

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

CURTIS N. MARTIN,)	
Petitioner,)	Civil Action No. 7:14cv00445
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
STATE OF VA, et al.,)	By: Norman K. Moon
Respondents.)	United States District Judge

Petitioner Curtis N. Martin, 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 Appomattox County Circuit Court. I find that Martin 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 October 26, 2012, the Appomattox County Circuit Court convicted Martin of possessing or transporting a firearm as a violent felon, in violation of Virginia Code § 18.2-308.2. The court sentenced Martin to 5 years incarceration. According to his petition, and confirmed by state court records found online, Martin has not appealed his criminal conviction or filed a habeas petition in any state court.

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 a petitioner has failed to exhaust state court remedies, the federal court 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 Martin has yet to pursue his instant claims in the Supreme Court of Virginia. Accordingly, I find that Martin's petition is unexhausted.

III.

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

ENTER: This 4th day of September, 2014.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE