

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

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ALBERT L. HOWARD,

Petitioner,

v.

ROBERT HUMPHREYS, Warden,  
Kettle Moraine Correctional  
Institution,

Respondent.  
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ORDER

11-cv-793-bbc

Petitioner Albert L. Howard filed a petition for a writ of habeas corpus in this court in November 2011 and asked that it be held in abeyance until he had exhausted all of his state court remedies with respect to other constitutional claims he had not raised previously in state court. His request was granted and he was given until October 26, 2015 in which to file a habeas petition under State v. Knight, 168 Wis. 2d 508, 484 N.W.2d 540 (1992), in the Wisconsin Court of Appeals.

Now petitioner has written to the court to say that he filed his habeas petition and that it was denied by the court of appeals. He says that he intended to file a petition for certiorari with the state supreme court, but was unable to do so after the discs containing his legal materials were wiped clean by institution staff at the prison library before he could re-draft his petition. He asks whether this court still requires him to file a petition with the

state supreme court before hearing his petition in this court.

As unfortunate as petitioner's situation may be, this court lacks the authority to relieve him of his obligation to exhaust all his state court remedies. It appears that he has two options if he wishes to continue to pursue his petition: (1) he may go forward on only those claims on which he was granted leave to proceed in this court's order #3, entered on January 13, 2012 or (2) he may have a short period of time in which to persuade the state supreme court that it should allow him to file a late petition in light of the destruction of some of his critical legal materials. Petitioner will be given three weeks in which to inform the court of his decision.

#### ORDER

IT IS ORDERED that petitioner Albert L. Howard may have until April 18, 2016, in which to advise the court whether he wishes to go forward in this court on only those claims on which he was granted leave to proceed in this court's order, dkt. #3, entered on January 13, 2012 or whether he will try to persuade the state supreme court that it should allow him to file a late petition for review.

Entered this 29th day of March, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge