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To:

January 27, 2000

Hon. John J. Di Motto
Milwaukee County Circuit Court
901 N. Ninth Street
Milwaukee, WI 53233

Floyd Carter - #240333
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You are hereby notified that the Court has entered the following order:

No. 99-3049-W State ex rel. Carter v. Whalen L.C.#95CF953913

Upon consideration of the petition for supervisory writ filed by petitioner, Floyd Carter, and the motion to substitute John E. Litscher for Pat Whalen as respondent filed by the Wisconsin Department of Justice,

IT IS ORDERED that the petition is dismissed as premature. If and when petitioner challenges the effectiveness of his postconviction counsel in the circuit court, as he was advised to do by the court of appeals pursuant to State ex rel. Rothering v. McCaughtry, 205 Wis. 2d 668, 556 N.W.2d 36 (Ct. App. 996), he will then be able to appeal that determination, as necessary, to the court of appeals and, eventually, this court. He will then have an alternative adequate remedy, which dictates that no supervisory jurisdiction be exercised now. See Judicial Council Committee's Note, 1981 to sec. (Rule) 809.71. Similarly, any challenge to appellate counsel's representation in Case No. 99-2621, currently pending in the court of appeals, must await the decision of that court and the resolution of any Knight petition that might be subsequently submitted in that case.

IT IS FURTHER ORDERED that the motion to substitute is granted.

Cornelia G. Clark
Acting Clerk of Supreme Court