

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RAMSEY RANDALL,
Petitioner,

v.

MICHAEL ZAKAN, et al.,
Respondents.

CIVIL ACTION

NO. 18-961

ORDER

Mr. RANDALL'S
DISTRICT
COURT
ATTEMPT

AND NOW, this 26th day of March, 2024, after considering the petition under 28 U.S.C. § 2254 for writ of habeas corpus (ECF No. 1), the government's response in opposition to the petition (ECF No. 11), the Petitioner's numerous requests, memos, and other documents (ECF Nos. 7, 8, 48, 50, and 51), United States Magistrate Judge Elizabeth T. Hey's Report and Recommendation (ECF No. 55), and the Petitioner's objections to the Report and Recommendation (ECF Nos. 56, 57, 58, and 59), **IT IS HEREBY ORDERED** as follows:

1. The Petitioner's objections to the Report and Recommendation (ECF Nos. 56, 57, 58, and 59) are **OVERRULED**;¹
2. Judge Hey's Report and Recommendation (ECF No. 55) is **APPROVED** and **ADOPTED**;
3. The petition for a writ of habeas corpus (ECF No. 1) is **DENIED**;
4. Petitioner's motions/requests for counsel, bail, damages, and discovery (ECF Nos. 7, 8, 48, 50, and 51) are **DENIED**.
5. There is no plausible basis for the issuance of a certificate of appealability.²
6. The Clerk of Court is **DIRECTED** to remove this case from suspense and mark this case as **CLOSED**.

BY THE COURT:

/s/ Hon. Kelley B. Hodge
HODGE, KELLEY B., J.

¹ Under 28 U.S.C. § 636(b)(1), “[a] judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). Petitioner objects to Judge Hey’s recommendation that the Court should deny his petition for writ of habeas corpus. (ECF No. 58.) Specifically, he avers that his defamation claim has been misconstrued. (ECF No. 58 at 1.) Petitioner’s objection is unavailing. The Court agrees with Judge Hey’s determination that a defamation claim is not a basis for habeas relief. (ECF No. 55 at 11 n.9 (citing *Randall v. Sup’t Mahanoy SCI*, 835 F. App’x 675, 677 (3d Cir. 2020))).

As a foundational matter, the Court agrees with Judge Hey’s determination that Petitioner’s claims are procedurally defaulted. (ECF No. 55 at 7.) While a petitioner must generally exhaust his state remedies before the federal court can consider the merits of a habeas claim, a petitioner’s failure to exhaust his state remedies may be excused in limited circumstances on the ground that exhaustion would be futile. *See Lambert v. Blackwell*, 134 F.3d 506, 518–19 (3d. Cir. 1997). Petitioner has never properly presented any claims to the Superior Court and is now out of time to do so. *See* 42 Pa. C.S.A. § 9545(b) (PCRA statute of limitations). Thus, for the reasons set forth in the Report and Recommendation, Petitioner’s claims are procedurally defaulted.

Petitioner’s objections to the Report and Recommendation include a section titled “NOTICE OF APPEAL.” (ECF No. 58.) A Report and Recommendation is only a proposed finding, and it must be accepted, rejected, or modified by the district court. *See* 28 U.S.C. § 636(b)(1)(C) (“A judge of the [district] court may accept, reject, modify, in whole or in part, the findings or recommendations made by the magistrate judge.”). As a proposed finding, and not a final order, Judge Hey’s Report and Recommendation is not appealable to the Court of Appeals. *See United States v. Polishan*, 336 F.3d 234, 240 n.3 (3d Cir. 2003) (“We note that an appellate court may lack jurisdiction to review dispositive decisions made by a magistrate judge under 28 U.S.C. § 636(b)(1)(B) because that order is not final. Rather, it is a proposed finding and recommendation that must be accepted, rejected, or modified by the district court.”). In its consideration of ECF No. 58, the Court therefore interpreted the section titled “NOTICE OF APPEAL” to be a subpart of Petitioner’s objection to the Report and Recommendation.

Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error. Fed. R. Civ. P. 72(b), advisory committee notes. The Court has reviewed the remainder of the Report and Recommendation as to Petitioner’s motions/requests for counsel, bail, damages, and discovery (ECF Nos. 7, 8, 48, 50 and 51) to which Petitioner did not raise specific objections and finds it to be well reasoned and free of clear error. Therefore, the Court will overrule Petitioner’s objection and adopt the Report and Recommendation.

² In determining whether a certificate of appealability (COA) should be issued, “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue (and an appeal of the district court’s order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. Warden*, 529 U.S. 473, 473 (2000). In adopting the Report and Recommendation, the Court concurs with Judge Hey’s conclusion that “[t]here has been no substantial showing of the denial of a constitutional right requiring the issuance of a certificate of appealability.” (ECF No. 55 at 16.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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RAMSEY RANDALL : CIVIL ACTION

v.

MICHAEL ZAKEN, et al. : NO. 23-1389

REPORT AND RECOMMENDATION

ELIZABETH T. HEY, U.S.M.J.

February 26, 2024

This is a pro se petition for writ of habeas corpus filed by Ramsey Randall, challenging actions of the Pennsylvania Board of Probation and Parole (“Parole Board”).¹ For the reasons that follow, I recommend that the petition be dismissed without prejudice to Randall’s ability to file a habeas petition challenging the revocation of his parole and resission of his automatic reparole once he has exhausted state court remedies.

I. FACTS AND PROCEDURAL HISTORY²

Randall challenges the actions of the Parole Board in revoking his parole without serving him with the charge or timely holding a preliminary hearing, and he claims that

¹When the court directed Randall to file his petition on the court-approved form, the court sent Randall the form used for section 2241 petitions. Doc. 5 ¶ 4. However, the Third Circuit has held that a habeas petitioner challenging the execution of his sentence must proceed by way of section 2254. See Coady v. Vaughn, 251 F.3d 480, 484-86 (3d Cir. 2001) (challenging a denial of parole); see also Neri v. Mid State, Civ. No. 13-4555, 2014 WL 575458 (D.N.J. Feb. 11, 2014) (applying Coady to petition challenging revocation of parole and collecting cases). I will, therefore, construe Randall’s petition as filed pursuant to section 2254.

²The facts and procedural history are taken from the pleadings, the exhibits attached to the Response, Doc. 29-1, the status report filed by Respondents and attached exhibits, Doc. 43, and the state court docket sheet of his underlying criminal case, Commonwealth v. Randall, CP-06-CR-0003823-2015, Criminal Docket (Berks C.C.P.)

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the Parole Board's failure to do so constitutes cruel and unusual punishment and results in violations of due process and equal protection. Doc. 11 ¶ 7(a)-(d).

In the underlying matter, the Honorable Patrick Barrett of the Berks County Court of Common Pleas sentenced Randal to an aggregate term of 1 year, 8 months, and 7 days -to- 10 years' incarceration for two counts each of forgery and theft by deception. See Sentence Status Summary (Doc. 29-1 at 2); N.T. 5/26/23 at 6 (Doc. 29-1 at 31).³ The Pennsylvania Department of Corrections ("DOC") calculated Randall's minimum date as March 24, 2018, and his maximum date as July 17, 2026. Sentence Status Summary (Doc. 29-1 at 2).

Randall was released on parole on March 10, 2021, and his parole supervision was transferred to North Carolina. Order to Release on Parole/Reparole (Doc. 29-1 at 7); Special Conditions of Parole (Doc. 29-1 at 10); Offender's Application for Interstate Compact Transfer (Doc. 29-1 at 14). On February 8, 2023, the Pennsylvania Department of Corrections issued a warrant based on Randall's violation of his parole conditions, Warrant (Doc. 29-1 at 16), and he returned to DOC custody on February 19, 2023.

("Docket Sheet"). Because Randall's challenge is to the revocation proceedings, I did not order the state court record. All pinpoint citations to documents filed in his court are to the court's ECF pagination.

³Originally, Judge Barrett sentenced Randall to an aggregate term of 1 year and 447 days -to- 10 years' incarceration, followed by 5 years' probation. See Docket Sheet (Disposition Sentencing/Penalties). This sentence was modified on November 3, 2017. Id. (entries dated 11/3/17); see also Sentence Status Summary (Doc. 29-1 at 2 – Remarks on Sentence).

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Moves Report (Doc. 29-1 at 18). The violation charged was that, on February 8, 2023, Randall left a threatening voicemail for the United States Supreme Court Clerk's Office and sent a threatening email to the same office. Notice of Charges and Hearing (Doc. 29-1 at 20). The Parole Board held a preliminary hearing on March 17, 2023, and found, based on a Memorandum of Activity from the Supreme Court Police Protective Intelligence Unit, that there was a *prima facie* case that Randall violated the conditions of his parole by committing assaultive behavior.⁴ Parole Board Hearing Examiner Findings (Doc. 29-1 at 22).⁵

A final violation hearing was held on May 26, 2023. N.T. 5/26/23 (Doc. 29-1 at 26-64).⁶ At the conclusion of the hearing, Randall complained that he was not served with notice of the violation within 48 hours of his arrest, was not timely served with notice of a preliminary hearing, and that the hearing was untimely. Id. at 33-34 (Doc. 29-1 at 58-59). On June 6, 2023, the Parole Board recommitted Randall as a technical parole

⁴The memorandum is appended to the transcript of the final violation hearing. Doc. 29-1 at 66.

⁵At the final violation hearing, the hearing officer noted that the preliminary hearing (Mar. 17, 2023) was held within 120 days of Randal's return to Pennsylvania (Feb. 19, 2023). N.T. 5/26/23 at 8 (Doc. 29-1 at 33).

⁶Randall testified that he left the messages in an attempt to draw the attention of the Court to his problem that the government had publicized that he was an organized crime gang member, but then withdrew the allegations related to organized crime. N.T. 5/26/23 at 23 (Doc. 29-1 at 48). According to Randall, he had filed a motion for injunctive relief, seeking protective custody. Id. Randall explained that he had no intention to hurt anyone but wanted to get someone in high power to watch a video he had prepared concerning his predicament. Id. at 27-28 Doc. 29-1 at 52-53).

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violator to serve six months, and stated that Randall would be reparedoed automatically on August 8, 2023 provided he did not (1) commit a disciplinary infraction involving assaultive behavior, sexual assault, or a weapon or controlled substance, (2) spend more than 90 days in segregated housing due to one or more disciplinary infractions, or (3) refuse programming or a work assignment. Notice of Board Decision – June 6, 2023 (Doc. 29-1 at 69). His maximum date remained July 17, 2026. Id.

On June 14, 2023, the Parole Board rescinded the automatic reparole provision from the June 6, 2023 decision because Randall had committed a disciplinary infraction involving assaultive behavior. Notice of Board Decision – June 14, 2023 (Doc. 29-1 at 73). He will be considered again for reparole on or after May 2024. Id.

On July 5, 2023, Randall filed an administrative appeal from these two Parole Board decisions. Administrative Remedies Form (Doc. 29-1 at 75-81). On August 28, 2023, an appeal panel of the Parole Board affirmed the decisions recorded on June 6 and June 14, 2023, recommitting Randall and rescinding Randall's automatic reparole rights. Letter Re: Ramsey Wesley Randall, Parole No. 132-FT, dated Aug. 28, 2023 (Doc. 43-1 at 2-3). On September 27, 2023, Randall filed an appeal in the Commonwealth Court, which remains pending. Randall v. Pennsylvania Parole Bd., No. 1085 CD 2023, Docket Sheet (Commw. Ct.) (Doc. 43-2).

On April 10, 2023, before the final violation hearing was held, Randall filed a handwritten petition for writ of habeas corpus challenging the Parole Board's actions, but did not use the court's correct form. Doc. 1. After being directed to use the court's form,

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Doc. 5, Randall filed his present petition, claiming that the Parole Board violated his rights to due process and equal protection and subjected him to cruel and unusual punishment by failing to provide him with the charge or timely holding a preliminary hearing. Doc. 1 ¶¶ 7(a)-(d). The Parole Board responded that Randall's petition should be dismissed because he has not exhausted his state court remedies. Doc. 29 ¶ 27-45. In the event this court addresses the merits of his claims, the Parole Board argues that the claims are meritless. Id. ¶¶ 46-56. The Honorable Edward G. Smith, to whom the case was originally assigned, referred the case to me to prepare a Report and Recommendation. Doc. 12.⁷

II. DISCUSSION

Absent unusual circumstances, the federal court will not consider the merits of a habeas corpus petition unless the petitioner has complied with the exhaustion requirement of 28 U.S.C. § 2254(b)(1)(A). Exhaustion requires that the petitioner give the state courts a fair opportunity to review his allegations of error before seeking relief in the federal court. Baldwin v. Reese, 541 U.S. 27, 29 (2004) (citing Duncan v. Henry, 513 U.S. 364, 365 (1995)). “An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.” 28 U.S.C. § 2254(c).

⁷Upon Judge Smith's passing, the case was reassigned to the Honorable Kelley Brisbon Hodge. Doc. 37.

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To properly exhaust a claim challenging the Parole Board's revocation of parole, recommitment, and recalculation of the sentence, the petitioner must first seek administrative review with the Parole Board. See 37 Pa. Code § 73.1(a). Once the Parole Board has rendered a final decision, the petitioner must seek review in the Commonwealth Court. See 42 Pa. C.S.A. § 763(a); Bronson v. Pa. Bd. of Prob. & Parole, 421 A.2d 1021, 1025 (1980) (Commonwealth Court has jurisdiction of appeals from Parole Board decision). If the petitioner is unsuccessful in the Commonwealth Court, he must seek further review in the Pennsylvania Supreme Court before bringing a federal habeas action. See Williams v. Wynder, 232 F. Appx. 177, 180 (3d Cir. 2007) (concluding that Administrative Order 218 does not apply to appeals from Commonwealth Court decisions); see also Henry v. Ferrell, Civ. No. 21-1322, 2022 WL 1092927, at *3 (E.D. Pa. Apr. 12, 2022) (reviewing exhaustion requirements for revocation of parole); Jones v. Tritt, Civ. No. 16-1741, 2019 WL 314718 (M.D. Pa. Jan. 24, 2019) (dismissing habeas claim challenging Parole Board action for want of exhaustion where no appeal taken from Commonwealth Court decision).

Here, Randall's habeas petition is premature. He filed the petition prior to the final revocation hearing. He must exhaust state court remedies before seeking relief in the federal court. He properly filed an administrative appeal and has filed an appeal of that decision in the Commonwealth Court, which is currently pending. If he is

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unsuccessful in the Commonwealth Court, he would be required to seek review from the Pennsylvania Supreme Court to satisfy the exhaustion requirement.⁸

III. CONCLUSION

Randall's claims are unexhausted. Randall properly filed an administrative appeal challenging the revocation of his parole and rescission of his automatic re-parole. The appeal of the administrative denial is currently pending in the Commonwealth Court. If he is unsuccessful in the Commonwealth Court, he must file a petition for allowance of appeal in the Pennsylvania Supreme Court and await that court's ruling before his claims could be heard in this court.⁹

⁸If the Pennsylvania Supreme Court were to deny Randall's petition for allowance of appeal, he should promptly file a habeas petition in light of the one-year habeas limitations period. 28 U.S.C. § 2244(d).

⁹In his petition, in addition to release from custody, Randall also seeks monetary damages. See Doc. 11 at 12. "Monetary damages are not available to [a petitioner] by means of a habeas corpus action, which is a challenge to the very fact or duration of physical imprisonment and which involves relief in the form of the immediate release or a speedier release from imprisonment." Brown v. Lynch, Civ. No. 15-1680, 2015 WL 5881893, at *1 (M.D. Pa. Oct. 5, 2015) (citing Preiser v. Rodriguez, 411 U.S. 475 (1973); Marine v. Quintana, 347 F. App'x 736 (3d Cir. 2009) (affirming that money damages are not available in habeas action)).

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Therefore, I make the following:

RECOMMENDATION

AND NOW, this 26th day of February, 2024, IT IS RESPECTFULLY
RECOMMENDED that the petition for writ of habeas corpus be DISMISSED without
prejudice. There has been no substantial showing of the denial of a constitutional right
requiring the issuance of a certificate of appealability. Petitioner may file objections to
this Report and Recommendation. See Local Civ. Rule 72.1. Failure to file timely
objections may constitute a waiver of any appellate rights.

/s/ Elizabeth T. Hey

ELIZABETH T. HEY, U.S.M.J.

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