

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARLIN D. LONG,
Petitioner,

v.

CASE NO. 07-3009-SAC

RAY ROBERTS,
Respondent.

O R D E R

Petitioner herein, Marlin D. Long, is an inmate of the El Dorado Correctional Facility, El Dorado, Kansas. This court received a letter from Mr. Long with a document attached, which is entitled "Notice of Appeal," and encaptioned "In the Supreme Court of the State of Kansas," Appellate Case No. 94260. The document indicates Mr. Long intends to appeal the decision of the Kansas Supreme Court in Case No. 94260 to "the U.S. District Court." Petitioner also attaches a letter from a Deputy Clerk of the Kansas Appellate Courts, where he apparently sent the Notice originally. The Deputy Clerk returned it to him with the explanation that she did not know the procedures "for taking your appeal from the Kansas Supreme Court to the U.S. District Court," but the filing of a Notice of Appeal in the Kansas Supreme Court is not necessary.

Mr. Long now asks this court to file his Notice of Appeal, or instruct him as to "the correct procedures. The court construes Mr. Long's filings as a petition for writ of habeas corpus filed pursuant to 28 U.S.C. 2254. The on-line appellate court records for Case No. 94260 show it is was a petition filed pursuant to K.S.A. 60-1507 in Sedgwick County District Court, and apparently denied by that court. Petitioner then filed a Notice of Appeal, and the Kansas Court of Appeals affirmed the denial on September 1, 2006.

The Kansas Supreme Court denied a Petition for Review on December 19, 2006.

If petitioner actually intends to directly appeal the decision of the Kansas Supreme Court in Case No. 94260, the only appellate court for that decision is the United States Supreme Court. He has 90 days in which to file a Petition for Writ of Certiorari in the United States Supreme Court. He would have to contact the United States Supreme Court for instructions on how to proceed there.

There is no direct appeal of the decision of the Kansas Supreme Court to the United States District Court, which is the trial court for the federal system. Thus, a Notice of Appeal to this court filed in either the Kansas Supreme Court or this court is not the proper way to proceed to federal court.

However, the court believes Mr. Long wants the federal courts to review his claims challenging his Kansas conviction or convictions, which were rejected by the state courts. In order to challenge state convictions in federal court, a state prisoner must file a petition for writ of habeas corpus pursuant to 28 U.S.C. 2254 on forms provided by this court. He must also either pay a filing fee of \$5.00, or submit a Motion for Leave to File Without Prepayment of Fees. Mr. Long has not satisfied the filing fee and has not filed a petition on the proper forms. He has also not stated any facts which would support a claim for federal habeas corpus relief.

Petitioner shall be given thirty (30) days in which to complete and file a Petition for Writ of Habeas Corpus under 28 U.S.C. 2254 on forms provided by the court for filing such an action, and to either pay the filing fee or complete and file a Motion for Leave to

Proceed Without Prepayment of Fees together with a certified statement of his inmate account for the six months preceding his filing of this action, as required by statute. Instructions are included with the forms, and Mr. Long is advised to carefully and fully follow those instructions in completing the forms. If petitioner fails to comply with this order in the time provided, the court may dismiss this action without further notice.

IT IS THEREFORE ORDERED that petitioner is granted thirty (30) days in which to file a Petition for Writ of Habeas Corpus on forms provided by the court and to satisfy the filing fee herein either by payment or motion as directed.

The Clerk is directed to transmit forms to petitioner for filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254 and a Motion for Leave to Proceed Without Payment of Fees.

IT IS SO ORDERED.

Dated this 19th day of January, 2007, at Topeka, Kansas.

s/Sam A. Crow
U. S. Senior District Judge