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

MICHAEL HENDRICKS,

Petitioner,

v.

ROBERT HUMPHREYS, Warden,
Racine Correctional Institution,

Respondent.

REPORT AND
RECOMMENDATION

06-C-564-C

REPORT

Michael Hendricks, an inmate at the Racine Correctional Institution, has petitioned the court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his December 10, 2003 convictions and sentences entered by the Circuit Court for Dane County in five consolidated cases for escape, retail theft, bail jumping and failure to report to jail. Petitioner contends that his guilty pleas to those charges were not entered knowingly and intelligently because: he is illiterate and mentally incompetent; the trial court failed to adequately explain the elements of the offenses or ascertain whether petitioner understood the ramifications of his plea; and his trial lawyer failed to inform that he would receive consecutive sentences. In addition, petitioner contends that his trial lawyer was ineffective for failing to request a competency hearing and for failing at sentencing to request probation or present mitigating evidence. Finally, petitioner contends that his appellate lawyer was ineffective for filing a "no merit" brief.

Respondent acknowledges that this petition is timely filed and that petitioner exhausted his state court remedies as to the claims his petition. Respondent contends that this court must deny the petition because the state court of appeals adjudicated the claims in a manner that was neither contrary to nor reflected an unreasonable application of clearly established federal law, 28 U.S.C. § 2254(d), or because the claims have no merit. Respondent is correct. Accordingly, I am recommending that this court deny the petition.

FACTS

On September 4, 2003, pursuant to a plea agreement, petitioner entered pleas of guilty to six criminal counts charged in five separate Dane County cases. The charges to which petitioner pled guilty were escape, failure to report to jail, bail jumping and retail theft (three counts). Before asking petitioner for his plea on each count, the court reviewed each count with petitioner by reading from the information. For example, with respect to the bail jumping charge, the court explained:

> Count 1 alleges that on November 12th, 2002, in Dane County you had been released from custody on bail on a charge of uttering and that you intentionally failed to comply with the terms of your bail, that is to not commit any further crimes.

Tr. of Plea Hrg., Sept. 4, 2003, attached to Answer, dkt. 11, Exh. S. at 4. When asked "To that charge how do you plead?", petitioner responded "Guilty." The court went through the remaining five counts with petitioner in similar fashion, reading the description of each charge from the information.

After obtaining guilty pleas from petitioner on each count, the court then explored with petitioner his plea questionnaire and waiver of rights form. Petitioner stated that he had signed a form for each case, that he had gone over the forms with his lawyer before he signed them, that he understood the constitutional rights he was giving up by pleading guilty and that he had reviewed and understood the entire form. In response to questioning, petitioner reported that he had completed only the second grade and that he could not read and write. He explained, however, that his attorney had read the forms to him and that he (petitioner) had understood everything. When the court asked whether he understood each charge to which he had pled guilty, petitioner responded that he did. The court asked petitioner whether he had discussed with his attorney "the elements of each offense you're pleading to, that is what the State would have to prove to convict you, and the consequences of your plea?" Petitioner responded affirmatively. Petitioner's lawyer reported that she had had enough time to discuss these matters with petitioner and that she believed he was entering his pleas knowingly and voluntarily.

On December 10, 2003 the court held a sentencing hearing on the consolidated cases. Petitioner submitted a psychological evaluation and argued, through counsel, that he should be placed on probation but that he remain jailed until he was admitted to treatment at Hope Haven, a residential drug and alcohol treatment facility. The court demurred, instead imposing consecutive sentences on each count for a combined total sentence of five years' confinement followed by six years' extended supervision.

Petitioner filed notice of his intent to pursue postconviction relief. A new lawyer was appointed to represent petitioner on appeal. Appellate counsel filed a no-merit brief, noting as potential issues whether petitioner's pleas were entered knowingly, voluntarily and intelligently and whether the court had properly exercised its sentencing discretion. With the help of a paralegal, petitioner filed a response to this no-merit brief. He argued that his pleas were invalid because during the plea colloquy the trial court had failed to inform him of the elements of each charge and had failed to ask whether anyone had threatened him or had promised him anything in order to make him plead guilty. Petitioner also alleged that his pleas were invalid because he is illiterate and because the psychological report indicated that he has some degree of mental retardation and disorganized thinking. Finally, petitioner asserted that his trial lawyer had ignored possible defenses and mitigating circumstances.

On August 30, 2005, the court of appeals rejected petitioner's claims and affirmed his conviction. *See* dkt. 11, Exh. L. The court found that the manner in which the trial court had reviewed each charge with petitioner was sufficient to comply with Wis. Stat. § 971.08, as required by *State v. Bangert*, 131 Wis. 2d 246, 274, 389 N.W. 2d 12, 26 (1986) (defendant seeking to withdraw plea must show prima facie violation of § 971.08(1)(a) or other mandatory duties and allege that he in fact did not know or understand information that should have been provided at plea hearing). *Id*., at 2-3.

Wis. Stat. § 971.08, Stats., provides, in pertinent part:

> (1) Before the court accepts a plea of guilty or no contest, it shall do all of the following:

> (a) Address the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge and the potential punishment if convicted.

The appellate court noted that "the court did recite each charge from the information, and the information was written in a way that named the elements of each charge." *Id*. at 3. It also noted that when the circuit court later asked petitioner if he understood the charges, petitioner affirmed that he did. *Id*.

The appellate court found that the trial court had violated its duty under *Bangert* when it failed to inquire whether promises or threats were made to obtain the pleas. *Id*., citing *Bangert*, 131 Wis. 2d at 262 (court accepting guilty plea has duty to ascertain whether any promises or threats were made to defendant). The court was not convinced that the plea questionnaire form signed by petitioner denying that he had been promised anything or threatened in exchange for his plea was an adequate substitute for the required oral inquiry by the court. However, the court found it unnecessary to resolve that question because petitioner had not alleged that any promises or threats had been made. *Id*., at 4.

Similarly, the court rejected petitioner's allegation that his pleas were invalid because of his low intellectual capacity and mental impairments, noting that petitioner had not alleged that he had actually failed to understand any fact or procedure related to the pleas. *Id*. As for petitioner's claim that his trial lawyer had been ineffective for ignoring possible defenses and mitigating circumstances, the court noted that petitioner had not alleged what those defenses or circumstances were. *Id*.

Petitioner filed a petition for review with the Wisconsin Supreme Court. Petitioner reasserted his claim that the trial court had not properly advised him of the elements of the charges and alleged that the court should have sought a competency evaluation before it accepted petitioner's guilty pleas. He also alleged that his trial lawyer was ineffective for failing to request a competency hearing, failing to advise him that he would receive consecutive sentences and for telling him that he would receive treatment and no prison time. Petitioner again stated that trial counsel had "totally ignored" possible defenses and mitigation circumstances, explaining that he could not identify what those circumstances were because he was illiterate. In addition, he contended that his appointed appellate lawyer was ineffective for filing a no merit brief when the record demonstrated that petitioner had viable constitutional claims. The state supreme court denied the petition for review.

ANALYSIS

I. Standard of Review

This court's ability to grant habeas relief is limited by 28 U.S.C. § 2254(d):

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim–
>
> > (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 of the United States; or

> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

When applying this statute, a federal court reviews the decision of the last state court that ruled on the merits of petitioner's claims, *Simelton v. Frank*, 446 F.3d 666, 669 (7th Cir. 2006), which in this case is the Wisconsin Court of Appeals. A decision is "contrary to" federal law when the state court applies a rule that "contradicts the governing law set forth by the Supreme Court," or when an issue before the state court "involves a set of facts materially indistinguishable from a Supreme Court case," but the state court rules in a different way. *Boss v. Pierce*, 263 F.3d 734, 739 (7th Cir. 2001) (*citing Williams v. Taylor*, 529 U.S. 362, 405-06 (2000)). "'A state-court decision that correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular petitioner's case' qualifies as a decision involving an unreasonable application of clearly established federal law." *Id*. (quoting *Williams*, 529 U.S. at 407-08). An "unreasonable" state court decision is one that is "well outside the boundaries of permissible differences of opinion." *Hardaway v. Young*, 302 F.3d 757, 762 (7th Cir. 2002).

Section 2254(d)'s standard of review applies only to claims actually "adjudicated on the merits" in state court. When a state court is silent with respect to a habeas petitioner's *federal* claim, then the federal court must apply the more lenient standard of 28 U.S.C. § 2243 and "dispose of the matter as law and justice require." *Canaan v. McBride*, 395 F.3d 376, 382-83 (7th Cir. 2005).

II. Voluntariness of Plea

Petitioner has not argued that the state court of appeals applied the wrong legal standards to this claim and he does not contend that the court's decision resulted in a decision contrary to clearly established federal law. Rather, he appears to be contending that the state court of appeals was wrong when it determined that the record supported a finding that his plea was made voluntarily, knowingly and intelligently as required by federal law. This argument concerns the application of federal law. As such, this court can grant relief to petitioner only if it finds that the state court's decision was "unreasonable."

Petitioner cannot prevail on this claim merely by showing that the trial court did not comply with *Bangert* in accepting petitioner's plea. Because this case arises as a collateral attack to a criminal proceeding under 28 U.S.C. § 2254 rather than as a direct appeal, the specific technical deficiencies of which petitioner complains merit little discussion because petitioner must establish more than a failure of the trial court to adhere to *Bangert*. *See Haase v. United States*, 800 F.2d 123, 126 (7th Cir. 1986). This is because the protections afforded by *Bangert* are not mandated by the federal constitution. *McCarthy v. United States,* 394 U.S. 459, 465 (1969); *Bangert*, 131 Wis. 2d at 260, 389 N.W. 2d at 20. Therefore, a guilty plea taken in violation of *Bangert* requirements still would be *constitutionally* sound if the plea was knowing, intelligent and voluntary. *Haase*, 800 F.2d at 127.

"A plea may be involuntary either because the accused does not understand the nature of the constitutional protections that he is waiving . . . or because he has such an incomplete

understanding of the charge that his plea cannot stand as an intelligent admission of guilt." *Henderson v. Morgan*, 426 U.S. 637, 645 n. 13 (1976) (citation omitted). A guilty plea is intelligent and knowing when the defendant is competent, aware of the charges, and advised by competent counsel. *Brady v. United States*, 397 U.S. 742, 748 (1970). A guilty plea is voluntary when it is not induced by threats or misrepresentations and the defendant is made aware of the direct consequences of the plea. *Brady*, 397 U.S. at 755. The record must demonstrate affirmatively that the defendant entered his plea understandingly and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). The voluntariness of a plea depends on all of the relevant circumstances surrounding it. *Brady*, 397 U.S. at 749.

The record before this court establishes that the court of appeals reasonably applied these federal standards when it determined that petitioner understood the nature of the charges to which he was pleading guilty and entered his plea knowingly and voluntarily. In addition to finding that each of the criminal informations filed against petitioner had been written in a manner that explained the elements of each charge, the appellate court noted that when the trial court asked if he understood each charge, petitioner stated that he did. Moreover, petitioner stated that he had gone over the elements of each charge with his attorney. Finally, petitioner has never explained what it is about any charge that he did not understand. *Cf. Henderson*, 426 U.S. at 647 (defendant alleged that he was not aware that intent to cause death was element of offense of second-degree murder).

The same goes for petitioner's claim that his conviction must be reversed because the trial court failed to inquire on the record whether petitioner had been threatened or promised anything besides the plea agreement in order to get him to plead guilty. At most, petitioner has established a technical violation of *Bangert*. As the court of appeals noted, however, absent some allegation by petitioner that he actually was threatened or promised anything, there was no basis to conclude that petitioner's plea was not voluntary.

Petitioner harps on his limited education, low intellectual functioning and inability to read. These factors certainly are relevant to whether petitioner understood the elements of the charges and the nature of the constitutional rights he was waiving, but the appellate court correctly noted that nothing in the record shows that petitioner actually failed to understand these matters. Petitioner told the trial court that his attorney had read him the waiver of rights and plea questionnaire form and he averred that he understood everything on the form, he understood what the state would have to prove if he went to trial, and he understood the consequences of his plea. Petitioner's lawyer affirmed that she had spent sufficient time reviewing these matters with petitioner and that she believed that petitioner was entering his guilty pleas knowingly and voluntarily. Again, petitioner has not alleged what it is about the nature of the charges that he did not understand.

Finally, petitioner suggests that he was mentally incompetent to enter a knowing, voluntary and intelligent plea. It would violate due process to convict an accused person while he is legally incompetent. *Drope v. Missouri*, 420 U.S. 162 (1975). The competency

determination hinges upon whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding-and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam). A trial court must conduct a competency hearing when the information known to the trial court at the time of the trial or plea hearing is sufficient to raise a bona fide doubt regarding the defendant's competency. *Pate v. Robinson*, 383 U.S. 375, 385 (1966).

As proof that the trial court should have ordered a competency evaluation, petitioner points to his limited education, his illiteracy and the results of the psychological evaluation opining that petitioner had some degree of mental retardation and disorganized thinking. Petitioner has not submitted a copy of the psychological evaluation but refers to its findings only summarily.

It appears that petitioner has the impression that the state might submit the report or that this court can somehow obtain it independently. *See* Pet.'s Br., dkt. 2, at 19 (asking court to review petitioner's medical report *in camera*). If this is petitioner's understanding, he is incorrect. Neither this court nor the state can obtain a copy of the psychological evaluation from the circuit court file without a signed release from petitioner. More importantly, if petitioner is aware of helpful evidence not contained in the state court's public case file, then it is his obligation to submit it to this court. Accordingly, if petitioner wants this court to review the psychological evaluation, then he must obtain a copy of it from the state circuit court and then submit it to this court.

However, the absence of the psychological evaluation does not warrant staying the proceedings until petitioner submits a copy of it. Instead, I will make a recommendation on petitioner's claim on the record as it stands. If petitioner wants to submit a copy of the psychological evaluation to the district court, then he may do so during his time period for objecting to this report, which I have extended to account for this possibility.

Petitioner's claim of incompetence faces another procedural hurdle: petitioner's response to the no-merit report in the state court of appeals does not contain any clearly developed argument that he was not mentally competent to enter a plea. It contains no reference to *Drope, Dusky* or *Pate*, and no argument that petitioner's federal rights were violated because he was incompetent to enter a plea. However, petitioner did mention the word "competency" and cited to the case of *State ex. rel. Vanderbeke v. Endicott*, 210 Wis. 2d 502, 563 N.W. 2d 883 (1997), in which the Wisconsin Supreme Court held that the constitutional principles developed in *Drope, Dusky* and *Pate* applied to probation revocation proceedings. It is debatable whether this was enough to alert the state courts that petitioner was raising a claim that he was incompetent to enter a plea. *See Verdin v. O'Leary*, 972 F.2d 1467, 1472-73 (7th Cir. 1992) (failure to fairly present claim alleged in habeas petition to state court constitutes procedural default).

Assuming, *arguendo*, that petitioner fairly presented his competency claim to the state courts, he is not entitled to habeas relief on it. Because the state court of appeals did not adjudicate this claim on the merits, there is no state court finding to which this court must

defer under § 2254(d). Instead, the court must apply the more lenient standard of 28 U.S.C. § 2243 and "dispose of the matter as law and justice require." *Canaan*, 395 F.3d at 382-83. Even under this standard, and even if this court assumes that petitioner has described accurately the findings of the psychological evaluation, his claim fails. Just because a defendant suffers from mental illness does not automatically render him legally incompetent to stand trial. *United States ex rel. Rivers v. Franzen*, 692 F.2d 491, 500 (7th Cir. 1982). Apart from his limited intellectual functioning, nothing that petitioner has cited from the psychological evaluation suggests that he was unable to consult with his lawyer or that he lacked a reasonable degree of understanding of the proceedings. To the contrary, petitioner's responses at the preliminary and plea hearings and his statement to the court at sentencing establish that he was able to follow the proceedings, to understand the court's questions, to provide logical and appropriate responses to them and to articulate his thoughts cogently.

Moreover, the trial court indicated that it had received the psychological evaluation; apparently it found nothing calling into question petitioner's competency. Finally, neither defense counsel nor the prosecutor raised any question about petitioner's competency, as they would have been obliged to do if they had any doubts in that regard. *Franzen*, 692 F.2d at 499("the failure of defendant or his counsel to raise the competency issue is persuasive evidence that there was no bona fide doubt as to [defendant's] competency"). All of this indicates that there was no reason for the court to order a competency hearing.

Therefore, because petitioner's claim that he was incompetent has no support in the record, I am recommending that this court deny petitioner's claim of incompetency under 28 U.S.C. § 2243. If petitioner has a copy of the psychological evaluation, then he may submit it to the district court along with any objections he has to this report and recommendation. I doubt, however, that this evaluation contains any findings significant enough to raise a genuine question about petitioner's competency to plead guilty.

As for petitioner's remaining challenges to the voluntariness of his plea, I recommend that this court deny relief on those claims as well. It was not an unreasonable application of clearly established federal law for the state court of appeals to conclude that, although the trial court's plea colloquy with petitioner was not perfect, nonetheless petitioner's plea was entered knowingly, intelligently and voluntarily.

III. Ineffective Assistance of Trial Counsel

Next, petitioner asserts that his trial lawyer provided ineffective assistance of counsel. To establish a claim for ineffective assistance of counsel, a defendant must prove that: (1) his attorney's performance fell below an objective standard of reasonableness; and (2) the attorney's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The defendant "bears a heavy burden when seeking to establish an ineffective assistance of counsel claim." *Jones v. Page*, 76 F.3d 831, 840 (7th Cir. 1996) (quoting *Drake v. Clark*, 14 F.3d 351, 355 (7th Cir. 1994)). To satisfy the first prong of the

Strickland test, the performance element, a defendant must identify the acts or omissions of counsel that form the basis of his claim of ineffective assistance. *Strickland*, 466 U.S. at 690; *United States v. Moya-Gomez*, 860 F.2d 706, 763-64 (7th Cir. 1988). A court's review of counsel's performance is highly deferential, presuming reasonable judgment and declining to second-guess strategic choices. *Strickland*, 466 U.S. at 689; *Kimmelman v. Morrison*, 477 U.S. 365, 381 (1986); *United States v. Williams*, 106 F.3d 1362, 1367 (7th Cir. 1997). With regard to the second prong, the prejudice element, "the defendant must show that there is a probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; *Moya-Gomez*, 860 F.2d at 764.

In his brief in the court of appeals, petitioner argued that his trial lawyer was ineffective for "ignor[ing] all possibilities of a defense and mitigating circumstances available to the defendant." As the court of appeals noted, however, petitioner never indicated what possible defenses to the charges existed. In fact, petitioner admitted at the sentencing hearing that he had committed the crimes to which he pled guilty. As for mitigation, petitioner's lawyer presented evidence showing that petitioner was a heroin addict, argued that his crimes were a result of his addiction and recommended that the court sentence petitioner to a term of probation so that he could obtain community-based drug treatment. On this record, there is simply no basis to conclude that counsel's performance was defective. The court of appeals reasonably applied *Strickland* when it denied this claim.

In his petition for review to the state supreme court (which he presents to this court as his brief in support of his habeas petition), petitioner expanded his claim of ineffective assistance of trial counsel, asserting that his lawyer did not tell him that he would receive consecutive sentences, told him he would receive treatment and no prison time and failed to request a competency hearing. However, petitioner did not present these allegations of ineffective assistance of counsel to the state court of appeals. Under the rules governing federal habeas review of state court convictions, a federal court cannot consider a state prisoner's federal claims unless the prisoner first gives the state's courts the opportunity to resolve them. *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). To do this, a state prisoner must present his claims at all levels of the state's appellate courts. *Id*. A failure to do so constitutes a procedural default that bars the federal court from hearing the claims unless the petitioner can show (1) cause for the default and actual prejudice from failing to raise the claim as required, or (2) that enforcing the default would lead to a "fundamental miscarriage of justice." *Steward v. Gilmore*, 80 F .3d 1205, 1211-12 (7th Cir. 1996) (quoting *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977)).

Respondent has not addressed these additional claims of ineffective assistance of counsel in its answer to the petition, either to argue that petitioner procedurally defaulted them or to argue that they should be denied under § 2254(d). This raises the question whether respondent has waived the fair presentment defense implicitly. *Perruquet v. Briley*, 390 F.3d 505, 516 (7th Cir. 2004) (assuming without deciding that state can implicitly

waive procedural default defense based on petitioner's failure to properly exhaust state-court remedies). It is not necessary to answer this question in this case because even if the court considers these claims on their merits, petitioner cannot prevail, even under § 2243's general standard. Notably, petitioner has not alleged that but for his lawyer's allegedly erroneous advice concerning the sentence he was likely to receive, he would have gone to trial. *See Hill*, 474 U.S. at 59.

Even if petitioner were to have made such an allegation to this court, the record would not support it. Although petitioner complains that he did not know he would receive consecutive sentences, the sentences he received were far below the maximum the court could have imposed on each count. Moreover, petitioner was facing a maximum term of 16 years' imprisonment on the bail jumping count by itself. So, although the court ordered consecutive sentences, it could have imposed the resulting 11-year sentence even if it had ordered all of the other sentences to run concurrently.

Petitioner's allegation that his lawyer assured him that he would receive treatment and no prison time is patently incredible. Petitioner already had a long rap sheet, and he stood charged with committing a series of crimes over a four-month period, some of which occurred while he was on bail for other charges and two of which involved failing to show up at jail. Although it is their job to make predictions, defense lawyers as a rule avoid making guarantees about the sentence a client is likely to receive. It defies credulity for petitioner to assert that his lawyer, in the face of petitioner's rap sheet and recent crime

spree and in a legal environment intolerant of repeaters, promised petitioner that the judge would not order any jail time.

Even if petitioner genuinely held this erroneous belief prior to his guilty pleas, the court made clear before accepting petitioner's plea that the state was not limiting its ability to recommend a sentence and could ask the court to impose the maximum term of incarceration. This was ample warning to petitioner that the court had the power to follow the state's recommendation and stick him in prison for a long time. There is no basis in this record to put any stock in petitioner's unsworn, vague declaration, made for the first time in his petition for review, regarding what his lawyer supposedly told him to the contrary.

Finally, petitioner suggests that his lawyer was ineffective for failing to request a competency evaluation. As discussed above, petitioner has not adduced evidence sufficient to show that his lawyer ought to have had a bona fide doubt in his competency to plead guilty. Accordingly, this court should deny this claim.

IV. Ineffective Assistance of Appellate Counsel

Petitioner alleges that his appellate lawyer was ineffective for filing a "no merit" brief. Although there is no state court ruling on this claim, the state concedes that petitioner exhausted the issue by presenting it in his petition for review to the state supreme court. I infer that the state is contending that this court should deny this claim on the merits under 28 U.S.C. § 2243. Applying that standard, I agree that petitioner is not entitled to habeas

relief on this claim. Petitioner was allowed the opportunity to respond to the no-merit report. The court of appeals considered the issues raised by petitioner and his lawyer and conducted its own independent review of the record as required by *Anders v. California*, 386 U.S. 738 (1967). Although the wisdom of counsel's decision to file a no-merit report is debatable, the bottom line is that petitioner is unable to show that this decision prejudiced the outcome of his appeal.

RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1)(B), I recommend that the petition of Michael Hendricks for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be DENIED.

Entered this 2nd day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
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January 3, 2007

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Re: Hendricks v. Humphreys
Case No. 06-C-564-C

Dear Mr. Hendricks and Attorney Gansner:

The attached Report and Recommendation has been filed with the court by the United States Magistrate Judge.

The court will delay consideration of the Report in order to give the parties an opportunity to comment on the magistrate judge's recommendations.

In accordance with the provisions set forth in the memorandum of the Clerk of Court for this district which is also enclosed, objections to any portion of the report may be raised by either party on or before February 2, 2007, by filing a memorandum with the court with a copy to opposing counsel.

If no memorandum is received by February 2, 2007, the court will proceed to consider the magistrate judge's Report and Recommendation.

Sincerely,

Connie A. Korth
Secretary to Magistrate Judge Crocker

Enclosures
cc: Honorable Barbara B. Crabb, District Judge