

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JULIO NEHOMAR ROSA,

Petitioner,

v.

Case No.: 2:20-cv-354-FtM-38MRM

STATE OF FLORIDA and FLORIDA
ATTORNEY GENERAL,

Respondents.

OPINION AND ORDER¹

Before the Court is Petitioner Julio Rosa's Notice to the Clerk ([Doc. 7](#)) filed on June 29, 2020. For the following reasons, the Court dismisses the Petition. On June 17, 2020, the Court directed Petitioner to file an Amended Petition. ([Doc. 5](#)). Instead, Petitioner filed this Notice to the Clerk stating that the Second District Court of Appeal had reopened his case and that all grounds in his Petition are now unexhausted.

Before a district court can grant habeas relief to a state prisoner under § 2254, the petitioner must exhaust all state court remedies available for challenging his conviction, either on direct appeal or in a state post-conviction motion. See [28 U.S.C. § 2254\(b\)1\(A\)](#); [O'Sullivan v. Boerckel, 526 U.S. 838, 842 \(1999\)](#) (“[T]he state prisoner must give the state courts an opportunity to act on his claims before he presents those claims to a federal court in a habeas petition.”). The Court will, therefore, dismiss this action without prejudice to allow Petitioner to complete the exhaustion requirements in the state courts.

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

See [Rose v. Lundy, 455 U.S. 509, 510 \(1982\)](#). The Court notes, however, that the dismissal without prejudice regarding exhaustion does not excuse Petitioner from the one-year period of limitation for raising a habeas corpus petition in the federal courts. See [28 U.S.C. § 2244\(d\)](#).

Accordingly, it is now

ORDERED:

Petitioner Julio Rosa's case is **DISMISSED without prejudice**.

DONE and **ORDERED** in Fort Myers, Florida this 1st day of July 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-2
Copies: All Parties of Record