

PEARSON, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ALBERT TOWNSEND,	)	
	)	CASE NO. 1:20CV0420
Petitioner,	)	
	)	JUDGE BENITA Y. PEARSON
v.	)	
	)	
KEITH FOLEY, Warden,	)	<b><u>MEMORANDUM OF OPINION</u></b>
	)	<b><u>AND ORDER</u></b>
Respondent.	)	[Resolving ECF Nos. <a href="#">3</a> , <a href="#">5</a> , <a href="#">7</a> , <a href="#">8</a> , <a href="#">9</a> , and <a href="#">10</a> ]

### I. Background

*Pro Se* Petitioner Albert Townsend filed a Petition for a Writ of Habeas Corpus Under [28 U.S.C. § 2254](#) ([ECF No. 1](#)), along with a Motion for Appointment of Counsel ([ECF No. 3](#)). He subsequently filed other motions in the case – a Request to Proceed *In Forma Pauperis* ([ECF No. 5](#)), a Motion Seeking Leave to Amend ([ECF No. 7](#)), a Motion Seeking Leave to Stay claims still pending in the Ohio courts ([ECF No. 8](#)), another Motion to Stay to Complete Exhaustion ([ECF No. 9](#)), and a Motion to Obtain Discovery ([ECF No. 10](#)).

Although the exact grounds for the Petition ([ECF No. 1](#)) are unclear, the Petition ([ECF No. 1](#)) on its face indicates Petitioner seeks to challenge his May 2018 conviction in the Cuyahoga County, Ohio Court of Common Pleas. See [ECF No. 1 at PageID #: 1](#); [State v. Townsend, CR-17-614508-A \(Cuy. Cty. Ct. Comm. Pls.\)](#). A jury found him guilty in that case on charges of rape, kidnapping, complicity to commit rape, attempted rape, and gross sexual

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imposition, all with sexually violent predator specifications. The trial court sentenced Petitioner on May 5, 2018, and he was classified a sexual predator for purposes of sex offender registration.

Petitioner indicates he appealed his conviction and sentence. *See* [ECF No. 1 at PageID #:2, ¶ 9\(a\)-\(d\)](#). The Ohio Eighth District Court of Appeals overruled seven of his eight assignments of error, but found merit to his argument that he cannot be classified a sexually violent predator under [Ohio Rev. Code § 2971.01\(H\)\(1\)](#) for offenses he committed prior to the amendment of that statute under the Constitution's *Ex Post Facto* Clause. *See* [State v. Townsend, No. 107186, 2019 WL 1417862 \(Ohio App. 8th Dist. March 28, 2019\)](#). Petitioner indicates he filed a notice of appeal with the Supreme Court of Ohio. *See* [ECF No. 1 at PageID #: 2, ¶ 9\(g\)](#). The Supreme Court of Ohio's online docket indicates that this appeal is still pending. *See* [State of Ohio v. Townsend, No. 2019-0606 \(Ohio Sup. Ct.\)](#).

## II. Standard of Review and Discussion

A district court must examine a habeas petition to determine whether “it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” [Rule 4 of the Rules Governing Section 2254 Cases](#); *see also* [28 U.S.C. § 2243](#). If so, the petition must be summarily dismissed. [Rule 4](#); *see* [Allen v. Perini, 424 F.2d 134, 141 \(6th Cir.1970\)](#) (district court has the duty to “screen out” petitions that lack merit on their face).

Upon review, the Court finds the Petition ([ECF No. 1](#)) must be dismissed.

Before a court may grant habeas relief to a state prisoner, the prisoner must exhaust the remedies available in the state courts. [28 U.S.C. § 2254\(b\)](#); [Hannah v. Conley, 49 F.3d 1193, 1196 \(6th Cir. 1995\)](#). “The exhaustion requirement is satisfied when the highest court in the

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state in which the petitioner was convicted has been given a full and fair opportunity to rule on the petitioner's claims." [Manning v. Alexander, 912 F.2d 878, 881 \(6th Cir. 1990\)](#) (citations omitted).

Regardless of the potential merits of any claim Petitioner seeks to raise, the Petition ([ECF No. 1](#)) is premature. Petitioner has not fully exhausted his claims in the state courts as to his May 2018 conviction because his direct appeal is still pending in the Supreme Court of Ohio.

### **III. Conclusion**

Accordingly, pursuant to [Rule 4 of the Rules Governing Section 2254 Cases](#), this action is dismissed without prejudice to Petitioner re-filing a petition upon full exhaustion of his state-court remedies. The pending motions are denied as moot. The Court certifies pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#) that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. [28 U.S.C. § 2253](#); [Fed. R. App. P. 22\(b\)](#).

IT IS SO ORDERED.

June 30, 2020  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge