

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

TRAVIS ALLEN HONORE,

Petitioner,

v.

Civil Action No. **3:16CV346**

HAROLD W. CLARKE,

Respondent.

MEMORANDUM OPINION

Petitioner, a Virginia inmate proceeding *pro se*, submitted a 28 U.S.C. § 2254 petition. (ECF No. 3.) Before a state prisoner can bring a § 2254 petition in federal district court, the prisoner must first have “exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). “As a general rule, in the absence of ‘exceptional circumstances where the need for the remedy afforded by the writ of *habeas corpus* is apparent,’ *Bowen v. Johnston*, 306 U.S. 19, 27 (1939), courts ‘require[] exhaustion of alternative remedies before a prisoner can seek federal habeas relief.’” *Timms v. Johns*, 627 F.3d 525, 530–31 (4th Cir. 2010) (alteration in original) (parallel citation omitted) (quoting *Boumediene v. Bush*, 553 U.S. 723, 793 (2008)). Exhaustion is accomplished by presenting the claims to the Supreme Court of Virginia for review either on direct appeal or in a collateral proceeding. Conversely, “federal courts should abstain from the exercise of [habeas] jurisdiction if the issues raised in the petition may be resolved either by trial on the merits in the state court or by other state procedures available to the petitioner.” *Dickerson v. Louisiana*, 816 F.2d 220, 225 (5th Cir. 1987) (citations omitted); *Durkin v. Davis*, 538 F.2d 1037, 1041 (4th Cir. 1976) (internal quotation marks omitted) (“Until 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.”).

Petitioner states that he has filed neither an appeal nor any other challenge to his state conviction to the Supreme Court of Virginia, (see § 2254 Pet. ¶¶ 8-10), nor previously raised the claims within his § 2254 Petition to the Virginia courts. (*Id.* at 5, 10-11, 19 (as paginated by CM/ECF).) Thus, the record fails to indicate that Petitioner has properly exhausted his state court remedies with respect to his claims.

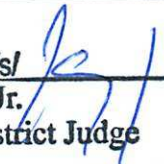
Accordingly, by Memorandum Order entered on August 9, 2016, the Court directed Petitioner to show cause as to why his § 2254 motion should not be dismissed for lack of exhaustion. Petitioner has responded. Petitioner states that he “did not know to go to state court first” and claims that he “was incompetent to stand trial, and that I am also still incompetent.” (Resp. 1, ECF No. 10.) Thus, Petitioner fails to demonstrate he has exhausted his state remedies. Moreover, the issues here may be resolved by collateral appeal. Petitioner fails to demonstrate any exceptional circumstances warrant the consideration of his habeas petition at this time. Accordingly, Petitioner’s § 2254 Petition and the action will be DISMISSED WITHOUT PREJUDICE because he has failed to demonstrate that he has exhausted available state remedies or demonstrate that exceptional circumstances warrant consideration of his petition at this juncture.

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability (“COA”). 28 U.S.C. § 2253(c)(1)(A). A COA will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or

that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). Petitioner fails to satisfy this standard. Accordingly, a certificate of appealability will be DENIED.

An appropriate Order shall issue.

Date: 10/3/18
Richmond, Virginia



John A. Gibney, Jr.
United States District Judge