

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RENARD McGRIFF,

Petitioner,

-vs-

Case No. 8:06-cv-630-T-17EAJ

SECRETARY, FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondent.

ORDER

This cause is before the Court on Petitioner's 28 U.S.C. § 2254 petition for writ of habeas corpus. In addition to the petition, Petitioner filed a memorandum in support of the petition. The memorandum consists of the transcript of the hearing on Petitioner's motion for belated appeal of the denial of his motion to withdraw his plea.

During the hearing, Petitioner referred several times to the fact that he could file a Rule 3.850 motion alleging ineffective assistance of his counsel for counsel's coercing him to enter a plea and for counsel's failing to file an appeal of the denial of his motion to withdraw his plea. The essence of the plea transcript reveals that Petitioner knew he had not raised these claims in state court.

Petitioner must first present the issues of a coerced plea and ineffective assistance of counsel related to a coerced plea and failure to file an appeal to the state courts before raising the claims in a federal petition. The dates furnished by Petitioner in his present federal petition indicate that he can still timely do so.

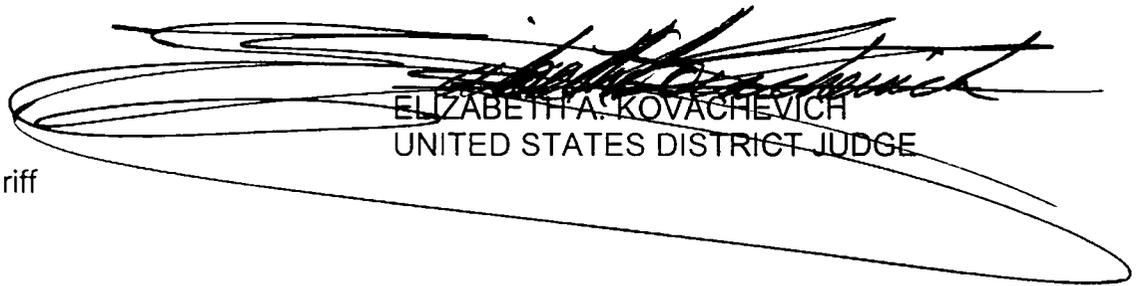
The present petition is not a mixed petition; it is a petition in which Petitioner has not raised any of the claims in state court. See Rhines v. Weber, 544 U.S. 269 (2005). Therefore, the Court will not stay the petition while Petitioner exhausts in state court. Instead, the Court will dismiss the petition, without prejudice, and will direct the Clerk to send a copy of this order to Petitioner by certified mail so that he can return to state court and raise his claims through the proper channels.

Accordingly, the Court orders:

That Petitioner's petition for writ of habeas corpus is dismissed, without prejudice. The Clerk is directed to enter judgment against Petitioner and to close this case.

The Clerk is directed to send Petitioner a copy of this order by certified mail.

ORDERED in Tampa, Florida, on APRIL 12th, 2006.



ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Renard McGriff