

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

LONNIE V. MITCHELL, JR.,

Petitioner,

v.

CASE NO. 19-3022-SAC

STATE OF KANSAS,

Respondent.

ORDER OF DISMISSAL

This matter is a petition for habeas corpus filed under 28 U.S.C. § 2254. On June 18, 2019, the Court entered an Order to Show Cause (OSC) directing petitioner to show cause why this matter should not be dismissed without prejudice due to his failure to exhaust state court remedies.

Petitioner filed a timely response in which he states that he sent a notice of appeal to the state district court in January 2019; he also states that was appointed a new attorney in July 2019 who advised petitioner against pursuing an appeal and instead intends to seek additional relief in the state district court. The Court has again reviewed on-line records maintained by the Kansas appellate courts¹ and finds that no appeal is pending.

It is settled that a petitioner seeking release from state custody is required to exhaust state court remedies whether proceeding under 28 U.S.C. § 2254 or 28 U.S.C. § 2241. *Montez v. McKinna*, 208 F.3d 862, 866 (10th Cir. 2000). Because it does not appear that petitioner has presented his claims to the state appellate courts,

¹ ¹ [Http://tpka-pitsskscourts.org](http://tpka-pitsskscourts.org).

the Court will dismiss this matter without prejudice.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed without prejudice.

IT IS FURTHER ORDERED no certificate of appealability will issue.

IT IS SO ORDERED.

DATED: This 23rd day of August, 2019, at Topeka, Kansas.

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