IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CHARLEY HUGHES,

                    Petitioner,

          v.   CASE NO. 17-3204-SAC

WARDEN DAN SCHNURR,

                    Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed under 28 U.S.C. § 2254. On November 28, 2017, the Court directed petition to show cause why this matter should not be dismissed without prejudice due to his apparent failure to exhaust state court remedies.

Petitioner filed a timely response, in which he states that he filed a petition in the District Court of Butler County, Kansas, on October 26, 2017. However, he states the Clerk of that court "returned [his] 2254" and directed him to file it in federal court (Doc. #4). If the pleading in question was identified as a petition under section 2254, the direction to file it in federal court was appropriate, as 28 U.S.C. § 2254 is the federal habeas statute for actions attacking a state court judgment. However, a petitioner does not exhaust his claims in the state courts by misfiling an action under section 2254 in state court. Instead, petitioner must present the claims for relief to the state courts under the correct state law provisions. If he is unsuccessful in the state district court, he then must present his claims to the state appellate courts to satisfy the exhaustion requirement. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)(state prisoner seeking federal habeas corpus relief first must

"give[] the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process."). Because petitioner has not done so, the Court will dismiss this matter without prejudice.

IT IS, THEREFORE, BY THE COURT ORDERED the petition for habeas corpus is dismissed without prejudice.

IT IS FURTHER ORDERED petitioner's motion to proceed in forma pauperis (Doc. #5) is denied as moot.

IT IS SO ORDERED.

DATED: This 27th day of December, 2017, at Topeka, Kansas.

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