

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

DERRICK BERNARD JACKSON,

Petitioner,

VS.

WARDEN CURTIS CLARK,

Respondent.

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NO. 5:25-cv-00485-CAR-CHW

RECOMMENDATION OF DISMISSAL

Petitioner Derrick Bernard Jackson, a prisoner at Valdosta State Prison in Valdosta, Georgia, filed a petition for a writ of habeas corpus challenging the denial of an appeal bond following his May 7, 2025, conviction in the Superior Court of Baldwin County.¹ ECF No. 1. Petitioner paid the \$5.00 filing fee for this case. He also filed two affidavits, a motion for release pending resolution of his writ petition, a motion for preliminary injunction or temporary restraining order (“TRO”), a motion to amend his writ petition, a motion under 28 U.S.C. § 2251, an amended petition, a motion for immediate release, a motion to file supplemental objections, a supplement, and a notice. ECF Nos. 3-13.

As discussed below, it is now **RECOMMENDED** that Petitioner’s habeas petition be **DISMISSED WITHOUT PREJUDICE** because he has not exhausted his available state court remedies. It is also **RECOMMENDED** that his pending motions be **DENIED AS MOOT**. Finally, it is **RECOMMENDED** that a certificate of appealability (“COA”)

¹Petitioner asserts that he is bringing this petition pursuant to 28 U.S.C. § 2241. Petitioner, however, has been convicted and is currently incarcerated pursuant to that conviction and sentence. Therefore, his petition is properly considered under 28 U.S.C. § 2254.

and any motion to proceed *in forma pauperis* on appeal be **DENIED**.

I. SCREENING

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that

The clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

Rules Governing § 2254 Cases, R. 4.

A state prisoner cannot petition for federal habeas relief without first exhausting his state court remedies. 28 U.S.C. § 2254(b)(1); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). To exhaust state court remedies, a state prisoner must first present his claims to the state courts through one complete round of the state's appellate review process, either on direct appeal or in state post-conviction proceedings. *Boerckel*, 526 U.S. at 845.

Failure to exhaust state remedies is a valid reason for dismissal under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. *See Paez v. Sec'y, Fla. Dep't of Corr.*, 947 F.3d 649, 653–55 (11th Cir. 2020). Although the exhaustion requirement is not jurisdictional, the Court can still *sua sponte* dismiss a §2254 petition on a non-jurisdictional basis, so long as (1) the petitioner is given “notice of its decision and an opportunity to be heard in opposition[.]” and (2) the respondent is given similar notice and an opportunity to waive that defense. *Id.* at 653 (allowing *sua sponte* dismissal based on untimeliness because Report and Recommendation provided notice and opportunity to respond to both petitioner and respondent); *see also Fletcher v. Oliver*, No.

1:20-00347-KD-N, 2020 WL 5100631, at *2 n.4 (S.D. Ala. July 21, 2020), *report and recommendation adopted*, 2020 WL 5099937 (S.D. Ala. Aug. 28, 2020) (stating that “[t]he undersigned finds no reason the procedure endorsed in *Paez* cannot also be utilized to *sua sponte* dismiss a habeas petition as unexhausted”).

The only claim that Petitioner raises in the initial petition is that he was denied a bond pending appeal in his state court criminal case. *See* ECF No. 1 at 2; ECF No. 1-1 at 2-5. Under Georgia law, a criminal defendant “may challenge the denial of an appeal bond by appealing the decision to the Georgia Supreme Court or filing a state habeas corpus petition.” *Vaughns v. State*, 2018 WL 1190173, at *3 (S.D. Ga. Feb. 8, 2018) (citing cases from the Georgia Supreme Court reviewing challenges to the denial of an appeal bond).

In response to the question on the § 2241 form asking whether he appealed the trial court’s denial of an appeal bond, Petitioner states that he did not do so. ECF No. 1 at 2. In explaining his failure to appeal, Petitioner asserts that his right to appeal was frustrated because the “judge withheld [the] order for more than 10 days to not allow [him] to appeal.” *Id.* Petitioner does not say why he did not attempt to file an appeal once he received notice that the order was issued.

Petitioner also does not assert that he presented this issue in a state habeas corpus petition. Instead, in response to the question asking about any other attempts to challenge the denial of an appeal bond, Petitioner cites a civil rights complaint that he filed in this Court. *Id.* at 5 (citing *Jackson v. Burleson*, Case NO. 5:25-cv-00333-MTT-ALS (M.D. Ga.)). That case does not satisfy the exhaustion requirement. It is apparent from documentation in Petitioner’s other filings that he has not raised this issue in the state court

on direct appeal or in a habeas petition. Thus, it appears on the face of the record that Petitioner has not exhausted this issue.

In addition to the issue raised in his original petition, Petitioner has also filed a motion to amend his petition and an “amended memorandum of law.” ECF Nos. 6 & 9. In this proposed amendment, Petitioner asserts that he is not challenging “the validity of his conviction” but is challenging the legality of his custody, “because the state trial court lacked jurisdiction to conduct the trial or enter judgment.” ECF No. 9 at 1. Petitioner’s argument that the trial court lacked jurisdiction would constitute a challenge to his conviction. Regardless, to the extent that Petitioner appears to be attempting to add this issue to his petition, it also is unexhausted.

On this point, Petitioner asserts that he raised this issue in state court through a “motion in arrest of judgment, an amended motion for new trial, and mandamus proceedings.” *Id.* at 1. He does not assert, however, that he has presented this issue either on direct appeal or in a habeas corpus petition in the state court. To the contrary, Petitioner contends both that exhaustion is not required because he is challenging a void judgment and that these steps satisfy “any conceivable exhaustion requirement.” *Id.* at 3. There is no exception to the exhaustion requirement for “void judgments.” *See Wimbush v. Tatum*, 2021 WL 12224756, at *1 (N.D. Ga. Apr. 26, 2021). The steps Petitioner asserts he has taken do not satisfy the exhaustion requirement, as they do not involve the state’s appellate review process. Therefore, this issue also has not been exhausted.

Because the issues that Petitioner is attempting to raise have not been fairly presented to the state court for a full round of review through the state’s appellate process,

it appears on the face of the record that Petitioner has not exhausted his state court remedies. Accordingly, it is **RECOMMENDED** that this petition be **DISMISSED WITHOUT PREJUDICE** for failure to exhaust. In light of this recommendation, it is **RECOMMENDED** that Petitioner's pending motions for release pending resolution of the writ petition, permanent injunction or temporary restraining order, to amend the writ petition, to stay enforcement of his sentence, for immediate release, and to file supplemental objections (ECF Nos. 4-6, 8, 10, 11) be **DENIED AS MOOT**.

II. COA AND *IN FORMA PAUPERIS* ON APPEAL

A prisoner seeking to appeal a district court's final order denying his petition for writ of habeas corpus has no absolute entitlement to appeal but must obtain a 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)."

"A [COA] may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). 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) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying

constitutional claim,” such as in this case, “a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

Petitioner has not made these showings. 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 **RECOMMENDED** that any motion to proceed *in forma pauperis* on appeal be **DENIED**.

III. CONCLUSION

As set forth above, it is **RECOMMENDED** that Petitioner’s habeas corpus petition, ECF No. 1, be **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state, that his pending motions (ECF Nos. 4-6, 8, 10, 11) be **DENIED AS MOOT**, and that any COA and motion to proceed *in forma pauperis* on appeal be **DENIED**.

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Clerk is **DIRECTED** “to notify the [P]etitioner” of this ruling by mailing him a copy of this Order and Recommendation of Dismissal. Pursuant to the memorandum of understanding with the Attorney General of the State of Georgia, the Clerk is **DIRECTED** to serve a copy of the Petition, ECF No. 1, and this Order and Recommendation of Dismissal on the Attorney General and Respondent electronically through CM/ECF and they may, **but are not required to**, respond to the Order and Recommendation of Dismissal.

IV. OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation with the District Judge to whom this case is assigned **WITHIN FOURTEEN (14) DAYS** after being served with a copy of this Order and Recommendation of Dismissal. Any objection is limited in length to **TWENTY (20) PAGES**. *See* M.D. Ga. L.R. 7.4. Any party may seek an extension of time in which to file written objections, provided a request for an extension is filed prior to the deadline for filing written objections. 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 RECOMMENDED, this 8th day of April, 2026.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge