

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 25, 2022

Lyle W. Cayce
Clerk

No. 21-51068
Summary Calendar

ERIC S. RAY,

Petitioner—Appellant,

versus

SCOTT CROW, *Director, Oklahoma Department of Corrections,*

Respondent—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 21-CV-244

Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:*

Appellant Eric S. Ray appeals the district court's final judgment dismissing his petition for a writ of habeas corpus under 28 U.S.C. § 2241 and denying all his pending motions. For the reasons that follow, we AFFIRM the judgment.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-51068

I.

While at their home in Oklahoma, Eric S. Ray punched his wife in the face on October 3, 2018; he then fled to Texas and was arrested in Ector County for possession of marijuana on October 23. He was subsequently notified of two outstanding warrants, one in Arkansas for failure to appear and the other in Collin County, Texas, for a charge of theft by check. After being arraigned on October 31 for the two Texas offenses, he was placed on a no-bail hold. On November 9, Ray was notified that he was also wanted by the State of Oklahoma on a felony charge of assault and battery of his wife. On December 13, Ray was taken into the custody of a sheriff's deputy from McCurtain County, Oklahoma, who traveled to Collin County, Texas, to transport Ray from Texas to Oklahoma. On December 14, Ray was arraigned on the domestic violence charge. In May 2019, a jury found Ray guilty on two counts of domestic assault and battery resulting in great bodily harm of his wife, and he is currently serving a thirty-year sentence in Oklahoma for those convictions.

Ray sued the Director of the Oklahoma Department of Corrections challenging his custody through a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2241. He alleges violations of his rights under the Fourth,

No. 21-51068

Fifth, Eighth, and Fourteenth Amendments,¹ as well as under the Uniform Criminal Extradition Act² and Interstate Agreement on Detainers Act.³

Ray claims that his initial arrest on October 23 in Ector County was illegal and that he was illegally detained until his transfer on December 13 to Oklahoma. He requests that the court “void [his] current conviction and furthermore dismiss all charges . . . in all three states . . . with prejudice.” The district court dismissed his petition without prejudice because (1) Ray’s allegation that his initial arrest was illegal was merely conclusory and (2) the doctrines of abstention and mootness prevented the court from reversing Ray’s extradition. Ray timely appeals.

II.

We review “a district court’s abstention ruling for abuse of discretion, but [we] review[] de novo whether the elements for *Younger* abstention are present.” *Bice v. La. Pub. Def. Bd.*, 677 F.3d 712, 716 (5th Cir. 2012). Pursuant to the Supreme Court’s abstention doctrine announced in *Younger*,⁴ federal courts must not exercise jurisdiction over a suit when three conditions are met: “(1) the federal proceeding would interfere with an ‘ongoing state

¹ Ray asserts on appeal that his constitutional rights under the First and Sixth Amendments were violated. “‘As a court for review of errors,’ we do ‘not . . . decide facts or make legal conclusions in the first instance,’ but ‘review the actions of a trial court for claimed errors.’” *Montano v. Texas*, 867 F.3d 540, 546 (5th Cir. 2017) (quoting *Browning v. Kramer*, 931 F.3d 340, 345 (5th Cir. 1991)). Accordingly, we address only the allegations presented to the district court and adjudicated there.

² The Uniform Criminal Extradition Act was codified into Texas law in the Texas Code of Criminal Procedure article 51.13.

³ “The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining.” 18 U.S.C. app. 2 § 2.

⁴ *Younger v. Harris*, 401 U.S. 37 (1970).

No. 21-51068

judicial proceeding’; (2) the state has an important interest in regulating the subject matter of the claim; and (3) the plaintiff has ‘an adequate opportunity in the state proceedings to raise constitutional challenges.’” *Id.* (quoting *Middlesex Cnty. Ethics Comm’n v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982)). When these three conditions are met, “a federal court can assert jurisdiction only if ‘certain narrowly delimited exceptions to the abstention doctrine apply.’” *Bice*, 677 F.3d at 716 (quoting *Tex. Ass’n Bus. v. Earle*, 388 F.3d 515, 519 (5th Cir. 2004)).

III.

The district court concluded that *Younger* abstention applies to Ray’s claim that his extradition was improper. On appeal, Ray neither contests the district court’s conclusion that the three abstention conditions were met nor argues that a “narrowly delimited exception[]” applies. *Earle*, 388 F.3d at 519. “Failure to prosecute an issue on appeal constitutes waiver of the issue.” *United States v. Green*, 964 F.2d 365, 371 (5th Cir. 1992). Accordingly, Ray has not put forth sufficient argument to convince us that the district court erred.⁵

IV.

For the foregoing reasons, we AFFIRM.

⁵ Ray also asserts that his initial arrest was illegal. Although the illegal arrest allegation is also subject to the abstention analysis, we note another ground for affirmance. “[P]ro se habeas petitions must be construed liberally,” *Koch v. Puckett*, 907 F.2d 524, 530 (5th Cir. 1990), however, “mere conclusory allegations on a critical issue are insufficient to raise a constitutional issue.” *United States v. Woods*, 870 F.2d 285, 288 n.3 (5th Cir. 1989). Ray does not allege what made his arrest on October 23 illegal; thus, this allegation is conclusory and insufficient to raise a constitutional issue as to his initial arrest.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 25, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-51068 Ray v. Crow
USDC No. 3:21-CV-244

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink, appearing to read "W. M. Jett", with a long horizontal flourish extending to the right.

By: _____
Whitney M. Jett, Deputy Clerk

Enclosure(s)

Mr. Eric S. Ray

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

2021 OCT 20 PM 3:10

ESTERHEDER

EP-21-CV-244-DCG

ERIC SHAWN RAY,
Petitioner,

v.

SCOTT CROW, Director, Oklahoma
Department of Corrections,¹
Respondent.

§
§
§
§
§
§
§
§

MEMORANDUM OPINION AND ORDER

Eric Shawn Ray, Oklahoma State Prisoner Number 210440, challenges his continued custody through a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2241. Pet'r's Pet., ECF No. 1-1. His petition is dismissed without prejudice for the following reasons.

BACKGROUND AND PROCEDURAL HISTORY

Ray is currently serving a thirty-year sentence in Oklahoma. See Oklahoma State Courts Network Docket Search, <https://www.oscn.net/dockets/> (search for CF-2018-239, McCurtain County) (last visited Oct. 18, 2021).² A jury found him guilty on two counts of domestic assault and battery on his wife which resulted in great bodily harm on May 17, 2019, in case number CF-2018-239, in McCurtain County District Court in Idabel, Oklahoma. Id.

¹ Ray names "Request Ex Parte Status" as the Respondent. He is incarcerated at the Davis Correctional Facility, a private prison in Holdenville, Oklahoma, because of a state-court judgment in case number CF-2018-239, in McCurtain County District Court in Idabel, Oklahoma. "If the petitioner is currently in custody under a state-court judgment, the petitioner must name as respondent the state officer who has custody." Rule 2(a) of the Rules Governing Section 2254 Cases. The Director of Corrections for the State of Oklahoma, Scott Crow, is therefore his custodian. See Braden v. 30th Judicial Circuit Court of Ky., 410 U.S. 484, 494-95 (1973); <https://oklahoma.gov/doc/about/office-of-the-director.html> (last visited Oct. 18, 2021). The case name is accordingly changed to Eric Shawn Ray, Petitioner, v. Scott Crow, Director, Oklahoma Department of Corrections, Respondent.

² See Fed. R. Evid. 201(b)(1) and (2) (permitting a court to take judicial notice of a fact that is "not subject to reasonable dispute in that it is either (1) generally known within the trial court's jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.").

Court records show Ray was sleeping with his wife in the home they shared in Idabel on the morning of October 3, 2018. See Oklahoma State Courts Network Docket Search, <https://www.oscn.net/dockets/> (search for F-2019-437, Okla. Crim. App.) (last visited Oct. 18, 2021), Appellee's Br. 2. His sleep was interrupted when his wife began making noises. Id. He woke her up and she cursed him as she got up and walked to the bathroom. Id. He followed her into the bathroom, struck her in the back of her head with his fist, and returned to the bedroom. Id. at 3. When she walked back into the bedroom and told him she was going to her father's apartment, he punched her in the face and caused her to suffer significant facial bleeding and a bilateral nasal plate fracture. Id. He grabbed a backpack and some clothes and fled to Texas. Id. at 4.

Ray was arrested in Ector County, Texas, for possession of marijuana on October 23, 2018. Pet'r's Pet. 30, ECF No. 1-1. He was notified after his arrest of an outstanding warrant for felony failure to appear in Washington County, Arkansas. Id. at 31. Consequently, he was held without bail in the Ector County jail. Id. He indicated to local officials that he planned to plead to an information and complaint alleging a violation of Texas Health and Safety Code § 481.121(b)(1), a class B misdemeanor, in cause number 18-4830-CCL2 in Ector County Court at Law Number 2. See Ector County Portal – District, County & Justice Records, <https://portal-txector.tvlertech.cloud> (last visited Oct. 18, 2021). But he failed to appear for his arraignment on December 19, 2018, and a capias was issued for his arrest. Id.

Ray failed to appear because authorities had already moved him to McKinney, Texas, on October 31, 2018, based on an outstanding warrant in Collin County. Id. He was arraigned in Collin County on a misdemeanor charge of theft by check. Id. He was also placed on a "no bail hold" due to the Arkansas warrant and a detainer. Id.

Ray claims he was notified on November 9, 2019, that he was also wanted by the State of Oklahoma on the felony charge of assault and battery on his wife. Id. at 32. He said he “was advised of his rights under [the] Interstate Agreement on Extradition Act.”³ Id. He added he declined to waive extradition proceedings. Id.

On December 12, 2018, Ray was taken into custody by a McCurtain County sheriff’s deputy at the Collin County jail and forcibly transported across the Texas-Oklahoma state line to the McCurtain County jail. Id. at 33. He was arraigned in McCurtain County, Oklahoma, on December 14, 2018, in case number CF-2018-239 on the domestic violence charge. Id.

While a pretrial detainee in the McCurtain County jail, Ray filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the United States District Court for the Eastern District of Oklahoma. See Ray v. Tadlock, 6:19-CV-16-JHP (E.D. Okla.), Order, ECF No. 4. He claimed that “his initial arrest was without probable cause.” Id. at 2. He alleged that he “was not advised of any rights, including rights regarding the Interstate Agreement on Extradition Act, and he was not allowed to contact anyone before [his] arraignment.” Id. He maintained that “he was held without bail for no lawful reason.” Id.

The Court dismissed Ray’s petition because it determined, after reviewing Ray’s state-court records, that he had failed to exhaust his state remedies. Id. at 3.

Ray filed a second § 2241 petition in the Eastern District of Oklahoma while a still pretrial detainee. See Ray v. Crow, 6:19-CV-159-RAW (E.D. Okla.), Order, ECF No. 4. He claimed that “he was unlawfully seized in Texas and removed to Oklahoma in violation of the

³ See Letizia v. Hickman, No. CV H-18-0930, 2018 WL 1783798, at *1 n.7 (S.D. Tex. Apr. 13, 2018) (“[T]he Uniform Criminal Extradition Act authorizes the arrest and extradition of anyone in Texas who is wanted in connection with a criminal offense in another state. See Tex. Code Crim. Proc. Art. 51.13, §§ 7–9 (detailing the governor’s duty to issue a warrant of arrest which ‘shall authorize’ a peace officer or other person to arrest the accused ‘at any time and any place where he may be found within the State’).”)

United States Constitution, the Interstate Agreement on Extradition Act, and the Oklahoma Bill of Rights.” Id. at 1.

The State opposed Ray’s petition. It noted that he was convicted in case number CF-2018-239 after his petition was filed. Id. at 2. It added that he had appealed his conviction, and his appeal was still pending. Id.

Consequently, the Court denied Ray’s second petition because his case was on appeal, and he had not exhausted the issues he raised. Id. at 3. The Court also found Ray had “failed to make a ‘substantial showing of the denial of a constitutional right,’ as required by 28 U.S.C. § 2253(c)(2).” Id. at 4.

The Oklahoma Court of Criminal Appeals subsequently affirmed Ray’s conviction and sentence in case number CF-2018-239. See Oklahoma State Courts Network Docket Search, <https://www.oscn.net/dockets/> (search for F-2019-437, Okla. Crim. App.) (last visited Oct. 18, 2021), Summ. Op. 9.

In his instant petition, Ray alleges that his Fourth, Fifth, and Fourteenth Amendment rights—as well as his rights under the Uniform Criminal Extradition Act and Interstate Agreement on Detainers⁴ and—were violated by law enforcement authorities in Ector County between the date of his “illegal arrest” on October 23, 2018, until his transfer to McKinney, Texas, on October 31, 2018. Pet’r’s Pet. 6. He maintains that he was “completely denied due

⁴ See United States v. Mauro, 436 U.S. 340, 343–44 (1978) (“[T]he Interstate Agreement on Detainers . . . is designed ‘to encourage the expeditious and orderly disposition of . . . charges [outstanding against a prisoner] and determination of the proper status of any and all detainees based on untried indictments, informations, or complaints.’ Art. I. It prescribes procedures by which a member State may obtain for trial a prisoner incarcerated in another member jurisdiction and by which the prisoner may demand the speedy disposition of certain charges pending against him in another jurisdiction. In either case, however, the provisions of the Agreement are triggered only when a ‘detainer’ is filed with the custodial (sending) State by another State (receiving) having untried charges pending against the prisoner; to obtain temporary custody, the receiving State must also file an appropriate ‘request’ with the sending State.”).

process in Ector County” when authorities failed to give him notice of the Oklahoma charge before transferring him to Collin County. Id. He asserts that once the “Texas authorities became liable . . . they had a vested interest in [his] extradition” to Oklahoma. Id. at 7. He further claims that the Oklahoma assault occurred in Indian County. Id. Hence, he argues that he had a right to have authorities in Texas determine whether he was subject to federal or state jurisdiction for the offense. He asks the Court to “establish jurisdiction over the alleged offense and void [his] conviction.” Id. at 8. He also asks the Court to “dismiss all charges . . . in all three states . . . with prejudice.” Id.

APPLICABLE LAW

A prisoner is entitled to § 2241 relief only to remedy a restraint on his liberty which violates the constitution, treaties, or laws of the United States. United States v. Hayman, 342 U.S. 205, 211–12 & n.11 (1952). He may be entitled to § 2241 relief “regardless of whether final judgment has been rendered and regardless of the present status of the case pending against him.” Dickerson v. State of La., 816 F.2d 220, 224 (5th Cir. 1987). But he must show he is “in custody” and must have exhausted his available state remedies” to be eligible for habeas relief. Id. “Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court . . . the application may be filed in [either] the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him.” 28 U.S.C. § 2241(d). Finally, a court must “award the writ or issue an order directing the Respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” Id. § 2243.

ANALYSIS

Ray alleges that law enforcement authorities in Ector County violated his rights between

the date of his “illegal arrest” on October 23, 2018, until his transfer to Collin County on October 31, 2018. Pet’r’s Pet. 6, ECF No. 1-1. He maintains that he was “completely denied due process” when the authorities failed to give him notice of the Oklahoma charge before transferring him to Collin County. Id.

Ray is not in custody in Ector County. Pet’r’s Pet. 1. He has also not been convicted or sentenced in Ector County. See Ector County Portal – District, County & Justice Records, <https://portal-txector.tylertech.cloud> (last visited Oct. 18, 2021). The charges against him there are pending. Id.

Ray does not detail why he believes his arrest in Ector County was illegal. “Although pro se habeas petitions must be construed liberally, ‘mere conclusory allegations on a critical issue are insufficient to raise a constitutional issue.’” Koch v. Puckett, 907 F.2d 524, 530 (5th Cir. 1990) (quoting United States v. Woods, 870 F.2d 285, 288 n.3 (5th Cir. 1989)). Ray will need to allege more than his arrest was illegal to obtain habeas relief.

Admittedly, Ector county is within the jurisdiction of the Western District of Texas. 28 U.S.C. §124(d)(3). But the doctrine of abstention announced in Younger v. Harris, 401 U.S. 37, 45 (1970), requires the Court, absent special circumstances, to “abstain in cases in which a state criminal proceeding is pending.” DeSpain v. Johnston, 731 F.2d 1171, 1177 (5th Cir. 1984). Specifically, the Younger doctrine requires a federal court to decline to exercise jurisdiction over a state-criminal-defendant’s claims when three conditions are met: “(1) the federal proceeding would interfere with an ongoing state judicial proceeding; (2) the state has an important interest in regulating the subject matter of the claim; and (3) the plaintiff has an adequate opportunity in the state proceedings to raise constitutional challenges.” Bice v. Louisiana Pub. Defender Bd., 677 F.3d 712, 716 (5th Cir. 2012) (citing Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423, 432 (1982)) (internal citations omitted). All three conditions are met here.

The Court will not intervene in the Ector County proceedings.

Ray also asserts that once the “Texas authorities became liable . . . they had a vested interest in [his] extradition” to Oklahoma. Pet’r’s Pet. 7, ECF No. 1-1. He further claims that the Oklahoma assault occurred in Indian County. *Id.* He argues that he had the right to have authorities in Texas determine whether he was subject to federal jurisdiction for the offense. *Id.* He asks the Court to “establish jurisdiction over the alleged offense and void [his] conviction.” *Id.* at 8. He further asks the Court to “dismiss all charges . . . in all three states . . . with prejudice.” *Id.* In essence, he asks the Court to somehow reverse his extradition to Oklahoma and exercise jurisdiction over an offense he maintains occurred in Indian Country.

Article IV of the Constitution provides that interstate extradition is a “summary and mandatory executive proceeding.” *Michigan v. Doran*, 439 U.S. 282, 288 (1978) (citing U.S. Const. art. IV, § 2, cl. 2 (“A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.”)). “[O]nce the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive.” *Id.* at 289. As a result, once extradition is completed, a court may no longer afford a habeas petitioner relief. *See Edwards v. Bowles*, 109 F. App’x 704 (5th Cir. 2004) (dismissing petitioner’s habeas corpus action on appeal because petitioner already had been extradited) (citing *Schlang v. Heard*, 691 F.2d 796, 799 & n.6 (5th Cir. 1982) (“This claim is not moot in the sense that it fails the ‘in custody’ requirement, *see Carafas v. LaVallee*, 391 U.S. 234 (1968), but in the sense that, since Schlang has been released, there is

simply no relief this court can give him in a habeas proceeding.).

Article III of the Constitution limits jurisdiction of federal courts to actual “cases” and “controversies.” U.S. CONST. art. III, § 2. A moot case presents no Article III case or controversy, and a federal court has no constitutional jurisdiction to resolve the issues presented in such a matter. Adair v. Dretke, 150 F. App’x 329, 331 (5th Cir. 2005) (citing Goldin v. Bartholow, 166 F.3d 710, 717 (5th Cir. 1999)).

Ray has already been extradited to Oklahoma. He can no longer challenge his extradition proceedings. He does not have an actual case or controversy for the Court to address. His claims regarding his extradition are moot.

Finally, Ray is incarcerated in Holdenville, Oklahoma, because of a state-court judgment in case number CF-2018-239, in McCurtain County District Court in Idabel, Oklahoma. Pet’r’s Pet. 1, ECF No. 1-1. He may file an application for habeas relief in the Eastern District of Oklahoma where he was convicted and where he is in custody—but not in the Western District of Texas.

CONCLUSION AND ORDERS

The Court concludes that it should abstain from exercising jurisdiction over Ray’s claims arising from his arrest and prosecution in cause number 18-4830-CCL2 in Ector County Court at Law Number 2. The Court further concludes that Ray’s claims arising from his extradition from Texas to Oklahoma are moot. The Court also concludes that it does not have jurisdiction over Ray’s claims arising from his arrest, prosecution, and conviction in case number CF-2018-239, in McCurtain County District Court in Idabel, Oklahoma. Thus, the Court finally concludes it appears from Ray’s petition that he is not entitled to relief at this time. The Court, therefore, enters the following orders:

IT IS ORDERED that Ray’s “Petition for a Writ of Habeas Corpus under 28 U.S.C. §


2241" (ECF No. 1-1) is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that all pending motions are **DENIED**.

IT IS FINALLY ORDERED that the District Clerk shall **CLOSE** this case.

SO ORDERED.

SIGNED this 20th day of October 2021.



DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**