

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

OTIS LEE RODGERS,

Petitio-er,

vs.

Civil Actio- 2:14-cv-453  
Judge Frost  
Magistrate Judge Ki-g

STATE OF OHIO, et al.,

Respo-de-ts.

OPINION AND ORDER

Petitio-er, who is curre-tly i-carcerated i- Califor-ia, filed a- actio- i- the U-ited States District Court for the Ce-tral District of Califor-ia asserti-g claims for damages u-der 42 U.S.C. § 1983 i- co--ectio- with a detai-er lodged agai-st him by the Ohio Adult Parole Authority. ECF No. 1. The actio- was thereafter tra-sferred to the Easter- District of Califor-ia, *Order*, ECF No. 4, a-d petitio-er's applicatio- for leave to proceed *i- forma pauperis* was gra-ted. *Order*, ECF No. 8. Petitio-er's request to tra-sfer the case to this Court, ECF 23, was also gra-ted. *Order*, ECF No. 24. Petitio-er thereafter filed a *Petitio- for a Writ of Habeas Corpus*, ECF No. 32, a-d his claims for mo-etary damages u-der 42 U.S.C. § 1983 were dismissed. *Opi-io- a-d Order*, ECF No. 38.<sup>1</sup>

O- December 10, 2014, the U-ited States Magistrate Judge recomme-ded that respo-de-t's *Motio- to Dismiss*, ECF No. 54, be gra-ted. *Order a-d Report a-d Recomme-datio-*, ECF No. 73. This matter is -ow before the Court o- petitio-er's objectio-s to that

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<sup>1</sup> Petitio-er's appeal from the dismissal of his claims u-der § 1983 remai-s pe-di-g. *Rodgers v. State of Ohio*, Case No. 14-3683 (6<sup>th</sup> Cir.).

recommendo-, *Objectio-*, ECF No. 76. Petitioner has also filed motions for leave to supplement those objections. *Motio- for Extensio- of Time to Supplement the Objectio-s*, ECF No. 77; *Motio- for Leave to File Supplemental Objectio-s*, ECF No. 81. The latter motion appears to be petitioner's supplemental objections.

Petitioner's motions for leave to supplement his objections, ECF Nos. 77, 81, are **GRANTED**. In considering petitioner's objections to the Magistrate Judge's recommendations, the Court will consider all of petitioner's filings.

The Magistrate Judge summarized the facts relevant to the resolution of this case, as well as petitioner's claims, as follows:

On June 9, 1983, following his conviction in the Court of Common Pleas for Cuyahoga County on two counts of kidnapping and three counts of gross sexual imposition, Petitioner was sentenced to an aggregate indeterminate term of imprisonment of fifteen to sixty-five years. *Exhibits A, B, C to Motion to Dismiss*, PageID# 335-37. Petitioner's maximum release date is March 22, 2048. *Exhibit C to Motion to Dismiss*, PageID# 338. In 1992, Petitioner was released on parole to be served in California following service of a sentence imposed by the State of Arizona. *Id.* at PageID# 338, 341; *Exhibits to Traverse*, ECF 67, PageID# 413. Ohio's parole authorities indicated that Petitioner's Ohio parole would remain active until the completion of his Arizona sentence; upon his release on the Arizona sentence, Petitioner was to report for supervision in California and to notify Ohio parole authorities. *Exhibits C, D, E, to Motion to Dismiss*, Page ID# 338-41. Petitioner was also directed to notify the Adult Parole Authority "[i]n the event of [his] imprisonment in another state . . . ." *Exhibit D to Motion to Dismiss*, PageID# 339. Once activated, Petitioner's parole supervision would continue for at least two years and supervision could be extended or revoked for failure to comply with these directives. *Id.* at PageID# 340. Ohio's parole supervision would not terminate until the State of Ohio granted a final release. *Id.*

On July 12, 2013, the Ohio Adult Parole Authority issued an arrest warrant based on Petitioner's alleged

violatio- of co-ditio-s of parole. *Exhibit G to Motio- to Dismiss*, PageID# 342. That warra-t was received as a detai-er agai-st Petitio-er's release from the custody of the Departme-t of Correctio-s a-d Rehabilitatio- i-Califor-ia, where Petitio-er is curre-tly co-fi-ed. *Id.* at PageID# 343. Petitio-er is scheduled to be released from co-fi-eme-t by Califor-ia o- August 24, 2015. *Id.* There is -o evide-ce that Petitio-er has bee- gra-ted a certificate of fi-al release from parole by Ohio. See O.R.C. § 2967.16.

Petitio-er challe-ges Ohio's parole violatio-proceedi-gs, taki-g the positio- that he fully satisfied his parole obligatio-s while servi-g his Arizo-a se-te-ce; therefore, Petitio-er co-te-ds, his Ohio parole had expired prior to the issua-ce of the warra-t agai-st him. Petitio-er co-te-ds that Ohio lacks jurisdictio- to hold him beyo-d the expiratio- of his Califor-ia se-te-ce a-d complai-s that the Ohio parole board waited too lo-g before issui-g the parole violatio- warra-t. As -oted *supra*, Petitio-er de-ies havi-g bee- advised that his Ohio parole would co-ti-ue beyo-d the expiratio- of his Arizo-a se-te-ce; he alleges ge-erally that Respo-de-ts have falsified or ma-ufactured docume-ts. Petitio-er also complai-s that he was de-ied a heari-g prior to his adjudicatio- as a parole violator. The *Petitio-* asks that Ohio's parole violatio- warra-t be declared i-valid.

*Order a-d Report a-d Recomme-datio-*, ECF No. 73, pp. 2-3 (foot-otes omitted). Without defi-itively determi-i-g the issue of exhaustio-, the Magistrate Judge co-cluded that the *Petitio-* affords -o basis for federal habeas corpus relief:

The record fails to support Petitio-er's claim that his parole i- Ohio expired prior to the issua-ce of the parole violator warra-t. U-der Ohio law, a parolee remai-s i- the custody of the Ohio Departme-t of Rehabilitatio- a-d Correctio- u-til the Ohio Adult Parole Authority gra-ts the parolee "a fi-al release." O.R.C. § 2967.02(C), (D). There is -o evide-ce that Petitio-er has ever bee- gra-ted a fi-al release from parole by Ohio. See also *Palmer v. Ghee*, 117 Ohio App. 3d 189 (Ct. App. 3d Dist. 1997) (Ohio parole authority is -ot estopped by its failure to promptly pursue parolee who had -ot bee- gra-ted a certificate of fi-al release). I- a-y eve-t, the Ohio parole board is -ot required to pursue parole revocatio- proceedi-gs while Petitio-er remai-s i- the custody of Califor-ia pursua-t to a -ew crimi-al co-victio-. Federal law requires o-ly that

a parole revocatio- heari-g be held withi- a reaso-able time after the state has secured custody of the parolee by executi-g the detai-er a-d retur-i-g the parolee to the i-stitutio- from which he was paroled. I- *Moody v. Daggett*, 429 U.S. 78 (1976), the U-ited States Supreme Court held that there is -o co-stitutio-al duty to provide a parolee a- adversary parole revocatio- heari-g u-til he is take- i-to custody as a parole violator by executio- of the warra-t:

Petitio-er's prese-t co-fi-eme-t a-d co-seque-t liberty loss derive -ot i- a-y se-se from the outsta-di-g parole violator warra-t, but from [the co-victio-s for which he is curre-tly i-carcerated]. Issua-ce of the warra-t a-d -otice of that fact to the i-stitutio- of co-fi-eme-t did -o more tha-express the [Parole] Board's i-te-t to defer co-sideratio- of parole revocatio- to a later time.

*Id.* at 86. Accord *Sa-tiago-Fraticelli v. Thoms*, 221 F.3d 1336 (6<sup>th</sup> Cir. 2000)(u-published); *Myers v. Dave-port*, 2:06-cv-247, 2006 WL 1705180 (S.D. Ohio Ju-e 16, 2006). I-short, u-til Ohio's parole violator warra-t is executed, Petitio-er's co-stitutio-al right to a heari-g has -ot vested. To the exte-t that Petitio-er may i-te-d to allege a violatio- of Ohio law, a-y such claim ca--ot form the basis for federal habeas corpus review. See *Pulley v. Harris*, 465 U.S. 37, 41 (1984); *Smith v. Sowders*, 848 F.2d 735, 738 (6th Cir. 1988).

*Order a-d Report a-d Recomme-datio-*, ECF No. 73, pp. 5-6. The Magistrate Judge therefore recomme-ded that the actio- be dismissed. *Id.*

This Court will co-sider the matter *de -ovo*. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b).

Petitio-er argues that, because his parole was i-active while he was i- the custody of Arizo-a, it ca--ot be reactivated without -otice a-d a heari-g that co-forms to co-stitutio-al -otio-s of due process. Petitio-er also argues that he satisfied his 2 year mi-imum term of parole while i- custody i- Arizo-a. He agai- de-ies, as he did before the Magistrate Judge, that he ever received parole i-structio-s

following his release from confinement in Arizona. However, these contentions miss the mark. Petitioner was sentenced in 1983 to an aggregate indeterminate term of imprisonment of up to 65 years, or until 2048. Under Ohio law, a parolee remains in the custody of the Ohio Department of Rehabilitation and Correction until the Ohio Adult Parole Authority grants the parolee "a final release." O.R.C. § 2967.02(C), (D). There is no evidence that Petitioner has ever been granted a final release from parole by Ohio. Moreover, Ohio is not required by the United States Constitution to pursue parole revocation proceedings so long as petitioner remains in his current custody of California. See *Moody v. Daggett*, 429 U.S. at 86; *Sa-tiago-Fraticelli v. Thomas*, 221 F.3d 1336. To the extent that petitioner intends to assert a violation of state law or argue that the State of Ohio is estopped, by the passage of time, from pursuing its detainer, petitioner remains free to do so in connection with state parole revocation proceedings, whenever those proceedings are instituted.

In short, petitioner's objections to the recommendation of the Magistrate Judge, *Objectio-*, ECF Nos. 76, 81, are **DENIED**. The *Report a-d Recomme-datio-*, ECF No. 73, is **ADOPTED AND AFFIRMED**. Respondent's *Motio- to Dismiss*, ECF No. 54, is **GRANTED**.

Petitioner's *Motio- to Compel*, ECF No. 82, and *Motio- to Postpo-e the No--Oral Heari-g Date*, ECF No. 84, are **DENIED as moot**.

The Clerk is **DIRECTED** to enter **FINAL JUDGMENT**.

          /s/          Gregory L. Frost  
                          Gregory L. Frost  
                          United States District Judge