

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ISIAC BROWN,

Plaintiff,

v.

CASE NO. 06-3094-SAC

SCOTT HOWARD, et al.,

Defendants.

O R D E R

Plaintiff proceeds pro se on a form complaint submitted under 42 U.S.C. § 1983. By an order dated April 6, 2006, the court directed plaintiff to show cause why the complaint should not be liberally construed as an application for habeas relief filed under 28 U.S.C. § 2254, and dismissed without prejudice based upon plaintiff's apparent failure to exhaust state court remedies.

In response, plaintiff filed a form motion for seeking post-conviction relief in the state district courts. This pleading only highlights that plaintiff is indeed seeking relief that must be pursued in a writ of habeas corpus filed under 28 U.S.C. § 2254 after first exhausting state court remedies, see Preiser v. Rodriguez, 411 U.S. 475 (1973), and that plaintiff's exhaustion of state court remedies is not yet complete.

Accordingly, the court liberally construes this action as a habeas petition filed under 28 U.S.C. § 2254 and dismisses this action without prejudice.

IT IS THEREFORE ORDERED that the complaint is construed as a petition filed under 28 U.S.C. § 2254, and is dismissed without

prejudice.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel (Doc. 5) is denied as moot.

**IT IS SO ORDERED.**

DATED: This 16th day of May 2006 at Topeka, Kansas.

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