

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY LEROY DAVIS,

Petitioner,

v.

CASE NO. 20-3269-SAC

DAN SCHNURR,

Respondent.

MEMORANDUM AND ORDER

This matter is a federal habeas proceeding under 28 U.S.C. § 2254. Petitioner proceeds pro se. The matter comes before the Court on Petitioner's "Motion Demanding a Trial by Jury," brought under Federal Rule of Civil Procedure 38(b)¹. (Doc. 38.)

"When a jury trial has been demanded under Rule 38, the . . . trial on all issues so demanded must be by jury unless: . . . the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial." Fed. R. Civ. P. 39(a). Federal statutes governing applications for writs of habeas corpus state that "[t]he court shall summarily hear and determine the facts, and dispose of the matter as law and justice require." 28 U.S.C. § 2243. Petitioner has no federal right to a jury trial in this matter. See *Jefferson v. Jenkins*, 2019 WL 1968055, *1 (E.D. N.C. 2019) (unpublished) (holding there is no federal right to a jury trial in proceedings brought under 28 U.S.C. § 2254); *Miller*

¹ Petitioner also cites 28 U.S.C. § 1874, which by its plain language applies to actions to recover annexed forfeitures, and Wyoming Revised Statute Annotated (1931) 89-1329, neither of which are relevant in this federal habeas corpus action.

v. Nohe, 2018 WL 1513910, *1 (S.D. W. Va. 2018) (unpublished) (same); *Richard v. Norris*, 2009 WL 2462387, *6 (E.D. Ark. 2009) (unpublished) (same).

IT IS THEREFORE ORDERED that Petitioner's motion for jury trial (Doc. 38) is **denied**.

IT IS SO ORDERED.

DATED: This 13th day of May, 2022, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge