FILED: June 28, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6823
(5:19-hc-02269-FL)

JASON ROBERT TWARDZIK

Petitioner - Appellant

v.

NORTH CAROLINA

Respondent - Appellee

JUDGMENT

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix A

PER CURIAM:

Jason Robert Twardzik, a state pretrial detainee, seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2241 petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Twardzik has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

Appendix A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-HC-2269-FL

JASON TWARDZIK,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	
NORTH CAROLINA,	)	
	)	
Respondent.	)	

Petitioner, a state pretrial detainee proceeding pro se, commenced this action by filing petition for a writ of habeas corpus on September 24, 2019, asserting constitutional violations during his pretrial proceedings pursuant to 28 U.S.C. § 2241. The court dismissed the petition and denied a certificate of appealability on May 29, 2020. Petitioner noticed appeal of the court's judgment on June 4, 2020. On August 18, 2020, the court granted in part and denied in part petitioner's post-judgment motions to supplement the record on appeal. The matter now is before the court on petitioner's motion to alter or amend judgment (DE 26) pursuant to Federal Rules of Civil Procedure 59(e) and 60(b). Although the filing is not a model of clarity, plaintiff appears to seek reconsideration of the court's August 18, 2020, order, and the May 29, 2020, order dismissing the petition.

Where petitioner's appeal of the court's order dismissing this action was dismissed for failure to prosecute (see DE 29), the instant motion for reconsideration of the order denying the motions to supplement the record on appeal is moot. To the extent plaintiff seeks reconsideration

Appendix B

of the order dismissing his habeas petition, the motion is denied for the reasons stated in the May 29, 2020, order.

Based on the foregoing, the court DENIES plaintiff's motion for reconsideration (DE 26).

SO ORDERED, this the 12th day of February, 2021.

LOUISE W. FLANAGAN
United States District Judge

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:19-HC-2269-FL

JASON TWARDZIK,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	
NORTH CAROLINA,	)	
	)	
Respondent.	)	

Petitioner, a state pretrial detainee proceeding pro se, petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter is before the court for an initial review of the petition pursuant to 28 U.S.C. § 2243, which provides that the court need not seek a response from the respondent when it is clear on the face of the petition that the petitioner is not entitled to relief. The matter also is before the court on petitioner's motions to amend the petition, (DE 5, 6) and for jury trial, (DE 9).

Petitioner challenges his ongoing state criminal prosecution. Specifically, petitioner alleges that state officials are violating his constitutional rights to self-representation and pursuing false criminal charges against him. As relief, petitioner seeks a court order directing state officials to allow him to represent himself or dismissing the pending criminal charges.

A habeas corpus application allows a petitioner to challenge the fact or length of custody and seek immediate release. See, e.g., Preiser v. Rodriguez, 411 U.S. 475, 487–88 (1973). Pretrial detainees may file a habeas corpus petition pursuant to § 2241. See 28 U.S.C. § 2241; United States v. Tootle, 65 F.3d 381, 383 (4th Cir. 1995). However, a state pretrial detainee first must exhaust other available remedies to be eligible for habeas corpus relief under § 2241.

See Timms v. Johns, 627 F.3d 525, 530–31 (4th Cir. 2010); Durkin v. Davis, 538 F.2d 1037, 1041 (4th Cir. 1976) ("Until the State has been accorded a fair opportunity by any available procedure to consider the issue and afford a remedy if relief is warranted, federal courts in habeas proceedings by state [inmates] should stay their hand." (internal quotations omitted)); see also Adams v. U.S. ex rel. McCann, 317 U.S. 269, 274 (1942) ("Of course the writ of habeas corpus should not do service for an appeal."); Jones v. Perkins, 245 U.S. 390, 391 (1918) ("It is well settled that in the absence of exceptional circumstances in criminal cases the regular judicial procedure should be followed and habeas corpus should not be granted in advance of a trial.").

Where petitioner is currently a pretrial detainee, he has not exhausted his available remedies in the trial and appellate courts. Petitioner also has not demonstrated exceptional circumstances excuse his failure to exhaust. Accordingly, the court will dismiss the § 2241 petition without prejudice.

Alternatively, the court may not proceed with this action because federal courts are not authorized to interfere with a state's pending criminal proceedings, absent extraordinary circumstances. See Younger v. Harris, 401 U.S. 37, 44 (1971). Specifically, a federal court must abstain from exercising jurisdiction and interfering with a state criminal proceeding if "(1) there is an ongoing state judicial proceeding brought prior to substantial progress in the federal proceeding; that (2) implicates important, substantial, or vital state interests; and (3) provides adequate opportunity to raise constitutional challenges." Nivens v. Gilchrist, 444 F.3d 237, 241 (4th Cir. 2006). The Supreme Court, however, has recognized three exceptions to Younger abstention: "where (1) there is a showing of bad faith or harassment by state officials responsible for the prosecution; (2) the state law to be applied in the criminal proceeding is flagrantly and

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patently violative of express constitutional prohibitions; or (3) other extraordinary circumstances exist that present a threat of immediate and irreparable injury." See id. (quotations omitted). "[T]he cost, anxiety, and inconvenience of having to defend against a criminal prosecution alone does not constitute irreparable injury." See id. (quotation omitted).

Petitioner's request for habeas relief falls within Younger. First, petitioner is challenging an ongoing state criminal proceeding. Second, "North Carolina has a very important, substantial, and vital interest in preventing violations of its criminal laws." Nivens v. Gilchrist, 319 F.3d 151, 154 (4th Cir. 2003). Third, petitioner's "pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights." Gilliam v. Foster, 75 F.3d 881, 904 (4th Cir. 1996) (en banc). Petitioner also has not alleged extraordinary circumstances sufficient to invoke an exception to Younger. Accordingly, the court abstains from considering petitioner's claims.

Finally, to the extent petitioner is attempting to challenge his conditions of confinement, such claims are not cognizable in this habeas corpus proceeding. See Wilborn v. Mansukhani, 795 F. App'x 157, 163-64 (4th Cir. 2019); Rodriguez v. Ratledge, 715 F. App'x 261, 265-66 (4th Cir. 2017); Braddy v. Wilson, 580 F. App'x 172, 173 (4th Cir. 2014). Claims challenging conditions of confinement must be brought in a civil rights action pursuant to 42 U.S.C. § 1983.

After reviewing the claims presented in the habeas petition in light of the applicable standard, the court finds reasonable jurists would not find the court's treatment of any of petitioner's claims debatable or wrong, and none of the issues are adequate to deserve encouragement to proceed further. See Buck v. Davis, 137 S. Ct. 759, 777 (2017); Miller-El v.

Appendix C

Supreme Court of North Carolina

AMY L. FUNDERBURK, Clerk
Justice Building, 2 E. Morgan Street
Raleigh, NC 27601
(919) 831-5700

Fax: (919) 831-5720
Web: https://www.nccourts.gov

Mailing Address:
P. O Box 2170
Raleigh, NC 27602

From Orange
(19CRS051413 19CRS51528 19CRS51529)

10 September 2019

Mr. Jason Twardzik
Pro Se
Orange County Jail
125 Court Street
Hillsborough, NC 27278

RE: State v Jason Twardzik - 358P19-1

Dear Mr. Twardzik:

The following order has been entered on the motion filed on the 5th of September 2019 by Defendant for Emergency Appeal of Denial of Defendant Request of Release on Own Recognizance:

"Motion Dismissed by order of the Court in conference, this the 10th of September 2019."

s/ Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 10th day of September 2019.

Amy L. Funderburk
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
Mr. Jason Twardzik, For Twardzik, Jason
Mr. Daniel P. O'Brien, Special Deputy Attorney General, For State of N.C. - (By Email)
Mr. James R. Woodall, Jr., District Attorney
Hon. Mark Kleinschmidt Stanford, Clerk
West Publishing - (By Email)
Lexis-Nexis - (By Email)

Appendix D

Supreme Court of North Carolina

AMY L. FUNDERBURK, Clerk
Justice Building, 2 E. Morgan Street
Raleigh, NC 27601
(919) 831-5700

Fax: (919) 831-5720
Web: https://www.nccourts.gov

Mailing Address:
P. O Box 2170
Raleigh, NC 27602

From Orange
(19CRS051413 19CRS51528 19CRS51529)

10 September 2019

Mr. Jason Twardzik
Pro Se
Orange County Jail
125 Court Street
Hillsborough, NC 27278

RE: State v Jason Twardzik - 358P19-1

Dear Mr. Twardzik:

The following order has been entered on the motion filed on the 5th of September 2019 by Defendant for Emergency Appeal of Denial of Defendant Request of Dismissal of Charges:

"Motion Dismissed by order of the Court in conference, this the 10th of September 2019."

s/ Davis, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 10th day of September 2019.

Amy L. Funderburk
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
Mr. Jason Twardzik, For Twardzik, Jason
Mr. Daniel P. O'Brien, Special Deputy Attorney General, For State of N.C. - (By Email)
Mr. James R. Woodall, Jr., District Attorney
Hon. Mark Kleinschmidt Stanford, Clerk
West Publishing - (By Email)
Lexis-Nexis - (By Email)

Appendix D