

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FAYVUN MANNING,

Petitioner,

v.

CASE NO. 06-3119-SAC

STATE OF KANSAS,

Respondent.

O R D E R

This petition for writ of habeas corpus, 28 U.S.C. 2254, was filed by an inmate of the Lansing Correctional Facility, Lansing, Kansas, and the filing fee was paid.

Petitioner was convicted upon trial by jury on June 30, 1999, in the District Court of Wyandotte County, Kansas, of one count of aggravated battery and sentenced to 162 months in prison. He seeks to challenge this state conviction on numerous grounds. In his original Petition, Mr. Manning alleged that some grounds had been raised on direct appeal, and that he had filed a state post-conviction motion, which was denied by the trial court on June 14, 2002, and on appeal. The court found the original Petition did not contain a clear statement of exhaustion of state court remedies on each of the numerous claims raised therein, and required petitioner to submit his claims on court-provided forms and show full exhaustion on each of his claims. Petitioner submitted the forms, which were filed as an Amended Petition (Doc. 4). The court finds that this pleading should be treated as a Supplemental Petition, rather than an Amended Petition.

With regard to Mr. Manning's direct appeal of his 1999 conviction, Kansas Appellate Courts on-line records indicate an appeal was filed of District Court Case Number 98-CR-445 to the Kansas Supreme Court in October, 1999 (Appellate Case Number 84047), and petitioner's conviction was affirmed by the Kansas Court of Appeals on December 8, 2000. The Kansas Supreme Court denied his Petition for Review on January 4, 2001.

Kansas Appellate Courts on-line records also indicate an appeal of the denial of a 60-1507 action in Wyandotte County District Court Case No. 02-C-1354 was docketed in the appellate courts on May 21, 2004 (Appellate Case No. 92211); and the denial was affirmed by the Kansas Court of Appeals on April 8, 2005. Mr. Manning's Petition for Review was denied by the Kansas Supreme Court on September 20, 2005. The court presumes from the district court case number that petitioner's 1507 motion was filed in 2002.

The court notes that this case proceeds only upon those claims pertaining to petitioner's 1999 convictions entered in Case No. 98-CR-0445.

Having examined the materials filed in this case, the court finds that this action should proceed upon the claims raised in the original and the supplemental Petitions. The court further 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.

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 then return this file to the undersigned judge for such other and further proceedings as may be appropriate; and that 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 FURTHER ORDERED that Document 4 filed herein as "Amended Petition" be changed to and treated as "Supplemental Petition."

IT IS SO ORDERED.

Dated this 2nd day of October, 2006, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge