

United States Court of Appeals For the First Circuit

No. 23-1381

KINLEY MACDONALD,

Petitioner - Appellant,

v.

STATE OF MAINE,

Respondent - Appellee.

ORDER OF COURT

Entered: June 22, 2023
Pursuant to 1st Cir. R. 27.0(d)

Upon filing a notice of appeal, the appellant is required to pay the filing fee to the clerk of the district court in accordance with Fed. R. App. P. 3(e). Appellant is presently in default as to this filing. If appellant is indigent and unable to pay the fee, appellant may file a motion for leave to proceed in forma pauperis ("IFP") in the district court pursuant to Fed. R. App. P. 24. A compliant request for IFP status consists of a motion, fully completed Form 4, Financial Affidavit, and prison trust account statement, if incarcerated.

Unless this court is provided with notice of paying the filing fee to the clerk of the district court, or filing a motion seeking in forma pauperis status in the district court by July 6, 2023, this appeal will be dismissed for lack of prosecution.

By the Court:

Maria R. Hamilton, Clerk

cc:

Aaron M. Frey
Kinley MacDonald

Other Events2:22-cv-00329-JAW MACDONALD v. STATE OF MAINE

ADMIN,HABEAS

Appendix I**U.S. District Court****District of Maine****Notice of Electronic Filing**

The following transaction was entered on 11/3/2022 at 3:17 PM EST and filed on 11/3/2022

Case Name: MACDONALD v. STATE OF MAINE

Case Number: 2:22-cv-00329-JAW

Filer: KINLEY MACDONALD

Document Number: No document attached

Docket Text:

Filing Fee Received from KINLEY MACDONALD: Amount Paid: \$5.00. Receipt Number: 258.

Method of Payment: Check. Purpose of Payment: Filing Fee. Date Paid: 11/3/2022. (jgd)

2:22-cv-00329-JAW Notice has been electronically mailed to:

2:22-cv-00329-JAW Notice has been delivered by other means to:

KINLEY MACDONALD
614541
CUMBERLAND COUNTY JAIL
50 COUNTY WAY
PORTLAND, ME 04102

Appendix I
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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,

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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.) CIVIL NO. 2:22-cv-00329-JAW
STATE OF MAINE,)
Respondent)

JUDGMENT

Pursuant to the Order Affirming Recommended Decision entered by U.S. District Judge John A. Woodcock, Jr. on April 6, 2023; Petitioner take nothing and the Petition for Writ of Habeas Corpus is Dismissed.

Dated this 6th day of April, 2023.

CHRISTA K. BERRY
CLERK

By: /s/ Joanne Deering
Deputy Clerk

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United States Court of Appeals For the First Circuit

No. 23-1381

~~Plaintiff
Petitioner~~

KINLEY MACDONALD,

Petitioner - Appellant,

v.

STATE OF MAINE,

Respondent - Appellee.

ORDER OF COURT

Entered: May 19, 2023
Pursuant to 1st Cir. R. 27.0(d)

This court has docketed petitioner's appeal from the denial of his petition for writ of habeas corpus under 28 U.S.C. § 2254. The case cannot go forward unless a certificate of appealability issues. 28 U.S.C. § 2253. The district court declined to issue a certificate of appealability on April 6, 2023. Petitioner-appellant has filed a request for a certificate of appealability in the court of appeals. However, this court cannot consider the request until appellant either pays the docketing fee or moves for in forma pauperis status in accordance with Fed. R. App. P. 24.

Petitioner-appellant is advised that by **June 12, 2023**, he must either 1) pay the \$505 fee to the district court, or 2) file in the district court a motion to proceed in forma pauperis accompanied by Form 4, Financial Affidavit, and prison trust account statement, if incarcerated. See Fed. R. App. P. 24; Form 4. A copy of Form 4 is enclosed for petitioner-appellant. If petitioner-appellant does not notify this court that he has paid the fee, or if he does not file a motion to proceed in forma pauperis on or before **June 12, 2023**, his appeal may be dismissed pursuant to 1st Cir. R. 3.0(b). If petitioner-appellant timely pays the filing fee or moves for in forma pauperis status on appeal and is granted such status, the case will be submitted to this court for a determination whether a certificate should issue. If a certificate is denied, the appeal will be terminated.

By the Court:

Maria R. Hamilton, Clerk

cc:

Aaron M. Frey
Kinley MacDonald

Appendix LL

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