

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

VINODH RAGHUBIR,

Petitioner,

v.

Case No: 6:18-cv-1016-Orl-37DCI

SECRETARY, DEPARTMENT OF
CORRECTIONS and ATTORNEY
GENERAL, STATE OF FLORIDA,

Respondents.

ORDER

This cause is before the Court on Respondents' Response to Amended Petition ("Response," Doc. 19). Petitioner filed a Reply (Doc. 21) to the Response, and Respondents subsequently filed a Memorandum of Law (Doc. 43).

Petitioner has filed an Amended Petition for Writ of Habeas Corpus ("Amended Petition," Doc. 15) pursuant to 28 U.S.C. § 2254 and a supporting Memorandum of Law ("Memorandum," Doc. 15-2). Petitioner mentioned in the Amended Petition that he currently had matters pending in the state courts related to the underlying conviction and sentence that is being challenged in this case. (Doc. 15 at 4).

According to the Amended Petition, Petitioner is challenging his state conviction and sentence that was entered by the Circuit Court in and for Orange County, Florida, in Case Number 2016-CF-1833. (*Id.* at 1). Petitioner's conviction and sentence were

affirmed *per curiam* on July 18, 2017. (Doc. 19-1 at 16). However, Petitioner continues to challenge this conviction and sentence in the state courts.

In particular, Petitioner filed a Petition for Writ of Habeas Corpus ("State Petition") in the Supreme Court of Florida (Case Number SC18-1010), which concerns Case Number 2016-CF-1833. (Doc. 43-1 at 15). The Supreme Court of Florida entered an order on July 20, 2018, transferring the State Petition to the state trial court to be treated as motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. (*Id.*). The State Petition remains pending in the state trial court. (*Id.* at 56).

In addition, Petitioner also has pending in the Supreme Court of Florida (Case Number SC18-615) a case seeking review of the denial of a postconviction motion. (*Id.* at 12).

I. ANALYSIS

In the present case, Petitioner is currently pursuing remedies in the state courts related to the conviction and sentence being challenged in this case. Petitioner specifically mentions that these proceedings involve issues of "fraud upon the courts, constructive denial of counsel, void judgments, denials of due process, [and] fundamental errors" (Doc. 15 at 4).

"To allow simultaneous federal and state proceedings would offend the principles of comity that form the basis for the exhaustion requirement." *Brown v. Walker*, No. 1: 09-cv-2534-WSD, 2010 WL 3516820, at *1 (N.D. Ga. Aug. 31, 2010) (citing *Horowitz v. Wainwright*, 709 F.2d 1403, 1404 (11th Cir.1983)). As a matter of comity, it is best left to the

Florida state courts to determine Petitioner's constitutional claims and challenges in the pending proceedings. In particular, the pending proceedings might result in the reversal of Petitioner's conviction and eliminate the federal question, thereby rendering any decision by this Court moot and wasting precious judicial resources. There is no indication that there has been excessive delay by the state courts, and Petitioner has not shown that existing circumstances render his available state remedies ineffective to protect his rights. Under the circumstances, the Court concludes this action should be dismissed without prejudice so that the state proceedings may be exhausted.

II. CERTIFICATE OF APPEALABILITY

This Court should grant an application for a certificate of appealability only if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Lamarca v. Sec'y, Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). However, the petitioner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

Petitioner fails to demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. Moreover, Petitioner cannot show that jurists of reason would find this Court's procedural rulings debatable. Petitioner fails to make a substantial showing of the denial of a constitutional right. Thus, the Court will deny Petitioner a certificate of appealability.

III. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Amended Petition for Writ of Habeas Corpus (Doc. 15) is **DENIED**, and this case is **DISMISSED** without prejudice.

2. Petitioner is **DENIED** a certificate of appealability in this case.

3. The Clerk of the Court is directed to close this case.

DONE and **ORDERED** in Orlando, Florida on October 11, 2018.




ROY B. DALTON JR.
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Party
OrIP-2 10/11

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14577-D

VINODH RAGHUBIR,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Vinodh Raghbir seeks leave to proceed *in forma pauperis* (“IFP”), in order to appeal the district court court’s denial of his “Second Demand for Due Process.” Because Raghbir seeks leave to proceed IFP, his appeal is subject to a frivolity determination. See 28 U.S.C. § 1915(e)(2)(B). An action is frivolous if it is without arguable merit either in law or fact. See *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

As background, Raghbir, proceeding *pro se*, filed an amended petition for writ of habeas corpus, 28 U.S.C. § 2254, seeking review of his Florida convictions and sentences for (1) a scheme to defraud, and (2) fraudulent use of personal identification information. The Secretary of the Florida Department of Corrections (the “Secretary”) filed a notice of pendency of related cases and moved to dismiss the petition due to pending state court challenges. The district court

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Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: MARCUS and GRANT, Circuit Judges.

BY THE COURT:

Vindoh Raghbir has filed a motion for reconsideration of this Court's order dated February 13, 2019, denying his motion for leave to proceed *in forma pauperis*, in the appeal from the denial of his "Second Demand for Due Process." Because Raghbir has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, this motion for reconsideration is DENIED.

ultimately denied Raghbir's petition and dismissed the case without prejudice, due to the ongoing state proceedings. Raghbir then filed the instant "Second Demand for Due Process," in which he argued that the district court had denied him due process by failing to address the government's attempt to "commit great bodily harm and/or murder." The district court denied the request as moot, noting that the case had been dismissed with prejudice. Raghbir filed an "Emergency Notice of Appeal" challenging the district court's order, which generated the instant appeal.

Raghbir has no non-frivolous issue that he could raise on appeal with respect to the district court's denial of his "Second Demand for Due Process" as moot. In his motion for IFP status, he indicates that he would raise the issue of "whether all available relief should be granted." However, he filed the instant motion—which apparently sought relief from unspecified mistreatment by state authorities—in a closed § 2254 proceeding, which he had not sought to reopen. The district court, therefore, acted properly in denying Raghbir's request for unspecified additional relief as moot, regardless of whether he otherwise was entitled to any "available relief." Moreover, any relief that Raghbir might be entitled to as a result of any mistreatment would not properly be sought via a collateral attack on his state convictions, even if the proceedings were ongoing.

Accordingly, Raghbir's motion for leave to proceed IFP is DENIED.


UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
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No. 18-14577-D

VINODH RAGHUBIR,

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SECRETARY, DEPARTMENT OF CORRECTIONS,
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ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Vinodh Raghbir has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective April 23, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Scott O'Neal, D, Deputy Clerk

FOR THE COURT - BY DIRECTION