

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAVID PAYNE,

Petitioner,

v.

CASE NO. 12-3232-RDR

CLYDE MAYE, et al.,

Respondents.

O R D E R

This matter is a petition for habeas corpus filed pursuant to 28 U.S.C. § 2241. Petitioner proceeds pro se and submitted the full filing fee.

It is well-established that the exhaustion of administrative remedies is a prerequisite to the pursuit of federal habeas corpus pursuant to § 2241. See *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986) (per curiam). The exhaustion requirement is met when a prisoner completes the four-tier administrative grievance procedure available to a prisoner in federal custody, commencing with a request for informal resolution and followed by administrative grievances addressed at the institutional, regional and national levels. See 28 C.F.R. §§ 542.13-.18. By its earlier order, the court directed petitioner to demonstrate his use of the administrative grievance procedures before commencing this action.

Petitioner filed a response that includes a copy of the resolution of his grievance filed at the national level (Doc. 4). That document shows that the appeal was rejected as untimely. The document notes that petitioner could provide a staff memo on Bureau of Prisons

letterhead to explain any mitigating circumstances concerning the timeliness of the submission, but there is no indication that petitioner did so.

Because it does not appear that petitioner has satisfied the exhaustion requirement, the court must dismiss this matter for lack of exhaustion.

IT IS, THEREFORE, BY THE COURT ORDERED the petition for habeas corpus is dismissed due to petitioner's failure to properly exhaust administrative grievances.

IT IS FURTHER ORDERED petitioner's motion for an extension of time (Doc. 3) is denied as moot.

A copy of this order shall be transmitted to the petitioner.

IT IS SO ORDERED.

DATED: This 30th day of January, 2013, at Topeka, Kansas.

S/ Richard D. Rogers
RICHARD D. ROGERS
U.S. Senior District Judge