

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH CHRISTOPHER CAVER,

Petitioner,

v.

CASE NO. 2:07-CV-12053
HONORABLE AVERN COHN

MICHIGAN DEP'T. OF CORRECTIONS, et al.,

Respondents.

**OPINION AND ORDER DISMISSING THE PETITION FOR WRIT OF HABEAS
CORPUS WITHOUT PREJUDICE**

I. Introduction

This is a habeas case under 28 U.S.C. § 2254. Kenneth Christopher Caver (“Petitioner”), a Michigan parolee, pleaded guilty to bank robbery and being a fourth habitual offender in the Wayne County Circuit Court on March 2, 2001 and was sentenced to three years seven months to 20 years imprisonment. He was released on parole on May 8, 2007. In his pleadings, Petitioner raises claims concerning the denial of appellate counsel, ineffective assistance of appellate counsel, and ineffective assistance of trial counsel. For the reasons set forth below, the petition will be dismissed without prejudice.

II. Procedural History

Following Petitioner’s conviction and sentencing, the state trial court appointed counsel for Petitioner to proceed on appeal. Appellate counsel subsequently moved to

withdraw as counsel indicating that there were no issues for appeal. The trial court granted the motion to withdraw on January 25, 2002. Petitioner filed a motion for replacement counsel which was denied on May 12, 2004 “for the reasons that his conviction and sentence is no longer subject to appellate review and may only be reviewed in accordance with MCR 6.502 et seq.” Petitioner subsequently filed a Halbert request for appointment of counsel with the state trial court which was denied on May 31, 2006 because Petitioner had in fact been appointed appellate counsel following his plea. From the record before this Court, it does not appear that Petitioner has appealed the trial court’s decisions concerning the appointment of counsel, nor has he filed a motion for relief from judgment pursuant to Michigan Court Rule 6.500 et seq. Petitioner dated the instant federal petition for writ of habeas corpus on May 5, 2007 and it was filed by the Court on May 10, 2007.

III. Analysis

A prisoner filing a petition for a writ of habeas corpus under 28 U.S.C. §2254 must first exhaust all state remedies. See O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (“state prisoners must give the state courts one full fair opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process”). A Michigan prisoner must raise each issue he seeks to present in a federal habeas proceeding to the state courts. Each issue must be presented to both the Michigan Court of Appeals and the Michigan Supreme Court to satisfy the exhaustion requirement. See Welch v. Burke, 49 F. Supp. 2d 992, 998 (E.D. Mich. 1999). The burden is on the petitioner to prove exhaustion.

Petitioner has not met his burden of showing exhaustion of state court remedies.

Petitioner admits that he has not pursued his appellate remedies nor filed a motion for relief from judgment in the state courts concerning his present habeas claims.

Petitioner must complete the state court process before seeking habeas relief in this Court. Federal habeas law provides that a habeas petitioner is only entitled to relief if he can show that the state court adjudication of his claims resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States. See 28 U.S.C. § 2254(d). The state courts must first be given a fair opportunity to rule upon Petitioner's habeas claims before he can present those claims to this Court. Otherwise, the Court cannot apply the standard found at 28 U.S.C. § 2254.

IV. Conclusion

For the reasons stated above, Petitioner has not exhausted his state court remedies as to each of his habeas claims. Accordingly, the petition is **DISMISSES WITHOUT PREJUDICE.**

SO ORDERED.

Dated: May 16, 2007

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to Kenneth Caver, #207387, 16170 San Juan Drive, Detroit, MI 48221 on this date, May 16, 2007, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160