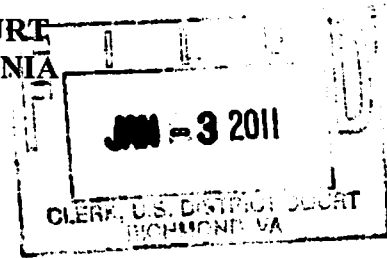


**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**



**JOHN DANIEL O'NEILL,**

Petitioner,

v.

Criminal Action No. **3:10CV157**

**HARRIS L. DIGGS,**

Respondent.

**MEMORANDUM OPINION**

John Daniel O'Neill has submitted a petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his convictions in the Circuit Court for the City of Hampton (the "Circuit Court") for eight counts of rape, six counts of object sexual penetration, two counts of attempted rape, and one count of child pornography. The matter is before the Court on Respondent's motion to dismiss O'Neill's § 2254 petition on the grounds that O'Neill has failed to exhaust his available state court remedies as required. For the reasons set forth below the motion to dismiss will be DENIED AS MOOT.

Following his convictions, O'Neill unsuccessfully appealed his convictions to the Supreme Court of Virginia. In the spring of 2009, O'Neill filed a petition for a writ of habeas corpus with the Circuit Court. On August 21, 2009, the Circuit Court denied O'Neill's petition for a writ of habeas corpus. O'Neill appealed the dismissal of his state habeas petition to the Supreme Court of Virginia.

On March 30, 2010, this federal Court received O'Neill's § 2254 petition. On April 23, 2010, O'Neill moved the Court for a continuance while the Supreme Court of Virginia considered his appeal from the Circuit Court's dismissal of his state habeas petition.

