

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON

CRIMINAL ACTION: 2:12-162-KKC

DARIUS A. HARRIS, SR.,

PETITIONER,

v.

OPINION AND ORDER

STEVE HANEY, Warden

RESPONDENT.

*** **

This matter is before the Court on the Petitioner's pleading captioned "Petition to 'Show-Cause' of Submission of Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus." (DE 7.) For the following reasons, the Court will interpret the Petitioner's pleading as a motion to withdraw his § 2254 petition and will grant the motion.

The Petitioner filed a § 2254 petition on July 31, 2012. In the petition, he stated that he was currently serving a 40-year state sentence for murder. He stated that his appeal of that conviction and sentence was pending in the Kentucky Supreme Court. The Magistrate Judge entered a recommended disposition (DE 6) in which he recommended that the petition be dismissed without prejudice for failure to satisfy the exhaustion requirement of 28 U.S.C. § 2254(b).

The petitioner then filed the pleading currently before the Court in which he concedes that he has not exhausted his state court remedies and asks the Court to permit him to resubmit his petition after he has done so. The Court interprets this pleading as a motion to withdraw the § 2254 petition in this matter.

Accordingly, the Court hereby ORDERS as follows:

- 1) The Petitioner's motion to withdraw (DE 7) the 28 U.S.C. § 2254 petition (DE 1) is GRANTED and the petition is WITHDRAWN;
- 2) The Magistrate Judge's Recommended Disposition (DE6) is SET ASIDE as moot;
- 3) the Petitioner's Motion for Leave to Proceed In Forma Pauperis (DE 4) is DENIED as moot; and
- 4) This matter is hereby DISMISSED and STRICKEN from the Court's active docket.

Dated this 26th day of February, 2013.



Signed By:

Karen K. Caldwell

A handwritten signature in black ink, consisting of the initials "K.K.C." in a stylized, cursive font.

United States District Judge