

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ROBERT L. RAYFORD,

Plaintiff,

v.

CASE NO. 12-3264-SAC

STATE OF KANSAS,

Defendant.

MEMORANDUM AND ORDER

This matter is a civil action filed by a prisoner at the Sedgwick County Jail, Wichita, Kansas. Plaintiff proceeds pro se.

By its order of January 17, 2013, the court liberally construed the action as a challenge the fairness of state criminal proceedings pending against plaintiff and concluded the matter should be construed as a petition for habeas corpus. Finding plaintiff had not exhausted the claims by presenting them to the state appellate courts, the court advised him that it was considering the dismissal of this matter without prejudice to allow him to pursue available state court remedies. Plaintiff was directed him to show cause why this matter should not be dismissed on or before February 15, 2013. Finally, the court directed plaintiff to submit the filing fee or a motion to proceed in forma pauperis.

Plaintiff filed an appropriate motion, but he has not submitted a financial statement in support of his request. Likewise, plaintiff has made no response to the court's construction of this matter as a petition for habeas corpus or to the proposed dismissal of this matter as premature.

Having considered the record, the court concludes this matter should be dismissed for the reasons set forth in its order of January 17, 2013. As explained in the court's earlier order, the plaintiff's sole federal remedy for challenging the constitutionality of the state criminal proceedings is a petition for habeas corpus. See *Preiser v. Rodriguez*, 411 U.S. 475, 504 (1973). However, such a petition ordinarily may not be brought until an applicant satisfies the exhaustion requirement by pursuing available state court remedies. 28 U.S.C. § 2254(b); see *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000). Because plaintiff has not shown that he has exhausted available state court remedies, the court will dismiss this matter without prejudice.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is liberally construed as a petition for habeas corpus relief and is dismissed without prejudice.

IT IS FURTHER ORDERED the motion for leave to proceed in forma pauperis (Doc. 3) is denied.

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

IT IS SO ORDERED.

DATED: This 27th day of February, 2013, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge