitioner's request and certified that his appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3). Now petitioner has filed an "Emergency Motion for a Psychiatric Evaluation and Examination" and respondent has filed a motion "for leave of court to transfer the appellant" pursuant to Fed. R. App. P. 23(a).

When petitioner filed his notice of appeal, this court was divested of jurisdiction over his case. Therefore, I have no authority to entertain petitioner's "Emergency Motion." Nor

does this court have jurisdiction to rule on respondent's motion. That motion should be addressed to the court of appeals. See, e.g., Lindstrom v. Graber 203 F.3d 470, 475 (7th Cir. 2000) ("nor need we decide whether Rule 23(a) of the Federal Rules of Appellate Procedure, which forbids transferring the custody of a prisoner during an appeal in his habeas corpus case *without the approval of the appellate court* here neither sought nor granted, was violated")(emphasis added); Ward v. U.S.Parole Commission, 804 F.2d 64 (7th Cir. 1986)(order of court of appeals ruling on motion to transfer under Fed. R. App. P. 23).

Accordingly, IT IS ORDERED that petitioner's "Emergency Motion" is DENIED because this court lacks jurisdiction to entertain it. Further, IT IS ORDERED that the Clerk of Court forward respondent's motion for leave to transfer the appellant to the Court of Appeals for the Seventh Circuit for its review.

Entered this 25th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge