

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

**DWAYNE MIDDLETON,
No. Y-21267,
Petitioner,**

v.

No. 17-cv-361-DRH

**DONALD R. JONES, and
CHET SHAFFER,**

Defendants.

MEMORANDUM AND ORDER

HERNDON, District Judge:

Pro se Petitioner Dwayne J. Middleton filed this Petition for a Writ of Habeas Corpus (Doc. 1), asserting several due process claims in relation to his then pending criminal action in Franklin County, Illinois (Case No. 2017-CF-62). At the time the Petition was filed, Petitioner was being detained in the Franklin County Jail awaiting trial on burglary charges. Shortly after filing this Petition, his case was called to trial and Petitioner was convicted. As a result, Petitioner is presently housed at the Sheridan Correctional Center, serving a five year sentence on his burglary conviction. For the reasons set forth below, the Petition is dismissed without prejudice for failure to exhaust state court remedies.

BACKGROUND

The Franklin County Court docket indicates that Petitioner was charged with burglary in February 2017 and entered a plea of not guilty. On April 7, 2017,

Petitioner filed the instant § 2254 Petition alleging due process violations in connection with his then pending criminal trial. In connection with these claims, Petitioner seeks immediate or “speedier” release. The Petition indicates that Petitioner has not sought state court relief on any level. On April 27, 2017, Petitioner was adjudicated guilty and sentenced to 5 years’ imprisonment. Petitioner is presently in IDOC custody and is housed at Sheridan Correctional Center.

LAW AND ANALYSIS

A petitioner who has been tried and convicted, and who therefore is “in custody pursuant to the judgment of a State court” must challenge his conviction or sentence under 28 U.S.C. § 2254. *See Preiser v. Rodriguez*, 411 U.S. 475, 500, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973). A pretrial detainee being held at the county jail, however, is not “in custody pursuant to the judgment of a State court.” Pretrial detainees must therefore pursue habeas relief under § 2241. *See Braden v. 30th Judicial Cir. Ct. of Kentucky*, 410 U.S. 484, 488 (1973); *Jacobs v. McCaughtry*, 251 F.3d 596, 597–98 (7th Cir. 2001). At the time he filed this Petition, Petitioner was in pretrial custody, and had not yet been convicted of any charge. Shortly after the Petition was filed, he was convicted. He is now in custody pursuant to that judgment of conviction.

28 U.S.C. § 2254 requires petitioners to exhaust state court remedies prior to seeking federal habeas corpus relief. *See Baldwin v. Reese*, 541 U.S. 27, 124 S.Ct. 1347, 158 L.Ed.2d 64 (2004) (§ 2254 requires exhaustion of state court

remedies). Although pretrial detainees in state court pursuing relief under § 2241 are not subject to the statutory requirement of exhaustion of remedies, “federal courts nevertheless may require, as a matter of comity, that such detainees exhaust all avenues of state relief before seeking the writ.” *United States v. Castor*, 937 F.2d 293, 296–97 (7th Cir. 1991).

The exhaustion requirement promotes comity by affording the state courts the first opportunity to address and correct violations of their prisoners' federal constitutional rights. *O' Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999); *Perruquet v. Briley*, 390 F.3d 505, 513-14 (7th Cir. 2004). For that opportunity to be meaningful, the petitioner must “fairly present” his federal constitutional claims in one complete round of state review. *Boerckel*, 526 U.S. at 845, 848. To do so, the petitioner must “present both the operative facts and the legal principles that control each claim” at each level of state review. *Stevens v. McBride*, 489 F.3d 883, 894 (7th Cir. 2007) (citation omitted). This includes presenting the claim in a petition for discretionary review with the Illinois Supreme Court. *Boerckel*, 526 U.S. at 845-47.

In this case, Petitioner has already been convicted. The relief Petitioner seeks (release from prison) would require overturning that conviction. Therefore, Petitioner’s due process challenges are an attack on his state court judgment. Consequently, he must give the State of Illinois an opportunity to address his claim before bringing it to federal court. It is clear from the Petition that none of the potential grounds for habeas relief has yet been presented to the Illinois state

courts for resolution. This Court cannot review the merits of this claim, under § 2241 or § 2254 unless and until Petitioner exhausts his state court remedies.

Accordingly, the Petition shall be dismissed without prejudice to the claims being refiled, if necessary, after Petitioner has fully exhausted his claims in the state courts.

DISPOSITION

For all the foregoing reasons, the Petition for a Writ of Habeas Corpus (Doc. 1) is dismissed without prejudice for failure to exhaust state court remedies pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

Should Petitioner desire to appeal this Court's ruling, he must first secure a certificate of appealability, either from this Court or from the Seventh Circuit Court of Appeals. *See* FED. R. APP. P. 22(b); *see also* 28 U.S.C. § 2253(c)(1). 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). While a Petitioner need not show that his appeal will succeed, *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003), he 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. *See* FED. R. APP. P. 22(b)(1)-(3).

For the reasons detailed above, the Court has determined that Petitioner is not entitled to relief at this time because he has yet to exhaust his state court remedies. Furthermore, the Court finds no basis for a determination that its decision is debatable or incorrect. Thus, Petitioner has not made “a substantial showing of the denial of a constitutional right.”

IT IS THEREFORE ORDERED that a certificate of appealability shall **NOT** be issued. The Clerk is **DIRECTED** to enter judgment accordingly and close this case.

IT IS SO ORDERED.

Signed this 17th day of July, 2017.

David R. Herndon



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Judge David R.
Herndon
Date: 2017.07.17
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UNITED STATES DISTRICT JUDGE