

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CURTIS EDWARDS,)
Petitioner,)
v.) No. 4:15CV508 TCM
MICHAEL S. BOWERSOX,)
Respondent,)

MEMORANDUM AND ORDER

Curtis Edwards seeks a petition for writ of habeas corpus under 28 U.S.C. § 2254. However, when he filed this action he had not properly exhausted his available state remedies. As a result, this action is dismissed without prejudice.

Under § 2254(b)(1)(A), a petition for writ of habeas corpus cannot be granted unless “the applicant has exhausted the remedies available in the courts of the State.” Petitioner’s state postconviction case was Edwards v. Missouri, No. 13SL-CC04356 (St. Louis County). When petitioner filed this action, on March 16, 2015, that case was still pending. Id. (accessed at <https://www.courts.mo.gov/casenet/base/welcome.do>).¹ Petitioner believed that the case was dismissed on September 19, 2014. However, his state postconviction motion was not dismissed until April 6, 2015. Id. The docket sheet does not reflect whether petitioner filed a notice of appeal. It does reflect, however, that petitioner’s attorney filed a motion for leave to proceed in forma pauperis on May 13, 2015. So, it is possible that a notice of appeal will be filed.

The question of whether a state habeas petitioner has exhausted his available state court remedies is determined at the time the petition is filed in federal court. See Beaulieu v.

¹ The Court may take judicial notice of the state court’s file. See Levy v. Ohl, 477 F.3d 988, 991 (8th Cir. 2007).

Minnesota, 583 F.3d 570, 573 (8th Cir. 2009). Because petitioner had not exhausted his available state remedies at the time the instant case was filed, the Court will dismiss this action without prejudice to refiling when his claims are exhausted.

Finally, the Court does not believe that jurists of reason could debate whether the petition was exhausted at the time it was filed. Therefore, the Court will not issue a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that the petition is **DENIED** without prejudice.

An Order of Dismissal will be filed separately.

Dated this 18th day of May, 2015.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE