

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

LLOYD BROWN, JR.,)	
)	
Petitioner,)	
)	
v.)	CAUSE NO. 3:07-CV-101 AS
)	
SHERIFF GRANT COUNTY JAIL,)	
)	
Respondent.)	

OPINION AND ORDER

Lloyd Brown, Jr., a *pro se* prisoner, filed this habeas corpus petition attempting to challenge his criminal conviction in 27D03-0608-FD-708 on January 9, 2007 in the Grant County Superior Court. Mr. Brown plead guilty to operating a vehicle while intoxicated and guilty to a prior conviction for the same offense within the past five years. Mr. Brown was sentenced to three years in prison.

If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

Section 2254 Habeas Corpus Rule 4.

Under 28 U.S.C. § 2254(b)(1)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that--

- (A) the applicant has exhausted the remedies available in the courts of the State; or
- (B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Here, although Mr. Brown could not file a direct appeal since he plead guilty to the charges, the state affords Mr. Brown the opportunity to file a petition for post-conviction relief. Mr. Brown has not done so, and therefore, has not exhausted the available state court remedies. As a result, this court cannot address Mr. Brown's petition for writ of habeas corpus until he files a petition for post-conviction relief and fully exhausts his appeals with regard to that petition. Mr. Brown may refile a petition for writ of habeas corpus after exhausting his state court remedies.

Mr. Brown has also filed a motion for leave to proceed *in forma pauperis*. However, Mr. Brown has already paid the \$5.00 filing fee. Therefore, his motion is denied.

For the foregoing reasons, the court **DISMISSES WITHOUT PREJUDICE** the habeas corpus petition and **DENIES** his motion to proceed *in forma pauperis* (docket # 2).

IT IS SO ORDERED.

ENTERED: March 15, 2007

S/ ALLEN SHARP
ALLEN SHARP, JUDGE
UNITED STATES DISTRICT COURT

