

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MINNESOTA**

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MAKSUD UL MAHBUB,

Petitioner,

Civil No. 17-4908 (JRT/LIB)

v.

WARDEN, RUSH CITY PRISON; JOHN  
CHOI, *Ramsey County Attorney*; LORI  
SWANSON, *Attorney General*; STATE  
OF MINNESOTA,

**ORDER**

Respondents.

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Maksud UI Mahbub, 23498, Freeborn County Detention Center, P.O. Box 170, Albert Lea, MN 56007, *pro se* petitioner.

Edwin W. Stockmeyer, III, and Matthew Frank, **MINNESOTA ATTORNEY GENERAL'S OFFICE**, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101; Peter R. Marker, **RAMSEY COUNTY ATTORNEY'S OFFICE**, 345 Wabasha Street North, Suite 120, St. Paul, MN 55102, for respondents.

Petitioner Maksud UI Mahbub (“Mahbub”), an inmate at the Minnesota Correctional Facility – Rush City, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 11, 2017, Magistrate Judge Leo I. Brisbois recommended that Mahbub’s petition be denied and the action dismissed. After an independent review of the files, records, and proceedings, the Court will conclude that Mahbub’s petition is barred by 28 U.S.C. § 2244(b) and will dismiss the action without prejudice for lack of jurisdiction.

## BACKGROUND

Mahbub was convicted in state court of one count of third-degree criminal sexual conduct and three counts of fourth-degree criminal sexual conduct. *State v. Mahbub*, No. A11-1284, 2013 WL 4779009, at \*3 (Minn. Ct. App. Sept. 9, 2013), *review denied* (Minn. Nov. 26, 2013). Mahbub appealed the verdict on a number of grounds. *Id.* at \*4-7. He also brought a postconviction petition, arguing that his trial counsel was ineffective because he failed to request a suppression motion. *Id.* at \*7-9. The Minnesota Court of Appeals affirmed both the conviction and denial of Mahbub’s postconviction petition. *Id.* at \*9. The Minnesota Supreme Court denied review on November 26, 2013.

Following the denial of his postconviction petition in state court, Mahbub filed a habeas petition under 28 U.S.C. § 2254. *Mahbub v. Warden*, No. 14-4825, 2016 WL 75053, at \*1 (D. Minn. Jan. 6, 2016). The petition was dismissed with prejudice because Mahbub had procedurally defaulted on the claims raised in that petition. *Id.* at \*2-3.

The present petition is Mahbub’s second habeas petition (“the present petition”). (Pet., Oct. 30, 2017, Docket No. 1.) The Magistrate Judge recommended that the Court dismiss the present petition because Mahbub has not received permission from the Eighth Circuit Court of Appeals to file a second habeas petition as required by 28 U.S.C. § 2244(b)(3). (R&R at 2-3, Dec. 11, 2017, Docket No. 16.)

## DISCUSSION

### I. STANDARD OF REVIEW

Upon the filing of a report and recommendation by a magistrate judge, a party may “serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2); *accord* D. Minn. LR 72.2(b)(1). “The district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *accord* D. Minn. LR 72.2(b)(3). While Mahbub has not formally filed objections, the Court construes his *pro se* filings liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

### II. PROCEDURAL BAR

State prisoners are prohibited from bringing a second or successive habeas petition, unless the claims presented in the petition fall within one of three narrow exceptions. 28 U.S.C. § 2244(b)(2). Even when such an exception applies, the petitioner must move the Eighth Circuit for an order authorizing the Court to consider the second or successive application. *See id.* § 2244(b)(3).

The present petition is Mahbub’s second habeas petition. *See Mahbub*, 2016 WL 75053, at \*1. Mahbub needed approval from the Eighth Circuit before filing this second petition. 28 U.S.C. § 2244(b)(2). The Eighth Circuit has not authorized the Court to review Mahbub’s present petition and, therefore, the Court will dismiss it without prejudice.

Nevertheless, Mahbub moves for the Court to consider the present petition as a first habeas petition because he argues that it falls within one of the exceptions enumerated in 28 U.S.C. § 2244(b)(2). (Mot. to Accept Current Petition as First Habeas Pet., Mem. of L. at 1, Nov. 8, 2017, Docket No. 10.) The Court need not decide whether the present petition falls within one of these exceptions because, even if it did, the Court cannot consider it without the Eighth Circuit's authorization. 28 U.S.C. § 2244(b)(3)(A). Accordingly, the Court will deny Mahbub's motion and dismiss his petition without prejudice for lack of jurisdiction.

### **III. MOTIONS TO STAY**

Mahbub has also filed three motions to stay, requesting that the Court stay the present petition until he has filed subsequent actions in various courts.<sup>1</sup> The Court does not have jurisdiction over the present petition and, therefore, cannot stay the action. Even if the Court stayed the action pending Mahbub's other lawsuits, the Court would not obtain jurisdiction following these other lawsuits. 28 U.S.C. § 2244(b)(3)(A) (requiring that the petitioner obtain permission from the Eighth Circuit to file a second habeas petition **before** the petition is filed with the Court). Accordingly, the Court will deny Mahbub's motions.

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<sup>1</sup> (Mot. for Order of Stay and Abeyance, Oct. 30, 2017, Docket No. 2; Mot. to Stay and Abeyance, Feb. 9, 2018, Docket No. 20; Mot. to Allow Pet'r to Present Answer, Feb. 21, 2018, Docket No. 24 (requesting deadline to file objections be stayed until other actions have been resolved).)

## ORDER

Based on the foregoing, and all the files, records, and proceedings herein, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge [Docket No. 16].

Accordingly, **IT IS HEREBY ORDERED** that:

1. Mahbub's Petition for a Writ of Habeas Corpus [Docket No. 1] is **DENIED**.

2. The action is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

3. Mahbub's Motion to Accept Current Petition as a First Habeas Petition [Docket No. 9] is **DENIED**.

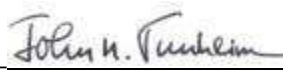
4. Mahbub's Motion for an Order of Stay and Abeyance [Docket No. 2] is **DENIED**.

5. Mahbub's Motion to Stay and Abeyance [Docket No. 20] is **DENIED**.

6. Mahbub's Motion to Allow Petitioner to Present an Answer to a Consolidated Report and Recommendation [Docket No. 24] is **DENIED**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

DATED: May 17, 2018  
at Minneapolis, Minnesota.

  
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JOHN R. TUNHEIM  
Chief Judge  
United States District Court