United States Court of Appeals
For the First Circuit

No. 23-1381
D.C. No. 2:22-cv-00329-JAW

KINLEY MACDONALD,

Petitioner - Appellant,

v.

STATE OF MAINE,

Respondent - Appellee.

JUDGMENT

Entered: August 21, 2023
Pursuant to 1st Cir. R. 27.0(d)

On **June 22, 2023**, this court issued an order directing the appellant to either pay the $505.00 filing fee or to file a compliant request to appeal with in forma pauperis (IFP) status before the district court. Appellant was notified that failure to take either action would result in this case being dismissed for lack of prosecution pursuant to Local Rule 3.0(b).

A review of the district court docket sheet does not reflect payment of the filing fee nor the filing of a request for in forma pauperis status. This appeal is, therefore, dismissed for lack of prosecution.

By the Court:

Maria R. Hamilton, Clerk

cc:
Kinley MacDonald
Aaron M. Frey

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KINLEY MACDONALD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:22-cv-00329-JAW
	)	
STATE OF MAINE, et al.	)	
	)	
Defendants.	)	

ORDER AFFIRMING RECOMMENDED DECISION

On October 26, 2022, Kinley MacDonald, an inmate at the Cumberland County Jail, state of Maine, filed a petition for a writ of habeas corpus. *Pet. Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (ECF No. 1) (*Pet.*). On February 28, 2023, the Magistrate Judge issued a recommended decision, recommending that the Court dismiss the petition and deny a certificate of appealability. *Recommended Decision After Preliminary Review* (ECF No. 6) (*Recommended Decision*). On March 8, 2023, Ms. MacDonald filed an objection to the Magistrate Judge's decision, *Obj. to Magistrate Decision to Dismiss* (ECF No. 8), and on March 8 and April 5, 2023, she filed motions for appointment of counsel. *Mot. for Appointment of Counsel* (ECF No. 7); *Mot. for Appointment of Counsel* (ECF No. 9).

The Court has previously informed Ms. MacDonald that she is not entitled to appointed counsel for her civil actions. *See MacDonald v. Duddy*, No. 2:22-cv-00293-JAW, 2022 U.S. Dist. LEXIS 201009, at *2-4 (D. Me. Nov. 4, 2022) ("Given that she has now filed three motions for the Court to appoint counsel for her in her civil action,

it appears that Ms. MacDonald is under the misimpression that she must be entitled to a court-appointed lawyer"). That principle applies similarly to her habeas petition, as "[a]ppointed counsel is not a constitutional right in habeas proceedings." *United States v. Saccoccia*, 564 F.3d 502, 506 n.3 (1st Cir. 2009) (quoting *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987)).

There is a federal statute, 28 U.S.C. § 1915(e)(1), that allows a court to request a civil litigator to represent a civil plaintiff like Ms. MacDonald. But the court is not authorized to appoint a lawyer, only to request that an attorney agree to the representation. Furthermore, Congress appropriated no funds to pay the civil lawyer. *Ruffin v. Bran*, 09-cv-87-B-W, 2010 WL 500827, at *1 (D. Me. Feb. 8, 2010); *Clarke v. Blais*, 473 F. Supp. 2d 124, 125 (D. Me. 2007). Thus, the Court would have to ask a lawyer to represent Ms. MacDonald for free, something the Court has determined is not justified by the allegations in her case, and something that Ms. MacDonald could do just as well as the Court. Moreover, the extraordinarily rare instances where the Court employs § 1915 are limited to potentially meritorious cases. Here, as the Magistrate Judge has carefully explained, Ms. MacDonald's habeas corpus petition clearly lacks any merit because her criminal case remains pending in the courts of the state of Maine, and the federal courts must not interfere in ongoing state criminal matters. *Recommended Decision* at 2-3.

On the merits of Ms. MacDonald's petition, the Court reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; the Court made a de novo determination of all matters adjudicated by the Magistrate

Judge's Recommended Decision; and the Court concurs with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision and dismisses the petition for writ of habeas corpus. Additionally, the Court denies a certificate of appealability because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

1. It is therefore ORDERED that the Recommended Decision of the Magistrate Judge (ECF No. 6) be and hereby is AFFIRMED.

2. It is further ORDERED that Kinley MacDonald's Petition for Writ of Habeas Corpus (ECF No. 1) be and hereby is DISMISSED.

3. It is further ORDERED that a certificate of appealability shall not issue because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

4. It is further ORDERED that Kinley MacDonald's Motions for Appointment of Counsel (ECF Nos. 7 & 9) be and hereby are DENIED.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 6th day of April, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

KINLEY MACDONALD,	)	
	)	
Petitioner	)	
	)	
v.	)	2:22-cv-00329-JAW
	)	
STATE OF MAINE,	)	
	)	
Respondent	)	

RECOMMENDED DECISION AFTER PRELIMINARY REVIEW

Petitioner, a pretrial detainee in a county jail, seeks habeas relief pursuant to 28 U.S.C. § 2254. (Petition, ECF No. 1.) Petitioner contends her counsel in a state court criminal matter has rendered ineffective assistance and that the state court bail is unreasonable.

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, upon the filing of a petition, the Court must conduct a preliminary review of the petition, and "must dismiss" the petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." *See McFarland v. Scott*, 512 U.S. 849, 856 (1994) ("Federal courts are authorized to dismiss summarily any habeas petition that appears legally insufficient on its face. . .").[1] After a review of Petitioner's request for habeas relief, I recommend the Court dismiss the petition.

[1] Because Petitioner is evidently not in custody pursuant to a state court judgment, it is § 2241, rather than § 2254, that governs the petition. However, "the § 2254 rules specifically state that they may be applied by the district court to other habeas petitions." *Bramson v. Winn*, 136 F. App'x 380, 382 (1st Cir. 2005) (citing Rule 1(b) of the Rules Governing § 2254 Cases).

DISCUSSION

Under *Younger v. Harris*, 401 U.S. 37 (1971), federal courts generally abstain from the exercise of jurisdiction when a petitioner seeks relief in federal court from ongoing state criminal proceedings. *See Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013) (noting that *Younger* "preclude[s] federal intrusion into ongoing state criminal prosecutions"); *In re Justices of Superior Court Dept. of Mass. Trial Court*, 218 F.3d 11, 16 (1st Cir. 2000) ("The federal courts have long recognized the 'fundamental policy against federal interference with state criminal proceedings.'" (quoting *Younger*, 401 U.S. at 46)). Abstention is called for "when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." 401 U.S. at 43-44.

The elements of mandatory abstention consist of the following: "(1) the [state] proceedings are judicial (as opposed to legislative) in nature; (2) they implicate important state interests; and (3) they provide an adequate opportunity to raise federal constitutional challenges." *Bettencourt v. Bd. of Registration in Med. of Commonwealth of Mass.*, 904 F.2d 772, 777 (1st Cir. 1990). Petitioner does not assert that the state criminal proceedings have reached a final resolution. To the contrary, Petitioner asserts that she has not pled to the charge(s), that there has been no indictment, and that she "will have" a jury trial. (Petition at 1-2.) The criminal proceedings alleged in the petition are judicial in nature, implicate important state interests associated with the State's administration of its laws, and the state court system affords Petitioner an adequate opportunity to raise federal constitutional challenges. Abstention, therefore, is presumptively appropriate.

"Courts have consistently applied the *Younger* doctrine to dismiss habeas claims by pretrial detainees based on excessive bail, claims of actual innocence, or due process violations, absent bad faith, harassment, or [other] extraordinary circumstances." *Enwonwu v. Mass. Superior Court, Fall River*, No. 1:12-cv-10703, 2012 WL 1802056, at *3 n. 7 (D. Mass. May 16, 2012). In this case, Plaintiff has not alleged any facts that would constitute the extraordinary circumstances necessary to overcome the presumption in favor of abstention. Dismissal, therefore, is appropriate.

CONCLUSION

Based on the foregoing analysis, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, I recommend the Court dismiss the petition. I further recommend that the Court deny a certificate of appealability pursuant to Rule 11 of the Rules Governing Section 2254 Cases because there is no substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 28th day of February, 2023.

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