

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

MYOUN SAWYER,

Petitioner,

vs.

CIVIL ACTION  
No. 12-3006-SAC

CHRISTOPHER BURKE, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter is before the court on a petition for habeas corpus filed pursuant to 28 U.S.C. § 2254 by a person under civil commitment as a sexual predator. He proceeds pro se, and the court grants leave to proceed in forma pauperis.

The court liberally construes the present action as a challenge to the commitment proceedings.

A petitioner seeking federal habeas corpus review generally must satisfy the exhaustion requirement. Under 28 U.S.C. §2254(b)(1), a petitioner must show the claims presented in the habeas corpus action (1) have been presented to the state courts, including the highest state court, or (2) that no adequate state court remedies are available or effective. See *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999); *Dever v. Kansas*

*State Penitentiary*, 36 F.3d 1531, 1534 (10th Cir.1994).

Because the materials appended to the petition show that a direct appeal is pending in the Kansas appellate courts<sup>1</sup>, the court will dismiss this matter without prejudice. Petitioner has not presented his claims to the highest state court; rather, he has a pending appeal in the civil case related to his status as a sexual predator.

IT IS, THEREFORE, BY THE COURT ORDERED the petition for habeas corpus is dismissed without prejudice to allow petitioner to complete the exhaustion of state court remedies.

A copy of this order shall be transmitted to the petitioner.

**IT IS SO ORDERED.**

Dated at Topeka, Kansas, this 2d day of February, 2012.

S/ Sam A. Crow  
SAM A. CROW  
United States Senior District Judge

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The petition reflects a pending appeal in the Kansas appellate courts, and the court's research reflects that the appeal remains pending; a copy of the appellate docket sheet is appended to this order.