

United States Court of Appeals For the First Circuit

No. 16-1511

LORENZO ROBINSON EVANS,

Petitioner, Appellant,

v.

ASHBEL T. WALL, II,

Respondent, Appellee.

Before

Torruella, Kayatta and Barron,
Circuit Judges.

JUDGMENT

Entered: May 31, 2017

Lorenzo Evans, a Rhode Island state prisoner, appeals from the dismissal of his petition for writ of habeas corpus. Though petitioner labeled his petition as one pursuant to 28 U.S.C. § 2241, we construe the petition as one pursuant to § 2254. See Francis v. Maloney, 798 F.3d 33, 36 (1st Cir. 2015) (explaining that § 2241 motions properly include claims going to "the execution of" a sentence, not "the imposition of" a sentence). For the sake of simplicity, we assume that the matter is properly before the court despite the fact that petitioner did not procure a certificate of appealability. We also assume, without deciding, that the underlying petition was not barred as an unauthorized second or successive habeas petition.

We conclude, after careful review of all relevant portions of the record, that the appeal presents no "substantial question." See Loc. R. 27.0(c). The district court correctly concluded that the petitioner had failed to show exhaustion of his state remedies, that is, that he "'fairly and recognizably presented to the state courts the factual and legal bases of [his] federal claim[s].'" Coningford v. Rhode Island, 640 F.3d 478, 482 (1st Cir. 2011) (quoting Adelson v. DiPaola, 131 F.3d 259, 262 (1st Cir. 1997)). As such, his petition was properly dismissed as unexhausted.

Furthermore, the single unexhausted claim petitioner actually presses on appeal "is patently without merit," and its dismissal, therefore, is alternatively affirmed on the merits. Coningford,

640 F.3d at 483 (citation omitted); see also Branzburg v. Hayes, 408 U.S. 665, 688 n.25 (1972) (explaining that "indictment by grand jury is not part of the due process of law guaranteed to state criminal defendants by the Fourteenth Amendment . . .") (citing Hurtado v. California, 110 U.S. 516 (1884)). Petitioner has waived the merits of any other claims by failing to address them to a meaningful degree in his appellate brief. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (holding that insufficiently briefed issues are waived).

Thus, we affirm the judgment of the district court, and deny as moot any pending motions. In addition, to the extent petitioner's "Motion for Order to Cease-and-Desist" seeks some sort of injunctive relief pending appeal, the request is denied in light of the foregoing. See, e.g., Ainsworth Aristocrat Intern. Pty. Ltd. v. Tourism Co. of Com. of Puerto Rico, 818 F.2d 1034, 1039 (1st Cir. 1987) (explaining that party seeking injunctive relief must make, inter alia, "a strong showing that he is likely to succeed on the merits").

Affirmed.

By the Court:

/s/ Margaret Carter, Clerk

cc: Lorenzo Robinson Evans
Christopher Robinson Bush

United States Court of Appeals For the First Circuit

No. 16-1511

LORENZO ROBINSON EVANS,

Petitioner, Appellant,

v.

ASHBEL T. WALL, II,

Respondent, Appellee.

Before

Howard, Chief Judge,
Torruella, Lynch, Thompson,
Kayatta and Barron, Circuit Judges.

ORDER OF COURT

Entered: January 8, 2018

We treat the petitions for rehearing en banc as including requests for panel rehearing. The petitions for rehearing having been denied by the panel of judges who decided the case, and the petitions for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petitions for rehearing and the petitions for rehearing en banc be denied.

By the Court:

/s/ Margaret Carter, Clerk

cc: Lorenzo Robinson Evans
Christopher Robinson Bush

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

LORENZO ROBINSON EVANS
Petitioner,

v.

ASHBEL T. WALL, II
Respondent.

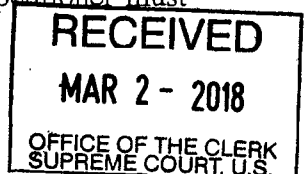
C. A. No. 16-096-M-LDA

ORDER

Petitioner Lorenzo Robinson Evans filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 arising from his state court conviction for possession of cocaine with intent to deliver. He had previously filed a Petition a month earlier in this Court pursuant to 28 U.S.C. § 2254 (*see* 16-cv-26-M-LDA) arising from the same state court conviction involved in this case. The Court dismissed the earlier Petition when Mr. Evans did not file an objection to Defendant's Motion to Dismiss (*see* TEXT ORDER in 16-cv-26-M-LDA dated 3/18/2016).

The Defendant has now moved to dismiss this matter (ECF No. 4) asserting that it is an impermissible successive Petition, that Mr. Evans has failed to exhaust his state court remedies, and that his Petition lacked sufficient facts. Because Mr. Evans has failed to exhaust his state court remedies as is required, the Court grants Defendant's Motion to Dismiss.

The Rhode Island Superior Court entered a judgment against Mr. Evans on March 14, 2016, after a jury trial. There is no record before this Court that Mr. Evans has filed either an appeal of his conviction to the Rhode Island Supreme Court or a post-conviction petition with the Rhode Island Superior Court. Mr. Evans has failed to exhaust his state remedies before filing a petition in this federal court pursuant to either 28 U.S.C. § 2241 or § 2254. See, *e.g.*, *Scarpa v. DuBois*, 38 F.3d 1, 6 (1st Cir. 1994), *cert. denied*, 513 U.S. 1129 (1995) (generally, a petitioner must



exhaust all available state remedies before federal habeas jurisdiction attaches); *Nadworny v. Fair*, 872 F.2d 1093, 1096-97 (1st Cir. 1989); *see* 28 U.S.C. § 2254(b).

The Defendant's Motion to Dismiss (ECF No. 4) is therefore GRANTED and the Petition is dismissed.

IT IS SO ORDERED:

A handwritten signature in black ink, appearing to read "John J. McConnell, Jr.", written over a horizontal line.

John J. McConnell, Jr.
United States District Judge

April 19, 2016