

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

EFREM TATE,	:	
	:	
Petitioner,	:	
v.	:	
	:	NO. 4:23-CV-00013-CDL-MSH
Sheriff GREG COUNTRYMAN,	:	
	:	
Respondent.	:	
_____	:	

**REPORT AND RECOMMENDATION**

Pending before the Court is Respondent's motion to dismiss (ECF No. 9) Petitioner's recast application (ECF No. 6) for habeas relief pursuant to 28 U.S.C. § 2241. For the following reasons, it is recommended that Respondent's motion be granted.

**BACKGROUND**

Petitioner is a pretrial detainee of the Muscogee County Jail in Columbus, Georgia. Recast Pet. 1, ECF No. 6. According to Petitioner, he was arrested on or about April 20, 2022, for multiple misdemeanor traffic offenses. *Id.* at 2. Petitioner contends that he has been incarcerated for over twelve months. *Id.* The Court received Petitioner's original habeas application, made pursuant to 28 U.S.C. § 2254 (ECF No. 1), on January 30, 2023, while he was still confined in the Muscogee County Jail. Pet. 1, ECF No. 1. Petitioner was ordered to recast his petition as a petition under 28 U.S.C. § 2241 because he was not in custody pursuant to a judgment of a state court (ECF No. 4). Although unclear, in his recast petition made pursuant to § 2241, Petitioner appears to allege that he has a felony charge but the charges at issue are misdemeanor charges, and that Petitioner tried to contact

the District Attorney's Office, and his court appointed lawyer refused to investigate the matter. Recast Pet. 3, ECF No. 6.

Respondent timely answered on June 30, 2023 (ECF No. 8) and moved to dismiss on July 14, 2023 (ECF No. 9). Petitioner filed a response (ECF No. 11) to the motion to dismiss. Respondent's motion is ripe for review.

### **DISCUSSION**

Respondent moves to dismiss Petitioner's habeas application on the grounds that he failed to exhaust his available state remedies, and the *Younger* Doctrine bars this Court from interfering with an on-going state criminal case. Resp't's Mem. in Supp. of Mot. to Dismiss 3-5, ECF No. 9-1.

Because Petitioner applies for habeas corpus relief as a pretrial detainee, his petition is governed by 28 U.S.C. § 2241 as opposed to 28 U.S.C. § 2254, which applies only to post-conviction applications. *Hughes v. Att'y Gen. of Fla.*, 377 F.3d 1258, 1261 (11th Cir. 2004). An explicit exhaustion requirement is found in 28 U.S.C. § 2254(b)(1)(A), but there is no equivalent provision in § 2241 requiring a petitioner to exhaust all state remedies prior to filing a federal habeas petition. Despite the lack of an exhaustion requirement in § 2241, a "body of case law has developed" directing federal courts to abstain from reviewing § 2241 petitions if the issues raised could be resolved using state remedies. *Estimar v. Edward*, No. 18-CV-61838-BLOOM, 2018 WL 4519295, at \*3 (S.D. Fla. Aug. 29, 2018) (collecting cases), *recommendation adopted by* 2018 WL 4510252 (S.D. Fla. Sept. 20, 2018). "The exhaustion doctrine of [§ 2241] was judicially crafted on federalism grounds to protect the state courts' opportunity to confront and resolve initially any

constitutional issues arising within their jurisdiction and also to limit federal interference in the state adjudicatory process.” *Id.* (citing *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 490-91 (1973)).

In order to exhaust state remedies, a petitioner must submit his claims to the applicable state courts to allow “one full opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process.” *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). Further, “[b]ecause ordinary appellate procedure in Georgia authorizes habeas review in the Georgia Supreme Court, a petitioner must avail himself of that procedure before [a district court] will deem all state remedies to be exhausted.” *Jackson v. Walker*, 206 F. App’x 967, 968 (11th Cir. 2006) (per curiam) (citing *Pope v. Rich*, 358 F.3d 852, 854 (11th Cir. 2004)); *see also* O.C.G.A. §§ 9-14-1, 9-14-22 (providing a state habeas remedy and appeal to Supreme Court of Georgia). A petitioner moving under § 2241 “bears the burden of proving that he has exhausted available state remedies, and retains the burden to prove all facts relevant to the exhaustion requirement.” *Blanton v. Prine*, No. 7:13-CV-165-HL, 2014 WL 4199780, at \*1 (M.D. Ga. Aug. 22, 2014).

Here, Petitioner fails to meet his burden of showing that he exhausted his available state remedies. In his recast petition, Petitioner indicates that he only tried to contact the District Attorney’s Office. Recast Pet. 3. If so, then Petitioner has not exhausted his available state remedies, which include the right to bring a state habeas petition under Georgia law.

Moreover, in response to Respondent's motion to dismiss, Petitioner makes no effort to show that he attempted to file anything in the state courts of Georgia, and he reiterates his factual allegations regarding his continued detention. He also does not argue that anything rendered the state processes inadequate to address his claims. Instead, he argues that the Court should grant his release and dismiss the state charges. Pet'r's Mem. in Supp. of Resp. to Mot. to Dismiss 2, ECF No. 11.

Accordingly, the Court recommends that Respondent's motion to dismiss be granted. As a result, the Court does not address Respondent's additional argument.

### CONCLUSION

Accordingly, **IT IS RECOMMENDED** that Respondent's motion to dismiss (ECF No. 9) be **GRANTED** and Petitioner's recast application for a writ of habeas corpus (ECF No. 6) be **DISMISSED**. Pursuant to 28 U.S.C. § 636(b)(1), parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. Any objection should be no longer than **TWENTY (20) PAGES** in length. The district judge shall make a *de novo* determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the

consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 11th day of September, 2023.

/s/ Stephen Hyles

UNITED STATES MAGISTRATE JUDGE