

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2476

Cloyce Peters,

Appellant,

v.

Larry Norris, Director, Arkansas
Department of Correction,

Appellee.

*
*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
Eastern District of Arkansas.

[UNPUBLISHED]

Submitted: April 12, 2001

Filed: April 16, 2001

Before BOWMAN, BEAM, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Cloyce Peters appeals from the District Court's dismissal of his 28 U.S.C. § 2254 petition for failure to exhaust state remedies. The District Court made its decision without considering whether any non-futile state remedies remained for Peters. That is contrary to the procedure established in Smittie v. Lockhart, 843 F.2d 295, 296 (8th Cir. 1988).

Accordingly, we reverse and remand with instructions that the District Court order the service of Peters's petition on the State and then proceed in accordance with Smittie.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.