

United States Court of Appeals for the Fifth Circuit

No. 24-40356
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
December 5, 2024

Lyle W. Cayce
Clerk

BOBBY B. KIRKENDOLL,

Petitioner—Appellant,

versus

WARDEN, *FCI Texarkana,*

Respondent—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:23-CV-142

Before SMITH, GRAVES, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Bobby Kirkendoll, federal prisoner #12934-035, moves to proceed *in forma pauperis* ("IFP") to appeal the dismissal of his 28 U.S.C. § 2241 petition challenging the validity of his federal prosecution under the Interstate Agreement on Detainers ("IAD"). The district court determined that Kirkendoll was not entitled to relief because at the time the United States sought to commence prosecution, he was in the custody of the State of Louisiana,

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

which was not a party to the IAD and thus was not subject to its terms; the court also determined that any appeal would not be taken in good faith. This court's inquiry into whether an appeal is taken in good faith "is limited to whether the appeal involves 'legal points arguable on their merits (and therefore not frivolous).'" *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (citation omitted).

Before this court, Kirkendoll asserts that his arguments arose under Article V(g) of the IAD, which does not include a reference to "party states" and thus applies to all states regardless whether they adopted the IAD. His contention is unsupported by the plain language of the IAD. *See 18 U.S.C. App. 2 § 2, Arts. II, V.*

Kirkendoll does not make the requisite showing that he will present a nonfrivolous issue for appeal. *See Howard*, 707 F.2d at 220. Accordingly, theis motion to proceed IFP is DENIED, and the appeal is DISMISSED as frivolous. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

BBOBBY KIRKENDOLL §
v. § CIVIL ACTION NO. 5:23cv142
WARDEN, FCI-TEXARKANA §

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Petitioner Bobby Kirkendoll, an inmate currently confined in the Federal Correctional Institution at Texarkana, filed this application for the writ of habeas corpus stating that he is seeking “statutory interpretation” of the Interstate Agreement on Detainers. The petition was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and Local Rule CV-72 of the Local Rules of Court for the Eastern District of Texas.

I. Background

Petitioner says that he was involved in state criminal proceedings in Louisiana when the federal government submitted an arrest warrant on July 24, 2019, along with a writ of habeas corpus ad prosequendum. Because the federal government is the gaining state, Petitioner asserts that the government is bound by the Interstate Agreement on Detainers (IAD).

Petitioner states that he never requested final disposition, and so the IAD creates an agreement by three parties - the gaining entity, the losing entity, and the accused. Under the IAD, Petitioner contends that because he had ongoing criminal proceedings with the State of Louisiana, the federal government could not convict him of federal offenses before the state concluded or dismissed its proceedings against him. Consequently, Petitioner asserts that the State of Louisiana, being the sending state, lacked authority to transfer jurisdiction to the federal government, and the federal government lacked authority to begin criminal proceedings against him.

II. Discussion

The Interstate Agreement on Detainers is an agreement between forty-eight States, the Federal Government, and the District of Columbia which creates uniform procedures for lodging and executing a detainer. *Alabama v. Bozeman*, 533 U.S. 146, 148 (2001). However, Louisiana is one of the two states which is not a party to the IAD. *Spratt v. Vannoy*, civil action no. 19-9115, 2021 WL 2722603 (E.D.La., June 4, 2021) (citing *Birdwell v. Skeen*, 983 F.2d 1332, 1335 (5th Cir. 1993)). As a result, the provisions of the IAD do not apply to the United States in its dealings with Louisiana. *U.S. v. Williams*, crim. no. 05-30014-01, 2008 U.S. Dist. LEXIS 106868, 2008 WL 5532099 (W.D.La., December 4, 2008), *Report adopted at* 2009 WL 750273 (W.D.La., January 20, 2009) (citing *Robinson v. United States*, 580 F.2d 783, 784 (5th Cir. 1978)); *Dickerson v. State of Louisiana*, 816 F.2d 220, 222 n.1 (5th Cir. 1987). Because Petitioner's petition alleges a violation of the Interstate Agreement on Detainers involving the State of Louisiana, which is not a party to the Agreement, his claims are without merit. *Williams*, 2008 U.S. Dist. LEXIS 106868 at *14; *Nealy v. Vasquez*, civil action no. 15-0004, 2015 U.S. App. LEXIS 87471 (W.D.La., April 2, 2015), *Report adopted at* 2015 U.S. Dist. LEXIS 88026, 2015 WL 4092877 (W.D.La., July 6, 2015) (because Louisiana has not adopted the IAD, the habeas petitioner could not assert a statutory violation).

RECOMMENDATION

It is accordingly recommended that the above-styled application for the writ of habeas corpus be dismissed with prejudice.

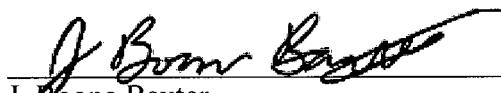
A copy of these findings, conclusions and recommendations shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendations must file specific written objections within 14 days after being served with a copy.

In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the Magistrate Judge's proposed findings, conclusions, and recommendation where the disputed determination is

found. An objection which merely incorporates by reference or refers to the briefing before the Magistrate Judge is not specific, and the district court need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Commission*, 834 F.2d 419, 421 (5th Cir. 1987).

Failure to file specific written objections will bar the objecting party from appealing the factual findings and legal conclusions of the Magistrate Judge which are accepted and adopted by the district court except upon grounds of plain error. *Duarte v. City of Lewisville*, 858 F.3d 348, 352 (5th Cir. 2017).

SIGNED this the 26th day of February, 2024.



J. Boone Baxter
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

BOBBY KIRKENDOLL,

Petitioner,

v.

WARDEN, FCI-TEXARKANA,

Respondent.

CASE NO. 5:23-CV-142-RWS-JBB

ORDER

Before the Court is Petitioner Bobby Kirkendoll's writ of habeas corpus under 28 U.S.C. § 2241. Docket No. 1 at 1. Petitioner, proceeding *pro se*, seeks "statutory interpretation" of "whether the Interstate Agreement on Detainers (IAD), 18 U.S.C. App. 2 § 2, is an agreement between three parties (the state, the federal government, and the accused)," and "whether Article V of this provision was violated where [he] was deemed to remain in custody and subject to the jurisdiction of the sending state[.]" *Id.* The case was referred to United States Magistrate Judge J. Boone Baxter pursuant to 28 U.S.C. § 636(b)(1).

Petitioner explains that he was in the custody of the State of Louisiana pending state charges when, on July 29, 2019, the federal government filed a petition for writ of habeas corpus *ad prosequendum* requesting Petitioner be transferred to and remain in federal custody until the disposition of the case. *Id.* However, Petitioner argues that under Article V(g) of the Interstate Agreement on Detainers ("IAD"), the federal government could not take custody of him until he was actually serving a state sentence or the state charges were dismissed. *Id.* at 2–3. Consequently, he contends that the State of Louisiana lacked authority to transfer jurisdiction over him to the federal government, and the federal government lacked authority to begin any criminal proceedings against him. *See id.* Petitioner further maintains that:

Therefore, the Interstate Agreement on Detainers Act was violated by presuming that Petitioner had committed an offense in both jurisdictions, violating Petitioner's presumption of innocence which also denied Petitioner's right to due process, and the opportunity to have a trial in the State of Louisiana or come to an agreement via a plea deal for potentially the same charges he would have faced in the federal government (at this time neither party can assume that the charges by definition would have been the same in both jurisdictions or different). Additionally, the violation of the IAD violated Petitioner's presumption of innocence and due process by the federal government forcing jurisdiction away from the State against the Agreement in the IAD, Article V(g).

Id. at 3.

After reviewing the pleadings, the Magistrate Judge issued a Report recommending that the petition for habeas corpus relief be dismissed. *See* Docket No. 3. The Magistrate Judge observed that the "Interstate Agreement on Detainers is an agreement between [48] states, the Federal Government, and the District of Columbia creating uniform procedures for lodging and executing a detainer." *Id.* at 2. The State of Louisiana, however, is one of the two states which are not parties to the Agreement. *Id.* (citing *Birdwell v. Skeen*, 983 F.2d 1332, 1335 (5th Cir. 1993)). As a result, the Magistrate Judge determined that "the provisions of the IAD do not apply to the United States in its dealings with Louisiana." *Id.* (citing *United States v. Williams*, No. 05-30014-01, 2008 WL 5532099, at *5 (W.D. La. Dec. 4, 2008), *report and recommendation adopted* at 2009 WL 750273 (W.D. La. Jan. 20, 2009)).

Petitioner filed objections and attempted to distinguish the case law cited by the Magistrate Judge. *See generally* Docket No. 4. For example, Petitioner attempts to distinguish *Nealy v. Vasquez* by stating the petitioner in that case was serving a federal sentence while Petitioner was not serving a sentence when his jurisdiction was transferred. No. 15-0004, 2015 WL 4092877, at *2-3 (W.D. La. July 6, 2015). In *Nealy*, however, the Western District of Louisiana concluded that because Louisiana had not joined the IAD, the habeas petitioner could not assert a statutory violation and thus failed to set out a basis for habeas corpus relief. *Id.* at 2. In similar fashion, the Magistrate Judge in the present

case determined that Petitioner had not set out a basis for habeas corpus relief and recommended that the petition be dismissed.

Petitioner also contends that other cases cited by the Magistrate Judge involve Article IV of the IAD, while his case involves Article V. Docket No. 4 at 2–3. Petitioner argues that this distinction is critical because the language of Article IV indicates that the terms of the Agreement are only operative in transactions between party states, while Article V(g) does not contain the language “party state.” *Id.* at 3. Petitioner therefore concludes that Article V(g) applies to *all* states, whether parties to the IAD or not, if the prisoner is not serving a sentence at the time the detainer is lodged.¹ Petitioner, however, presents no authority supporting the proposition that Article V(g) of the IAD is applicable to Louisiana despite Louisiana’s failure to join in the agreement, based solely on the omission of the phrase “party state” from Article V(g). The IAD is a single instrument, to which Louisiana is not a party, and there is no legal basis for concluding that Article V(g) of an agreement which the State of Louisiana has not joined is nonetheless applicable to Louisiana simply because the phrase “party state” does not appear in that subsection.

Indeed, the IAD specifies that the Agreement was enacted into law and “entered into by the United States on its own behalf and on behalf of the District of Columbia, with all jurisdictions legally joining in substantially the following form” (i.e., the articles of the Agreement, which were then set out). Interstate Agreement on Detainers, Pub. L. No. 91-538, 84 Stat. 1397 (1970). But the State of Louisiana did *not* legally join the IAD and therefore no portion of the IAD is applicable to Louisiana. *Nealy*, 2015 WL 4092877, at *2–3 (“Louisiana has never adopted the [IAD], and thus petitioner

¹ Article V(g) of the IAD provides that “for all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.” 84 Stat. at 1401. While the phrase “party state” does not appear in Article V(g), it does appear elsewhere in Article V. See generally *id.* at 1400–01.

cannot assert a statutory violation.”). Accordingly, Petitioner has failed to present any valid basis for habeas corpus relief.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge’s proposed findings and recommendations to which the Plaintiff objected. *See* 28 U.S.C. § 636(b)(1) (The district judge shall “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct, and the Petitioner’s objections are without merit. Accordingly, it is

ORDERED that the Petitioner’s objections (Docket No. 4) are **OVERRULED**. It is further

ORDERED that the Report of the Magistrate Judge (Docket No. 3) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is **DISMISSED**

WITH PREJUDICE.

So ORDERED and SIGNED this 10th day of April, 2024.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

BOBBY KIRKENDOLL,

Petitioner,

v.

WARDEN, FCI-TEXARKANA,

Respondent.

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CASE NO. 5:23-CV-142-RWS-JBB

FINAL JUDGMENT

Pursuant to the Court's Order adopting the Report and Recommendation of the Magistrate Judge, the Court hereby enters final judgment. Accordingly, it is

ORDERED that the above-captioned case is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that any pending motions in the above-captioned case are **DENIED-AS-MOOT**.

The Clerk of Court is directed to close the case.

So ORDERED and SIGNED this 10th day of April, 2024.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

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