FILED
United States Court of Appeals
Tenth Circuit

August 23, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MARCUS ALLEN MURPHY,

Plaintiff - Appellant,

v.

EL PASO CO. (CO) DIST. 4 DISTRICT ATTORNEY,

Defendant - Appellee.

No. 23-1188
(D.C. No. 1:23-CV-00293-LTB-KLM)
(D. Colo.)

ORDER DENYING A CERTIFICATE OF APPEALABILITY[*]

Before **TYMKOVICH**, **McHUGH**, and **CARSON**, Circuit Judges.

Petitioner Marcus Allen Murphy, a Colorado state prisoner proceeding pro se,[1] seeks a certificate of appealability ("COA") to challenge the district court's denial of his 28 U.S.C. § 2241 application for a writ of habeas corpus. See 28 U.S.C.

[*] After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[1] While we are "generally obliged to construe pro se pleadings liberally," we have declined to do so where the pro se party is a licensed attorney. Smith v. Plati, 258 F.3d 1167, 1174 (10th Cir. 2001). Petitioner in this case claims to be a licensed attorney and member of this court, however, in filings at the district court he noted that his license has been suspended. Given the suspension and the fact that Petitioner

§ 2253(c)(1)(A) (stating no appeal may be taken from a "final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court" until an applicant obtains a COA); Montez v. McKinna, 208 F.3d 862, 869 (10th Cir. 2000) (stating § 2253(c)(1)(A)'s requirements apply when a state habeas applicant is proceeding under § 2241). Petitioner also seeks leave to proceed in forma pauperis. Exercising jurisdiction under 28 U.S.C. § 1291, we deny a COA, deny Petitioner's request to proceed in forma pauperis, and dismiss this matter.

I.

Petitioner is a pretrial detainee at the El Paso County Criminal Justice Center in Colorado Springs, Colorado. In February 2023, Petitioner initiated these proceedings in the United States District Court for the District of Colorado by filing a pro se application for a writ of habeas corpus under 28 U.S.C. § 2241, and a motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915. Petitioner challenged his confinement following his arrest for criminal trespass and asked the district court to "perfect his removal" of his state criminal case, grant an eviction hearing, and order his immediate release.

On April 6, 2023, the assigned magistrate judge recommended dismissal of Petitioner's action for lack of jurisdiction under the Younger v. Harris, 401 U.S. 37 (1971), abstention doctrine. Petitioner objected to the recommendation. But, upon de novo review, the district court agreed with the magistrate judge's recommendation

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is a pretrial detainee, we liberally construe his filings. See Yang v. Archuleta, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

and issued an order of dismissal on May 18, 2023. And relying on 28 U.S.C. § 1915(a)(3), the district court certified that we should not take this appeal in forma pauperis because it lacks good faith. Petitioner appeals.

II.

A COA is necessary to appeal from a district court's denial of a § 2241 application. See 28 U.S.C. § 2253(c)(1)(A); Montez, 208 F.3d at 869. The district court's denial based on Younger abstention constitutes dismissal on procedural grounds because the court did not reach the merits of the applicant's constitutional claims. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (describing standard of review when district court "denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim"); Haff v. Firman, 646 F. App'x 604, 606 (10th Cir. 2016) (unpublished) (agreeing with Strickland v. Wilson, 399 F. App'x 391, 395 n.5 (10th Cir. 2010) (unpublished), that a dismissal based on Younger abstention is a dismissal on procedural grounds for COA purposes).

When a district court denies a § 2241 application on procedural grounds, we may issue a COA only when the applicant shows (1) "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" and (2) "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 529 U.S. at 484; Haff, 646 F. App'x at 606.

III.

Federal courts are generally prohibited from interfering with ongoing state criminal prosecutions. Younger, 401 U.S. at 53–54. Younger abstention applies

when "(1) the state proceedings are ongoing; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to present the federal constitutional challenges." Phelps v. Hamilton, 122 F.3d 885, 889 (10th Cir. 1997).

Petitioner acknowledges that state court proceedings are ongoing in El Paso County. And the Supreme Court "has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief." Kelly v. Robinson, 479 U.S. 36, 49 (1986) (citing Younger, 401 U.S. at 44–45). Thus, the first two prongs of Younger abstention are met. And Petitioner cannot overcome the third prong—that the state court proceedings afford him an adequate opportunity to present his federal constitutional challenges. Before the district court, Petitioner made only a conclusory allegation with respect to this prong; and before us, Petitioner makes no effort to explain why the state proceedings are inadequate for his claims.

We are thus unpersuaded that the state court proceedings do not "afford [Petitioner] an adequate opportunity to present the federal constitutional challenges." Phelps, 122 F.3d at 889; see also Kugler v. Helfant, 421 U.S. 117, 124 (1975) (noting "ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights"). Nor does Petitioner provide any factual allegations demonstrating that he meets any exception to Younger abstention. See Phelps, 122 F.3d at 889–90.

In sum, Petitioner has not shown "jurists of reason would find it debatable whether the district court was correct in its procedural ruling" that Younger abstention applies. Slack, 529 U.S. at 484.

IV.

Petitioner also moved to proceed in forma pauperis under 28 U.S.C. § 1915(a)(1). The district court certified "pursuant to 28 U.S.C. § 1915(a)(3) that any appeal . . . is not taken in good faith." Murphy v. El Paso Co. (CO) Dist. 4 District Attorney, No. 23-cv-00293, ECF No. 42 (D. Colo. May 17, 2023). We agree with the district court's certification under the statute and, therefore, deny Petitioner's motion to proceed in forma pauperis.

Because no reasonable jurist could debate the district court's dismissal, see Slack, 529 U.S. at 484, we deny Petitioner's application for a COA and dismiss his appeal. We also deny Petitioner's request to proceed in forma pauperis. We further deny Petitioner's motion captioned "Notice of Appeal," as, at the time it was filed, we had issued no ruling in this case from which Petitioner could request review.

Entered for the Court

Joel M. Carson III
Circuit Judge