

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:17-cv-00117-FDW**

TIMOTHY BROYHILL,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF NORTH CAROLINA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court upon initial review of Petitioner Timothy Broyhill’s pro se Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254. (Doc. No. 1.)

On January 4, 2017, Petitioner filed a document in the Eastern District of North Carolina, which that court construed as a 28 U.S.C. § 2254 petition for writ of habeas corpus. (Doc. No. 1.) The court sent Petitioner a deficiency notice informing him that his habeas petition was not on the required form for that district and a blank copy of the appropriate form to fill in and return. (Doc. No. 3.). Petitioner failed to complete and return the form. On July 7, 2017, the Eastern District transferred the entire action to this Court, where venue is proper. (Doc. No. 7.)

Rule 2(d) of the Rules Governing Section 2254 Cases in the United States District Courts requires that habeas petitions follow a specific format. As noted by the Eastern District, Petitioner’s pleading does not comply with that requirement. This Court provided Petitioner an additional opportunity to comply with Rule 2(d). (Doc. No. 9.) On July 10, 2017, the Clerk of Court sent Petitioner the standard 28 U.S.C. § 2254 form to complete, sign, and return.

The Court provided Petitioner 21 days to complete and return the standard form and warned Petitioner that failure to comply with the Court’s Order would result in dismissal of this

action without further notice. (Doc. No. 9.) Petitioner has not completed and returned the standard § 2254 form.

IT IS, THEREFORE, ORDERED that the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. No. 1) is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that, pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 474, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive procedural ruling is debatable, and that the petition states a debatably valid claim of the denial of a constitutional right).

Signed: December 1, 2017


Frank D. Whitney
Chief United States District Judge

