

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

DOUGLAS M. GREEN,)	
)	
Petitioner,)	Civil Action No. 7:20cv00631
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
WARDEN,)	By: Hon. Thomas T. Cullen
)	United States District Judge
Respondent.)	

Petitioner Douglas M. Green, a Virginia inmate proceeding *pro se*, filed this petition for writ of habeas corpus under 28 U.S.C. § 2254. Having reviewed the petition and state court online records, the court concludes that Green has not fully exhausted his state court remedies before filing this federal habeas petition and, therefore, will dismiss his petition without prejudice.

Green challenges his 2020 conviction in the Warren County Circuit Court. Green filed a § 2254 petition in this court on October 20, 2020, and then filed a direct criminal appeal of his conviction to the Court of Appeals of Virginia on October 27, 2020. The court conditionally filed this action, advised Green that his petition appeared to be unexhausted, and directed him to submit additional information. Green’s submissions and state court online records confirm¹ that his direct criminal appeal is still pending in the Court of Appeals of Virginia. *See Green v. Commonwealth*, No. 1198-20-4 (Va. Ct. App.).

¹ It is well-settled that a court may take judicial notice of court records. *See* Fed. R. Evid. 201; *Wittbohn v. Fed. Ins. Co.*, 164 F. App’x 395, 397 (4th Cir. 2006) (regarding state court records, “[a] district court may clearly take notice of these public records”).

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. *Preiser v. Rodriguez*, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. *Slayton v. Smith*, 404 U.S. 53 (1971). In Virginia, a non-death row felon ultimately must present his claims to the Supreme Court of Virginia and receive a ruling from that court before a federal district court may consider his claims. *See* Va. Code § 8.01-654. In this case, it is clear from the record and state court records found online that Green has not finished exhausting his state court remedies before filing this action and, therefore, the court will dismiss his habeas petition without prejudice.

ENTERED this 4th day of December, 2020.

/s/ Thomas T. Cullen
HON. THOMAS T. CULLEN
UNITED STATES DISTRICT JUDGE