United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

February 17, 2023

Before:

David F. Hamilton, ***Circuit Judge***
Michael Y. Scudder, ***Circuit Judge***
Amy J. St. Eve, ***Circuit Judge***

THOMAS POWERS, Petitioner-Appellant,	] Appeal from the United] States District Court for] the Northern District of
No. 22-2099 v.	] Illinois, Western Division.]
GREG DONATHAN, Facility Program Director, Respondent-Appellee.	] No. 3:21-cv-50256]] Philip G. Reinhard,] Judge.

ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or order appealed. In this case judgment was entered on January 31, 2022, and the order denying petitioner Thomas Powers' motion for reconsideration (filed on February 9, 2022) was entered on March 4, 2022, starting the time to appeal. The notice of appeal filed on June 21, 2022, therefore, is well over two months late. This appeal also is late – by nearly two months – as to the order denying petitioner Thomas Powers' second motion to reconsider, which was entered on March 25, 2022.

We note that the district court treated appellant's notice of appeal – captioned "late Notice of Appeal" – as a motion to extend the time to appeal, but denied it because "it was filed well more than 30 days after the expiration of the time for filing the notice

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App A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Thomas Powers,	)	
	)	
Petitioner,	)	
	)	Case No. 21 C 50256
v.	)	
	)	Hon. Philip G. Reinhard
Greg Donathan,	)	
	)	
Respondent.	)	

ORDER

Respondent's motion to dismiss pursuant to *Younger v. Harris* [16] is granted, and petitioner's § 2241 petition [1] is dismissed without prejudice. The court declines to issue a certificate of appealability. Petitioner's motions to appoint counsel [20, 22] are denied without prejudice. Civil case terminated.

STATEMENT

Petitioner Thomas Powers is currently being held at Rushville Treatment and Detention Facility in Rushville, Illinois. On June 25, 2012, the Circuit Court of Winnebago County found that there was probable cause to believe that petitioner was a "sexually violent person," as defined by Illinois's Sexually Violent Persons Commitment Act ("SVPCA"), 725 ILCS 207/1, *et seq*. The circuit court ordered that he be committed to the Illinois Department of Human Services for control, care, and treatment pending trial. The SVPCA sets forth a two-stage process. The probable cause finding is the first stage. The second stage is a trial. To date, no trial has taken place.

Now before the court is petitioner's *pro se* § 2241 habeas corpus petition [1]. Petitioner raises a single claim, arguing that his Sixth Amendment right to a speedy trial has been violated. He asks for his "immediate release" from commitment. *Id.* at 5. In a previous *pro se* habeas corpus petition filed in 2019, petitioner also asserted a speedy trial claim, along with other claims.[1] *See Powers v. Scott*, Case No. 19-50069. On March 6, 2020, this court dismissed that earlier petition without prejudice [30]. As for the speedy trial claim, this court first noted that, to the extent petitioner was arguing that the SVPCA violates the Illinois constitution, this was a state law claim not cognizable under federal habeas law. Second, this court noted that petitioner had not exhausted his state court remedies. At that time, petitioner had filed motions in the trial court to dismiss his SVPCA petition on speedy trial grounds, and the trial court had denied those motions, but petitioner had not yet appealed those decisions. Third, this court noted that, under *Younger v. Harris*, 401 U.S. 37 (1971) and related cases, federal courts must abstain from interfering with pending state court proceedings. *See generally Olsson v. Curran*, 328 Fed. Appx. 334, 335 (7th Cir. 2009) ("Federal courts must abstain from interfering with state court [] proceedings involving important state interests, as long as the state court provides an opportunity to raise the federal claims and no 'exceptional circumstances' exist."). As part of this analysis, this court acknowledged that the Seventh Circuit has stated that a speedy trial claim could in theory constitute an exception to the *Younger* doctrine. *See Sweeney v. Bartow*, 612

[1] He also alleged that the SVPCA violated state and federal constitutional prohibitions against double jeopardy and *ex post facto* laws.

various actions (*e.g.* switching counsel multiple times) that has been the chief cause of the delay. Petitioner does not argue that respondent has mischaracterized the litigation history.

Based on this litigation history, the court agrees with respondent that this court should abstain from adjudicating petitioner's speedy-trial claim because the state is prepared to go to trial and because the recent delay has been only at petitioner's request. As such, no exceptional circumstances exist under *Younger*. It is true, as petitioner notes, that overall there has been a lengthy delay in bringing this case to trial, but the docket sheet provided by respondent, as well as the other exhibits, indicate that petitioner has been largely responsible for this delay. *See Thomas v. Bartow*, 2011 WL 3516035, * 3 (E.D. Wisc. Aug. 11, 2011) (noting that there has been an "extreme amount of time that has passed without a trial on whether Mr. Thomas should be committed" but noting that "even a passing glance at the docket for this case indicates that Mr. Thomas is responsible for the majority of the delay in his state court proceedings, given his waiver of his statutory right to a speedy trial and his near constant efforts to force his counsel to withdraw from the case"). For all the above reasons, the § 2241 habeas petition is dismissed without prejudice.

Petitioner also filed, around the same time he filed his reply brief, two duplicate one-page motions [20, 22] asking that counsel be appointed in this case. Given this court's conclusion above that it must abstain for now from adjudication of the speedy-trial claim, the court does not see any need to appoint counsel now. Moreover, the court notes that counsel has been appointed numerous times already in the state court litigation, and petitioner has apparently not been able (for whatever reason) to work with counsel on a sustained basis.

Petitioner is advised that this is a final decision ending his case in this court. The court declines to issue a certificate of appealability. If he wishes to appeal, he must file a notice of appeal with this court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1).

Date: 1/31/2022

ENTER:

Philip G. Reinhard

United States District Court Judge

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