

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

LANDON FRANK BROWN,)	
Petitioner,)	Civil Action No. 7:16cv00454
)	
v.)	
)	By: Elizabeth K. Dillon
COMMONWEALTH OF VIRGINIA,)	United States District Judge
Respondent.)	

MEMORANDUM OPINION

Petitioner Landon Frank Brown, a Virginia inmate proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 2016 conviction in the Augusta County Circuit Court. After reviewing the petition, the court finds that it should be summarily dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases.¹

A federal court may not grant a § 2254 habeas petition unless the petitioner exhausted the remedies available in the courts of the state in which petitioner was convicted. 28 U.S.C. § 2254(b); *Preiser v. Rodriguez*, 411 U.S. 475 (1973). The exhaustion requirement is satisfied by seeking review of a claim in the highest state court with jurisdiction to consider the claim. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). In Virginia, a non-death row convict ultimately must present the claims to the Supreme Court of Virginia and receive a ruling from that court before a federal district court can consider the claims. Va. Code §§ 8.01-654, 17.1-411; Va. Sup. Ct. R. 5:9(a). If the petitioner has failed to exhaust state court remedies, the federal court should dismiss the petition. *See Slayton v. Smith*, 404 U.S. 53 (1971).

¹ A petition must be dismissed pursuant to Rule 4 if it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.

In this case, it plainly appears from the petition that Brown has not presented his claims to the Supreme Court of Virginia.² Accordingly, the court finds that Brown's petition is unexhausted and, therefore, will dismiss the petition without prejudice.³

Entered: October 3, 2016.

/s/ Elizabeth K. Dillon

Elizabeth K. Dillon
United States District Judge

² Brown states in his petition that he has not yet filed a direct appeal or a state habeas petition.

³ Brown may refile his federal habeas petition after he has exhausted his state court remedies. Brown is advised, however, that his time to file state and federal habeas petitions is limited. *See* 28 U.S.C. § 2244(d); Va. Code § 8.01-654(A)(2); Va. Sup. Ct. R. 5:9(a).