

No. 24-3025

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Sep 18, 2024

KELLY L. STEPHENS, Clerk

ALFRED A. JOHNSON, SR.,

Petitioner-Appellant,

v.

DOUGLAS LUNEKE, Warden,

Respondent-Appellee.

ORDER

Before: SILER, Circuit Judge.

Alfred A. Johnson, Sr., a pro se Ohio prisoner, appeals the district court's dismissal without prejudice of his 28 U.S.C. § 2254 petition for a writ of habeas corpus. The court construes his notice of appeal as an application for a certificate of appealability (COA). *See* 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b)(2). Johnson has also filed a motion for the appointment of counsel, a motion to proceed in forma pauperis, and several miscellaneous motions. For the reasons below, his COA application and motions are denied.

Johnson filed a § 2254 petition listing nine claims. The district court reviewed the petition and noted that it lacked "crucial information," including the conviction that Johnson sought to challenge, the court of conviction, relevant dates, and the state-court litigation history. Thus, the district court ordered Johnson to file an amended petition that included the above information within 30 days, warning him that failure to do so "could result in dismissal of this action without prejudice."

After more than 30 days passed and Johnson had not complied with that order—he filed a motion for release, but not an amended § 2254 petition—the district court dismissed his petition without prejudice for failure to prosecute.

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Weeks later, Johnson filed an amended petition, claiming that (1) the indictment was defective, (2) the trial court abused its discretion, (3) the prosecutor engaged in misconduct, (4) the State violated *Brady*, (5) a witness gave improper testimony, (6) the prosecutor coerced a witness, and (7) the State failed to investigate other suspects. Johnson also filed a motion for reconsideration claiming that he “sent a motion . . . and the Clerk’s [Office] did not present it to the Court.”

The district court denied Johnson’s motion for reconsideration, holding that he did not comply with the court’s prior order. The district court also reviewed his untimely amended petition and noted that his petition would be premature because he was still exhausting his state-court remedies for his proposed claims. *See* 28 U.S.C. § 2254(b)(1)(A). Johnson appealed, and the district court declined to issue a COA.

A court may issue a COA “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “That standard is met when ‘reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner,’” *Welch v. United States*, 578 U.S. 120, 127 (2016) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or when “jurists could conclude the issues presented are adequate to deserve encouragement to proceed further,” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

No reasonable jurist could debate the district court’s dismissal without prejudice of Johnson’s § 2254 petition. The Rules Governing Section 2254 Cases require, among other things, that a “petition must substantially follow either the form appended to these rules or a form prescribed by a local district-court rule.” Rules Governing Section 2254 Cases, Rule 2(d). That form requires the basic information that the district court noted was absent from Johnson’s original petition. Plus, a district court may dismiss an action for failure to comply with a court order. Fed. R. Civ. P. 41(b). “The Supreme Court has also recognized that the ‘judicial power’ grants lower federal courts some ‘inherent power’ to ‘manage their own affairs,’” including “[t]he authority . . . to dismiss a plaintiff’s action . . . because of his failure to prosecute.” *In re Univ. of Mich.*,

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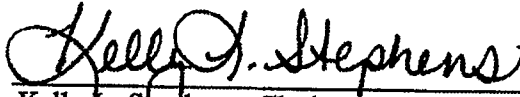
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936 F.3d 460, 463 (6th Cir. 2019) (quoting *Link v. Wabash Ry. Co.*, 370 U.S. 626, 629-30 (1962)). Moreover, the district court correctly noted that Johnson's proposed claims would be subject to dismissal without prejudice anyway because he was still exhausting his state-court remedies. See generally *Rhines v. Weber*, 544 U.S. 269, 274-78 (2005).

Johnson also moves for the appointment of counsel, but "[t]here is no right to counsel in postconviction proceedings," *Garza v. Idaho*, 586 U.S. 232, 245 (2019), and there are no "exceptional circumstances" to justify appointment here, *Cavin v. Mich. Dep't of Corr.*, 927 F.3d 455, 461 (6th Cir. 2019) (quoting *Lavado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993)). Johnson's miscellaneous motions do not speak to the district court's decision or the COA question.

Therefore, Johnson's COA application is **DENIED**, his motion to proceed in forma pauperis is **DENIED** as moot, and all other motions are **DENIED**.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ALFRED A. JOHNSON, SR.,

CASE NO. 3:23 CV 1103

Petitioner,

JUDGE JAMES R. KNEPP II

v.

WARDEN CHAE HARRIS,

Respondent.

ORDER OF DISMISSAL

Alfred A. Johnson, Sr., submitted a *pro se* Petition for a Writ of Habeas Corpus under 28 U.S.C. §2254. (Doc. 6). While the Petition listed nine grounds for relief, it was missing crucial information the Court needed to consider the Petition. Johnson did not indicate: (1) the conviction he is challenging; (2) in which court he was convicted; (3) the dates on which he was convicted and sentenced; (4) whether he appealed his conviction or sentence, and if so, what grounds he asserted on those appeals and what result he received from his appeals; (5) whether he filed a post-conviction petition in state court, and if so, what grounds he asserted in that petition, whether he appealed those decisions in the state courts, and what results he received from the appeals.

On August 10, 2023, this Court advised Johnson that it could not evaluate his Petition without the above-described information and ordered him to file an Amended Petition within 30 days that contains the information listed above, as well as the grounds for relief he is asserting in this case. (Doc. 8). The Clerk's Office provided Johnson with a blank form for a Petition for a Writ of Habeas Corpus under 28 U.S.C. §2254 with a copy of that Order. *See id.* The Court advised

Johnson that failure to file an Amended Petition within 30 days could result in dismissal of this action without prejudice. *See id.*

On August 23, 2023, Johnson filed a Motion for Release (Doc. 9). That Motion does not contain any of the requested information and does nothing to attempt to correct the deficiencies in his Petition. The deadline to file an Amended Petition has passed and Johnson has not complied with the Court's prior Order.

For the foregoing reasons, good cause appearing, this action is DISMISSED without prejudice for failure to prosecute.

s/ James R. Knepp II
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Nov 18, 2024

KELLY L. STEPHENS, Clerk

ALFRED A. JOHNSON, SR.

Petitioner-Appellant,

v.

DOUGLAS LUNEKE, Warden,

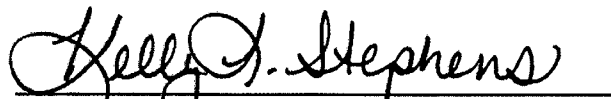
Respondent-Appellee.

*Appendix C*ORDER

Before: CLAY, STRANCH, and MURPHY, Circuit Judges.

Alfred A. Johnson, Sr., petitions for rehearing en banc of this court's order entered on September 18, 2024, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



 Kelly L. Stephens, Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**