

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ANTHONY BERNARD CAMPBELL,
Petitioner,

vs.

DOUG DRETKE,
Director of the Texas Department of
Criminal Justice - Correctional Institutions
Division,
Respondent.

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CIVIL ACTION H-05-0029

MEMORANDUM AND RECOMMENDATION

Anthony Bernard Campbell is petitioning the court for a writ of habeas corpus. Dkt. 1. Campbell is a state prisoner held in custody under the authority of Douglas Dretke as director of the Correctional Institutions Division of the Texas Department of Criminal Justice. Campbell alleges that his Fourteenth Amendment rights are being deprived because he has not been allowed to borrow the transcript or record of his trial.

The respondent argues that Campbell's petition should not be granted on the grounds that he has not exhausted his state court remedies. Under the exhaustion requirement, an application for a writ of habeas corpus on behalf of a person in state custody shall not be granted unless it appears that "the applicant has exhausted the remedies available in the courts of the State." 28 U.S.C. § 2254(b)(1). The Fifth Circuit has specifically applied the exhaustion requirement to state prisoners requesting transcripts. *See, e.g., Bentley v. Jones*, 467 F.2d 906, 907 (5th Cir. 1972); *Kirby v. Sutton*, 436 F.2d 1082 (5th Cir. 1971).

The respondent has included affidavits certifying that Campbell has not exhausted his available remedies with the Texas state courts. *See* Dkt. 10 (affidavits of Troy C. Bennett, Jr., Clerk

of the Texas Court of Criminal Appeals, certifying that Campbell has not filed an application for a writ of habeas corpus or a petition for discretionary review with that court). Accordingly, the court recommends that Campbell's petition be dismissed without prejudice.

The parties have ten days to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. P. 72.

Signed on May 13, 2005, at Houston, Texas.


Stephen Wm Smith
United States Magistrate Judge