

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DALE E. McCORMICK,

Petitioner,

v.

CASE NO. 06-3098

PHIL KLINE, et al.,

Respondents.

MEMORANDUM AND ORDER

This petition for writ of habeas corpus, 28 U.S.C. 2254, is before the court upon Mr. McCormick's Amended Petition (Doc. 3) and Response to Show Cause Order (Doc. 4), both filed in response to the Court's Memorandum and Order entered herein on May 11, 2006. This matter proceeds only upon petitioner's claims presented in his Amended Petition. Having examined all the materials filed in this case, the court finds:

1. Petitioner is presently a prisoner in the custody of the State of Kansas; and
2. petitioner demands his release from such custody, and as grounds therefore alleges that he is being deprived of his liberty in violation of his rights under the Constitution of the United States, and he claims that he has exhausted all remedies afforded by the courts of the State of Kansas.

The court concludes a response to the Petition is required.

IT IS THEREFORE ORDERED THAT:

1. Respondents herein are hereby required to show cause within twenty (20) days from the date of this order why the writ should not be granted.

2. The response should present:

- (a) the necessity for an evidentiary hearing on each of the grounds alleged in petitioner's pleadings; and
- (b) an analysis of each of said grounds and any cases and supporting documents relied upon by respondents in opposition to the same.

3. Respondents shall cause to be forwarded to this court for examination and review the following:

the records and transcripts, if available, of the criminal proceedings complained of by petitioner, if a direct appeal of the judgment and sentence of the trial court was taken by petitioner, respondents shall furnish the records, or copies thereof, of the appeal proceedings.

Upon termination of the proceedings herein, the clerk of this court will return to the clerk of the proper state court all such state court records and transcripts.

4. The petitioner is granted ten (10) days after receipt by him of a copy of the respondents' answer and return to file a traverse thereto, admitting or denying under oath all factual allegations therein contained.

5. The clerk of this court transmit copies of this order to petitioner and to the office of the Attorney General for the State of Kansas.

IT IS SO ORDERED.

Dated this 10th day of October, 2006, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge