

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>DWAYNE BROWN,</b>	)	
<b>Petitioner,</b>	)	<b>Civil Action No. 7:13cv00567</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>UNNAMED,</b>	)	<b>By: Norman K. Moon</b>
<b>Respondent.</b>	)	<b>United States District Judge</b>

Petitioner Dwayne Brown, a Virginia inmate proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction in the Roanoke City Circuit Court. I find that Brown did not fully exhaust his state court remedies before filing this federal habeas petition and, therefore, I will dismiss this action without prejudice.

**I.**

On June 27, 2013, the Roanoke City Circuit Court convicted Brown of possessing a firearm as a violent felon, in violation of Va. Code 18.2-308.2, and sentenced him to 5 years incarceration. Brown appealed and the Court of Appeals of Virginia denied his appeal on December 19, 2013. Brown has not appealed to the Supreme Court of Virginia or filed a petition for writ of certiorari to the Supreme Court of the United States. Brown also has not filed a habeas petition in any state court yet. Brown filed his first habeas petition in this court on November 27, 2013, and argues that counsel provided ineffective assistance.<sup>1</sup>

**II.**

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. *Preiser v. Rodriguez*, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court

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<sup>1</sup> The court received Brown's petition on December 5, 2013; however, prisoners are entitled to the benefit of the prison mailbox rule which states that a prisoner's pleading is deemed filed at the time of delivery to the proper prison authorities for forwarding to the clerk of court. *Houston v. Lack*, 487 U.S. 266, 270-71 (1988).

must dismiss the petition. *Slayton v. Smith*, 404 U.S. 53 (1971). In Virginia, a non-death row felon ultimately must present his claims to the Supreme Court of Virginia and receive a ruling from that court, before a federal district court may consider his claims. See Va. Code § 8.01-654. In this case, it is clear that Brown has yet to pursue his instant claims in the Supreme Court of Virginia. Accordingly, I find that Brown's petition is unexhausted.

**III.**

Based on the foregoing, I will dismiss Brown's habeas petition, without prejudice, as unexhausted.

**ENTER:** This 9th day of January, 2014.

  
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NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE