

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

**MYRON LAMAR FRAZIER (#312773)**

**CIVIL ACTION**

**VERSUS**

**WARDEN JOHN SMITH**

**NO. 14-0787-SDD-RLB**

**ORDER**

The *pro se* petitioner, an inmate confined at the Tensas Parish Detention Center, Waterproof, Louisiana, brought this habeas corpus proceeding pursuant to 28 U.S.C. § 2254, complaining that his constitutional rights have been violated in connection with his sentence as a fourth felony offender under the Louisiana habitual offender statute, which sentence was imposed in 2013 in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana. The petitioner asserts that the sentence imposed is excessive.

Pursuant to 28 U.S.C. § 2254(b) and (c), a claimant seeking federal habeas corpus relief is required to first exhaust his claims by presenting them for review before the courts of the state in which he is confined. The exhaustion requirement is satisfied only when a petitioner's claims have been properly presented to the state's highest court, in this case the Louisiana Supreme Court, either on direct review or on post-conviction attack. *Rose v. Lundy*, 455 U.S. 509, 522 (1982); *Bufalino v. Reno*, 613 F.2d 568, 570 (5<sup>th</sup> Cir. 1980). The petitioner in this case has provided competing assertions regarding the presentation of the instant claim before the state's highest court, *see* R. Doc. 1 at pp. 2 and 6. Accordingly, the Court is unable to determine whether this claim has been exhausted. Further, whereas the Court has determined that the petitioner has presented this claim before the intermediate Louisiana appellate court, which court

affirmed the petitioner's sentence on September 24, 2014, *see State v. Frazier*, 2014 WL 4742544 (La. App. 1<sup>st</sup> Cir. Sept. 24, 2014), the Court has found no record, in the "presumptively accurate published jurisprudence of the State of Louisiana," that the petitioner has presented the claim before the Louisiana Supreme Court. *See Reed v. Keith*, 2014 WL 940587, \*1 at note 1 (W.D. La. Mar. 11, 2014). Accordingly,

**IT IS ORDERED** that, within thirty (30) days of the date of this Order, the petitioner shall provide to the Court, in writing, any evidence within his possession or control that reflects that he has presented and/or exhausted the claim asserted in this proceeding before the Louisiana Supreme Court. The petitioner is advised that a failure to provide a response to this Order within the time allowed may result in a dismissal of this proceeding without further notice from the Court.

Signed in Baton Rouge, Louisiana, on February 25, 2015.



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**RICHARD L. BOURGEOIS, JR.**  
**UNITED STATES MAGISTRATE JUDGE**