

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

**MARK T.J. SALARY,**

**Petitioner,**

**v.**

**CASE NO. 19-3174-SAC**

**STATE OF KANSAS,**

**Respondent.**

**MEMORANDUM AND ORDER**

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

**Background**

On September 10, 2019, the Court issued a notice to petitioner explaining that the petition was deficient because it was not submitted on forms approved by the Court. Petitioner was granted to and including October 10, 2019, to file the petition on an appropriate form.

On September 27, 2019, petitioner submitted a pleading to the Court asking whether the forms provided by the Court operate under or are subject to the laws of admiralty. On October 16, 2019, the Court advised petitioner that there was no basis for admiralty jurisdiction in this matter and extended the time for filing the petition to and including October 30, 2019. Petitioner did not respond.

**Analysis**

Rule 41(b) of the Federal Rules of Civil Procedure "authorizes a district court, upon a defendant's motion, to order the dismissal of an action for failure to prosecute or for failure to comply with

the Federal Rules of Civil Procedure or 'a court order.'" *Young v. U.S.*, 316 F. App'x 764, 771 (10th Cir. 2009) (citing Fed. R. Civ. P. 41(b)). "This rule has been interpreted as permitting district courts to dismiss actions *sua sponte* when one of these conditions is met." *Id.* (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003)). "In addition, it is well established in this circuit that a district court is not obligated to follow any particular procedures when dismissing an action *without prejudice* under Rule 41(b)." *Young*, 316 F. App'x at 771-72 (citations omitted).

The Court has carefully considered the record and finds that this matter must be dismissed without prejudice. Petitioner has not complied with the order of the Court despite the extension granted, nor do his arguments in this matter appear to present challenges to his state court conviction or sentence that may be considered in an action brought under 28 U.S.C. § 2254.

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 this matter is dismissed without prejudice.

**IT IS SO ORDERED.**

DATED: This 1st day of November, 2019, at Topeka, Kansas.

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