

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DONALD NEWELL,

ORDER

Petitioner,

10-cv-707-bbc

v.

JUDY SMITH, Warden,
Oshkosh Correctional Institution,

Respondent.

Donald Newell, Jr., an inmate at the Oshkosh Correctional Institution, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He is asserting 25 claims, only one of which he exhausted in state court. On January 6, 2011, I asked petitioner to inform the court whether he would like to proceed only with his exhausted claim or dismiss the petition in its entirety and refile it after he exhausts all of his claims.

Petitioner has responded, stating that he wishes to dismiss his habeas petition and resubmit it after he has pursued his 24 unexhausted claims in state court. Dkt. #9. Therefore, I will dismiss the petition in its entirety without prejudice. Once petitioner has completed the state appellate process, he may resubmit his petition, if necessary. Petitioner is advised that he should act diligently to insure that his federal habeas clock does not expire

before he resubmits his habeas petition.

One final matter requires attention. Petitioner has asked how he should exhaust his claims in state court and whom he should contact for assistance. He says that the state public defender's office has been uncooperative. I understand that post conviction and collateral review procedures are complex and may be difficult for the petitioner to understand without legal assistance. However, as I explained to petitioner in the January 6 order, this court cannot assist him in pursuing his claims in state court and cannot provide him legal advice. Any questions he has regarding his state court claims should be brought to the attention of the state court.

ORDER

IT IS ORDERED that Donald Newell, Jr.'s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is dismissed without prejudice for failure to exhaust his state court remedies.

Entered this 12th day of January, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge