

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

THOMAS H. CROWDER, JR.,)
Petitioner,)
v.) CIV-17-54-R
TRACY McCOLLUM, Warden,)
Respondent.)

ORDER

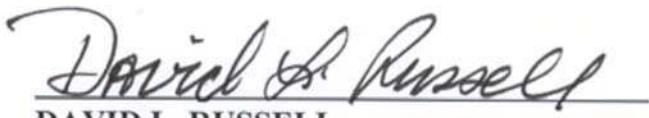
Petitioner filed this action pursuant to 28 U.S.C. § 2254, challenging his conviction in the District Court of Oklahoma County, Case No. CF-2014-5800, for which he is serving a term of twenty-five years imprisonment. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to United States Magistrate Judge Gary M. Purcell for preliminary review. On February 21, 2017, Judge Purcell issued a Report and Recommendation wherein he recommended the Court dismiss the Petition because it contains unexhausted claims, in order to permit Petitioner to exhaust. (Doc. No. 9). On March 3, 2017, the Court received Petitioner's Reply to the February 21, 2017 Order, which the Court construes as a timely objection to the Report and Recommendation. (Doc. No. 10). Having given the Report and Recommendation *de novo* review, the Court finds as follows.

Petitioner does not object to the conclusion that his Petition is not fully exhausted nor does he dispute that sufficient time remains for him to exhaust the currently unexhausted claims. He asserts, however, that exhaustion via the District Court of Oklahoma County may be difficult, because that Court is notorious for making untimely

service of orders denying post-conviction relief, thereby depriving inmates of their ability to appeal to the Oklahoma Court of Criminal Appeals. He further notes, however “[f]or all other purposes Mr. Crowder will proceed to exhaust his three (3) remaining or possibly (2) Substantive claims before the State Courts.” Doc. No. 10. He further notes that he is actually factually innocent as well.

The Court finds no basis in the objection, other than Petitioner’s speculation regarding processes at the District Court of Oklahoma County that would warrant holding the instant petition in abeyance pending exhaustion. Furthermore, Petitioner does not re-urge the request for abeyance that he asserted before Judge Purcell. Accordingly, for the reasons set forth in the Report and Recommendation, this action is hereby **DISMISSED WITHOUT PREJUDICE** so as to permit Petitioner to exhaust his claims in state court. The Report and Recommendation is hereby **ADOPTED**.

IT IS SO ORDERED this 6th day of March 2017.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE