

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-13871-C

Appendix
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WILLIE C. WALKER,

Petitioner-Appellant,

versus

STATE OF GEORGIA,
JUDGE TOM CAMPBELL,
DBHDD,
ANTRON EVANS,
CITY OF SOUTH FULTON MUNICIPAL COURT,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

ORDER:

Willie C. Walker, a civil detainee, filed the present *pro se* 28 U.S.C. § 2254 habeas corpus petition. Although his § 2254 petition is difficult to understand and full of irrelevant citations to state and federal law, it appears to challenge his present involuntary civil commitment. Mr. Walker also filed a motion for *in forma pauperis* (“IFP”) status before the district court.

The district court issued an order denying Mr. Walker’s § 2254 petition and motion for IFP status. In doing so, the court noted that “[n]othing in the record indicates that [Mr. Walker] has pursued a petition for writ of habeas corpus from the final order of civil commitment or the most recent order modifying the civil commitment.” It also noted that there was no indication that he otherwise had petitioned for relief in state court and that nothing in the record indicated that state

remedies were unavailable to him or would have proven ineffective to protect his rights. Thus, the district court found that any habeas claim that Mr. Walker attempted to raise in his § 2254 petition was unexhausted and that the petition was, consequently, frivolous and due to be dismissed.

Mr. Walker now moves this Court for a certificate of appealability (“COA”) and IFP status. In order to obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where the district court dismissed a habeas petition on procedural grounds, the movant must show that reasonable jurists would debate (1) whether the motion states a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

“Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999); 28 U.S.C. § 2254(b)(1). “An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.” 28 U.S.C. § 2254(c).

Here, reasonable jurists would not debate the district court’s determination that any claim Mr. Walker attempted to raise was unexhausted. *See Slack*, 529 U.S. at 484. Under Georgia law, Mr. Walker had the right to raise a challenge to his involuntary civil commitment in a petition under O.C.G.A. § 37-3-148(a) or O.C.G.A. § 17-7-131(f). *See Hogan v. Nagel*, 576 S.E.2d 873, 875 (Ga. 2003) (“[An individual] under an order of involuntary commitment has two parallel judicial means by which he might secure his release on the ground that he no longer meets the criteria for civil commitment: by a petition for writ of habeas corpus (O.C.G.A. § 37-3-148(a)) and by petition for release under O.C.G.A. § 17-7-131(f).”). However, the record and Mr. Walker’s § 2254 petition do not contain any indication that Mr. Walker raised his challenge to his

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involuntary commitment in any state court proceeding. Consequently, the district court could not have granted Mr. Walker any habeas relief he requested in connection to his involuntary commitment because any claim he raised was unexhausted and prematurely before the district court. *See O'Sullivan*, 526 U.S. at 842.

Accordingly, Mr. Walker's motion for a COA is DENIED. Mr. Walker's motion for IFP status is DENIED AS MOOT.

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Appendix
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No. 20-13871-C

WILLIE C. WALKER,

Petitioner-Appellant,

versus

STATE OF GEORGIA,
JUDGE TOM CAMPBELL,
DBHDD,
ANTRON EVANS,
CITY OF SOUTH FULTON MUNICIPAL COURT,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

Before: JILL PRYOR and BRASHER, Circuit Judges.

BY THE COURT:

Willie C. Walker has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's March 4, 2021, order denying his motion for a certificate of appealability and denying as moot his motion for leave to proceed on appeal *in forma pauperis*. Upon review, Mr. Walker's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIE C. WALKER,

Plaintiff,

v.

STATE OF GEORGIA, JUDGE TOM
CAMPBELL, DBHDD, ANTRON
EVANS, and CITY OF SOUTH
FULTON MUNICIPAL COURT,

Defendants.

CIVIL ACTION NO.

1:20-CV-2373-CAP

ORDER

The plaintiff filed the instant action pro se and requested in forma pauperis ("IFP") status. After a magistrate judge granted the plaintiff's request to proceed IFP, this court conducted a frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B). While the court was uncertain as to precisely what type of claim the plaintiff sought to assert, i.e., a civil rights claim or a habeas corpus claim, the court concluded that the plaintiff could not proceed in federal court before first exhausting his state court remedies. Therefore, the complaint was dismissed as frivolous [Doc. No. 11]. The plaintiff has now filed a notice of appeal [Doc. No. 13] and an application for leave to appeal IFP [Doc. No. 14].

The petitioner's application to proceed on appeal IFP is governed by 28 U.S.C. § 1915 and Federal Rule of Appellate Procedure 24. Section 1915(a) provides, in relevant part:

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress. . . .

A review of the petitioner's financial affidavit [Doc. No. 14] indicates that he does not have sufficient funds to pay the filing fee for the appeal.¹ 28 U.S.C. § 1915(a)(3) provides, however, that an appeal may not be taken IFP if the trial court certifies in writing that it is not taken in good faith. In the notice of appeal [Doc. No. 13], the petitioner does not articulate his grounds for appeal, and seems to concede that he must exhaust his state remedies before filing in this court—precisely the reason for the dismissal of this action. Accordingly, this court finds the appeal is not taken in good faith and therefore must DENY the application for leave to appeal IFP [Doc. No. 14] pursuant to 28 U.S.C. § 1915(a)(3).

¹ The document submitted by the plaintiff is not signed and contains very little substantive information. The plaintiff marked nearly all blanks of the form "N/A."

Because the plaintiff indicated in his complaint that he seeks habeas corpus relief, the court finds that to the extent this action is governed by the certificate of appeal requirements at 28 U.S.C. § 2253(c), the plaintiff is not entitled to a certificate because he has failed to "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Further requests for a certificate of appealability or to proceed IFP on appeal should be directed, on motion, to the United States Court of Appeals for the Eleventh Circuit.

SO ORDERED this 15th day of October, 2020.

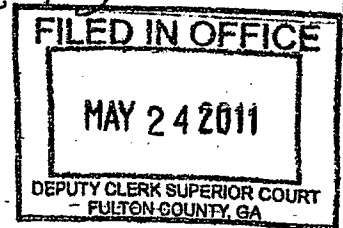
/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge

Please mark as
Exhibit-A { Appendix
A

In The Superior Court of Fulton County
State of Georgia

Willie C. Walker
v.s.
State of Georgia

Case No. 10SC93691
Case No. 11SC99124
~~Case No. 10SC93~~



Notice of Filing

Please take notice that in the above-entitled case matter of charges has been fully adjudicated in the U.S. District Court for the Northern District of Georgia. The final Order and Judgment of the dismissal is herewith attached.

re: Willie C. Walker
4-N-103 #1027879
901 Rice St
Atl. Ga. 30318

Respectfully Submitted

Willie C. Walker
petitioner,

To the Clerk office:
Send Copies, Judge, Gager;
district Atty. office.
Return file copy.

May 18, 2011.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

App. A ---

WILLIE C. WALKER,

Petitioner,

vs.

STATE OF GEORGIA,

Respondent.

CIVIL ACTION FILE

NO. 1:11-cv-174-CAP

J U D G M E N T

This petition for a writ of habeas corpus having come before the court, Honorable Charles A. Pannell, Jr., United States District Judge, for consideration, and the petition having been considered and the court having rendered its opinion, it is

Ordered and Adjudged that the petition for a writ of habeas corpus be, and the same hereby is and **dismissed**.

Dated at Atlanta, Georgia, this 13th day of May, 2011.

JAMES N. HATTEN
CLERK OF COURT

By: s/Andrea Gee
Deputy Clerk

Prepared, Filed and Entered
in the Clerk's Office
May 13, 2011
James N. Hatten
Clerk of Court

By: s/Andrea Gee
Deputy Clerk

Appendix B

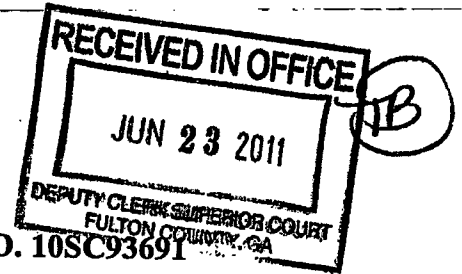
IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA

STATE OF GEORGIA

V.

Willie Walker

INDICTMENT NO. 10SC93691



JUDGEMENT AND ORDER IN PLEA OF MENTAL INCOMPETENCY TO STAND TRIAL

The defendant in the above-styled case, while represented by Counsel, has waived a jury trial. The Court sitting as judge and jury trying the issue formed upon the Defendant's Plea of Mental Incompetency to Stand Trial, finds as follows:

Counsel for Defendant has presented to the Court sufficient psychiatric evidence to show that Defendant is incapable of understanding the nature of the charges against him/her, nor of understanding the object of the proceedings against him/her, and is incapable of rendering his/her attorney proper assistance in his/her defense. Counsel moves that his/her plea be sustained by the Court and that the Defendant be placed in the custody of the Department of Human Resources (DHR).

After consideration of all the medical evidence and the attached psychiatric report, the Court, the Court finds in favor of the Defendant's Plea of Mental Incompetency to Stand Trial.

THEREFORE, the Court hereby ORDERS that the Defendant be confined in a State facility for the mentally ill. Within ninety (90) days after the Department of Human Resources has received custody of the Defendant, the Defendant shall be evaluated and a diagnosis made as to whether he/she is presently competent to stand trial or whether there is substantial probability that the Defendant will at some future time attain mental competency to stand trial in the said case.

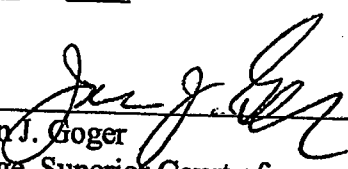
IT IS FURTHER ORDERED that the Department of Human Resources shall report their findings and the reasons therefore to this Court.

IT IS THE FURTHER ORDER of this Court that the Sheriff of Fulton County shall transport and deliver said Defendant to the State hospital for the mentally ill, to be selected by the Department of Human Resources, along with two (2) copies of this Order.

App. B

The Court FURTHER ORDERS that the Defendant be confined and treatment rendered in accordance with O.C.G.A. §17-7-130.

This the 3 day of June, 2011.



John J. Goger
Judge, Superior Court of
Fulton County, Georgia