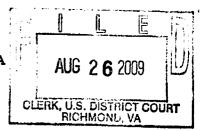
IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Richmond Division



ANDREW M. JACOBS,

Petitioner,

v.

Civil Action No. 3:09CV366

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

MEMORANDUM OPINION

Andrew M. Jacobs, a Virginia inmate proceeding <u>prose</u>, submitted a petition under 28 U.S.C. § 2254 challenging his conviction and sentence. On July 7, 2009, the Court ordered Jacobs to show cause for not dismissing his petition as unexhausted. The July 7, 2009 Order reads, in relevant part:

Prior to seeking federal habeas Petitioner required is to exhaust available state remedies. See 28 U.S.C. § 2254(b)(1)(A). The United States Court of Appeals for the Fourth Circuit has admonished that, "[u]ntil the State has been accorded a fair opportunity by any available procedure to consider the issue and afford a remedy if relief is warranted, federal courts in habeas proceedings by state [inmates] should stay their hand." <u>Durkin v. Davis</u>, 538 F.2d 1037, 1041 (4th Cir. 1976) (internal quotation marks omitted); see 28 U.S.C. S 2254(c) applicant shall not be deemed to have exhausted the remedies available in the courts of the State . . . if he has the right under the law of the State to raise, available procedure, the question presented."). Petitioner's submissions indicate that Petitioner's state application is still pending in the Sentencing Court. Petitioner is therefore ORDERED to show cause, within eleven (11) days of the date of entry hereof, for not dismissing his § 2254 petition for failure to exhaust his state remedies.

(July 7, 2009 Order 1.)

Jacob's response indicates that the Circuit Court of Fairfax County has yet to rule on his state habeas petition. (Petr.'s Resp. to July 7, 2009 Order ¶ 8.) The instant petition is therefore unexhausted. Jacobs's claims will be DISMISSED WITHOUT PREJUDICE. The petition will be DENIED. The action will be DISMISSED. Jacobs's outstanding motions will be DENIED AS MOOT.

The Clerk is directed to send a copy of this Memorandum Opinion to Jacobs.

And it is so ORDERED.

_____/s/ Robert E. Payne

United States District Judge

REP

Date: Aufw 26, 2009 Richmond, Virginia