

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MICHAEL A. OGLESBEE,

Petitioner,

v.

No.: 3:13-cv-121

SEVIER COUNTY CIRCUIT COURT,

Respondent.

MEMORANDUM AND ORDER

Petitioner has filed a petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's application to proceed *in forma pauperis* is **GRANTED**. The Clerk is **DIRECTED** to file this action without prepayment of costs or other fees as of the date the petition was received and to serve a copy of the petition and this Memorandum and Order on the Attorney General of the State of Tennessee. However, for the reasons stated below, the Attorney General shall not be required to file an answer or other pleading to the petition and this petition is **DISMISSED WITHOUT PREJUDICE**.

Petitioner states that he pleaded guilty in the Circuit Court of Sevier County, Tennessee, on June 12, 2012, to burglary, vandalism, and theft charges and was sentenced to 20 years imprisonment. He admits that he did not appeal from the judgment of conviction nor did he file a petition for post-conviction relief. He now challenges in this Court the

sentence he received and the manner in which it is being served; he also claims he received ineffective assistance of counsel.

A state prisoner's petition for a writ of habeas corpus cannot be granted by a federal court unless the petitioner has exhausted his available state court remedies. 28 U.S.C. § 2254. This rule has been interpreted by the Supreme Court as one of total exhaustion. *Rose v. Lundy*, 455 U.S. 509 (1982). Thus, each and every claim set forth in the federal habeas corpus petition must have been presented to the state appellate court. *Picard v. Connor*, 404 U.S. 270 (1971). As noted, petitioner admits that he did not appeal his judgment of conviction or seek post-conviction relief in the state courts. Accordingly, his petition for habeas corpus relief is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state court remedies. Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts. A certificate of appealability **SHALL NOT ISSUE** in this action. 28 U.S.C. § 2253(c).

In addition to the above, this Court has carefully reviewed this case pursuant to 28 U.S.C. § 1915(a) and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court hereby **DENIES** the petitioner leave to proceed *in forma pauperis* on appeal. *See* Rule 24 of the Federal Rules of Appellate Procedure.

ENTER:

s/ Leon Jordan
United States District Judge