

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARCUS WASHINGTON,

Petitioner,

vs.

CIVIL ACTION
No. 11-3045-SAC

RAYMOND ROBERTS and
DEREK SCHMIDT,

Respondents.

MEMORANDUM AND ORDER

This matter comes before the court on petitioner's motion for stay and abeyance (Doc. 29). Petitioner seeks a stay of this matter to allow him to present a claim of ineffective assistance of counsel in the state courts.

Respondents oppose the motion, asserting that petitioner no longer has an available state court remedy (Doc. 30).

The court has examined the record and has identified a pending action in the Kansas Court of Appeals (KCOA), Case No. 107643.¹ It appears the petitioner filed a state post-conviction action pursuant to K.S.A. §60-1507 in 2011. The KCOA has appointed counsel in that matter and granted a stay on August 27, 2012.

¹A copy of the appellate docket sheet is attached.

Having considered the record, the court will provisionally grant the motion for a stay in this matter. The respondents, at their option, may investigate the claims presented in the pending state appellate matter to determine whether it concerns the same criminal conviction as the present case. If not, respondents may seek reconsideration of this ruling.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion for stay and abeyance (Doc. 29) is provisionally granted.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

DATED: This 19th day of September, 2012, at Topeka, Kansas.

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