

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

**GREGORY S. KUNIS,** )  
Petitioner, )  
v. )  
**OKLAHOMA COURT OF** )  
**CRIMINAL APPEALS,** )  
**Respondent.** )

Case No. CIV-17-567-R

## ORDER

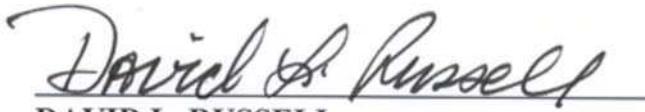
Before the Court is the Report and Recommendation of United States Magistrate Judge Bernard Jones, Doc. 11, and Petitioner’s Objection, Doc. 12. The Magistrate Judge construed Petitioner’s “Motion Requesting Assumption of Jurisdiction,” Doc. 1, as a petition for mandamus relief. Petitioner wants the Court to order the state courts to dismiss all claims against him and to order the Oklahoma Court of Criminal Appeals to refile Petitioner’s Petition in Error. The Magistrate Judge construed the Motion as one for mandamus relief, reasoned that federal courts cannot grant a writ of mandamus against state and local officials, and subsequently recommended dismissal for lack of jurisdiction.

Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court must review de novo those portions of the Report and Recommendation to which Petitioner has objected. In his Objection, Petitioner asks the Court to treat his Motion as a petition for habeas relief under 28 U.S.C. § 2254 despite acknowledging the negative implications that could arise if the Court does so. Yet even if the Court were inclined to characterize Petitioner's Motion as seeking

habeas relief, that would be inappropriate. A habeas petitioner is “generally required to exhaust state remedies . . . .” *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000). The exhaustion of state remedies includes both administrative and state court remedies. *Clonce v. Presley*, 640 F.2d 271, 273-74 (10th Cir. 1981) (stating that a prisoner must “exhaust the respective state and administrative remedies before challenging his state or federal custody by habeas corpus”). As Petitioner admits and court records indicate, the District Court for Beckham County has yet to rule on his request to file an application for post-conviction relief out of time. He has therefore failed to exhaust his state remedies, making any consideration of relief under § 2254 premature.

The Magistrate’s Report and Recommendation is ADOPTED. Plaintiff’s Motion is dismissed and all other pending motions are denied as moot.

IT IS SO ORDERED this 12<sup>th</sup> day of July 2017.

  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE