

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

THOMAS J. REESE, JR.,

Plaintiff,

vs.

CIVIL ACTION
No. 04-3362-GTV

ED HARLIN, et al.,

Defendants.

ORDER

This matter is before the court on plaintiff's motion to reopen (Doc. 9). By its order of November 5, 2004 (Doc. 7), the court liberally construed this matter as a petition for habeas corpus filed pursuant to 28 U.S.C. 2254 and dismissed this matter without prejudice to allow the petitioner to pursue state court remedies.

Plaintiff's present motion to reopen is supported by a copy of an order entered in the District Court of Ellis County, Kansas, denying relief in a state post-conviction action filed pursuant to K.S.A. 60-1507.

The federal courts generally should not review habeas corpus claims until a state prisoner exhausts available state

remedies. Picard v. Connor, 404 U.S. 270, 275 (1971). This requirement is met when the state appellate courts have had the opportunity to consider the same claims presented to the federal court, or when the petitioner has no state remedy. Miranda v. Cooper, 967 F.2d 392, 398 (10th Cir.), cert. denied, 506 U.S. 924 (1992). Here, because petitioner did not present his claims for relief to the state appellate courts, before beginning this action, the court concludes this matter may be dismissed without prejudice to permit him to do so.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion to reopen (Doc. 9) is denied.

A copy of this order shall be transmitted to the plaintiff.

IT IS SO ORDERED.

Dated at Kansas City, Kansas, this 24th day of May, 2005.

/s/ G. T. VanBebber

G. T. VANBEBBER

United States Senior District Judge