

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

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|-----------------------------|---|---------------------------|
| NORMAN E. DICKINSON, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | Civil No. 96-248-B |
| |) | |
| STATE OF MAINE, |) | |
| |) | |
| Respondent |) | |

***RECOMMENDED DECISION TO DENY
PETITION FOR WRIT OF HABEAS CORPUS***

The petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (1994) following his convictions in the Maine Superior Court (Cumberland County) on two counts of criminal threatening with the use of a dangerous weapon in violation of 17-A M.R.S.A. §§ 209, 1252(4) (1983) (Class C); one count of kidnapping in violation of 17-A M.R.S.A. § 301(1)(A)(3), (4), and (5) (1983) (Class A); and one count of robbery in violation of 17-A M.R.S.A. § 651(1)(B)(1), (2), and (E) (1983) (Class A). He challenges the convictions on four separate grounds, all involving claims of ineffective assistance of counsel relating to the appeals of his sentences. Concluding that the petitioner has failed to exhaust all available state remedies, the Court recommends that the petition be denied.

Although the petitioner did not directly and timely appeal his convictions or his sentences, he subsequently did obtain leave from the Law Court to appeal his concurrent sentences. Such sentences ultimately were vacated by the Law Court, and the petitioner was re-sentenced for the initial underlying convictions. Moreover, the petitioner initiated two separate post-conviction review proceedings; a third one currently is pending. The petitioner previously filed a Section 2254 petition

with this Court that was denied due to his failure to exhaust state remedies. Having carefully reviewed the record, the Court once again concludes that the petitioner has failed to satisfy the applicable exhaustion requirements set forth in 28 U.S.C . § 2254.

The petitioner's ineffective assistance of counsel claims all are currently pending before a state court as part of his third post-conviction review proceeding. In view of the fact that the petitioner has failed to exhaust his available state remedies, and because he has failed to present any arguments suggesting a need to dispense with the customary exhaustion requirements set forth in 28 U.S.C. § 2254, the Court recommends that the petition be denied. *See Scarpa v. Dubois*, 38 F.3d 1, 6 (1st Cir. 1994) (citing *Rose v. Lundy*, 455 U.S. 509, 518 (1982)).

The Court further recommends that the petitioner's motion for the appointment of counsel be denied. The appointment of counsel is unnecessary when no evidentiary hearing is required. *See* Rule Governing Section 2254 Cases 8(c). The record is adequate to enable a resolution of the petition without an evidentiary hearing. In view of the fact that no exceptional circumstances exist to suggest otherwise, the Court concludes that the motion should be denied.

Accordingly, for the foregoing reasons, the Court hereby recommends that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be **DENIED**, and that the accompanying motion for the appointment of counsel be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated in Bangor, Maine, on March 21, 1997.