

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROBERT L. RAYFORD,

Plaintiff,

v.

CASE NO. 12-3264-SAC

STATE OF KANSAS,

Defendant.

MEMORANDUM AND ORDER

This matter is a civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff, a prisoner at the Sedgwick County Jail, proceeds pro se.

The court has examined the complaint and has liberally construed the allegations. Because plaintiff appears to challenge the fairness of state criminal proceedings against him, the court construes this matter as a petition for habeas corpus, which provides the sole federal remedy for a challenge to the validity of a state court conviction. *See Preiser v. Rodriguez*, 411 U.S. 475, 504 (1973). Before plaintiff may pursue such an action, he must exhaust state court remedies by presenting his claims for relief to the state courts, including the state appellate courts. *See Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000).

For these reasons, the court is considering the dismissal of this matter without prejudice to allow plaintiff to pursue available remedies in the state courts.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff is granted to and including February 15, 2013, to submit the \$5.00 filing fee or

a motion to proceed in forma pauperis and to show cause why this matter should not be construed as a petition for habeas corpus and dismissed as premature. The failure to file a timely response may result in the dismissal of this matter without additional prior notice.

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

IT IS SO ORDERED.

DATED: This 17th day of January, 2013, at Topeka, Kansas.

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