

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KEVIN RICHARD KIMBERLY, JM-0558,	)	
Petitioner,	)	
	)	
v.	)	2:13-cv-1043
	)	
SUPT. GIROUX, et al.,	)	
Respondents.	)	

MEMORANDUM and ORDER

Kevin Richard Kimberly, an inmate at the State Correctional Institution at Albion has presented a petition for a writ of habeas corpus which he has been granted leave to prosecute in forma pauperis.

In his petition, Kimberly sets forth that he is presently serving consecutive 9 to 24 months and 12 to 24 months sentences imposed following his conviction by a jury at No. CP-26-CR-225-2008 and CP-26-CR-226-2008 in the Court of Common Pleas of Fayette County, Pennsylvania. This sentence was imposed on April 14, 2010 and is being served concurrently with a former sentence.<sup>1</sup> Accordingly to the petitioner the judgment and sentence were affirmed on October 31, 2011 and leave to appeal to the Pennsylvania Supreme Court was not sought.<sup>2</sup> However, Kimberly did file a post-conviction petition on August 13, 2012 and that petition is presently pending before the Court of Common Pleas.<sup>3</sup> In his federal petition, Kimberly sets forth that he will complete his maximum sentence on September 30, 2013, which could well be before his post-conviction petition is addressed.<sup>4</sup> Accordingly, he has moved that the instant petition be held in abeyance while at the same time preserving his filing rights in this Court.<sup>5</sup>

In his "Motion for Abeyance" (ECF 1-3), petitioner requests "that this Federal Court grant placement of this current Habeas Corpus in a state of ABEYANCE until at least Ninety

---

<sup>1</sup> See: Petition at ¶¶ 1-6.

<sup>2</sup> Id. at ¶ 9.

<sup>3</sup> Id. at ¶ 11.

<sup>4</sup> See; ECF 1-3.

<sup>5</sup> Id.

Days after a PCRA evidentiary hearing or the unconditional release from custody scheduled [for] September 30, 2013."<sup>6</sup>

Due to the pendency of the post-conviction petition it is readily apparent that Kimberly has not exhausted his state court remedies, and that his petition here is premature.<sup>7</sup> For this reason we will grant his "Motion for Abeyance" (ECF 1-3) and administratively close the case until such time, if any, that the petitioner makes a timely request that it be reopened.

An appropriate Order will be entered.

---

<sup>6</sup> Id.

<sup>7</sup> 28 U.S.C. §§2254(b)(1)(A).

ORDER

AND NOW, this 7<sup>th</sup> day of August, 2013, for the reasons set forth in the foregoing Memorandum,

IT IS ORDERED that the "Petitioner's Motion for Abeyance" is GRANTED, and the case is administratively closed until such time, if any, that the petitioner timely seeks to reopen the case.

s/ Robert C. Mitchell  
United States Magistrate Judge