



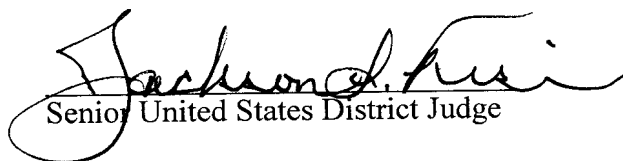
if the Court of Appeals rules against him. Second, he can attack his conviction collaterally by filing a state habeas petition with the circuit court where he was convicted, with an appeal of an adverse decision to the Supreme Court of Virginia. Va. Code § 8.01-654. Finally, he can exhaust his remedies by filing a state habeas petition directly with the Supreme Court of Virginia. Id. Whichever route the inmate chooses to follow, it is clear that he must ultimately present his claims to the Supreme Court of Virginia and receive a ruling from that court before a federal district court can consider them. See O'Sullivan v. Boerckel, 526 U.S. 828, 845 (1999).

In this case, it is clear that Mallory's present claim has not been adjudicated by the Supreme Court of Virginia. In his petition, Mallory concedes that no direct appeal was filed, but claims that he filed several "hand written motions to Judge Bouton to have the sentences run concurrent" and that he filed a motion for reconsideration which he also sent to Judge Bouton. Judge Bouton is the Chief Judge of the Greene County Circuit Court in Virginia. Mallory also concedes that he has not appealed any of his motions to any higher state court. Further, it is clear that Mallory has not pursued a habeas corpus action in state court. Therefore, the court finds that he has failed to fully exhaust available state court remedies prior to filing the instant petition, as required by 28 U.S.C. § 2254(b). For this reason, I dismiss Mallory's petition as unexhausted and without prejudice.

The petitioner is advised that he may refile his federal habeas petition if he is still unsuccessful in obtaining relief after presenting his claims to the Supreme Court of Virginia. The petitioner is also advised that his time to file a state or federal habeas petition is now limited. See 28 U.S.C. § 2244(d); Virginia Code § 8.01-654(A)(2).

The Clerk is directed to send a certified copy of this Memorandum Opinion and the accompanying Order to the petitioner.

**ENTER:** This 28<sup>th</sup> day of September, 2007.

  
Senior United States District Judge