

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

ERIC BUIE,)	
)	
Petitioner,)	
)	
v.)	1:09CV579
)	
ALBERT W. KELLER, JR.,)	
)	
Respondent.)	

MEMORANDUM OPINION AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the state of North Carolina, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket No. 1.) Respondent was ordered to respond to the petition, and later did so by filing a motion to dismiss. (Docket No. 4.) He argued in that motion that the petition should be dismissed because Petitioner failed to exhaust any of his state court remedies before proceeding in this Court. Petitioner, having seen the motion to dismiss, has now filed motion to withdraw his petition. (Docket No. 9.) He agrees that he did not exhaust his state court remedies, states that he believes it is in his best interests to now do so, and requests that he be allowed to withdraw his petition in order to pursue his case in the state courts.

Because Petitioner’s request is a reasonable one, and because 28 U.S.C. § 2254(b)(1) does not allow this Court to grant relief on non-exhausted claims in any event, Petitioner’s motion should be granted. This moots Respondent’s motion to dismiss, which should be denied.

IT IS THEREFORE RECOMMENDED that Petitioner's motion to withdraw (docket no. 9) be **GRANTED**, that Respondent's motion to dismiss (docket no. 4) be **DENIED** for being moot, and that Judgment be entered **DISMISSING** this action without prejudice to Petitioner refiling it after his claims have been exhausted in the state courts.

/s/ Donald P. Dietrich
Donald P. Dietrich
United States Magistrate Judge

October 19, 2009