

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

JEFFERY KEMP,

Petitioner,

vs.

STATE OF IOWA,¹

Respondent.

No. C15-2102-LRR

ORDER

This matter is before the court on the petitioner's application for a writ of habeas corpus (docket no. 1), filed on November 24, 2015, supplement (docket no. 2), filed on November 24, 2015, and application to proceed in forma pauperis (docket no. 3), filed on December 3, 2015. The petitioner did not pay the required filing fee. *See* 28 U.S.C. § 1914.

Based on the petitioner's statements, the court concludes that the petitioner does not have sufficient funds to pay the required filing fee. 28 U.S.C. § 1914(a) (requiring \$5.00 filing fee). Thus, the plaintiff's application to proceed in forma pauperis is granted. *See generally* 28 U.S.C. § 1915.

¹ The petitioner brings this action against the State of Iowa, but the proper respondent in a federal habeas corpus action is "the person having custody of the person detained." 28 U.S.C. § 2243; *see also* 28 U.S.C. § 2242 (stating application shall allege the name of the person who has custody over him); *Braden v. 30th Judicial Circuit Ct. of Ky.*, 410 U.S. 484, 494-95 (1973) ("The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody."). Thus, the petitioner improperly named the State of Iowa as the respondent.

Regarding the petitioner's application for a writ of habeas corpus, the petitioner did not comply with Rule 2(d) of the Rules Governing Section 2254 Cases, which requires him to substantially follow the form that is typically utilized by those seeking relief under 28 U.S.C. § 2254. Moreover, before seeking a writ of habeas corpus in this court, the petitioner must exhaust the remedies that are available in the Iowa courts. The petitioner's application for a writ of habeas corpus clearly demonstrates that the petitioner did not comply with 28 U.S.C. § 2254(b)(1)(A).² Accordingly, the petitioner's application for a writ of habeas corpus is denied without prejudice.

IT IS SO ORDERED

DATED this 28th day of December, 2015.

A handwritten signature in black ink, appearing to be "A. N. N.", is centered on the page.

² The court notes that a review of state court records indicates that the Iowa District Court for Black Hawk County granted a motion to dismiss on December 11, 2015. Iowa state court criminal and civil records may be accessed online at: http://www.iowacourts.gov/For_the_Public/Court_Services/Docket_Records_Search/index.asp. See *Stutzka v. McCarville*, 420 F.3d 757, 760 n.2 (8th Cir. 2005) (addressing court's ability to take judicial notice of public records).