

United States Court of Appeals for the Fifth Circuit

No. 24-10774

United States Court of Appeals

Fifth Circuit

FILED

February 17, 2025

DANIEL RAY GARCIA,

Lyle W. Cayce
Clerk

Petitioner—Appellant,

versus

MATTHEW JOSEPH KACSMARYK, *District Judge*; UNITED STATES
MARSHAL; CHRISTOPHER FORBIS, *Sheriff*; LEE ANN RENO,
Magistrate Judge,

Respondents—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:24-CV-153

Before SOUTHWICK, WILLETT, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Daniel Ray Garcia, a federal pretrial detainee, filed a 28 U.S.C. § 2241 petition alleging a violation of his Sixth Amendment right to represent himself on pending criminal charges for mailing a threatening communication. The district court dismissed the petition without prejudice for failure to exhaust remedies in his criminal proceedings and as moot since

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

No. 24-10774

Garcia had been granted his request for self-representation. Garcia moves this court to proceed in forma pauperis (IFP) on appeal, which constitutes a challenge to the district court's certification that any appeal would not be taken in good faith because Garcia will not present a nonfrivolous appellate issue. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997).

In his IFP pleadings and brief, Garcia does not challenge the district court's determination that his § 2241 petition was rendered moot by the grant of his request for self-representation in his criminal proceedings. Thus, the claim is deemed abandoned. *See Yohey v. Collins*, 985 F2d 222, 224-25 (5th Cir. 1993); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). We do not consider Garcia's newly raised claims challenging the district court's rulings with respect to his motion to withdraw his guilty plea and motion to recuse, as well as any claims alleging the denial of access to the courts or the law library. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999).

Accordingly, Garcia has failed to show a nonfrivolous issue with respect to the district court's dismissal of his § 2241 petition. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). His motion to proceed IFP on appeal is therefore DENIED, and the appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

DANIEL RAY GARCIA,
Institutional ID No. 101883,

Petitioner,

v.

2:24-CV-153-Z-BR

MATTHEW KACSMARYK, *et al.*,

Respondents.

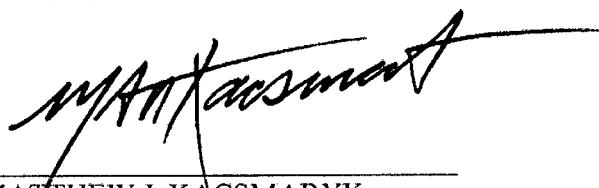
ORDER ADOPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Before the Court are the findings, conclusions, and recommendation of the United States Magistrate Judge (“FCR”) (ECF No. 4). Petitioner filed objections (“Objections”) (ECF No. 5), arguing that his inability to proceed pro se violates his Sixth Amendment rights, *id.* at 2.

These Objections are inapposite for at least two reasons. First, the Court recently granted Petitioner’s request to proceed pro se in his criminal case, mooted both his Objections and his requested relief. *See* Case No. 5:23-cr-100-Z-BR-(1) at ECF No. 82 (granting Petitioner’s request to proceed pro se). Second, Petitioner’s failure to exhaust outstanding remedies in his criminal matter also suffice to deny his requested relief. *See* ECF No. 4 at 1–3 (explaining failure to exhaust remedies). Thus, after making an independent review of the pleadings, files, and records in this case, the Court concludes that the FCR is correct. It is therefore **ORDERED** that the FCR is **ADOPTED** and this case is hereby **DISMISSED** without prejudice.

SO ORDERED.

August 21, 2024.


MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

DANIEL RAY GARCIA,

Petitioner,

v.

MATTHEW J. KACSMARYK, et al.,

Respondents.

§ 2:24-cv-00153-Z-BR

FINDINGS, CONCLUSIONS AND RECOMMENDATION TO DISMISS PETITION

Petitioner Daniel Ray Garcia (“Garcia”) filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2241. (ECF 3). For the reasons stated below, the petition should be DISMISSED.

I. BACKGROUND

Garcia, a federal pretrial detainee in the Randall County Detention Center, seeks relief from a claimed violation of his Sixth Amendment right to represent himself in his pending criminal case because, at the time this case was filed, the court in his criminal case had not yet granted his motion to proceed *pro se*. The Court concludes that Garcia has failed to exhaust the remedies available in his criminal case, and further that the relief requested herein is moot because he recently has been granted the right to proceed *pro se* in his criminal case. Therefore, this petition should be dismissed.¹

II. LEGAL ANALYSIS

A petitioner may seek habeas relief under 28 U.S.C. § 2241 if he or she is “in custody in

¹Although Garcia did not pay the filing fee or file a motion to proceed *in forma pauperis*, it is more efficient to dismiss the petition than to require compliance with the Court’s filing requirements.

violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). A prisoner bringing a § 2241 petition is limited to attacking “the manner in which a sentence is carried out or the prison authorities’ determination of its duration....” *Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000). A federal prisoner filing a § 2241 petition “must first pursue all available administrative remedies.” *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012).

A habeas corpus petition under 28 U.S.C. § 2241 is subject to summary dismissal if it appears from the face of the petition that the petitioner is not entitled to relief. *See Wottlin v. Fleming*, 136 F.3d 1032, 1034 (5th Cir. 1998) (affirming summary dismissal of § 2241 petition without ordering an answer from respondent); *see also* Rule 4 of the RULES GOVERNING SECTION 2254 CASES (providing for summary dismissal of a habeas petition).²

Pretrial habeas relief is available to a federal pretrial detainee only “in rare and exceptional cases.” *Johnson v. Hoy*, 227 U.S. 245, 247 (1913) (citations omitted). It is well established that courts “should withhold relief . . . where an adequate remedy available in the criminal proceeding has not been exhausted.” *Stack v. Boyle*, 342 U.S. 1, 6–7 (1951) (citations omitted). Likewise, the United States Court of Appeals for the Fifth Circuit has adopted “the settled principle that a writ of habeas corpus may not be used . . . as a substitute for the ordinary proceedings of a trial court.” *United States v. Bowler*, 62 F.3d 397, 1995 WL 449713, *2 (5th Cir. 1995) (per curiam) (quoting *U.S. ex rel. Palma v. Saegert*, 251 F.2d 59 (5th Cir. 1957)). In *Bowler*, two federal pre-trial detainees filed a petition under § 2241 challenging their indictment after the district court denied their motion to dismiss it. *Bowler*, 1995 WL 449713, *1. The Fifth Circuit found no “rare and exceptional” circumstances warranting consideration of the pre-trial writ as a substitute for a direct appeal and concluded that the petitioners’ arguments should be “presented and reached ‘in

²Rule 1(b) of the RULES GOVERNING SECTION 2254 CASES renders the 2254 Rules applicable to habeas petitions not covered by Section 2254.

the orderly administration of justice.”” *Id.* at *2; *see also Philip v. Cruz*, 3:11-CR-0361-L, 2012 WL 1413432, at *1–2 (N.D. Tex. Mar. 26, 2012), *R. & R. adopted*, 2012 WL 1423656 (N.D. Tex. Apr. 24, 2012) (dismissing § 2241 detention and prosecution claims for failing to exhaust remedies available in the federal detainee’s pending criminal case).

Here, as in *Bowler*, all claims raised by Garcia in his § 2241 petition can be (and were) pursued in his pending criminal action. Further, the relief requested by Garcia recently was granted in his criminal case. *See Case No. 5:23-cr-100 at ECF No. 82.* Accordingly, his habeas challenge should be dismissed as moot, and for failure to exhaust remedies in his criminal case.

III. RECOMMENDATION

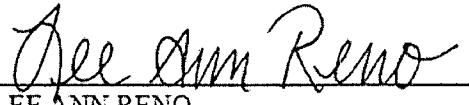
For the reasons stated above, the United States Magistrate Judge recommends that Petitioner Daniel Ray Garcia’s petition for writ of habeas corpus under 28 U.S.C. § 2241 should be DISMISSED WITHOUT PREJUDICE as moot, and for failure to exhaust the remedies available in his pending criminal case.

IV. INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of these Findings, Conclusions and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED August 6, 2024.



LEE ANN RENO
UNITED STATES MAGISTRATE JUDGE