

APPENDIX #A

United States

COURT

OF

APPEALS

Judgment & Order

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Judgment

&

Order

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UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 25-6305

JEROME CURRY, a/k/a Flesh And Blood Man,

Petitioner - Appellant,

v.

KIRKLAND CORR. INST.; LIEBER CORR. INST. WARDEN; ATTORNEY
GENERAL OF SOUTH CAROLINA; STATE OF SOUTH CAROLINA,

Respondents - Appellees.

No. 25-6377

JEROME CURRY, a/k/a Flesh And Blood Man,

Petitioner - Appellant,

v.

KIRKLAND CORR. INST.; LIEBER CORR. INST. WARDEN; ATTORNEY
GENERAL OF SOUTH CAROLINA; STATE OF SOUTH CAROLINA,

Respondents - Appellees.

Appeals from the United States District Court for the District of South Carolina, at Rock
Hill. Jacquelyn Denise Austin, District Judge. (0:24-cv-01674-JDA)

Submitted: August 28, 2025

Decided: September 3, 2025

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Before GREGORY, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Jerome Curry, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Jerome Curry seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing Curry's 28 U.S.C. § 2254 petition without prejudice for failure to exhaust state court remedies. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. See *Buck v. Davis*, 580 U.S. 100, 115-17 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Curry has not made the requisite showing. Accordingly, we deny Curry's pending motions, deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: September 3, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-6305 (L)
(0:24-cv-01674-JDA)

JEROME CURRY, a/k/a Flesh And Blood Man

Petitioner - Appellant

v.

KIRKLAND CORR. INST.; LIEBER CORR. INST. WARDEN; ATTORNEY
GENERAL OF SOUTH CAROLINA; STATE OF SOUTH CAROLINA

Respondents - Appellees

No. 25-6377
(0:24-cv-01674-JDA)

JEROME CURRY, a/k/a Flesh And Blood Man

Petitioner - Appellant

v.

KIRKLAND CORR. INST.; LIEBER CORR. INST. WARDEN; ATTORNEY
GENERAL OF SOUTH CAROLINA; STATE OF SOUTH CAROLINA

Respondents - Appellees

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jerome Curry,)	C/A No. 0:24-1674-JDA-PJG
)	
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Kirkland Corr. Ins/ State of South Carolina,)	
)	
Respondent.)	
_____)	

Petitioner Jerome Curry, a self-represented state prisoner, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.). The court authorized service in this case and directed the parties to file briefing stating their position on whether this case should be dismissed or stayed in light's Petitioner's indication that he has not yet exhausted his state court remedies. (ECF No. 36.) The parties provided briefs on the issue. (ECF Nos. 58 & 70). Having carefully considered the parties' submissions and the record in this case, the court concludes that this case should be dismissed for Petitioner's failure to exhaust his state court remedies.

Petitioner pled guilty in the Charleston County Court of General Sessions to attempted armed robbery and was sentenced in October 2021 to six years' imprisonment. 2021-GS-10-4573. He did not appeal his conviction or sentence, but Petitioner filed an application for post-conviction relief in the Charleston County Court of Common Pleas in 2022 that is pending. 2022-CP-10-2017. On April 3, 2024, Petitioner filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, claiming multiple constitutional violations based on defective indictments, lack of pretrial hearings, and Brady issues arising out of his 2021 armed robbery conviction.

Petitioner has filed multiple motions to amend the petition since he originally filed this case. In some of the motions, Petitioner appears to now also include grounds for habeas corpus relief for a separate conviction—a 2011 indecent exposure charge to which he pled guilty in the Charleston County Court of General Sessions. 2011-GS-10-2820. The court clarifies here that Petitioner cannot seek habeas corpus relief in this case for an unrelated conviction arising out of a different criminal case. Therefore, this case concerns only Petitioner’s 2021 attempted armed robbery conviction. Any new grounds relief from Petitioner’s 2011 indecent exposure conviction are not properly raised in this case and must be brought in a separate petition for a writ of habeas corpus.

Turning back to the issue at hand—Petitioner’s petition for habeas corpus relief from his 2021 attempted armed robbery conviction—the court concludes that the petition should be dismissed for Petitioner’s failure to exhaust his state remedies. A habeas corpus petitioner may obtain relief in federal court only after he has exhausted his state court remedies. 28 U.S.C. § 2254(b)(1)(A). “To satisfy the exhaustion requirement, a habeas petitioner must present his claims to the state’s highest court.” Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997), abrogated on other grounds by United States v. Barnette, 644 F.3d 192 (4th Cir. 2011); see also In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases, 471 S.E.2d 454, 454 (S.C. 1990) (holding that “when the claim has been presented to the Court of Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies.”). Generally, district courts must dismiss petitions that have unexhausted claims. Rose v. Lundy, 455 U.S. 509, 515 (1982). Though exhaustion is not jurisdictional, Jenkins v. Fitzberger, 440 F.2d 1188, 1189 (4th Cir. 1971), the doctrine is strictly enforced, Thomas v. Eagleton, 693 F. Supp. 2d 522, 538 (D.S.C. 2010).

Here, Petitioner admits he has not yet exhausted his state remedies in light of his pending state PCR action, but he argues the court should stay this action.¹ See Rhines v. Weber, 544 U.S. 269, 273-79(2005) (providing district courts should stay mixed § 2254 petitions in certain circumstances to protect the petitioner from running afoul of the statute of limitations). However, Petitioner provides no explanation for why this matter should be stayed. Petitioner does not appear to have an issue with the statute of limitations, 28 U.S.C. § 2244(d)(1), considering the statute of limitations is tolled while Petitioner pursues relief in his state PCR case. 28 U.S.C. § 2244(d)(2). Therefore, a stay is not necessary to protect Petitioner's rights. Consequently, the court concludes that this case should be dismissed for failure to exhaust, without prejudice to file a new petition once he has exhausted his state court remedies.²

August 30, 2024
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

*The Petitioner is directed to the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."*

¹ Notably, in light of his many motions to amend, Petitioner appears to raise direct appeal claims as well as claims that are currently the subject of his state PCR application. (See, e.g., ECF No. 54 at 3-4.) And because Petitioner did not file a direct appeal of his conviction or sentence, his direct appeal claims are "technically exhausted" though they are likely procedurally defaulted here. See generally Coleman v. Thompson, 501 U.S. 722, 731-32, (1991); Bassette v. Thompson, 915 F.2d 932, 937 (4th Cir. 1990) ("[W]hen it is clear that the state law would bar state review, exhaustion is not required, and federal review is precluded.").

² In light of the court's recommendation, Petitioner's motion for summary judgment should be denied. (ECF No. 61.)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Jerome Curry)	Case No. 0:24-cv-01674-JDA
<i>a/k/a</i>)	
<i>(Flesh And Blood Man),</i>)	
)	
Petitioner,)	<u>OPINION AND ORDER</u>
)	
v.)	
)	
Kirkland Corr. Inst., Lieber Corr. Inst.)	
Warden, Attorney General of South)	
Carolina, State of South Carolina,)	
)	
Respondents.)	
)	

This matter is before the Court on a Report and Recommendation ("Report") of the Magistrate Judge [Doc. 81] and on Petitioner's motion for summary judgment [Doc. 61], motion to strike Respondent's motion to hold time [Doc. 87], motions to amend [Docs. 90; 97; 107; 114], motion for copies [Doc. 100], motion for change of venue [Doc. 110], motion for PR appeal bond [Doc. 118], and motion for production of records [Doc. 119]. Proceeding pro se, Petitioner filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 and has twice amended his petition. [Docs. 1; 9; 38.] In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings.

On August 30, 2024, the Magistrate Judge issued the Report recommending that the case be dismissed for failure to satisfy the exhaustion requirement of 28 U.S.C. § 2254(b)(1)(A), without prejudice to his right to file a new petition once he has exhausted his state court remedies, and that Petitioner's summary judgment motion be denied.

[Doc. 81.] The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. [*Id.* at 4.] On September 19 and 30, 2024, Petitioner filed objections to the Report and a supplement to the objections.¹ [Docs. 91; 93.]

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” (internal quotation marks omitted)).

¹ On October 24, 2024, Petitioner filed a notice of appeal as to the Report. [Doc. 101.] On January 29, 2025, the United States Court of Appeals for the Fourth Circuit dismissed the appeal for lack of appellate jurisdiction on the basis that the Report was neither a final order nor an appealable interlocutory or collateral order. [Doc. 125.] The Court notes that “while the filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal, the district court does not lose jurisdiction when the litigant takes an appeal from an unappealable order.” *United States v. Jones*, 367 F. App’x 482, 484 (4th Cir. 2010) (cleaned up).

As noted, the Magistrate Judge recommends dismissing this action for Petitioner's failure to exhaust his state remedies.² [Doc. 81.] Specifically, the Magistrate Judge noted that Petitioner admits he has not yet exhausted his state remedies in light of his pending state post-conviction relief ("PCR") action, but he argues the Court should stay this action. [*Id.* at 3.] The Magistrate Judge indicated that the Petitioner does not appear to have an issue with the statute of limitations, considering the statute of limitations is tolled while Petitioner pursues relief in his state PCR case. [*Id.* (citing 28 U.S.C. § 2244(d)).]

In his objections, Petitioner appears to argue that because he has *initiated* PCR proceedings, he has exhausted his administrative proceedings. [Doc. 91 at 3.] That is not correct. "To satisfy the exhaustion requirement [set out in 28 U.S.C. § 2254(b)(1)(A)], a habeas petitioner must fairly present his claim to the state's highest court," *Matthews v. Evatt*, 105 F.3d 907, 911 (4th Cir. 1997), *abrogated on other grounds by United States v. Barnette*, 644 F.3d 192 (4th Cir. 2011), and "give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the [s]tate's established appellate review process," *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). Here, Petitioner has not yet completed this process. In fact, a review of the Charleston County Public Index reveals that Petitioner recently filed a motion to amend his PCR application on February 21, 2025, just a little more than one month ago. See *Curry v. South Carolina*, No. 2022CP1002017, available at Charleston County Public Index, <https://jcmsweb.charlestoncounty.org/PublicIndex/> (search by case number

² The Report noted that Petitioner attempted to raise issues in his amended petitions that were unrelated to his originally filed petition. [Doc. 81 at 2.] The Report declined to address issues as to unrelated convictions arising out of different criminal cases for which Petitioner would need to file a separate petition. [*Id.*]

2022CP1002017) (last visited Mar. 28, 2025). Thus, Petitioner's objection that he has satisfied the habeas exhaustion requirement is overruled.

In a supplement to his objections, Petitioner, citing *Davis v. Scott*, 176 F.3d 805 (4th Cir. 1999), contends that the Magistrate Judge was without jurisdiction under 28 U.S.C. § 636(c) to issue the Report because Petitioner did not consent to a magistrate judge presiding over his case. [Doc. 93 at 1.] However, in this case, the matter was before the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.) (providing for automatic references to magistrate judges of all pretrial proceedings in applications for post-conviction review under 28 U.S.C. § 2254), and thus no consent by Petitioner was required. Accordingly, Petitioner's objection is overruled.

Petitioner also contends that the Magistrate Judge has been biased towards him as evidenced by the fact that she has consistently ruled against him. [Doc. 93 at 1–2.] To the extent that Petitioner is arguing that the Magistrate Judge should be disqualified, the disqualification statute provides:

- (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party

28 U.S.C. § 455(a), (b)(1). Critically, “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). Because Petitioner's allegation of the Magistrate Judge's bias is based only on her rulings

and recommendations that were unfavorable to him, the Court overrules this objection as well.

In addition to the objections the Court has specifically discussed, out of an abundance of caution for a pro se party, the Court has conducted a de novo review of the Report, the record, and the applicable law. Upon such review, the Court accepts the Report and Recommendation of the Magistrate Judge and incorporates it by reference. Accordingly, this action is DISMISSED without prejudice to Petitioner's right to file a new petition once he has exhausted his state court remedies, and Petitioner's motion for summary judgment [Doc. 61] is DENIED. Additionally, Petitioner's motion to strike Respondent's motion to hold time [Doc. 87], motions to amend [Docs. 90; 97; 107; 114], motion for copies [Doc. 100], motion for change of venue [Doc. 110], motion for PR appeal bond [Doc. 118], and motion for production of records [Doc. 119] are DENIED.

IT IS SO ORDERED.

s/ Jacquelyn D. Austin
United States District Judge

March 31, 2025
Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.