

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

MICHAEL ALBERT FOCIA,             )  
  )  
                  Petitioner,               )  
  )  
                  v.                                    )  
  )  
  )  
UNITED STATES OF AMERICA, *et al.*,        )  
  )  
  )  
                  Respondents.                 )

CASE NO. 2:15-CV-258-WKW

**ORDER**

On June 17, 2015, the Magistrate Judge filed a Recommendation (Doc. # 8), in which he concluded that Petitioner Michael Albert Focia’s petition for habeas relief under 28 U.S.C. § 2241 should be dismissed without prejudice to allow Mr. Focia to pursue an appropriate challenge to his pretrial detention. Mr. Focia responded with a Writ of Error (Doc. # 9),<sup>1</sup> which this court construes as an Objection to the Magistrate Judge’s Recommendation. Upon an independent review of the file and upon consideration of the Recommendation, it is ORDERED that the Objection (Doc. # 9) is due to be OVERRULED and the Recommendation

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<sup>1</sup> The Recommendation provided that Mr. Focia was afforded until July 1, 2015, to file a timely objection. Mr. Focia’s Objection (Doc. # 9) was docketed on July 13, 2015 – thirteen days after the deadline provided in the Recommendation. Pursuant to the prison mailbox rule, however, the Objection is deemed “filed at the time [Mr. Focia] delivered it to the prison authorities for forwarding to the court clerk.” *Houston v. Lack*, 487 U.S. 266, 267 (1988). It will be assumed that Mr. Focia delivered his filing to the prison authorities on the date he prepared the filing.

is due to be ADOPTED to the extent that the Magistrate Judge recommended that Mr. Focia's 28 U.S.C. § 2241 petition be DISMISSED without prejudice.

In the Recommendation, the Magistrate Judge reviewed Mr. Focia's habeas petition and determined that Mr. Focia was required under the *Rules Governing Section 2254 Cases in the United States District Courts* to pursue his pretrial release through an appeal of his order of detention and not through a writ of habeas corpus. Accordingly, the Magistrate Judge recommended that Mr. Focia's petition be dismissed without prejudice to allow him to pursue appropriate remedies. Mr. Focia has objected to the Magistrate Judge's Recommendation, arguing that the court is without jurisdiction to "issue any orders that are contrary to the wish of the Sovereign American People" and that, regardless, "exceptional circumstances" exist in this case to make habeas relief appropriate. (Doc. # 9.) While Mr. Focia cites vindictive prosecution as the basis for his claim of exceptional circumstances, Mr. Focia has failed to provide any argument as to why the appropriate pretrial procedures, such as the filing of an appeal, would not have provided a sufficient means of challenging his pretrial detention.

Furthermore, since the filing of the Recommendation, a jury found Mr. Focia guilty as to all four counts of his superseding indictment, and Mr. Focia is now being detained pending sentencing. As a result of his conviction and current incarceration, a case or controversy no longer exists as to his pending petition for

pretrial release. That is, Petitioner does not present a “live” issue regarding the challenges made to his pretrial detention, and the court should dismiss his petition without prejudice for lack of jurisdiction. *See Fassler v. United States*, 858 F.2d 1016, 1018 (5th Cir. 1988) (“Because [petitioner] is now legally in . . . custody, we must hold that his request for release from pretrial confinement is moot.”); *see also Murphy v. Hunt*, 455 U.S. 478, 481–82 (1982) (holding that a conviction moots a claim regarding pretrial bail); *United States v. Taylor*, 814 F.2d 172, 174 (5th Cir. 1987) (determining that a defendant’s claim of illegal pretrial detention failed after defendant pleaded guilty). Because Mr. Focia’s case is now moot and a dismissal without prejudice serves to protect any subsequent habeas filings Mr. Focia may wish to make, it is ORDERED that Mr. Focia’s Objection (Doc. # 9) is OVERRULED, the Recommendation (Doc. # 8) is ADOPTED, and Mr. Focia’s petition is DISMISSED without prejudice.

A separate final judgment will be entered.

DONE this 15th day of July, 2015.

/s/ W. Keith Watkins  
CHIEF UNITED STATES DISTRICT JUDGE