

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BRYAN DUNN,	)	
	)	
Petitioner,	)	8:17CV376
	)	
v.	)	
	)	
MARK FOXHALL, C.E.O. of the Douglas County Dept. of Corrections,	)	MEMORANDUM AND ORDER
	)	
Respondent.	)	
	)	

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This is a habeas corpus action by a pretrial detainee that I construe to have been filed pursuant to 28 U.S.C. § 2241. I conduct an initial review of the petition under [28 U.S.C. § 2243](#). Moreover, [Rule 1\(b\)](#) of the *Rules Governing Section 2254 Cases in the United States District Courts* allows me to apply [Rule 4](#) of those rules to a section 2241 action.

Principles of comity and federalism require a federal court to abstain from deciding a pretrial habeas claim under 28 U.S.C. § 2241 unless the prisoner demonstrates that (1) he or she has exhausted available state judicial remedies, and (2) special circumstances warrant federal intervention. *See, e.g., Davis v. Mueller*, 643 F.2d 521, 525 (8th Cir.1981) (noting that the availability of federal habeas relief while state court proceedings are still pending is limited by the “notion of comity” and “the proper respect for state functions”).

Petitioner has failed to show that he has exhausted his available state judicial remedies. He has also failed to show the special circumstances warranting federal

intervention. In coming to these conclusions, I reviewed the underlying court file in the state court.<sup>1</sup>

Although Petitioner sought relief under 28 U.S.C. § 2241, he must obtain a certificate of appealability if he wishes to appeal. See [28 U.S.C. § 2253](#); [Fed. R. App. P. 22\(b\)\(1\)](#); [Rule 1\(b\)](#) and [Rule 11\(a\)](#) of the *Rules Governing Section 2254 Cases in the United States District Courts*. See also [Hoffler v. Bezi](#), 726 F.3d 144, 153 (2d Cir. 2013) (collecting cases of courts that ruled a state prisoner who petitions for habeas relief under 28 U.S.C. § 2241 must obtain a certificate of appealability). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in [Slack v. McDaniel](#), 529 U.S. 473, 484-485 (2000). The court has applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that the petition for writ of habeas corpus (filing no. [1](#)) is denied without prejudice. No certificate of appealability has been or will be issued. A separate judgment will be issued.

DATED this 13<sup>th</sup> day of October, 2017.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge

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<sup>1</sup> *State v. Dunn*, CR 17 0001492 (Douglas County, Nebraska District Court). This information is made available online to this court by the State of Nebraska through the JUSTICE case search system.