

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**JOHNIE OLIVER, JR.,**

**Petitioner,**

**v.**

**STATE OF GEORGIA,**

**Respondent.**

**1:16-cv-1726-WSD**

**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge John K. Larkins III's Final Report and Recommendation [4] ("R&R"). The R&R recommends the Court deny Petitioner Johnie Oliver, Jr.'s ("Petitioner") petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 [1] ("Petition").

**I. BACKGROUND**

On May 26, 2016, Petitioner, confined in the DeKalb County Jail in Decatur, Georgia, submitted his Petition. Petitioner seeks dismissal of state criminal charges, including murder, aggravated assault, and possession of a firearm by a convicted felon.

On June 8, 2016, the Magistrate Judge issued his R&R. The Magistrate Judge determined that, because Petitioner's state criminal proceeding is ongoing,

the abstention doctrine articulated by the United States Supreme Court in Younger v. Harris, 401 U.S. 37 (1971) applies. The Magistrate Judge also recommended a certificate of appealability should be denied. Petitioner did not file any objections to the Magistrate Judge's R&R.

## II. ANALYSIS

### A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). No party objects to the R&R, and the Court thus conducts a plain error review of the record. See United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

### B. Discussion

Under Younger, "abstention is required when (1) the proceedings constitute an ongoing state judicial proceeding, (2) the proceedings implicate important state interests, and (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges." Turner v. Broward Sheriff's Office, 542 F. App'x 764, 766 (11th Cir. 2013) (per curiam).

The Magistrate Judge found that, here, all three requirements of Younger are satisfied, and thus the Court is prohibited from interfering in Petitioner's state criminal proceeding. The Magistrate Judge recommends the Petition be dismissed without prejudice. The Court finds no plain error in these findings and recommendation. See Slay, 714 F.2d at 1095.

The Magistrate Judge also recommends the Court deny a certificate of appealability, because it is not debatable that Younger prohibits federal court interference in Petitioner's ongoing state criminal proceeding. The Court finds no plain error in these findings and recommendation, and a certificate of appealability is denied. See Slay, 714 F.2d at 1095. Petitioner is advised that he "may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." 28 U.S.C. foll. § 2254, Rule 11(a).

### **III. CONCLUSION**


For the foregoing reasons,

**IT IS HEREBY ORDERED** that Magistrate Judge John K. Larkins III's Final Report and Recommendation [4] is **ADOPTED**.

**IT IS FURTHER ORDERED** that Petitioner Johnie Oliver, Jr.'s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241[1] is **DISMISSED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that a certificate of appealability is  
**DENIED.**

**SO ORDERED** this 19th day of August, 2016.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE