

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

EHAB ALLABABIDI,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26 C 1077
	)	
MATT JUNKIN, <i>et al.</i> ,	)	The Honorable
	)	John Robert Blakey,
Respondents.	)	Judge Presiding.

**MOTION TO DISMISS
PETITIONER'S HABEAS PETITION WITHOUT PREJUDICE**

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, respondent moves to dismiss petitioner's 28 U.S.C. § 2254 habeas corpus petition without prejudice because petitioner has not exhausted available state court remedies and fails to show that he should be excused from doing so.

Background

I. State Court Proceedings

A. Petitioner pleads guilty to aggravated reckless driving.

Following a multi-vehicle collision, in June 2023, petitioner was indicted on charges of aggravated reckless driving and aggravated speeding. Exh. A, Indictment, *People v. Allababidi*, No. 23 CF 1146 (Cir. Ct. Lake Cnty. June 14, 2023).

On September 8, 2025, petitioner entered a negotiated guilty plea to aggravated reckless driving, a Class 4 felony; the aggravated speeding charge was

dismissed pursuant to the agreement. Exh. B, Order and Certificate of Felony Probation (Cir. Ct. Lake Cnty. Sept. 8, 2025); *see* 625 ILCS 5/11-503 (a person commits the offense of reckless driving if he “drives any vehicle with a willful or wanton disregard for the safety of persons or property”; the offense is elevated to aggravated reckless driving “if the violation results in great bodily harm ... to another.”). The State provided, and petitioner stipulated to, a factual basis for the plea. Petitioner drove his Lexus “at a high rate of speed that was later determined to be approximately 122 miles per hour, but 97 kilometers per hour approximately five seconds before impact.” Exh. C (Change of Plea Hearing) at 11. Petitioner’s car then “slammed into the back of a Peterbilt dump truck,” stopped, “veered into the oncoming lane,” and “struck a van driven by the victim,” whose injuries included “a closed fracture of multiple ribs on the right side, an intramuscular hematoma, closed misplaced fracture of right calcaneus, closed dislocation of the right patellas, contusion of the chest wall, right angle fracture, left foot that was slightly impacted offset laterally and angulated fracture of the third and fourth metatarsal.” *Id.* “Complications from this and other matters eventually led to the victim having his foot partially amputated a month after” the crash. *Id.*

Consistent with the plea agreement, the state circuit court sentenced petitioner to 30 months of probation, 180 days in jail (stayed “pending compliance” with probation conditions), and 240 hours of community service, Exh. B, and ordered, among other things, that he pay restitution. The order further specified that “[s]hould the Defendant have no violations during his probation, then the plea

of guilty to Count 1 in the indictment, Agg Reckless Driving/Bodily Harm (Class 4), shall be amended to a Reckless Driving (Class A) misdemeanor.” *Id.* at 5, ¶ 30; *see also* Exh. C at 2, 18. Petitioner acknowledged that he had received and read the terms of the order. *Id.* at 5; Exh. C at 17.¹

B. The state appellate court dismisses petitioner’s appeal.

Petitioner appealed, and the state appellate court dismissed the appeal because petitioner failed to file a motion to withdraw his plea, which is a condition precedent to an appeal from a negotiated plea of guilty. Exh. E, Order, *People v. Allababidi*, No. 2-25-0440 (Ill. App. Ct. Nov. 17, 2025); Ill. S. Ct. R. 604(d); *see also* Exh. D, Petitioner’s motion to stay and remand, *People v. Allababidi*, No. 2-25-0440; *People v. Wilk*, 529 N.E.2d 218, 222-23 (Ill. 1998) (under Rule 604(d), motion to withdraw guilty plea is condition precedent to appeal from judgment entered upon guilty plea; where no post-plea motion is filed, appellate court must dismiss appeal; defendant’s remedy lies in a postconviction petition alleging ineffective assistance of counsel for failing to preserve appeal rights and the grounds he would have had to withdraw his plea had counsel filed a proper post-plea motion). The Illinois Supreme Court denied petitioner’s ensuing petition for leave to appeal (PLA) on January 28, 2026. Exh. F, PLA No. 132495; Exh. G, Order denying PLA.

¹ In October 2025, petitioner’s probation supervision was transferred from Lake County to Cook County.

C. Petitioner files a state postconviction petition that is dismissed for want of prosecution.

Meanwhile, in November and December 2025, petitioner filed state postconviction petitions. Exh. H, Petition for Post-Conviction Relief (Cir. Ct. Lake Cnty. Nov. 25, 2025); Exh. I, Petition for Post-Conviction Relief (Cir. Ct. Lake Cnty. Dec. 8, 2025). While not identical, the petitions appear to raise substantially similar allegations: that the State suppressed evidence, that plea counsel was ineffective for failing to preserve his appeal right, and that plea counsel was deficient in numerous additional respects. Exhs. H & I. On December 8, 2025, petitioner filed a “combined motion” in which he requested plea counsel’s (the assistant public defender’s) trial file, preparation of “critical transcripts,” an order requiring preservation of certain evidence, and “coordinated handling” of his postconviction petition. Exh. J. On March 10, 2026, the state circuit judge struck the postconviction petitions because petitioner failed to appear. Exh. K.

D. The State petitions to revoke petitioner’s probation.

On May 14, 2026, the State petitioned to revoke petitioner’s probation on the grounds that he had “willfully failed to pay court ordered financial obligations”; tested positive for amphetamine on or about November 10, 2025; failed to report to probation on five dates in February and March 2026 (February 19 and 27, 2026 and March 10, 11, and 26, 2026); failed to provide proof of completion of his public service hours; and failed to provide proof of completion of “the Live Victim Impact Panel.” Exh. L (Petition to Revoke). Petitioner again failed to appear in court on May 28, 2026, and a bench warrant issued. Exh. M (Warrant of Arrest – Violation).

On June 15, 2026, petitioner filed a pleading captioned “Omnibus Filing,” which, among other things, challenged the petition to revoke probation and the validity of the arrest warrant and requested to proceed pro se. Exh. N. On June 17, 2026, the state circuit court issued an order discharging the public defender as attorney of record “nunc pro tunc to October 6, 2025.” Exh. O (Order). On June 18, 2026, the trial court issued an order lifting the stay of petitioner’s 180-day jail sentence. Exh. P (Order).

II. Federal Habeas Proceedings

In the meantime, on January 29, 2026, petitioner filed the present 28 U.S.C. § 2254 petition, which alleges:

1. Plea counsel was ineffective for (a) representing that “the negotiated disposition would result in a misdemeanor,” when in fact petitioner was convicted of a felony “with DNA collection requirements”; and (b) failing to obtain and review (i) “raw Bosch .CDRx files” showing that petitioner was seat-belted and engaged in evasive braking before impact; (ii) “internal prosecution communications” expressing doubt that petitioner could be charged with DUI-drugs; and (iii) evidence that at the time of the indictment, no medical records supported the charge that petitioner had inflicted great bodily harm on the victim, Doc. 1 at 4; and
2. Petitioner should not be required to exhaust state court remedies due to (a) “eFile lockout”; (b) “refusal of email filing”; (c) “requirement of in-person filing when Petitioner’s vehicle has been sabotaged”; and (d) “denial of remote appearance,” *id.*

Argument

This Court should dismiss the petition without prejudice because petitioner has not exhausted his available state postconviction remedies, *see* 28 U.S.C. § 2254(b)(1), and cannot excuse the exhaustion requirement.

A. Petitioner has not exhausted available state court remedies as required by statute.

Petitioner has failed to exhaust available state court remedies, so his petition should be dismissed without prejudice. “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 unless it appears that the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). Thus, a petition for federal habeas corpus relief “should be dismissed if the prisoner has not exhausted available state remedies as to any of his federal claims.” *Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *see also Rhines v. Weber*, 544 U.S. 269, 274 (2005) (“comity and federalism dictate that state courts must have the first opportunity to decide a petitioner’s claims”); *Rose v. Lundy*, 455 U.S. 509, 518-19 (1982) (encouraging “rigorous[] enforce[ment]” of “total exhaustion rule”).

To properly exhaust federal constitutional claims for habeas review, a petitioner “must ‘fairly present’ his constitutional claims through . . . one complete round of the state’s established appellate review process.” *Hicks v. Hepp*, 871 F.3d 513, 530 (7th Cir. 2017) (quoting *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)). “[T]his means that a petitioner must have . . . appealed to the Illinois Appellate Court and presented the claim in a [PLA] to the Illinois Supreme Court.” *Guest v.*

McCann, 474 F.3d 926, 930 (7th Cir. 2007), “either on direct review or in post-conviction proceedings,” *McGhee v. Watson*, 900 F.3d 849, 854 (7th Cir. 2018) (internal quotation marks omitted). To fairly present a claim that counsel was ineffective, a petitioner “must have identif[ied] the specific acts or omissions of counsel that form the basis for [his] claim of ineffective assistance.” *Johnson v. Hulett*, 574 F.3d 428, 432 (7th Cir. 2009) (internal quotation marks omitted).

Here, as he concedes, *see* Doc. 1 at 2-4, petitioner has failed to fairly present any of his ineffective assistance of counsel claims through one complete round of state court review. He conceded in state court that he could not raise the ineffectiveness claims on direct appeal. *See* Exh. D at 2. Petitioner then filed postconviction petitions raising allegations of ineffective assistance of counsel. *See* Exhs. H & I. Although the state circuit court struck the postconviction petitions because petitioner failed to appear in court, Exh. K, he may reinstate those petitions and therefore has an available state court remedy to exhaust his ineffective assistance claims.

In Illinois, “those sentenced to probation . . . may file [postconviction] petitions.” *People v. Carrera*, 940 N.E.2d 1111, 1114 (Ill. 2010). The postconviction petition is the appropriate mechanism to assert a claim that “in the proceedings which resulted in [petitioner’s] conviction there was a substantial denial of his or her rights under the Constitution of the United States.” 725 ILCS 5/122-1(a)(1); *see also Wilk*, 529 N.E.2d at 222-23. Thus, petitioner can allege in a postconviction

petition that he received ineffective assistance of counsel in violation of the Sixth Amendment.

Moreover, time remains for petitioner to reinstate his postconviction petitions. Under Illinois law, a petitioner may refile or reinstate a postconviction petition within one year after its dismissal for want of prosecution. *See People v. Bell*, 254 N.E.3d 522, 528-29 (Ill. App. Ct. 2024) (citing 735 ILCS 5/13-217). The state circuit court struck the postconviction petitions because petitioner failed to appear on March 10, 2026, *see* Exh. K — which is a dismissal for want of prosecution, *see Bell*, 254 N.E.3d at 528-29 — so petitioner has until March 10, 2027, to reinstate his postconviction petitions.²

And dismissal without prejudice will not “effectively end any chance at federal habeas review.” *Dolis v. Chambers*, 454 F.3d 721, 724 (7th Cir. 2006). Petitioner’s conviction became final on April 28, 2026, 90 days after the Illinois Supreme Court denied his PLA on January 28, 2026, *see* Exh. G, and when the time

² Even had petitioner not already filed postconviction petitions in state court, he would have time remaining to do so. The time for seeking certiorari review expired on April 28, 2026, 90 days after the Illinois Supreme Court denied his PLA on January 28, 2026. *See* Sup. Ct. R. 13.1; Exh. G. Petitioner had another 6 months, or until October 26, 2026, to file a petition. *See* 725 ILCS 5/122-1(c) (providing that not proceedings under this Article shall be commenced more than 6 months after the conclusion of proceedings in the United States Supreme Court; if a petitioner for certiorari is not filed, no proceedings under this Article shall be commenced more than 6 months from the date for filing a certiorari petition, unless the petitioner alleges facts showing that the delay was not due to his culpable negligence); *People v. Lighthart*, 2023 IL 128398, ¶ 67 (6-month limitations period, and not 3-year period applicable to defendants who do not file a direct appeal, applies where defendant “files a notice of appeal that culminates in an appellate court order disposing of the appeal, whether by dismissal or on the merits.”).

for seeking certiorari review in the United States Supreme Court expired, *see* Sup. Ct. R. 13.1; *Gonzalez v. Thaler*, 565 U.S. 134, 150 (2012). The one-year limitations period, *see* 28 U.S.C. § 2244(d)(1)(A), began running the following day, and petitioner thus has until April 28, 2027, to file a timely federal habeas petition. Additionally, the one-year limitations period is tolled during the pendency of a “properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim.” 28 U.S.C. § 2244(d)(2); *Wilson v. Battles*, 302 F.3d 745, 747 (7th Cir. 2002). So, if petitioner reinstates his petition by March 2027, the limitations clock will be tolled while it is pending. Under these circumstances, dismissal without prejudice is appropriate. *See Tucker v. Kingston*, 538 F.3d 732, 735 (7th Cir. 2008) (where over five months remaining in habeas limitations period dismissal, as opposed to stay, was warranted).

In sum, petitioner has not exhausted his available state postconviction remedies and his federal petition should be dismissed without prejudice.

B. Petitioner cannot excuse the statutory exhaustion requirement.

Because petitioner fails to show that “circumstances exist that render [the State corrective] process ineffective to protect [his] rights,” 28 U.S.C. § 2254 (b)(1)(B)(ii), he cannot excuse the exhaustion requirement.

Petitioner’s allegations boil down to complaints about state court rules requiring him to (a) file documents by mail or in person and (b) appear in person for certain court hearings. *See* Doc. 1 at 3 (complaining that “Lake County does not permit electronic filing” in his criminal case; filing by “Email is not accepted”; “No

remote appearance was offered.”). But these rules are not circumstances that render the State corrective process ineffective — they are merely the procedures every pro se criminal defendant must comply with to invoke the available State corrective process.

Indeed, petitioner can file documents by mail in state court, just as the vast majority of petitioners who collaterally attack their convictions in state and federal courts do. And filing by mail is not ineffective, as petitioner asserts, for it allows a filer to both “meet statutory deadlines” and obtain “confirmation by receipt.” Doc. 1 at 10. Illinois Supreme Court Rule 12(b)(5) provides that service by mail is proved by “certification under section 1-109 of the Code of Civil Procedure of the person who deposited the document in the mail . . . stating the time and place of mailing or delivery, the complete address that appeared on the envelope or package, and the fact that proper postage . . . was prepaid[.]” Thus, petitioner may meet statutory deadlines by depositing a pleading in the mail before the deadline and complying with Rule 12(b)(5)’s requirements. *See generally People v. Scott*, 143 N.E.3d 164, 169 (Ill. App. Ct. 2019) (postconviction petitions and other pleadings are considered timely filed on date of mailing when filer complies with pertinent subsection of Illinois Supreme Court Rule 12). And petitioner can confirm receipt of filing by viewing the case activity on the Lake County Circuit Clerk’s website or, as petitioner was instructed, by requesting such confirmation by including an additional copy of the pleading and a self-addressed stamped envelope. Doc. 1 at 11. Thus, the option for filing by mail is available to petitioner.

So, too, is the option to file in person. Petitioner suggests that he cannot file in person because his mother’s “vehicle was sabotaged.” *See* Doc. 1 at 3. But petitioner’s allegation is not only unsubstantiated but also insufficient to demonstrate that the state corrective process is ineffective. First, nothing prevents petitioner from taking public transportation or seeking a ride from a friend, taxi, or rideshare service.³ Second, in a federal court filing, petitioner has represented that the vehicle has since been repaired and that his mother acts as his “driver” following revocation of his driver’s license. *See* Doc. 1, *Allababidi v. Shephard et al.*, No. 26 C 6738, at 8. Third, petitioner alleges that the “sabotage” was committed by his own family member, *see* Doc. 9 at 6, meaning that nothing about the State corrective process itself was ineffective. Finally, petitioner can always file by mail.

Petitioner’s complaint that he was “lock[ed] out” of the Odyssey electronic filing system used by Illinois courts, Doc. 1 at 3, has no basis in fact. His own exhibits establish that electronic filing is unavailable for *any* Lake County criminal case and that he was instructed that he may file in person or by mail and may view case information by creating an account on the Clerk’s website. Doc. 1 at 11, 13. Similarly, that the Lake County Circuit Court does not permit litigants to file via

³ Petitioner may not drive himself to the courthouse, as his state court filings represent that his driver’s license was revoked in October 2025. Assuming the truth of his assertion, *see* 625 ILCS 5/6-205(a)3 (providing for mandatory revocation of license of any driver convicted of a felony “in the commission of which a motor vehicle was used”); *id.* § 5/11-503(c) (aggravated reckless driving is a felony), petitioner may not legally drive *any* motor vehicle to the courthouse to file in person. *See* Exh. B at 1, ¶ 8 (probation condition providing that petitioner shall not “operate a motor vehicle without a valid driver’s license”).

email does not establish that the State process is ineffective; as noted, petitioner may file in person or by mail.

Finally, that petitioner appeared in person on January 28, 2026 and “no remote appearance option was offered” for a future court date, *see id.* at 3, both belies his claim that he could not file in person and fails to establish that the state corrective process is ineffective to protect his rights. Indeed, both before and after filing his federal petition, petitioner successfully filed a number of pleadings in the Lake County Circuit Court. *See* Exhs. H, I, and J (postconviction petitions and “combined motion” filed before federal habeas petition); Exh. N (“omnibus filing” filed after federal habeas petition); *see also* Exh. Q (certified case summary report) (listing additional recent filings). Moreover, to the extent petitioner contends that he may be detained pursuant to the outstanding warrant for his arrest and petition to revoke his probation, *see* Docs. 10 & 16, that would not render the State corrective process ineffective. As this Court has made clear, even “detainees traditionally and consistently litigate their cases while in custody, and his claim of being unable to litigate his case while in jail remains frivolous.” Doc. 25.

In sum, petitioner has failed to exhaust available state court remedies and cannot excuse the statutory exhaustion requirement. The Court should therefore dismiss his federal habeas petition without prejudice.

Conclusion

This Court should dismiss the habeas petition without prejudice.

August 7, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 7, 2026, I electronically filed the foregoing **Motion to Dismiss Petitioner's Habeas Petition Without Prejudice** with the Clerk of the United States District Court for the Northern District of Illinois, using the CM/ECF system, which will provide electronic notice to all registered parties. I further certify that I emailed a copy of this document to the following:

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