FILED: September 20, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 22-1637
(1:21-cv-03714-TLW)

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In re: BRUCE ALLEN BUCKNER

Petitioner

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O R D E R

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The court dismisses this proceeding for failure to prosecute pursuant to Local Rule 45.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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| Bruce Allen Buckner,<br><br>Petitioner,<br><br>vs.<br><br>Warden of MacDougall Correctional Institution,[1]<br><br>Respondent. | ) | C/A No.: 1:21-3714-TLW-SVH<br><br>REPORT AND RECOMMENDATION |

Bruce Allen Buckner ("Petitioner"), an inmate incarcerated in MacDougall Correctional Institution, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(c) (D.S.C.), the undersigned is authorized to review such petitions and submit findings and recommendations to the district judge. For the reasons that follow, the undersigned recommends the district judge dismiss the petition in this case without requiring respondent to file an answer.

[1] A prisoner's custodian is the proper respondent in a habeas corpus action. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). Therefore, the Clerk of Court is directed to terminate the State as a respondent in this action, and to add the Warden of MacDougall Correctional Institution as the sole respondent in this case.

I. Factual and Procedural Background

Petitioner filed his petition seeking habeas relief from a sentence imposed in York County on May 28, 2021. [ECF No. 1 at 2]. Petitioner alleges he filed direct appeals and, most recently, the South Carolina Supreme Court dismissed his appeal on October 7, 2021. [ECF No. 1 at 5]. Petitioner neglected to complete the form petition and provides no allegations related to the exhaustion of post-conviction remedies.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of this petition pursuant to the Rules Governing Section 2254 Proceedings for the United States District Court, the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214, and other habeas corpus statutes. Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). When a federal court is evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se

pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

B. Analysis

As an initial matter, the undersigned notes that two statutes potentially provide Petitioner an avenue for federal habeas relief: 28 U.S.C. § 2241 and 28 U.S.C. § 2254. Under § 2241, a federal court may issue a writ of habeas corpus to a state prisoner if the prisoner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3). Similarly, under § 2254, a federal court may issue a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Thus, both § 2241 and § 2254 appear to provide this court with jurisdiction to consider the petition. Although circuit courts are split on whether § 2241 or § 2254 is the proper statute under which a state inmate should proceed when challenging the execution of his state sentence, "[t]he majority view is that § 2254 is the exclusive vehicle for habeas corpus relief by a state prisoner in custody

pursuant to a state court judgment . . . The Fourth Circuit noted the split of authority in *Gregory v. Coleman*, 218 F. App'x 266, (4th Cir. 2007), but does not appear to have taken a definitive stance to date." *Cranford v. Warden, Manning Corr. Inst.*, No. 6:12-cv-00590-JMC-KFM, 2012 WL 5986771, at *1 (D.S.C. Mar. 21, 2012), *Report and Recommendation adopted by* 2012 WL 5986744 (D.S.C. Nov. 29, 2012) (citations omitted); *see also Hao Qing Zhan v. Wilson, No.* 8:12-cv-03052-RBH, 2013 WL 4500055, at *5 (D.S.C. Aug. 19, 2013) (collecting cases). In any event, both § 2241 and § 2254 require a petitioner to fully exhaust his state remedies before filing a federal habeas petition.

The requirement that state remedies must be exhausted before filing a federal habeas corpus action is found in 28 U.S.C. § 2254(b)(1), which provides that "[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that (A) the applicant has exhausted the remedies available in the courts of the State." *See also Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 490–91 (1973) (noting that exhaustion is required under § 2241). The exhaustion requirement is "grounded in principles of comity; in a federal system, the States should have the first opportunity to address and correct alleged violations of state prisoner's federal rights." *Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *Lawson v. Dixon*, 3 F.3d

743, 749–50 n.4 (4th Cir. 1993). In *Matthews v. Evatt*, 105 F.3d 907 (4th Cir. 1997), the Fourth Circuit Court of Appeals held:

> [A] federal habeas court may consider only those issues which have been "fairly presented" to the state courts. . . . To satisfy the exhaustion requirement, a habeas petitioner must fairly present his claim to the state's highest court. The burden of proving that a claim has been exhausted lies with the petitioner.

*Id.* at 911 (citations omitted), *abrogated on other grounds by United States v. Barnette*, 644 F.3d 192 (4th Cir. 2011).

Petitioner fails to allege he has exhausted his state law remedies, including filing an application for post-conviction relief ("PCR"), with respect to each of his habeas claims. If a direct appeal was filed and is ultimately unsuccessful (or if no direct appeal was filed), a petitioner may file a PCR application in a court of common pleas. *See* S.C. Code § 17-27-10, *et seq.* (1976); *see also Miller v. Harvey*, 566 F.2d 879, 880–81 (4th Cir. 1977) (noting that South Carolina's Uniform Post-Conviction Procedure Act is a viable state court remedy). If a petitioner's PCR application is denied by a court of common pleas, the petitioner must seek appellate review in the state courts or federal collateral review of the grounds raised in his PCR application may be barred by a procedural default. *See Longworth v. Ozmint*, 377 F.3d 437, 447–48 (4th Cir. 2004) (finding that exhaustion requires state prisoners to complete at least one complete round of the state's established appellate

review process by presenting the ground for relief in a face-up and square fashion).

As a practical matter, Petitioner could not have completed his post-conviction remedies in the brief time since his direct appeal was dismissed. His habeas action is therefore subject to summary dismissal. *See Galloway v. Stephenson*, 510 F. Supp. 840, 846 (M.D.N.C. 1981) ("When state court remedies have not been exhausted, absent special circumstances, a federal habeas court may not retain the case on its docket, pending exhaustion, but should dismiss the petition."); s*ee also Pitchess v. Davis*, 421 U.S. 482, 490 (1975).

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends the court dismiss this petition without prejudice and without requiring respondent to file a return.

IT IS SO RECOMMENDED.

Shiva V. Hodges

November 15, 2021
Columbia, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached "Notice of Right to File Objections to Report and Recommendation."**

**Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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| Bruce Allen Buckner,<br><br>PETITIONER<br><br>v.<br><br>Warden, MacDougall Correctional Institution<br><br>RESPONDENT | Case No. 1:21-cv-03714-TLW<br><br>**Order** |

Petitioner Bruce Allen Buckner, proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. The matter now comes before the Court for review of the Report and Recommendation (Report) filed by the magistrate judge to whom this case was assigned. ECF No. 6. In the Report, the magistrate judge recommends that the District Court dismiss the petition without prejudice without requiring respondent to file an answer. *Id.* at 6. The magistrate judge notes in the Report that the South Carolina Supreme Court dismissed his appeal on October 7, 2021, ECF No. 1 at 5. She states that Petitioner "neglected to complete the [§ 2241] form petition and provides no allegations related to the exhaustion of post-conviction remedies." ECF No. 6 at 2. The Report further states "Petitioner fails to allege he has exhausted his state law remedies, including filing an application for post-conviction relief ("PCR"), with respect to each of his habeas claims." *Id.* at 5. The magistrate judge also states, "as a practical matter, Petitioner could not have completed his post-conviction remedies in the brief time since his direct appeal was dismissed." *Id.* at 6. Petitioner's objections to the Report were due

by November 29, 2021. Petitioner failed to file objections. This matter is now ripe for review.

The Court is charged with conducting a *de novo* review of any portion of the Report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that Report. 28 U.S.C. § 636. In the absence of objections to the Report, the Court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983). In such a case, "a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

In light of this standard, the Court has carefully reviewed the Report and concludes that it accurately summarizes the case and the applicable law. In summary, Petitioner does not assert he has exhausted his state law remedies, including filing an application for post-conviction relief ("PCR"), with respect to each of his claims, as required before filing a federal habeas petition. Accordingly, it is hereby **ORDERED** that the Report and Recommendation is **ACCEPTED**. ECF No. 6. For the specific reasons articulated by the magistrate judge, without objection, this petition is **DISMISSED** without prejudice. Petitioner's outstanding motions, ECF Nos. 13, 14, 19, 22, and 23 are dismissed as moot.

**IT IS SO ORDERED.**

*s/ Terry L. Wooten*
Terry L. Wooten
Senior United States District Judge

June 14, 2022
Columbia, South Carolina