

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GARY QUIRK,

Petitioner,

vs.

CIVIL ACTION
No. 09-3209-SAC

SAM CLINE,

Respondent.

MEMORANDUM AND ORDER

This matter is before the court on a petition for habeas corpus filed pursuant to 28 U.S.C. § 2241. Respondent has filed a motion to dismiss (Doc. 7), and petitioner filed a response (Doc. 12).

Petitioner seeks relief from a decision of the Kansas Parole Board and alleges he was improperly penalized with a three-year period of reincarceration following a July 2008 revocation hearing that addressed his arrest for possession of a firearm.¹

Respondent moves for dismissal on the ground petitioner

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The court notes petitioner was indicted on federal charges arising from this incident, Case No. 10-cr-20033-KHV. Petitioner is presently incarcerated at the Leavenworth, Kansas, detention facility operated by the Corrections Corporation of America.

failed to exhaust state court remedies and points out his failure to pursue appellate review after the denial of his state court post-conviction action filed pursuant to K.S.A. 60-1501.

In response, petitioner argues he is not required to exhaust state court remedies. This argument is in error. It is settled that a petitioner proceeding under § 2241 must exhaust state court remedies as a prerequisite to seeking federal habeas corpus relief. *See Magar v. Parker*, 490 F.3d 816, 818 (10th Cir. 2007)(requiring exhaustion of available state court remedies before a petition may seek federal habeas corpus relief pursuant to § 2241). Accordingly, this matter will be dismissed due to petitioner's failure to properly exhaust state court remedies.

IT IS, THEREFORE, BY THE COURT ORDERED the petition for habeas corpus is denied.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 19th day of January, 2011.

S/ Sam A. Crow
SAM A. CROW
United States Senior District Judge