McNamee v. Wheeler Doc. 13

FILED
AUG 19 2009
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

CYNTHIA MCNAMEE,

Petitioner,

v. Civil Action No. **3:09CV168**

BARBARA J. WHEELER,

Respondent.

MEMORANDUM OPINION

Petitioner, a Virginia prisoner proceeding *pro se* and *in forma pauperis*, submitted this petition for a writ of habeas corpus on the form used in the Supreme Court of Virginia. Respondent has filed a motion to dismiss arguing that the petition, which contains both exhausted and unexhausted claims, should be dismissed without prejudice. *See Rose v. Lundy*, 455 U.S. 509 (1982). On August 3, 2009, the Court received Petitioner's request for dismissal without prejudice. Petitioner explains that she inadvertently filed the petition in the United States District Court for the Eastern District of Virginia rather than in the Circuit Court of Loudoun County. Respondent not being prejudiced thereby, *see* Fed. R. Civ. P. 41(a)(2), this action will be DISMISSED WITHOUT PREJUDICE to refiling after Petitioner's claims are exhausted. Respondent's motion to dismiss (Docket No. 7) will be DENIED AS MOOT.

It is so ORDERED.

/s/
Richard L. Williams
United States District Judge

Date: AUG 19 2009
Richmond, Virginia

Dockets.Justia.com