

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION**

MICHAEL EUGENE BLACK,)	
)	
Petitioner,)	
)	
vs.)	3:13-cv-1186-AKK-PWG
)	
LEON FORNISS, Warden; and THE)	
ATTORNEY GENERAL OF ALABAMA,)	
)	
Respondents.)	

MEMORANDUM OPINION


This is a petition for writ of habeas corpus brought by Michael Eugene Black (“Petitioner”) pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2011 state court conviction for first degree assault and leaving the scene of an accident on eleven grounds. (Doc. # 1-1). In response to the previously-assigned magistrate judge’s order to show cause, Respondents argue that Petitioner has failed to exhaust his state-law remedies because (1) Petitioner’s direct appeal presented only one of the grounds asserted in the instant petition, and (2) Petitioner has not filed a post-conviction habeas petition in state court. (Doc. # 6 at 5-7).

Petitioner does not challenge Respondents’ contentions, and, in fact, concedes that “[g]rounds 2 through 11 were not presented in Direct Appeal.” (Doc. # 1-1 at 11). Additionally, the petition reveals that Petitioner has not filed a post-conviction petition for habeas corpus in state court. (*See id.* at 3, 5, 7-8, 10, 12). The parties also agree that Petitioner’s conviction became final on April 12, 2013, when the certificate of judgment issued. (Doc. # 6-3 at 1; *see* Doc. # 1-1 at 2). In light of these facts, the court agrees with Respondents that the Petition is due to be dismissed without prejudice. (*See Rose v. Lundy*, 455 U.S. 509, 510 (1982) (stating that “a district court **must**

dismiss” a habeas petition “containing **any claims** that have not been exhausted in state courts”) (emphasis added)). Because Petitioner has not filed a post-conviction motion under Ala. R. Crim. P. 32, and because such a motion would not be time-barred, Petitioner has not fully exhausted his claims in state court. *Id.* As such, this court must dismiss the instant petition without prejudice. *Id.*

An appropriate order will be entered.

DONE this 12th day of December, 2013.



ABDUL K. KALLON
UNITED STATES DISTRICT JUDGE