

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

NOBLE L. JOHNSON,

Petitioner,

v.

CASE NO. 10-3126-SAC

KANSAS PAROLE BOARD,

Respondent.

O R D E R

This pro se petition for writ of habeas corpus was filed pursuant to 28 U.S.C. §§ 2241, 2254. On July 27, 2010, the court entered an Order granting Mr. Johnson time to show cause why this action should not be dismissed for reasons stated therein. In general, the reasons were: failure to exhaust state court remedies by filing a timely appeal to the Kansas Supreme Court, failure to state a claim of federal constitutional violation, and that petitioner's specific claim that the KPB's application of the current version of K.S.A. § 21-3717 to his case was an ex post facto violation is not supported by sufficient facts or legal authority. As his only response, Mr. Johnson has filed a Motion for Reconsideration (Doc. 5). Having considered this pleading, the court finds that petitioner has failed to show cause as required in the court's Order dated July 27, 2010.

Petitioner alleges that he was not allowed to file an appeal out of time to the KCA, and argues that this means he has exhausted his state court remedies. However, a habeas petitioner's filing of an appeal in state court that is denied on a procedural ground does not amount to fair exhaustion of his claims. Furthermore, Mr. Johnson does not address the other deficiencies set forth in the

court's Order. The court finds that petitioner has not shown sufficient cause as to why this action should not be dismissed for the reasons stated in this court's Order dated July 27, 2010. The court further finds that for the reasons stated in its prior Order, this action must be dismissed not only for failure to show full and proper exhaustion of state court remedies, but also for failure to state a federal constitutional claim including a violation of the ex post facto clause.

IT IS THEREFORE BY THE COURT ORDERED that petitioner's Motion for Reconsideration (Doc. 5) is denied.

IT IS FURTHER ORDERED that this action is dismissed and all relief is denied for the reasons stated in the court's Order of July 27, 2010.

IT IS SO ORDERED.

Dated this 1st day of November, 2010, at Topeka, Kansas.

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