

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

THOMAS JOSEPH CUTAIA,

Petitioner,

v.

CASE NO. 6:08-cv-579-Orl-35DAB

SECRETARY, DEPARTMENT
OF CORRECTIONS, et al.,

Respondents.

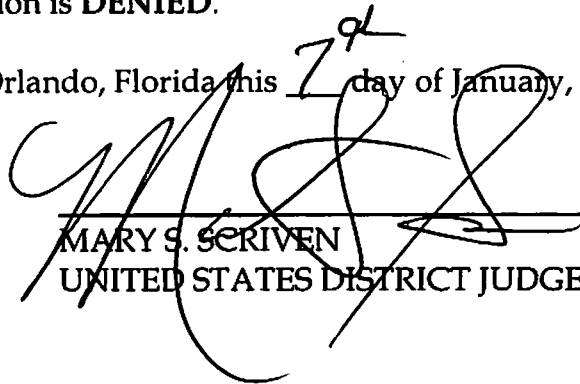
ORDER

This case is before the Court on Petitioner's Motion for Reconsideration (Doc. No. 25) of the Court's November 21, 2008, order dismissing this case without prejudice (Doc. No. 24). This habeas action was dismissed to give Petitioner the opportunity to complete the exhaustion requirement of 28 U.S.C. § 2254 in the state courts. *See* Doc. No. 24. Petitioner currently has pending in the Fifth District Court of Appeal a direct appeal challenging his state court convictions; therefore, Petitioner's convictions are not yet final for purposes of federal habeas corpus review. Furthermore, Petitioner must exhaust his remedies available in the state courts prior to seeking federal habeas review. *See* 28 U.S.C. § 2254(b)(1).

Contrary to Plaintiff's assertions, a federal court may not grant a petition for writ of habeas corpus unless the petitioner has exhausted the available state court remedies. The only exceptions to this rule are contained in Section 2254(b)(1)(B)(I) and (ii) - where

there is an absence of available state corrective process or an available process is ineffective to protect the petitioner's rights. However, Petitioner has not demonstrated that either exception is applicable in this case. As such, Petitioner has failed to demonstrate sufficient grounds warranting reconsideration of the Court's prior order dismissing this case to complete the exhaustion requirement of Section 2254. Thereon it is **ORDERED** that Petitioner's Motion for Reconsideration is **DENIED**.

DONE AND ORDERED at Orlando, Florida this 2nd day of January, 2009.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies to:
pslc 1/6
Thomas Joseph Cutaia
Counsel of Record