

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

ANTHONY LEON HOOVER, )

)

Petitioner, )

)

v. )

1:06CV1018

)

STATE OF NORTH CAROLINA, )

)

Respondent. )

**ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a prisoner of the State of North Carolina, has submitted a paper writing which the Court has reviewed and construes to be a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody. The Clerk of Court received the submission on November 14, 2006, which Petitioner had dated as of November 2, 2006. For the following reasons, the petition cannot be further processed.

1. Petitioner has not used the required § 2254 Forms. Rule 2, R. Gov. § 2254 Cases. The Clerk will forward to Petitioner the proper forms.
2. Petitioner has failed to indicate that state court remedies have been exhausted. [28 U.S.C. § 2254(b).]
3. Filing fee was not received or affidavit to proceed in forma pauperis was not submitted or signed by Petitioner. [Attached instructions and Rule 3(a), Rules Governing § 2254 Cases.]
4. Petitioner appears to include some claims regarding his medical treatment in prison which have nothing to do his conviction and which would need to be raised in a separate proceeding.

Because of these pleading failures, this particular petition should be filed and then dismissed, without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed in forma pauperis, and otherwise correcting the defects noted. The Court has no authority to toll the statute of limitation, therefore it continues to run, and Petitioner must act quickly if he wishes to pursue this petition. See Spencer v. Sutton, 239 F.3d 626 (4<sup>th</sup> Cir. 2001). To further aid Petitioner, the Clerk is instructed to send Petitioner a new application to proceed in forma pauperis, and new § 2254 forms.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation.

**IT IS THEREFORE ORDERED** that in forma pauperis status is granted for the sole purpose of entering this Order. The Clerk is instructed to send Petitioner § 2254 forms, instructions, and a current application to proceed in forma pauperis.

**IT IS RECOMMENDED** that this action be filed, but then dismissed sua sponte without prejudice to Petitioner filing a new petition which corrects the defects of the current petition.



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Wallace W. Dixon, U. S. Magistrate Judge

November 21, 2006