

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ERIC F. LEWIS,)	8:09CV244
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
STATE OF NEBRASKA,)	
)	
Respondent.)	

This matter is before the court on Respondent’s Motion for Summary Judgment. (Filing No. [10](#).) Respondent has submitted a Brief (filing no. [11](#)) and State Court Records (filing no. [9](#)) in support of the Motion. Petitioner Eric Lewis (“Lewis”) has not responded to Respondent’s Motion and the time to do so has now expired.

Respondent correctly argues that Lewis’ case must be dismissed because he has not exhausted his state court remedies. As set forth in [28 U.S.C. § 2254\(b\)\(1\)](#):

- (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—
 - (A) the applicant has exhausted the remedies available in the courts of the State; or
 - (B) (i) there is an absence of available State corrective process; or
(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

[28 U.S.C. § 2254\(b\)\(1\)](#). A state prisoner must therefore “fairly present” the substance of each federal constitutional claim to the state courts *before* seeking federal habeas relief. *Id.* at 844.

This is the third petition for writ of habeas corpus that Lewis has filed regarding his January 12, 2009, conviction for second-degree murder. (*See* [8:08CV396](#) and [8:09CV143](#).) The court dismissed the two prior cases because Lewis had not exhausted his state court remedies. This case is no different, as Lewis has not even completed his direct appeal in the underlying state criminal case. (*See* Filing No. [9-2](#), Attach. 1, at CM/ECF pp. 1-4.) Therefore, Lewis' claims are not ripe for federal habeas review and must be dismissed.

IT IS THEREFORE ORDERED that:

1. Respondent's Motion for Summary Judgment (filing no. [10](#)) is granted, and Petitioner's claims are dismissed without prejudice.
2. A separate judgment will be entered in accordance with this Memorandum and Order.

December 29, 2009.

BY THE COURT:

Richard G. Kopf
United States District Judge

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