

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY LEROY DAVIS,

Petitioner,

v.

CASE NO. 17-3087-SAC

DAN SCHNURR,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed by a prisoner in state custody. On June 6, 2017, the Court dismissed this matter without prejudice due to petitioner's apparent failure to exhaust state court remedies.

Petitioner has filed a motion to amend judgment (Doc. #9), a combined motion for new trial and motion to amend judgment (Doc. #10), and a motion to amend to conform to the evidence (Doc. #11).

The Court liberally construes the motion to amend judgment as a motion to alter or amend the judgment filed under Rule 59(e) of the Federal Rules of Civil Procedure. Relief under this provision is available only if the moving party can establish (1) an intervening change in the controlling law, (2) new evidence that was previously unavailable, or (3) a need to correct clear error or prevent manifest injustice. See *Hayes Family Trust v. State Farm Fire & Cas. Co.*, 845 F.3d 997, 1004 (10th Cir. 2017). A motion to alter or amend a judgment is appropriate if the "court has misapprehended the facts, a party's position, or the controlling law." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

Petitioner's motions, taken together, appear to argue that he has exhausted state court remedies. However, the materials he submits do not support this conclusion. Petitioner provides both an order entered by the state district court dated June 14, 2017, (Doc. #14, p. 7) in *State of Kansas v. Anthony Davis*, and an order entered on May 24, 2017 in the Kansas Supreme Court denying review in Case No. 116,352, *In Rem. Anthony Leroy Davis v. Joseph Norwood* (Doc. #9, p. 5). The Court also has examined on-line records maintained by the Kansas Appellate Courts and concludes that the relevant state-court action filed by petitioner remains pending.¹

Accordingly, the Court finds no reason to disturb the dismissal without prejudice in this matter.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion to amend judgment (Doc. #9), motion for new trial and to amend judgment (Doc. #10), and motion to amend to conform to the evidence (Doc. #11) are denied.

IT IS SO ORDERED.

DATED: This 25th day of July, 2017, at Topeka, Kansas.

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

¹ See attached appellate docket sheet in Case No. 115,714, *Davis v. State of Kansas*.