

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DE'ANDREW DIXON,

Petitioner,

v.

CASE NO. 08-3077-SAC

STATE OF KANSAS, et al.,

Respondents.

O R D E R

Petitioner proceeds pro se and in forma pauperis on a petition for writ of habeas corpus under 28 U.S.C. § 2254. Before the court is respondents' motion to dismiss the petition without prejudice because petitioner has not yet fully exhausted state court remedies on his claims.

In response, petitioner acknowledges he has an appeal currently pending before the Kansas Court of Appeals, and that the appeal is from the state district court's denial of petitioner's motion to withdraw his plea in the state criminal case being challenged in the present habeas action. Although petitioner desires to proceed in federal court because he believes his claims are not being adequately considered in the state courts, petitioner must allow the state courts a full opportunity to first resolve any constitutional claims presented to the federal court for habeas corpus relief. O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). Because petitioner has not yet done so, the court agrees that this matter should be dismissed without prejudice.

Petitioner is reminded of the one year limitation period in 28

U.S.C. § 2244(d)(1) for seeking federal habeas corpus relief, which is currently suspended or "tolled" under 28 U.S.C. § 2244(d)(2) while petitioner pursues post-conviction relief in the state courts. Once petitioner's pending state court appeal is fully resolved, the time *remaining* in that limitation period will resume running. If petitioner chooses to then seek a writ of habeas corpus under 28 U.S.C. § 2254, he must re-file his petition within the time remaining in the § 2244(d)(1) limitation period.

IT IS THEREFORE ORDERED that respondents' motion to dismiss the petition (Doc. 9) is granted, and that the petition is dismissed without prejudice.

IT IS SO ORDERED.

DATED: This 22nd day of July 2008 at Topeka, Kansas.

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