

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARTIN HERREDIA-MORALES,

Petitioner,

v.

CASE NO. 05-3469-SAC

STATE OF KANSAS,

Respondent.

O R D E R

Petitioner, a prisoner in Ellsworth Correctional Facility in Ellsworth, Kansas, proceeds pro se on a petition for writ of mandamus under 28 U.S.C. § 1361.

By an order dated December 22, 2005, the court directed petitioner to pay the \$5.00 filing fee in this action, or to file a motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915. Having reviewed petitioner's § 1915 motion and limited available financial resources, the court grants petitioner leave to proceed in forma pauperis.

Also in the order dated December 22, 2005, the court explained that this court's authority to grant federal mandamus relief does not extend to state court officials. See 28 U.S.C. § 1361 (U.S. district court has original jurisdiction of any action in the nature of mandamus to compel "an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff") (emphasis added). Petitioner's request for a federal writ of mandamus to direct the Wyandotte County District Court to resolve petitioner's pending post-

conviction motion is denied. This court has no authority to issue such a writ to "direct state courts or their judicial officers in the performance of their duties." Van Sickle v. Holloway, 791 F.2d 1431, 1436 n.5 (10th Cir. 1986)(*quoting Haggard v. State of Tennessee*, 421 F.2d 1384, 1386 (6th Cir. 1970)). The relief petitioner seeks must be pursued in the state courts.

IT IS THEREFORE ORDERED that petitioner is granted leave to proceed in forma pauperis.

IT IS FURTHER ORDERED that the petition for writ of mandamus is denied.

IT IS SO ORDERED.

DATED: This 11th day of January 2006 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge