LEE v. UNITED STATES MARSHAL SERVICE

2024 | Cited 0 times | M.D. Georgia | February 21, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION JAI DEVON LEE, :

: Petitioner, :

: V. :

: NO. 7:23-cv-00134-HL-TQL UNITED STATES : MARSHAL SERVICE, : : Respondent. :

: _____:

ORDER & RECOMMENDATION OF DISMISSAL Petitioner Jai Devon Lee, a federal detainee being held in the Butts County Detention Center in Jackson, Georgia, has filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2241. Pet. for Writ of Habeas Corpus, ECF No. 1. Petitioner has also filed a motion for leave to proceed in this action in forma pauperis and a motion for injunctive relief. Mot. for Leave to Proceed In Forma Pauperis, ECF No. 2; Mot. for Inj. Relief, ECF No. 3. Because Petitioner's documentation in support of his motion to proceed in forma pauperis indicates that he is unable to prepay the filing fee, that motion (ECF No. 2) is GRANTED, and Petitioner's petition is ripe for review.

For the reasons set forth below, it is RECOMMENDED that the petition be DISMISSED WITHOUT PREJUDICE and that Petitioner's motion for injunctive relief be DENIED AS MOOT. It is further RECOMMENDED that Petitioner be DENIED a certificate of appealability and leave to proceed on appeal in forma pauperis.

PRELIMINARY REVIEW OF THE PETITION Rule 4 of the Rules Governing § 2254 Cases requires district courts to dismiss habeas corpus petitions without ordering the State to respond "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief." Paez v. Sec'y, Fla. Dep't of Corrs., 947 F.3d 649, 653 (11th Cir. 2020) (quoting Rule 4). This preliminary review calls on a district court to screen the petition prior to service and dismiss the petition, sua sponte, upon a determination that it contains no meritorious claim for relief. See Rules Governing § 2254 Cases, Rule 4 advisory committee notes (providing that "it is the duty of the court to screen out frivolous applications"). This procedure serves to "eliminate the burden that would be placed on the respondent by ordering an unnecessary answer." Id.

LEE v. UNITED STATES MARSHAL SERVICE

2024 | Cited 0 times | M.D. Georgia | February 21, 2024

To survive a Rule 4 review, a habeas petition must set forth facts that, if true, would establish a constitutional violation entitling the petitioner to relief. Paez, 947 F.3d at 653 (citing Borden v. Allen, 646 F.3d 785, 810 (11th Cir. 2011) (holding that a § 2254 petition must comply with the "fact pleading requirements of [Habeas] Rule 2(c) and (d)" to survive dismissal under Rule 4)). A dismissal may be appropriate either on the merits or on a finding that the petition is procedurally barred or for both reasons. Paez, 947 F.3d at 649; Rohda v. Gordy, No. CA 14-0169-WS-C, 2014 WL 2616627, at *1 (S.D. Ala. June 12, 2014) (holding that "federal courts are authorized to raise the exhaustion issue sua sponte") (citing McNair v. Campbell, 416 F.3d 1291, 1304 (11th Cir. 2005)).

Here, Petitioner was previously convicted in this Court of fraud and identity theft for which he was sentenced to a period of incarceration to be followed by a term of supervised release. See J., United States v. Lee, Case No. 7:15-cr-00006-HL-TQL (M.D. Ga. Mar. 2, 2016), ECF No. 76. While on supervised release, Petitioner was arrested and charged with the state crimes of battery and criminal trespass, which resulted in his probation officer filing a warrant for Petitioner's arrest and suggesting that Petitioner's supervised release be revoked. Id. at Pet. for Warrant, ECF No. 140. Petitioner waived his preliminary revocation hearing and was held in the Butts County Detention Center pending his final revocation hearing. Id. at Text Only Minute Entry, ECF No. 144.

Petitioner subsequently filed this petition challenging his federal detention.

1 Generally, a federal prisoner seeking to challenge his conviction or sentence must do so through a 28 U.S.C. § 2255 motion filed in his criminal case. Insofar as Petitioner was a detainee awaiting a revocation hearing when he filed this petition, the petition arguably may be properly considered under 28 U.S.C. § 2241. See Garcon v. Palm Beach Cnty. Sheriff's Office, 291 Fed. App'x 225, 226 n.1 (11th Cir. 2008) (per curiam) (explaining that because the petitioner was a federal pretrial detainee, his petition should have been considered under 28 U.S.C. § 2241).

In that regard, however, the record from Petitioner's federal criminal case shows that Petitioner has now had a final revocation hearing at which he was sentenced to time

1 To the extent that Petitioner seeks to challenge his detention relating to any pending state charges, he must file a separate petition raising any claims he has in that regard. Petitioner should be aware that he must exhaust any state court remedies prior to filing a federal habeas corpus petition challenging his detention on state charges. served to be followed by a period of supervised release. See Text Only Minute Entry and Revocation J., United States v. Lee, Case No. 7:15-cr-00006-HL-TQL (M.D. Ga.), ECF Nos. 160 & 162. Thus, even if his petition challenging his pre-revocation detention would have been properly considered under § 2241, the claims challenging his detention are now moot, and if Petitioner wants to challenge his current term of supervised release, he must do so by filing a § 2255 motion in his criminal case. It is therefore RECOMMENDED that Petitioner's habeas corpus petition be DISMISSED WITHOUT PREJUDICE and that his pending motion for injunctive relief be DENIED AS MOOT.

LEE v. UNITED STATES MARSHAL SERVICE

2024 | Cited 0 times | M.D. Georgia | February 21, 2024

CERTIFICATE OF APPEALABILITY AND LEAVE TO PROCEED IFP ON APPEAL A prisoner seeking to appeal a district court's final order denying his petition for a writ of habeas corpus has no absolute entitlement to appeal but must obtain a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1)(A). Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that "[t]he district court must issue or deny a [COA] when it enters a final order adverse to the applicant," and if a COA is issued, "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." This requires a demonstration that "jurists of reason could disagree with the district court's resolution of [a petitioner's] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). When the Court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the petitioner must show that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling"; and (2) "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Petitioner has not made the required showing for a COA. Therefore, it is RECOMMENDED that Petitioner be DENIED a COA. Additionally, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. See 28 U.S.C. § 1915(a)(3). Accordingly, it is also RECOMMENDED that any motion to proceed IFP on appeal be DENIED.

OBJECTIONS Pursuant to 28 U.S.C. §636(b)(1), the parties may serve and file written objections to these recommendations with the Honorable Hugh Lawson, Senior United States District Judge, WITHIN FOURTEEN (14) DAYS after being served with a copy of this recommendation. The parties may seek an extension of time to file objections, provided a request for an extension is filed prior to the deadline for filing written objections. Any objection should be no longer than TWENTY (20) PAGES in length. See M.D. Ga. L.R. 7.4. Failure to object in accordance with the provisions of § 636(b)(1) waives the right to challenge on appeal the district judge's order based on factual and legal conclusions to which no objection was timely made. See 11th Cir. R. 3-1.

SO ORDERED AND RECOMMENDED, this 21st day of February, 2024. s/ Thomas Q. Langstaff United States Magistrate Judge