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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO WESTERN DIVISION

MARCUS L. CLARK, SR.,) CASE NO. 3:19CV1366
Petitioner,	JUDGE CHRISTOPHER A. BOYKO
vs.))
WARDEN EDWARD SHELDON,	OPINION AND ORDER
Respondent.	<i>)</i>)

CHRISTOPHER A. BOYKO, J:

Pro se petitioner Marcus L. Clark, Sr. is confined at the Mansfield Correctional Institution in Mansfield, Ohio. On June 12, 2019, he filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in connection with his October 2017 conviction in the Lucas County Court of Common Pleas pursuant to Ohio Rev. Code § 2921.05(B) and (C) (Case No. CR-17-1343) for which he was sentenced to a period of eighteen months. (ECF DKT #1). In the Petition, Clark asserts two grounds for relief: (1) his conviction was against the manifest weight of the evidence; and (2) the trial court erred in denying his motion to dismiss the indictment.

An application for a writ of habeas corpus by a person in state custody pursuant to a state court judgment shall not be granted unless it appears that the petitioner has exhausted all state court remedies. *See Manning v. Alexander*, 912 F.2d 878, 880-81 (6th Cir. 1990) (citing 28 U.S.C. § 2254(b), (c) and collecting cases). "The exhaustion requirement is satisfied when the highest court in the state in which the petitioner was convicted has been given a full and fair opportunity to rule on the petitioner's claims." *Id.* (citing among authority *Justices of Boston Mun. Court v. Lydon*, 466 U.S. 294, 302-03 (1984)).

It is Clark's burden to establish that he has properly and fully exhausted his available

state court remedies with respect to his habeas claims for relief. See Prather v. Rees, 822 F.2d

1418, 1420 n.3 (6th Cir. 1987) (citing *Hopkins v. State*, 524 F.2d 473, 474-75 (5th Cir. 1975)).

But for each ground asserted, Clark indicates on the face of the Petition that his post-conviction

proceedings remain pending. (See ECF DKT #1 at 6-7). Because Clark has not fully exhausted

his state court remedies, his § 2254 petition must be dismissed.

For all of the foregoing reasons, Clark's petition for a writ of habeas corpus is dismissed

pursuant to Rule 4 of the Rules Governing Section 2254 cases. Clark's motion to consolidate is

moot and denied as such. (ECF DKT #4).

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 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.

s/Christopher A. Boyko

CHRISTOPHER A. BOYKO

United States District Judge

Dated: August 13, 2019

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