

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

JOEY JAMES HICKS,

Petitioner,

ORDER

v.

07-C-0494-C

JODINE DEPPISCH, Warden,
Fox Lake Correctional Institution,

Respondent.

Petitioner Joey James Hicks, an inmate at the Fox Lake Correctional Institution, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the five dollar filing fee. The petition is before the court for preliminary consideration under Rule 4 of the Rules Governing Section 2254 Cases.

Petitioner challenges his March 10, 2006 guilty plea and resulting judgment of conviction in the Circuit Court for Adams County for one count of theft of movable property in violation of Wis. Stat. § 943.20(1)(a) and punishable as a Class H felony under Wis. Stat. § 943.20(3)(bm). Documents attached to the petition show that on August 4, 2006, the circuit court sentenced petitioner to three years in prison and ordered him to pay restitution in the amount of \$3,735.15.

Although he mentions violations of his rights to due process and effective assistance of counsel, petitioner did not articulate clearly the basis for his claims in his petition. From what I can decipher from petitioner's discussion, he is alleging that the trial court incorrectly

calculated the amount and value of rail that he stole from property owned by Union Pacific Railroad, resulting in a sentence and restitution amount that were too high. Petitioner alleges that he did not understand that he was pleading guilty to a class H felony and argues that if the calculations had been correct, the maximum penalty would be a class I felony under § 943.20(3)(bf). Petitioner also asserts that his attorney was ineffective for not advising him of this error and permitting the miscalculations to occur.

The petition contains few details about the state court proceedings following petitioner's sentencing. However, state court records available electronically show that petitioner's direct appeal from his conviction is pending in State v. Hicks, Case No. 2007 AP001058 CRNM. See Consolidated Court Automation Programs, WI Circuit Court Access for Adams County case number 05 CF 78 at <http://wcca.wicourts.gov> (visited September 19, 2007).

Before seeking a writ of habeas corpus in federal court, a petitioner must first exhaust any state court remedies that are available to him in state court. 28 U.S.C. § 2254(b)(1)(A). O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). This court will not consider a § 2254 petition until the state courts have completed their review of his claims. When petitioner has exhausted his state court remedies in this case, including his petition for review to the Wisconsin Supreme Court, see id., he may return to this court to seek relief under §2254.

ORDER

IT IS ORDERED that petitioner Joey James Hicks' petition for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for failure to exhaust state court remedies. The clerk of court is directed to enter judgment closing this case.

Entered this 19th day of September, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge