

No. 22-1826

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Feb 22, 2023

DEBORAH S. HUNT, Clerk

TERRENCE TERRELL MOORE,

Petitioner-Appellant,

v.

BRYAN MORRISON, Warden,

Respondent-Appellee.

O R D E R

Before: SUTTON, Chief Judge.

Terrence Terrell Moore, a pro se Michigan prisoner, appeals a magistrate judge's judgment dismissing his habeas petition filed under 28 U.S.C. § 2241. Moore moves this court for a certificate of appealability and for leave to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 22(b), 24(a)(5).

Moore is serving a life sentence for first-degree premeditated murder. In September 2020, Moore, then confined at the Lakeland Correctional Facility, filed a § 2241 habeas petition seeking his immediate release from prison on the basis that his confinement violated his constitutional rights by exposing him to a high risk of contracting COVID-19. Upon preliminary review, the district court dismissed Moore's habeas petition without prejudice for failure to exhaust his available state-court remedies.

In June 2022, after filing a habeas petition in state court, Moore filed another § 2241 habeas petition. Moore, then confined at the Chippewa Correctional Facility, asserted that the long-terms effects of his "intentional exposure" to COVID-19 had subjected him to a "death sentence" in violation of his rights under the Eighth and Fourteenth Amendments. Moore consented to have the magistrate judge conduct all proceedings in the case. Upon preliminary review, the magistrate judge dismissed Moore's habeas petition on the merits and declined to issue a certificate of appealability.

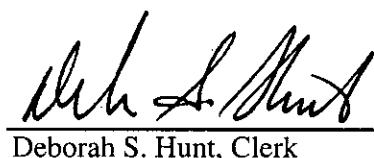
JA 3-4

This timely appeal followed. Moore now moves this court for a certificate of appealability. *See Winburn v. Nagy*, 956 F.3d 909, 912 (6th Cir. 2020) (requiring a certificate of appealability “for all state-prisoner habeas appeals”). To obtain a certificate of appealability, Moore must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

This court has recognized that a habeas petition seeking release from confinement on the basis that “there are no conditions of confinement sufficient to prevent irreparable constitutional injury” is cognizable under § 2241. *Wilson v. Williams*, 961 F.3d 829, 838 (6th Cir. 2020). An Eighth Amendment claim based on prison conditions requires an inmate to “show that he is incarcerated under conditions posing a substantial risk of serious harm” and that prison officials “know[] of and disregard[] an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994). As the magistrate judge pointed out, Moore’s habeas petition failed to provide any facts about his present conditions of confinement. Moore specifically failed to allege any facts to support the inference that prison officials have been deliberately indifferent to the risk to his health or that “no conditions of confinement [are] sufficient to prevent irreparable constitutional injury.” *Wilson*, 961 F.3d at 838. Reasonable jurists therefore could not disagree with the magistrate judge’s conclusion that Moore failed to present a meritorious claim for habeas relief under § 2241.

Accordingly, this court **DENIES** Moore’s motion for a certificate of appealability and **DENIES AS MOOT** his motion for leave to proceed in forma pauperis.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

JA 4-4

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UNITED STATES COURT OF APPEALS
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Apr 19, 2023

DEBORAH S. HUNT, Clerk

TERRENCE TERRELL MOORE,

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Petitioner-Appellant,

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v.

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BRYAN MORRISON, WARDEN,

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Respondent-Appellee.

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O R D E R

Before: BOGGS, GRIFFIN, and MATHIS, Circuit Judges.

Terrence Terrell Moore petitions for rehearing en banc of this court's order entered on February 22, 2023, denying his motion for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRANCE TERRELL MOORE,

Petitioner,

Hon. Paul L. Maloney

v.

Case No. 1:20-cv-1107

BRYAN MORRISON,

Respondent.

ORDER TO PROCEED IN FORMA PAUPERIS

IT IS ORDERED that Petitioner may commence this action without prepayment of fees or costs or security therefor. Any pleadings herein served by the United States Marshal shall be at the expense of the United States government. All costs shall be reimbursed to the United States government.

IT IS FURTHER ORDERED that Petitioner shall serve upon Respondent or, if appearance has been entered by an attorney, upon the attorney, a copy of every further pleading or other document submitted for consideration by the Court. The Petitioner shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date a true and correct copy of any document was mailed to Respondent or the attorney(s). Any paper received by a District Judge or Magistrate Judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

Date: November 19, 2020
NDJ

/s/ Ray Kent
RAY KENT
U.S. Magistrate Judge