


IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FILED
U.S. DISTRICT COURT
FOR SAVANNAH DIV.
2018 JUN 26 AM 11:28

KENNETH RAY JOHNSON,)
)
Petitioner,)
)
v.)
)
NATHAN BROOKE,)
)
Respondent.)
_____)

CLERK 
SO. DIST. OF GA.

CASE NO. CV418-084

O R D E R

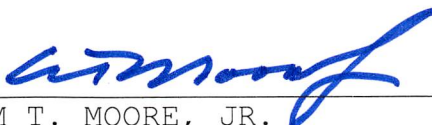
Kenneth Ray Johnson's application for habeas corpus under 28 U.S.C. § 2254, having been transferred to this Court from the Middle District of Georgia, was inadvertently screened on the merits without first assessing his application to proceed *in forma pauperis* (IFP). Doc. 8 (recommending dismissal as his habeas claims are unexhausted); see doc. 2 (motion for leave to proceed IFP).

Petitioner has \$7,074.89 in his prisoner account, with an average monthly balance of \$371.59 for the past six months. Doc. 2. He can certainly provide necessities for himself and also pay the \$5 filing fee associated with this action "without undue hardship." *Foster v. Cuyahoga Dep't of Health & Human Servs.*, 21 F. App'x 239, 240 (6th Cir.2001). In that light, and given the extremely modest \$5 filing fee that Congress has prescribed for habeas petitions in 28 U.S.C. § 1914(a), there is no way in which Johnson's application for leave to proceed without payment of the

filing fee can be regarded as having been presented in good faith. Further, as set forth in the Court's Report and Recommendation (doc. 8), Johnson's § 2254 petition must be dismissed on the merits for failure to exhaust his state-level remedies.¹ Because Johnson does not meet the financial criteria to proceed IFP, and because "it is clear that the proceeding which he proposes to conduct . . . will be futile," *Kinney v. Plymouth Rock Squab Co.*, 236 U.S. 43, 45 (1915); *Pothier v. Rodman*, 261 U.S. 307, 309 (1923), his application to proceed IFP is **DENIED**. And, for the reasons set forth in the R&R, his petition is **DISMISSED** as unexhausted.

Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court and petitioner's 28 U.S.C. § 2254 petition is **DISMISSED**. Petitioner is also not entitled to a Certificate of Appealability, rendering moot any request for *in forma pauperis* status on appeal.

SO ORDERED this 26th day of June 2018.



WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

¹ After all, he asserts "claims for relief that he concedes have not been 'presented to the highest state court having jurisdiction,' doc. 1 at 12, and therefore are not "exhausted" as required by § 2254(b)(1)(A)." Doc. 8 at 1.