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Ex 11

E.D.N.Y.-Bklyn
15-cv-2258
Korman, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of October, two thousand eighteen.

Present:

John M. Walker, Jr.,
Guido Calabresi,
Debra Ann Livingston,
Circuit Judges.

Alan W. Golder,

Petitioner-Appellant,

v.

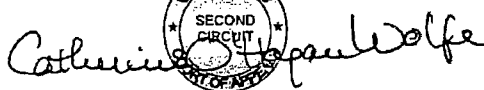

18-1695

Warden Carol Chapdelaine, et al.,

Respondent-Appellee.

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Appendix A

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Ex 6

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

ALAN WILLIAM GOLDER,

Petitioner,

– against –

WARDEN CAROL CHAPDELAINE, State
Prison, Connecticut, ERIC T.
SCHNEIDERMAN, Attorney General, State of
New York,

Respondents.

ORDER

15-CV-2258 (ERK) (LB)

ALAN WILLIAM GOLDER,

Petitioner,

– against –

WARDEN CAROL CHAPDELAINE, State
Prison, Connecticut, ERIC T.
SCHNEIDERMAN, Attorney General, State of
New York,

Respondents.

15-CV-5941 (ERK) (LB)

KORMAN, J.:

I assume familiarity with the underlying circumstances and procedural history of this case, which gives rise to two petitions for a writ of habeas corpus. In the first, 15-CV-2258, I agree that the petition is without merit for the reasons stated in the Answer filed by the Attorney General. I add these words. The petition is focused in large part on the claim that petitioner was illegally extradited from Belgium to the United States in violation of an international treaty to which the United States was a party. Although petitioner attached a copy of an opinion of the Council of State of Belgium to his state habeas corpus petition, he did not provide a translation. *See* SR

76-83. In an effort to simplify matters, I had what appeared to me to be a relevant portion of the opinion translated. I attach the translation to this order.

The opinion indicates that the order of extradition that was initially entered by the Minister of Justice was procedurally deficient and "shall be nullified as it pertains to the extradition of the petitioner to the government of the United States of America." The opinion was pronounced on February 19, 2009, approximately a year and a half after he was extradited to the United States. The fact that the Council of State of Belgium found that petitioner was improperly extradited under the laws of Belgium does not provide a basis for habeas corpus relief. *See United States v. Bout*, 731 F.3d 233, 240 (2d Cir. 2013) ("[U]nder the so-called *Ker-Frisbie* doctrine, the government's power to prosecute a defendant is not impaired by the illegality of the method by which it acquires control over him." (citation and internal quotation marks omitted)); *see also United States ex rel. Lujan v. Gengler*, 510 F.2d 62, 68 (2d Cir. 1975).

In the second petition, 15-CV-5941, I grant the motion of the District Attorney to dismiss the petition on the ground that it was not timely filed.

I deny a certificate of appealability with respect to both petitions.

SO ORDERED.

Brooklyn, New York
August 31, 2016

Edward R. Korman
Edward R. Korman
Senior United States District Judge

3.4.1. Considering that the petitioner argues violation of Article 3 of the Act of July 29, 1991 regarding the explicit Justification of administrative acts, of Article 3 of the European Convention of Human Rights [ECHR], and of the Duty of Care; that the petitioner, among others, argues that he had not been informed of the opinions of the Chamber of Indictments to which the disputed decision refers, that this is a gross violation of Article 3 of the Act of July 29, 1991 regarding the explicit Justification of administrative acts;

3.4.2. Considering that the obligation to state reasons included in Articles 2 and 3 of the Act of July 29, 1991 has the purpose to inform citizens of the reasons why the administrative authorities have made a certain decision, so that such citizen may judge whether it is useful to appeal such decision with the remedies available to him by law; that the aforementioned Articles 2 and 3 require the administrative authorities to include in the record the legal and factual considerations supporting the decision and to do so in an adequate manner; that the petitioner, in his letter of June 28, 2007, indicated to the Minister of Justice that in the event of extradition to the United States of America, there would be a real risk of his life being in danger, while referring to the fact that he participated in the federal "Witness Security Program"; that, in the second opinion by the Chamber of Indictments of July 31, 2007, this fear for his life argued by the petitioner was being investigated; that it must be determined that there is an unexplained reference to the opinions of the Chamber of Indictments in the introductory phrase of the disputed decision; that the administrative file does not show that the petitioner, at the time the disputed decision was served upon him, was

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aware of the contents of these opinions; that although the disputed decision considers "that there is no evidence either that there are concrete and serious risks that the person, if he is extradited, will be subjected to a flagrant denial of justice, or to torture, or inhuman degrading treatment in the requesting State"; that such a general consideration cannot be viewed as a substantive description of the abovementioned opinions; that violation of the formal justification obligation must be concluded; that the only remedy, to the extent discussed, is founded,

HAS DECIDED:

Article 1.

The Ministerial decision of August 22, 2007 shall be nullified as it pertains to the extradition of the petitioner to the government of the United States of America.

Article 2.

The costs of the appeal, established at 175 euros, shall be for the defendant's account.

Thus pronounced in Brussels at a public hearing
on the nineteenth of February, two thousand and nine, by

Messrs.	A. BEIRLAEN,	President of the Board of Appeals,
	C. VERHAERT,	Clerk of the Court

Clerk of the Court,	President,
C. VERHAERT.	A. BEIRLAEN



TRANSLATION
INTERPRETATION
A-V NARRATION
LINGUISTIC CONSULTATION

P.O. Box 1145, Fort Lee, NJ 07024 Tel (201) 290-9219 info@euronet-languages.com

Certificate for Translated Documents

I, Hanny H. Veenendaal, translator at EuroNet Language Language Services Inc., fully competent in both the Dutch and English languages, do verify that the above is a true translation of the document submitted to me in the Dutch language to the best of my knowledge and belief.

Hanny H. Veenendaal
Translator Signature

August 23, 2016
Date

State of New York

County of Westchester

Subscribed and sworn to before me this 23 day of August, 20 16

by Hanny H. Veenendaal
(Name of Signer)

NEAL BERNSTEIN
Notary Public State of New York
No. 018E5043933
Qualified in Kings County
Commission Expires May 15, 2019

[Signature]
Notary Public

THE EUROPEAN SPECIALISTS

Ex 7

E.D.N.Y.-Bklyn
15-cv-2258
Korman, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of January, two thousand seventeen.

Present:

Dennis Jacobs,
Robert D. Sack,
Susan L. Carney,
Circuit Judges.

Alan W. Golder,

Plaintiff-Appellant,

v.

16-3231

Warden Carol Chapelaine, State Prison Connecticut,
Eric T. Schneiderman,

Defendants-Appellees.

Appellant, pro se, moves for a certificate of appealability ("COA"), appointment of counsel, oral argument, and to extend time to reply to the Appellees' opposition to his COA motion. Upon due consideration, it is hereby ORDERED that the COA motion is GRANTED for the purpose of vacating the district court's August 31, 2016, order, and remanding the case to the district court for further proceedings. *See Castro v. United States*, 540 U.S. 375, 383 (2003); *Cook v. N.Y. State Division of Parole*, 321 F.3d 274, 282 (2d Cir. 2003) (holding that, prior to construing a motion for some other post-conviction relief as one brought under 28 U.S.C. § 2254, a district court must (1) inform a pro se litigant of its intent to recharacterize the submission; (2) warn the litigant of the restrictions on filing successive petitions; and (3) offer an opportunity to withdraw or amend the submission so that it contains all the § 2254 claims the pro se litigant believes he has). It is further ORDERED that the remaining motions are DENIED as MOOT.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



Catherine O'Hagan Wolfe

1A.25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORKNOT FOR PUBLICATION

ALAN WILLIAM GOLDER,

Petitioner,

– against –

WARDEN CAROL CHAPDELAINE, State
Prison, Connecticut, ERIC T.
SCHNEIDERMAN, Attorney General, State of
New York,

Respondents.

ORDER

15-CV-2258 (ERK) (LB)

ALAN WILLIAM GOLDER,

Petitioner,

– against –

WARDEN CAROL CHAPDELAINE, State
Prison, Connecticut, ERIC T.
SCHNEIDERMAN, Attorney General, State of
New York,

Respondents.

15-CV-5941 (ERK) (LB)

KORMAN, J.:

I assume familiarity with the underlying circumstances and procedural history of this case. Briefly, in 15-CV-2258, the defendant filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On September 15, 2015, I entered an order in 15-CV-2258 treating the petition as one seeking relief pursuant to 28 U.S.C. § 2254. I denied the petition pursuant to § 2241 as being without merit for the reasons stated in the Answer filed by the Attorney General, although I expressly addressed petitioner's claim, which was focused in large part on the argument that he was illegally extradited from Belgium to the United States in violation of an international treaty to which the United States was a party. Petitioner's claim was based on an opinion of the Council of

State of Belgium, a translated copy of which he did not provide. I bent over backwards to obtain a translation of the relevant portion of the document on which petitioner relied and which allegedly supported his argument that an order directing that he be extradited be nullified. A copy of the translation was attached to my memorandum and order.

In 15-CV-5941, I granted the motion of the District Attorney to dismiss the petition filed pursuant to 28 U.S.C. § 2254 on the ground that it was not timely filed. On January 9, 2017, the Court of Appeals vacated my order of August 31, 2016 and remanded for further proceedings. Specifically, the defect that it found was that, in my order treating the petition in 15-CV-2258 as a petition pursuant to § 2254, I had failed to inform the petitioner of all the consequences that could befall him by so treating his petition. Of course, those consequences could not befall the petitioner here because he had in fact filed a petition pursuant to § 2254, which, as I indicated above, I dismissed as untimely.

I vacate my order entered on September 15, 2015 in 15-CV-2258 treating his petition pursuant to § 2241 as a petition pursuant to § 2254. I deny the petition in 15-CV-2258 for the reason that none of the grounds on which the petitioner relies on for relief may be asserted in a petition filed pursuant to § 2241. Indeed, except in unusual circumstances not present here, the purpose of a petition pursuant to § 2241 filed by a petitioner who is incarcerated pursuant to a judgment of conviction is to challenge the execution of his sentence, including the conditions of his confinement. *Samak v. Warden, FCC Coleman-Medium*, 766 F.3d 1271, 1282 (11th Cir. 2014) (Pryor, J., concurring). Moreover, with respect to the principal ground on which his petition pursuant to § 2241 is based, I find that it is also without merit for the reasons stated in my order of August 31, 2016. Accordingly, the petition in 15-CV-2258 is dismissed.

I also dismiss the petition pursuant to § 2254, filed in 15-CV-5941, on the same grounds on which it was dismissed in my order of August 31, 2016. I deny a certificate of appealability as to both petitions.

SO ORDERED.

Brooklyn, New York
March 15, 2017

Edward R. Korman
Edward R. Korman
Senior United States District Judge

Ex 9

E.D.N.Y.-Bklyn
15-cv-2258
Korman, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of September, two thousand seventeen.

Present:

Dennis Jacobs,
José A. Cabranes,
Richard C. Wesley,
Circuit Judges.

Alan W. Golder,

Petitioner-Appellant,

v.


17-954

Warden Carol Chapelaine, State Prison Connecticut, et al.,

Respondents-Appellees.

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is GRANTED for the purpose of vacating the district court's March 13, 2017 order, and remanding the case to the district court for further proceedings. Insofar as the district court considered Appellant's filing to be a 28 U.S.C. § 2241 petition, such petition must be filed in the district of confinement. See *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004); *Billiteri v. U.S. Bd. of Parole*, 541 F.2d 938, 948 (2d Cir. 1976). To the extent the district court relied on the reasoning in its August 2016 order, which was the product of converting the § 2241 petition into a § 2254 petition, the district court was required to (1) inform Golder of the court's intent to recharacterize the submission; (2) warn Golder of the restrictions on filing successive petitions; and (3) offer an opportunity to withdraw or amend the petition. See *Castro v. United States*, 540 U.S. 375, 383 (2003); *Cook v. N.Y. State Div. of Parole*, 321 F.3d 274, 282 (2d Cir. 2003).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe


Ex 10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

ALAN WILLIAM GOLDER,

Petitioner,

ORDER

– against –

WARDEN CAROL CHAPELAINE, State Prison,
Connecticut, ERIC T. SCHNEIDERMAN,
Attorney General, State of New York,

15-cv-2258 (ERK) (LB)

Respondents.

Korman, J.:

On October 18, 2017, the Second Circuit issued a mandate vacating my order of March 13, 2017. The Court of Appeals explained that “[i]nsofar as the district court considered [Golder’s] filing to be a 28 U.S.C. § 2241 petition, such petition must be filed in the district of confinement.” *Golder v. Chapelaïne*, Case No. 17-954, Mandate, Oct. 18, 2017. Moreover, it stated that “[t]o the extent the district court relied on the reasoning in its August 2016 order, which was the product of converting the § 2241 petition into a § 2254 petition, the district court was required to (1) inform Golder of the court’s intent to recharacterize the submission; (2) warn Golder of the restrictions on filing successive petitions; and (3) offer an opportunity to withdraw or amend the petition.” *Id.*

I assume familiarity with—and pass over—the complex history of this case. Consistent with the Court of Appeal’s Mandate, I dismiss this § 2241 petition (15-cv-2258) without prejudice because “such [a] petition must be filed in the district of confinement.” *Id.*; see also *Rumsfeld v. Padilla*, 542 U.S. 426, 442, 451 (2004). Golder’s “district of confinement” is the District of Connecticut, not the Eastern District of New York.

On March 13, 2017, I also entered an order dismissing Golder’s separate petition, pursuant to 28 U.S.C § 2254 and filed in 15-cv-5941. The Second Circuit denied a certificate of

1 Appendix B

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appealability and dismissed the appeal “because Appellant has not shown that ‘jurists of reason would find it debatable whether the district court was correct in its procedural ruling,’ as to the untimeliness of the Appellant’s petition filed pursuant to 28 U.S.C. § 2254.” *Golder v. Chapedlaine*, Case No. 16-3242, Mandate, Mar. 30, 2017. Subsequently, on March 8, 2018, another panel of the Second Circuit denied Golder’s request to file a second, successive § 2254 petition because Golder’s “claims pertaining to that conviction are not based on a new rule of constitutional law or newly discovered evidence within the meaning of § 2244(b)(2).” *Golder v. Chapedlaine*, Case No. 18-129, Mandate, Mar. 8, 2018.

SO ORDERED.

Brooklyn, New York
May 2, 2018

Edward R. Korman
Edward R. Korman
Senior United States District Judge