

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

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JONATHAN MCCORD,

Petitioner,

ORDER

v.

05-C-005-C

STATE PUBLIC DEFENDER,

Respondent.

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Jonathan McCord, an inmate at the Green Bay Correctional Institution, has filed a petition for a writ of habeas corpus in which he alleges that he is being denied his constitutional right to the effective assistance of counsel on appeal and his right to appeal his July 30, 2004, conviction in the Circuit Court for Dane County for retail theft and resisting an officer. Petitioner alleges that the lawyer who was appointed on September 7, 2004, by the state public defender's office to represent him on appeal has not contacted him or taken any steps to pursue his appeal. According to petitioner, he has written to the state court of appeals, which has informed him that no appeal has been filed. In a separate order, I have granted petitioner's application to proceed in forma pauperis.

Before seeking habeas relief in federal court, a petitioner must first exhaust all the remedies that are available to him in the state courts. 28 U.S.C. § 2254(b)(1)(A). It appears from the petition that petitioner has not alerted the state courts or even the state public

defender's office of the alleged abandonment by his appointed attorney. If petitioner has in fact been abandoned by his attorney, he should make that fact known to both the state court of appeals and to the public defender's office. Those institutions are more properly suited than this court to provide relief to petitioner. This court lacks supervisory power over either the state public defender's office or petitioner's appointed attorney. Moreover, under the rules governing the adjudication of federal habeas petitions, this court must allow the state courts an opportunity to consider petitioner's claims before it may do so.

ORDER

IT IS ORDERED that the petition of Jonathan McCord for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for his failure to exhaust his state court remedies.

Entered this 4<sup>th</sup> day of February, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge