

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

WALTER PAYTON,

Plaintiff,

v.

CASE NO. 17-3049-SAC-DJW

STATE OF KANSAS, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff, a prisoner in state custody, commenced this matter as a civil rights action filed under 42 U.S.C. § 1983. Because plaintiff challenges the state district court's denial of DNA testing under K.S.A. 21-2512 and alleges his conviction is unlawful, the Court liberally construed the action as a petition for habeas corpus and concluded it was a successive application for relief. Due to petitioner's failure to seek prior authorization to proceed in a successive application, the Court dismissed the matter for lack of jurisdiction.

Petitioner has filed a Notice of Appeal (Doc. #8). The Court has considered the record and grants petitioner leave to proceed on appeal in forma pauperis.

IT IS THEREFORE, BY THE COURT ORDERED petitioner is granted leave to proceed on appeal in forma pauperis.

IT IS SO ORDERED.

DATED: This 9th day of May, 2017, at Topeka, Kansas.

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