

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

-----  
JONATHAN B. McCORD,

Petitioner,

v.

JESSICA DIETEL, Agent, DOC-DCC,

Respondent.  
-----

OPINION and ORDER

12-cv-661-bbc

Jonathan B. McCord has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his current probation hold. He alleges that on June 29, 2012, he was living at a half-way house in Madison, Wisconsin and went to Meriter hospital because he was feeling suicidal. He talked to a social worker at the hospital about his mental health and the social worker became upset when petitioner declined to give a urine sample and said he wished he did not have to go back to the half-way house. The social worker called the police and told them falsely that petitioner was being disrespectful and refusing to go back to the half-way house. Petitioner was taken into custody at the Dane County jail on a probation hold.

Petitioner contends in his petition that his current custody is a violation of his rights under the Fourth and Fourteenth Amendments, as well as state law. He is proceeding in forma pauperis and has made an initial partial payment. The petition is before the court for preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

After reviewing the petition, I conclude that it must be dismissed because it is clear

from petitioner's petition that he has not exhausted his state court remedies. Petitioner states in his petition that he filed his claims in this court because "if [he] filed [his] habeas corpus in state court [he] would be released from custody by the time the court ruled on it." Dkt. #1-1. Regardless whether this is true, I cannot consider the merits of petitioner's claims until he has exhausted the remedies available to him in the state courts. 28 U.S.C. § 2254(b)(1)(A); O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Perruquet v. Briley, 390 F.3d 505, 514 (7th Cir. 2004). This means that petitioner must present his claims to a state circuit court, the Wisconsin Court of Appeals and Wisconsin Supreme Court before he can seek relief from this court under § 2254. Therefore, I am dismissing his petition without prejudice for failure to exhaust his administrative remedies.

The only question remaining is whether to grant a certificate of appealability to petitioner. Under Rule 11 of the Rules Governing Section 2254 Cases, I 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

close. Reasonable jurists would not disagree that petitioner has not yet exhausted his state court remedies. Thus, petitioner has failed to make a substantial showing of the denial of a constitutional right.

ORDER

IT IS ORDERED that petitioner Jonathan McCord's petition for a writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED without prejudice for his failure to exhaust his state court remedies. Petitioner is DENIED a certificate of appealability. He may seek a certificate from the court of appeals under Fed. R. App. P. 22.

Entered this 26th day of October, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge