

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARK T. SALARY,

Petitioner,

v.

CASE NO. 13-3145-SAC

STATE OF KANSAS, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner proceeds pro se, and the court grants leave to proceed in forma pauperis.

Petitioner was convicted in Wyandotte County, Kansas, in January 2010. His direct appeal is currently pending before the Kansas Supreme Court (Doc. 1, p. 3). Petitioner states that he cannot proceed in that matter because authorities of the facility where he is incarcerated will not allow him adequate copies.

Before seeking federal habeas relief, a state prisoner must "exhaust[] the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1)(A). This exhaustion requirement is satisfied when the federal claim has been presented fairly "to the highest state court, either by direct review of the conviction or in a postconviction attack." *Brown v. Shanks*, 185 F.3d 1122, 1124 (10th Cir. 1999) (internal punctuation omitted).

Because the direct appeal of petitioner's conviction is pending, this action for habeas corpus is premature and must be dismissed. To the extent petitioner presents a challenge concerning access to the

court due to a lack of adequate copies, his claim is not a challenge to the validity of his conviction, but a challenge to the conditions of his confinement. Such a claim must be presented in a civil rights action after the exhaustion of administrative remedies. See *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) ("a [42 U.S.C.] § 1983 action is the proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody.")

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion for leave to proceed in forma pauperis (Doc. 2) is granted.

IT IS FURTHER ORDERED the petition for habeas corpus is dismissed without prejudice.

IT IS FURTHER ORDERED petitioner's motion for disclosure (Doc. 6) is denied as moot.

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

IT IS SO ORDERED.

DATED: This 22nd day of October, 2013, at Topeka, Kansas.

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