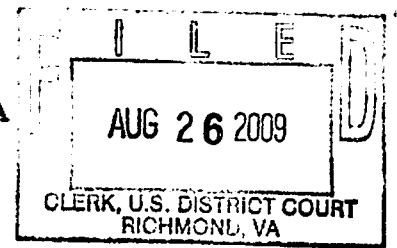


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division



ANDREW M. JACOBS,

Petitioner,

v.

Civil Action No. 3:09CV366

VIRGINIA DEPARTMENT OF CORRECTIONS,

Respondent.

MEMORANDUM OPINION

Andrew M. Jacobs, a Virginia inmate proceeding pro se, submitted a petition under 28 U.S.C. § 2254 challenging his conviction and sentence. On July 7, 2009, the Court ordered Jacobs to show cause for not dismissing his petition as unexhausted. The July 7, 2009 Order reads, in relevant part:

Prior to seeking federal habeas relief, Petitioner is required to exhaust his available state remedies. See 28 U.S.C. § 2254(b)(1)(A). The United States Court of Appeals for the Fourth Circuit has admonished that, "[u]ntil the State has been accorded a fair opportunity by any available procedure to consider the issue and afford a remedy if relief is warranted, federal courts in habeas proceedings by state [inmates] should stay their hand." Durkin v. Davis, 538 F.2d 1037, 1041 (4th Cir. 1976) (internal quotation marks omitted); see 28 U.S.C. § 2254(c) ("An applicant shall not be deemed to have exhausted the remedies available in the courts of the State . . . if he has the right under the law of the State to raise, by any available procedure, the question presented."). Petitioner's submissions indicate that Petitioner's state habeas application is still pending in the Sentencing

