

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

ANTHONY LEROY DAVIS,

Petitioner,

v.

CASE NO. 17-3087-SAC

DAN SCHNURR,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed by a prisoner in state custody. On May 23, 2017, the Court granted leave to proceed in forma pauperis, liberally construed the pro se pleading as a petition filed under 28 U.S.C. §2241, and directed petitioner to show cause why this matter should not be dismissed without prejudice due to a pending state court action identified in the petition.

On May 31, 2017, petitioner filed a motion for judgment on the pleadings (Doc. #6). He attaches an affidavit and copies of a brief filed in the state court action by the State. However, petitioner has not identified any final decision in that matter. Accordingly, it does not appear that petitioner has exhausted state court remedies, as directed in the order of the Court entered on May 23¹. The Court reminds petitioner that the exhaustion of available state court remedies is required before a state prisoner may seek federal habeas corpus relief under 28 U.S.C. § 2241. *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000).

¹ If the state district court enters a decision adverse to the petitioner, he must seek relief in the state appellate courts to properly exhaust state court remedies. See *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999); *Dever v. Kansas State Penitentiary*, 36 F.3d 1531, 1534 (10th Cir. 1994).

IT IS, THEREFORE, BY THE COURT ORDERED the petition for habeas corpus is dismissed without prejudice.

IT IS FURTHER ORDERED petitioner's motion to appoint counsel (Doc. #4) and motion for judgment on the pleadings (Doc. #6) are denied.

IT IS SO ORDERED.

DATED: This 6th day of June, 2017, at Topeka, Kansas.

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