

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

MICHAEL DAVIS,  
Petitioner,

v.

UNKNOWN,  
Respondent.

Civil Action No.  
1:24-cv-00646-SDG

**OPINION AND ORDER**

This matter is before the Court on the Final Report and Recommendation (R&R) entered by United States Magistrate Judge Regina D. Cannon [ECF 2], who recommends that what she construed as Petitioner Michael Davis's petition for a writ of habeas corpus under 28 U.S.C. § 2254 be dismissed. As the R&R reasoned, because Davis's state habeas corpus petition remains pending in Richmond County Superior Court, he has not exhausted his state-court remedies as required by § 2254(b), and his petition is subject to dismissal under Rule 4.<sup>1</sup> Davis filed objections to the R&R [ECF 4], which undersigned now reviews *de novo*. 28 U.S.C. § 636(b)(1).

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<sup>1</sup> Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, summary dismissal of a habeas petition under Rule 4 is proper if the petition and the attached exhibits plainly reveal that relief is not warranted. *McFarland v. Scott*, 512 U.S. 849, 856 (1994).

In his objections, Davis clarified that his intent was not to file a § 2254 action, but rather to remove his Georgia habeas proceeding to this Court.<sup>2</sup> Removal, however, is improper here for two reasons. First, a case may be removed only by a defendant, which Davis is not for purposes of his state habeas proceeding. 28 U.S.C. § 1441(a). Second, there is no federal subject matter jurisdiction over Davis's state habeas proceeding – a matter of Georgia law – because, given that all parties are Georgia citizens, there is no diversity of citizenship. 28 U.S.C. § 1332(a); *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999). Davis's petition must therefore be **DISMISSED**.

Davis's objections [ECF 4] are **OVERRULED**, and the R&R [ECF 2] as modified herein is **ADOPTED** as the order of this Court. To the extent necessary, this undersigned concludes that Davis has not met the standard of 28 U.S.C. § 2253(c)(2), and a Certificate of Appealability is **DENIED**. The Court declines to issue a certificate of appealability because resolution of the issues presented is not debatable. Accordingly, if Davis wants appellate review of this Order, he may seek a certificate of appealability from the Eleventh Circuit Court of Appeals under Federal Rule of Appellate Procedure 22. R. 11(a), R. Governing § 2254 Cases for the U.S. Dist. Cts. The Clerk is **DIRECTED** to mail a copy of this Order to Davis.

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<sup>2</sup> ECF 4, at 1.

The Clerk is further **DIRECTED** to close this case.

**SO ORDERED** this 6th day of January, 2025.



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Steven D. Grimberg  
United States District Judge