IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-11137-G

RELONZO PHILLIPS,

Petitioner-Appellant,

versus

SHERIFF,
SHERRY BOSTON,
DeKalb County District Attorney,

Respondents-Appellees.

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

ORDER:

Relonzo Phillips, a pretrial detainee confined in the DeKalb County Jail, appeals the district court's order dismissing without prejudice his 28 U.S.C. § 2241 habeas corpus petition. In his § 2241 petition, Phillips alleged that the DeKalb County Sheriff executed a deficient arrest warrant against him that was not properly supported by probable cause. He also asserted that the District Attorney was prosecuting him without probable cause and in bad faith. He requested that the court enjoin the criminal prosecution against him, that he be discharged, and that the restraints on his liberty be lifted.

A magistrate judge issued a report and recommendation ("R&R"), recommending that the district court dismiss Phillips's § 2241 petition. The magistrate judge noted that Phillips "face[d] no injury other than that normally faced in defending against a criminal prosecution," so "pretrial

federal habeas corpus relief [was] not available." As to Phillips's request that the court enjoin his criminal prosecution, the magistrate judge found that Phillips failed to show that the Anti-Injunction Act "allow[ed] injunctive relief in this case." The magistrate judge determined that Phillips did not meet the standard for the court to enjoin the criminal prosecution under an exception to *Younger v. Harris*, 401 U.S. 37 (1971), because "his challenge to probable cause c[ould] be adequately addressed in his defense to his state criminal prosecution." Phillips objected to the R&R and filed several motions, including two motions to amend.

The district court adopted the R&R, dismissed without prejudice Phillips's § 2241 petition, and denied a certificate of appealability ("COA"). The district court stated that, to the extent that Phillips had moved to amend his § 2241 petition, it denied the motions because the arguments made in support of amendment were unmeritorious, so amendment would be futile.

Phillips filed a motion for a COA, which the district court construed as a notice of appeal. Phillips now moves in this Court for a COA.

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). The movant satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

Here, reasonable jurists would not debate the district court's dismissal of Phillips's § 2241 petition. Phillips has not been convicted, and all of his claims involved issues in his ongoing state criminal proceeding, and, thus, his § 2241 petition is subject to the *Younger* abstention doctrine. *See Hughes v. Att'y Gen. of Fla.*, 377 F.3d 1258, 1262 (11th Cir. 2004) Phillips's allegations were insufficient to show that his criminal prosecution was motivated by bad

faith or that his claims presented extraordinary circumstances. *See Younger*, 401 U.S. at 48-49. Specifically, in his petition, Phillips asserted that, because the arrest warrant was not properly supported by probable cause, he was being prosecuted in bad faith. However, he has not provided any specific evidence of bad faith. *See id.* at 48-49. Further, the mere fact that Phillips must defend against a criminal prosecution was insufficient to establish an irreparable injury. *See id.* at 46.

While Phillips asserted that "waiting out the regular trial, appeal, and collateral review process [would] bar federal post-conviction habeas review," the district court properly concluded that Phillips could challenge the arrest warrant and prosecution in his criminal proceeding and, therefore, does not need to rely on federal habeas review. Consequently, the district court properly dismissed his petition without prejudice as barred by the *Younger* abstention doctrine. *See id.* at 43-45. Finally, Phillips's blanket assertion that relief was "necessary" "due to the circumstances of this case" is insufficient to demonstrate that the Anti-Injunction Act allows relief in this case. 28 U.S.C. § 2283. Additionally, dismissal without prejudice was an appropriate disposition because any amendment would be futile. Accordingly, Phillips's motion for a COA is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-11137-G

RELONZO PHILLIPS,

Petitioner-Appellant,

versus

SHERIFF,
SHERRY BOSTON,
DeKalb County District Attorney,

Respondents-Appellees.

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

Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Relonzo Phillips has moved for leave to file an out-of-time motion for reconsideration of this Court's June 29, 2022, order denying his motion for a certificate of appealability on appeal from the district court's dismissal without prejudice of his 28 U.S.C. § 2241 petition. He has also filed a motion for reconsideration. Phillips's motion for leave to file his out-of-time motion for reconsideration is GRANTED. Because Phillips has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, his motion for reconsideration is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RELONZO PHILLIPS, DeKalb County Sheriff's Office and/or Jail, Petitioner,	:	PRISONER HABEAS CORPUS 28 U.S.C. § 2241
v.	:	
DEKALB COUNTY SHERIFF MELODY MADDOX, SHERRY BOSTON, DeKalb County District Attorney, Respondents.	:	CIVIL ACTION NO. 1:21-CV-4455-WMR-CMS

UNITED STATES MAGISTRATE JUDGE'S ORDER
AND FINAL REPORT AND RECOMMENDATION

Petitioner, Relonzo Phillips, a pre-trial detainee who is confined in the DeKalb County Jail in Decatur, Georgia, has filed a 28 U.S.C. § 2241 petition, as amended [Docs. 1, 5], in which he challenges his pretrial detention. Petitioner seeks to proceed *in forma pauperis* [Docs. 2, 4], and a prison official certifies that Petitioner has a $0.00 balance in his inmate account and has had a $0.00 average monthly balance and deposit for the preceding six months [Doc. 4 at 3]. The Court finds that Petitioner has insufficient funds to pay the $5.00 filing fee for a federal habeas corpus action and is entitled to *in forma pauperis* status.

The matter is before the Court on the petition for consideration under Rule 4 of the Rules Governing Section 2254 Cases ("Rule 4"), as applied to § 2241 petitions. See Rules Governing Section 2254 Cases, Rule 1(b). Under Rule 4, federal district courts must examine habeas petitions prior to any pleading by the respondent, and, "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition[.]"

I. Discussion

Petitioner challenges his detention based on the following: DeKalb County Sheriff Melody Maddox executed against Petitioner a deficient arrest warrant that was not properly supported by probable cause, and District Attorney Sherry Boston is prosecuting him without probable cause. [Doc. 1 at 4; Doc. 5 at 2]. Petitioner contends that, under Younger,[1] this Court should intervene because he is being prosecuted in bad faith. [Doc. 1-1 at 10-12]. Petitioner argues that the federal court may intervene (1) because lack of probable cause for the arrest warrant is "so apparent" as to demonstrate bad faith and (2) because some irreparable injury is likely as he raises a constitutional challenge. [Id. at 15-18; Doc. 5 at 2]. For relief,

[1] Younger v. Harris, 401 U.S. 37 (1971).

Petitioner asks that the criminal prosecution against him be enjoined, that he be discharged, and that the restraints on his liberty be lifted. [Doc. 1 at 6; Doc. 1-1 at 25-26; Doc. 5 at 2].

The general habeas statute dictates that a prisoner is entitled to habeas relief if "[h]e is in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. §2241(c)(3). In limited circumstances, the federal habeas statute allows the granting of habeas corpus relief to state pretrial detainees (if applicable state pre-trial remedies have been exhausted) to enforce rights related to criminal proceedings that cannot adequately be addressed during the regular trial, appeal, and post-conviction review process, such as a demand for a speedy trial. See Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 488-90 (1973) (holding that petitioner could bring pre-trial habeas challenge for the violation of his right to a speedy trial). Otherwise, absent extraordinary circumstances, challenges to a state criminal prosecution must be exhausted through the regular pretrial, trial, appeal, and post-conviction process. See Garcon v. Palm Beach Cty. Sheriff's Office, 291 F. App'x 225, 226 (11th Cir. 2008) (concluding that district court properly dismissed § 2241 claims that indictment was invalid, counsel was ineffective, and the arrest warrant was not supported by probable cause and that such claims "are properly

brought during [the] criminal case and subsequent direct appeal"); Garey v. Fed. Det. Ctr., Miami, 180 F. App'x 118, 120-21 (11th Cir. 2006) ("As to the remainder of Garey's claims in his § 2241 petition[, including claims of obtaining a warrant against him in violation of constitutional requirements], this Court affirms the judgment and ruling of the district court that these claims were not properly brought pursuant to 18 U.S.C. § 2241, but should have been raised in his pending criminal case."); Brown v. Estelle, 530 F.2d 1280, 1282-83 (5th Cir. 1976) (stating that, generally, a pretrial petitioner who seeks relief based on an affirmative defense to a state criminal charge must exhaust state remedies by allowing the case to go to trial and through the state appellate process and referring to the "long established principle that 'federal habeas corpus does not lie, absent "special circumstances", to adjudicate the merits of an affirmative defense to a state criminal charge prior to a judgment of conviction by a state court'" (quoting Braden, 410 U.S. at 490)); Tooten v. Shevin, 493 F.2d 173, 175-77 (5th Cir. 1974) (same and stating that federal habeas corpus should not be used as a pretrial motion forum and holding that constitutional challenge to statute could adequately be addressed during regular trial and appeal process). Federal habeas corpus relief is not meant to derail state proceedings. Tooten, 493 F.2d at 176 ("Braden came to the federal court in order to enforce Kentucky's obligation to

provide him with a forum. The Braden court carefully emphasized that nothing it said would permit the derailment of a pending state proceeding . . . ." (discussing Braden)). Thus, "an attempt to dismiss an indictment or otherwise prevent a prosecution . . . [is an objective that] is normally not attainable through federal habeas corpus . . . ." Brown, 530 F.2d at 1283.

Further, the Anti-Injunction Act provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. Additionally, Younger precludes federal courts from exercising jurisdiction over suits aimed at restraining or seeking dismissal of pending state criminal actions. Younger, 401 U.S. at 53-54. Before a federal court may stay or enjoin a state criminal prosecution, a defendant must show great, immediate, and irreparable injury that cannot be addressed by a defense to a single criminal prosecution, id. at 45-46, based on circumstances such as a prosecution brought in bad-faith and to harass, id. at 47-49, or a prosecution under a statute that flagrantly violates the Constitution, id. at 53-54; see also Hughes v. Att'y Gen. of Fla., 377 F.3d 1258, 1262 (2004) ("When a petitioner seeks federal habeas relief prior to a pending state criminal trial the petitioner must satisfy the

'Younger abstention hurdles' before the federal courts can grant such relief." (quoting Kolski v. Watkins, 544 F.2d 762, 766 (5th Cir. 1977))).

Under Younger and § 2241 jurisprudence, extraordinary or special circumstances that would allow a pretrial federal habeas corpus challenge do not include matters such as "prosecutorial misconduct, and perjury by the police officers in the course of his preliminary hearing and lying by the police officers in their affidavits of probable cause" – "such allegations as these and even worse, have not been found sufficient to constitute 'extraordinary circumstances' or 'special circumstances' within the meaning of Section 2241 jurisprudence so as to merit the grant of a pretrial Section 2241 petition." Robinson v. Harper, CV 20-376, 2020 WL 2573352, at *5 (W.D. Pa. Apr. 28, 2020) (citation omitted) (discussing Younger and § 2241), report and recommendation adopted, 2020 WL 2572261 (W.D. Pa. May 21, 2020). "[W]here a threat to the petitioner's rights may be remedied by an assertion of an appropriate defense in state court, no special circumstances are shown." Weber v. Dir. of Anderson Cty. Det. Ctr., CA 8:13-02339-GR, 2013 WL 5781718, at *5 (D.S.C. Oct. 25, 2013) ("In this case, Petitioner alleges many constitutional violations, but he should have the opportunity to assert his claims during the criminal proceedings to be held, or, later if he is convicted, during post-trial state proceedings.

For example, Petitioner's allegations of invalid indictments and lack of probable cause, false evidence, and his alleged need for a change of venue, among other claims, may be raised during the trial proceedings.").

Although § 2241 is available for claims that cannot adequately be addressed during the regular trial, appeal, and post-conviction review process, Petitioner's challenge to his arrest warrant and probable cause is not such a claim. Petitioner faces no injury other than that normally faced in defending against a criminal prosecution, and pretrial federal habeas corpus relief is not available. To the extent that Petitioner seeks to enjoin his criminal prosecution, he fails to show that § 2283 allows injunctive relief in this case. Petitioner also does not meet the Younger standard as his challenge to probable cause can be adequately addressed in his defense to his state criminal prosecution. Petitioner does not show extraordinary circumstances that warrant federal interference in his state proceedings and does not show that the relief he seeks is available under § 2241. See Brown, 530 F.2d at 1283.

Petitioner must pursue and exhaust his claim through the regular trial, appeal, and collateral review process. See Garcon, 291 F. App'x at 226; see also Ferguson v. Gilliam, 946 F.2d 894 (Table), 1991 WL 206516, *1 (6th Cir. Oct. 11, 1991) (affirming dismissal of pretrial § 2241 petition by federal detainee alleging arrest

without probable cause and violations of Fourth Amendment). It is recommended that this action be dismissed.

II. Certificate of Appealability ("COA")

Under Rule 11 of the Rules Governing § 2254 Cases, "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." The Court will issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The applicant "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Melton v. Sec'y, Fla. Dep't of Corr., 778 F.3d 1234, 1236 (11th Cir. 2015) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

> When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, the prisoner in order to obtain a COA, still must show both (1) "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" and (2) "that jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

Lambrix v. Sec'y, DOC, 872 F.3d 1170, 1179 (11th Cir. 2017) (quoting Slack, 529 U.S. at 484).

The undersigned recommends that a COA should be denied because it is not debatable Petitioner fails to state a claim for pretrial relief under § 2241. If the Court adopts this recommendation and denies a COA, Petitioner is advised that he "may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Rule 11(a), Rules Governing § 2254 Cases in the United States District Courts.

III. Conclusion

Accordingly,

IT IS ORDERED that Petitioner's request to proceed *in forma pauperis* [Docs. 2, 4] is **GRANTED**.

IT IS RECOMMENDED that the instant petition, as amended [Docs. 1, 5], and this action be **DISMISSED** without prejudice and that a COA be **DENIED**.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RELONZO PHILLIPS, Petitioner, v. DEKALB COUNTY SHERIFF MELODY MADDOX, et al., Respondents.	CIVIL ACTION NO.1:21-cv-04455-WMR

ORDER

Before the Court is the Magistrate Judge's Report and Recommendation ("R&R"), which recommends that the Court dismiss Petitioner Relonzo Phillips's 28 U.S.C. § 2241 habeas petition. [Doc. 6.] Petitioner objects to the R&R and has also filed several miscellaneous motions. [Docs. 8–9, 11–13.] After careful consideration of the R&R, the objections, the applicable law, and the relevant parts of the record, and for the reasons discussed herein, the Court dismisses Petitioner's Section 2241 petition and denies a certificate of appealability.

Petitioner, a pretrial detainee confined in the DeKalb County Jail, challenged his pretrial detention in his Section 2241 petition. [Doc. 6 at 1.] He alleged that the DeKalb County Sheriff executed a deficient arrest warrant against him that was not properly supported by probable cause and that the District Attorney is prosecuting

him without probable cause and in bad faith. [*Id.* at 2.] In terms of relief, Petitioner asked the Court to enjoin the criminal prosecution against him. [*Id.* at 2–3.]

In the R&R, the Magistrate Judge recommends dismissing the Section 2241 petition. [*Id.* at 9.] The Magistrate Judge determined that "[a]lthough § 2241 is available for claims that cannot adequately be addressed during the regular [criminal] trial, appeal, and post-conviction review process, Petitioner's challenge to his arrest warrant and probable cause is not such a claim." [*Id.* at 7.] To the contrary, he "faces no injury other than that normally faced in defending against a criminal prosecution," so "pretrial federal habeas corpus relief is not available." [*Id.*] And, "[t]o the extent that Petitioner seeks to enjoin his criminal prosecution," the Magistrate Judge found that he failed to show that the Anti-Injunction Act "allows injunctive relief in this case." [*Id.*] Finally, the Magistrate Judge determined that Petitioner does not meet the standard for the Court to enjoin the criminal prosecution under an exception to *Younger v. Harris*, 401 U.S. 37 (1971), because "his challenge to probable cause can be adequately addressed in his defense to his state criminal prosecution." [*Id.*]

Separately, the Magistrate Judge recommends denying a certificate of appealability. [*Id.* at 9.] She found that "it is not debatable Petitioner fails to state a claim for pretrial relief" and thus Petitioner has not made a substantial showing of

the denial of a constitutional right as required to obtain a certificate of appealability. [*Id.* at 8–9.]

In reviewing the R&R, this Court makes a "de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). After review, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* Here, Petitioner objects to certain portions of the R&R [Doc. 8],[1] so the Court reviews those parts of the R&R *de novo*.

In his objections, Petitioner asserts that his challenge to the arrest warrant and prosecution "cannot be vindicated by undergoing the current criminal prosecution." [*Id.* at 2–3.] In a similar vein, Petitioner argues that "waiting out the regular trial, appeal, and collateral review process will bar federal post-conviction habeas review." [*Id.* at 5–6.] The Court disagrees. As demonstrated by the authorities cited

[1] Petitioner also filed a "Written Offer of Proof," which mirrors arguments made in his Section 2241 petition and objections. [Doc. 10.] The Court has considered the "Written Offer of Proof" in ruling on the R&R. Separately, Petitioner filed a "Motion for Leave to File Supplementary Amended Application for Writ of Habeas Corpus Brief" and a "Motion for Leave to File Supplementary Amended Petition." [Docs. 9, 11.] Petitioner does not set out what amendments he wishes to make to his Section 2241 petition. Instead, these filings also mirror arguments made in his Section 2241 petition and objections. As such, the Court has also considered these filings in ruling on the R&R. But, to the extent Petitioner actually moves to amend his Section 2241 petition, the Court denies the motions because the arguments made in support of amendment are unmeritorious, as discussed in this order and the R&R, so amendment would be futile. *See Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1262–63 (11th Cir. 2004) ("[A] district court may properly deny leave to amend the complaint . . . when such amendment would be futile."); *Harris v. United States*, 808 F. App'x 849, 852 (11th Cir. 2020) (stating that a district court does not err in denying a motion to amend a habeas petition when "amendment would have been futile") (citing *Hall*, 367 F.3d at 1262–63).

in the R&R, Petitioner can challenge the arrest warrant and prosecution in his criminal proceeding, so he *can* be vindicated in his criminal case and need not rely on federal habeas review to obtain review and relief.

Petitioner also contends that he faces irreparable injury and special and extraordinary circumstances warranting relief. [*Id.* at 3, 6–7.] However, the only injury and special and extraordinary circumstance Petitioner raises is the purported violation of his Fourth Amendment right due to his current detention, and, as discussed, he can vindicate that right in his criminal case.

Finally, with respect to the Magistrate Judge's finding that Petitioner failed to show that the Anti-Injunction Act allows injunctive relief in this case, Petitioner baldly asserts that relief is "necessary" "due to the circumstances of the current case." [*Id.* at 4.] This sort of "conclusive[] or general objection[] need not be considered" by the Court. *Marsden v. Moore*, 847 F.2d 1536, 1548 (11th Cir. 1988). Even so, the Court finds the objection unmeritorious, as he can challenge the circumstances of his criminal case in the criminal case itself.

Separately, this Court has reviewed the petition and concludes that even if the Court could review Petitioner's claims, his petition does not demonstrate that he is entitled to relief. As noted, Petitioner claims that the arrest warrant was not supported by probable cause. However, he also states that he was subsequently indicted by a grand jury [Doc. 1-1 at 6], and "the grand jury indictment of [a suspect]

following his arrest remedie[s] any defect in the . . . arrest warrant." *Denton v. United States*, 465 F.2d 1394, 1395 (5th Cir. 1972).[2] As a result, Petitioner's claim that his arrest warrant was not supported by probable cause fails. To the degree that Petitioner contends that the indictment is not supported by probable cause, that claim is entirely conclusory, as he has not submitted a copy of his indictment or raised any argument that might tend to show that the indictment is somehow invalid.

Accordingly, after considering the R&R *de novo*, the Court hereby receives the R&R with approval and adopts its recommendation as the opinion and order of the Court. Petitioner's habeas petition, as amended [Docs. 1, 5], is therefore **DISMISSED WITHOUT PREJUDICE** and a certificate of appealability is **DENIED**. Petitioner's miscellaneous pending motions [Docs. 9, 11–13] are **DENIED AS MOOT**. The Clerk is **DIRECTED** to close this action.

IT IS SO ORDERED, this 15th day of March, 2022.

William M. Ray II

WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE

[2] The Eleventh Circuit has adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RELONZO PHILLIPS, Petitioner, vs. DEKALB COUNTY SHERIFF MELODY MADDOX, *et al.*, Respondents.	CIVIL ACTION FILE NO. 1:21-cv-4455-WMR

JUDGMENT

This petition for a writ of habeas corpus having come before the Court, Honorable William M. Ray, II, United States District Judge, on the Magistrate Judge's Report and Recommendation, and the Court having adopted said recommendation as the opinion and order of the Court, it is

ORDERED AND ADJUDGED that that the petition for a writ of habeas corpus be **DISMISSED WITHOUT PREJUDICE**, a certificate of appealability be **DENIED,** and the action be, and same hereby is, **DISMISSED.**

Dated at Atlanta, Georgia, this 15th day of March, 2022.

KEVIN P. WEIMER
CLERK OF COURT

By: *s/ Charlotte Diggs*
Deputy Clerk

Prepared, Filed and Entered
in the Clerk's Office
March 15, 2022
Kevin P. Weimer
Clerk of Court

By: *s/ Charlotte Diggs*
Deputy Clerk