IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

KING MICHAEL OLIVER,
a/k/a Michael A. Oliver

Petitioner,

v. **No: 3:17-cv-00240-DRH**

LISA MADIGAN

Respondent.

MEMORANDUM AND ORDER

HERNDON, District Judge:

Petitioner, currently incarcerated in Pickneyville Correctional Center, brings this habeas corpus action pursuant to 28 U.S.C. § 2254 to request his immediate release from prison. The Petition was filed on March 7, 2017. (Doc. 1). As an initial matter, although styled as "King Michael Oliver," prison records show that Petitioner's name is "Michael A. Oliver." The Clerk is **DIRECTED** a/k/a Michael A. Oliver to the petitioner's name in the case docket.

The Petition is a 1 page document. (Doc. 1, p. 2). It notes that Petitioner is currently incarcerated in connection with two state cases: P-14-0122 from Pulaski County and 14-CF-486 from Jackson County. *Id.* Petitioner also states that he may have warrants out. *Id.* Petitioner then states "[m]y belief is that I Have been doing or going about this all wrong via Foreign Sovereign Immunities Act of 1976 whereas I have been arguing jurisdiction, not even sure what jurisdiction the courts are operating under. To my understanding the courts are acting under

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Admiralty (Maritime Laws) jurisdiction, but not admitting it....Have I been considered civilter mortuss were [sic] I was expected to be Lex Mercantorium?" *Id.* Petitioner then references a pre-paid account and states that he accepts the charges. *Id.* He also states that if that is insufficient, he wants to redeem his Mill Act reinsurance bonds. *Id.*

Discussion

Rule 4 of the Rules Governing § 2254 Cases in United States District Courts provides that upon preliminary consideration by the district court judge, "[i]f 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." After carefully reviewing the Petition in the present case, the Court concludes that Petitioner is not entitled to relief, and the Petition must be dismissed.

This is not the first time Petitioner has appeared before the Court and requested habeas relief. Petitioner brought a habeas case more than 2 years ago against staff at the Jackson County Jail and a judge in Jackson County. Case No. 15-cv-59-DRH ("first case"). That case was dismissed without prejudice pursuant to the Younger Doctrine because this Court cannot interfere with an ongoing state criminal prosecution. (First case, Doc. 6). Petitioner filed another habeas case later that year raising substantially similar claims. Case No. 15-cv- 1194-JPG ("second case"). The Court dismissed that case because Petitioner's pleadings were utterly unintelligible, despite multiple chances to amend the petition, and

because his claims were frivolous and unfounded. (Second case, Doc. 20). The Court warned Petitioner that if he continued filing frivolous litigation, he would be subject to sanctions. *Id.* In that case, Petitioner regularly referred to both § 2241 and § 2254. *Id.*

Here, this case must be dismissed because Petitioner has not met the requirements of § 2254. That statute authorizes claims "on the ground that [the petitioner] is in custody in violation of the Constitution or laws of treaties of the United States." 28 U.S.C. § 2254. Petitioner has not raised any constitutional issue in this case. He has not explained why his custody is wrongful at all; his Petition does little more than conclude he is entitled to release. Because the Petition does not provide any grounds for the Court to believe that Petitioner is in custody in violation of the Constitution, it must be dismissed.

Additionally, Lisa Madigan, the attorney general of the state of Illinois, is not the proper respondent. The warden of the facility where Petitioner is housed should be the respondent. Rule 2 of the Rules Governing Section 2254 cases in the United States District Courts. That alone is grounds for dismissal.

Petitioner was previously warned that if he continued to file frivolous pleadings, he would be subject to sanctions. It appears that Petitioner has taken at least some of the Court's prior warning to heart; he has not attempted to name the trial judge and the public defender as respondents, or renewed his attack on the undersigned. He has also expressed doubt as to his methods of proceeding, a thought which the Court encourages him to explore further. But this case is still

frivolous. Petitioner is once again warned that if he continues to file frivolous habeas cases, he will be sanctioned consistent with *Alexander v. United States*. 121 F.3d 312, 315 (7th Cir. 1997).

Disposition

For the reasons stated above, the instant habeas Petition is **DISMISSED** without prejudice to any other habeas petition or civil rights action Petitioner wishes to file. The Clerk of Court is **DIRECTED** to add a/k/a Michael A. Oliver to the petitioner line of the docket.

Should Petitioner desire to appeal this Court's ruling dismissing his petition for a writ of habeas corpus, he must first secure a certificate of appealability, either from this Court or from the Court of Appeals. *See* Fed. R. App. P. 22(b); 28 U.S.C. § 2253(c)(1). Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, the Court must issue or deny a certificate of appealability "when it enters a final order adverse to the applicant." *Id.* This petition has been dismissed without prejudice because Petitioner failed to allege that his custody violates the Constitution and named an improper respondent. Except in special circumstances, such a dismissal without prejudice is not a final appealable order, so a certificate of appeal ability is not required. *See Moore v. Mote*, 368 F.3d 754, 755 (7th Cir. 2004).

Further, pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a

constitutional right." This requirement has been interpreted by the Supreme Court to mean that an applicant must show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). A petitioner need not show that his appeal will succeed, *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003), but a petitioner must show "something more than the absence of frivolity" or the existence of mere "good faith" on his part. *Id.* at 338 (citation omitted). If the district court denies the request, a petitioner may request that a circuit judge issue the certificate. Fed. R. App. P. 22(b)(1)-(3).

Here, this order dismisses this case without prejudice, which means there is no final appealable order and a certificate of service is not required. Additionally, no reasonable jurist would find it debatable whether this Court's ruling on Petitioner's attempt to bring his habeas case pursuant to § 2254 was correct. Accordingly, a certificate of appealability shall **NOT** be issued.

IT IS SO ORDERED.
Signed this 10th day of April 2017.

UNITED STATES DISTRICT JUDGE