

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LEO BOYKINS, III

Petitioner, : Case No. 3:14-cv-255

- vs -

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

ERIC D. WILSON, Warden,

Respondent.

REPORT AND RECOMMENDATIONS

Petitioner Leo Boykins, III, brought this habeas corpus action *pro se* pursuant to 28 U.S.C. § 2241 to obtain relief with respect to two state court cases in the Dayton Municipal Court: *State v. Boykins*, Case No. 2009 TRD 011748, and *State v. Boykins*, Case No. 2011 TRT 003135.

In the 2009 case, Boykins was convicted on his plea of guilty of driving without a valid license on June 26, 2009. He was fined \$125 plus court costs and companion charges of driving under suspension, failure to reinstate driver's license, and improper display of license plates were dismissed. When Boykins failed to pay the fine and costs in accordance with the agreed payment plan, a warrant was issued and sent to the Bureau of Motor Vehicles to block issuance of a new license.

In the 2011 case, Boykins was charged with driving without a seatbelt. He failed to appear for initial appearance and a capias warrant was issued for his arrest on March 18, 2011.

Boykins asserts that he should receive jail time credit for time served regarding these two

cases because he was house “at the county detention for nearly a year, which Montgomery County refused to arrest him for these offenses.” (Petition, Doc. No. 2, PageID 18.) He requests “time served for nearly a year that can and should be credited for those offenses which he is now serving a five (5) year sentence.” *Id.* As relief he requests that the warrants or detainers in those two cases be dismissed.

Petitioner is in the custody of Respondent, the Warden of the Federal Correctional Center at Petersburg, Virginia, as the result of a Judgment and Commitment Order of this Court in Case No. 3:12-cr-121. Boykins is serving a sixty-month sentence upon his conviction on a plea of guilty to one count of conspiracy to possess with intent to distribute heroin (Doc. No. 78 in 3:12-cr-121).

Boykins understandably sued his current custodian, Warden Wilson. However, 28 U.S.C. § 2241 only gives District Judges authority to issue the writ “within their respective jurisdictions.” This Court therefore does not have authority to issue the writ to Warden Wilson. See *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

The proper respondent within this judicial district would be the Dayton Municipal Court, the court in which both of the referenced cases against Mr. Boykins were filed. See *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484 (1973). This Court has jurisdiction under 28 U.S.C. § 2241 to issue the writ to the Dayton Municipal Court.

Rather than dismiss the case for lack of jurisdiction over the Respondent, the Magistrate Judge proposed to substitute the Dayton Municipal Court as Respondent and contacted City of Dayton Chief Prosecutor Stephanie Cook to determine if she would object on behalf of the Court to the substitution. Rather than proceed in that manner, Prosecutor Cook obtained from the Dayton Municipal Court dismissals of both of those cases. Certified copies of the disposition

entries, signed by Senior Magistrate Collette Moorman, are attached. The seatbelt charge was withdrawn at the request of the Prosecutor (“WDROP” in the dismissal entry) because of Boykins’ present confinement. In the no driver’s license case, the case was terminated for time served and the balance of fines and costs suspended.

By virtue of the dismissals, there is no longer any process outstanding from the Dayton Municipal Court which can act as a detainer on Petitioner. While this case is not technically moot because there was still a warrant outstanding in 2011 traffic case when this case was filed, Petitioner has now received all the relief he sought¹.

As a formal matter, it is respectfully recommended that the Petition be dismissed without prejudice for lack of personal jurisdiction of the Respondent. Because reasonable jurists would not disagree with this conclusion, Petitioner should be denied a certificate of appealability and the Court should certify to the Sixth Circuit that any appeal would be objectively frivolous.

August 7, 2014.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ.

¹ To the extent the Petition can be read as seeking jail time credit against his federal sentence for time spent in jail, Boykins is not entitled to such credit based on the Dayton Municipal Court cases. Boykins was ordered detained in his federal criminal case by Magistrate Judge Michael Newman on September 28, 2012. Whether Boykins is entitled to jail time credit based on the detention order is not before this Court in the present case and must be presented first to the Bureau of Prisons.

P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).

Copies: The Honorable Collette Moorman
 City Prosecutor Stephanie Cook
 Warden Eric Wilson

REPORT OF ACTION ON CASE

DATE OF ARREST _____ M.
 COURT ACTION GUILTY NOT GUILTY RELEASED TO OTHER AUTHORITY

ADDITIONAL OFFICER

Name _____ Pda No. _____
 Owner of Veh. BRITANNY APPELO DERRY
 Owner of Add. 5381 SALOM POND DR.
 Employer _____
 Employer's Add. _____
 Occupation _____

OFFICER'S SUPPLEMENTAL COMMENTS

Direction _____ On _____ (STREET)
 apprehended at _____
LICENSE PLATE WAS IN REAR
LENDING NUMBER NUMBERS COULD NOT
BE SEEN. DRIVER WAS NO OL/SLIGHTLY

No. of Occupants 1R Cruiser No. 415 Driver Off.'s Initials CS
 JUVENILES LIST NAMES & AGES - ADDRESSES OF ALL JUVENILE CAR OCCUPANTS ABOVE.

JUVENILE INFORMATION

AS	MARRIED	AGE
_____	_____	_____
HOOL	GRADE	
_____	_____	
EMPLOYER		

REL OF CAR (RELATIONSHIP)	WITH OWNER CONSENT	WITHOUT OWNER CONSENT
_____	<input type="checkbox"/>	<input type="checkbox"/>
REL OF FATHER (NATURAL)	PHONE NO.	LIVING
_____	_____	<input type="checkbox"/>
DECEASED		

REL OF MOTHER (NATURAL)	PHONE NO.	LIVING
_____	_____	<input type="checkbox"/>
DECEASED		

REL OF FATHER (ADOPTED)	PHONE NO.	LIVING
_____	_____	<input type="checkbox"/>
DECEASED		

REL OF MOTHER (ADOPTED)	PHONE NO.	LIVING
_____	_____	<input type="checkbox"/>
DECEASED		

I hereby certify the foregoing to be a true and correct copy of the original on file in this court.

DAYTON MUNICIPAL COURT

Christina, Clerk of Court

NOTICE TO JUVENILE VIOLATOR: The juvenile is to appear in person at the following address: MONTGOMERY COUNTY JUVENILE COURT, FAMILY COURT CENTER, 303 WEST SECOND STREET, DAYTON, OHIO 45402.

ARREST NOTIFICATION

STATION _____ R.C. SECTION _____
 LOCATION _____ PLATFORM _____ PORTABLE _____
 TYPE OF OVERLOAD _____
 LOADED High Axis Tandem Gross Length Gross _____
 NO. _____
 Permit Holder or Company Name or Vehicle Owner Name _____
 Street _____
 City _____ State _____ Zip _____

NOTIFICATION OF ARREST ONLY
 NO FURTHER ACTION IS NECESSARY.

STATE OF OHIO MONTGOMERY COUNTY CITY OF DAYTON
 IN THE DAYTON MUNICIPAL COURT
 IN THE MONTGOMERY COUNTY JUVENILE COURT
 TICKET NO. 1750954
 CASE NO. DA2117948
 NAME LOU A BOYKINS III
 STREET 821 PARKWAY AVE
 CITY, STATE DAYTON OH ZIP 45407
 LICENSE ISSUED MO. _____ YR. _____ EXPIRES BIRTHDATE 20 _____ STATE _____
 SSN _____ D.O.B. MO. 9 DAY 9 YR. 82
 FINANCIAL RESPONSIBILITY PROOF SHOWN Yes No

TO DEFENDANT: COMPLAINT
 ON 6-13 20 07 AT 1135 M. YOU OPERATED/PARKED/WALKED/A
 P. Comm. Cycle Over 260 lbs. Haz. Mat.
 VEHICLE: YR. 00 MAKE BUICK BODY TYPE 4DR
 COLOR BLUE LIC. R554029 STATE OH
 UPON A PUBLIC HIGHWAY, NAMELY GOTTYSBURG
 AT FARM BANKS (M.P. _____)
 IN THE CITY OF DAYTON IN MONTGOMERY COUNTY (NO. 97) STATE OF OHIO AND COMMITTED THE FOLLOWING OFFENSE(S).

A	<input checked="" type="checkbox"/> <u>OBSCURED PLATE</u> <input type="checkbox"/> Over limits <input type="checkbox"/> Unless cond. <input type="checkbox"/> S.C.D.A. <input type="checkbox"/> Radar <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input type="checkbox"/> Pace <input type="checkbox"/> Laser <input type="checkbox"/> Stationary <input type="checkbox"/> Moving	<u>4503-21</u>
B	<input checked="" type="checkbox"/> <u>DRIVER LICENSE</u> <input type="checkbox"/> Prohibited drug or alcohol concentration <input type="checkbox"/> BAC <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input type="checkbox"/> Refused	<u>4570-12</u>
C	<input checked="" type="checkbox"/> DRIVER LICENSE: <input type="checkbox"/> None <input type="checkbox"/> Revoked <input checked="" type="checkbox"/> Suspended <input type="checkbox"/> Expired <input type="checkbox"/> 6 months or less <input type="checkbox"/> Over 6 months Suspension Type _____	<u>4570-11A</u>
D	<input checked="" type="checkbox"/> <u>SALES TAX</u> <input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint	<u>4570-76</u>
E	<input checked="" type="checkbox"/> OTHER OFFENSE <u>POS</u> <u>R520</u>	<u>4570-21</u>
F	<input checked="" type="checkbox"/> OTHER OFFENSE <u>DRUG OFF</u> <u>SUSPENDED</u>	<u>4570-17</u>

DRIVER LICENSE HELD VEHICLE SEIZED ARREST CODE _____
 PAVEMENT: Dry Wet Snow Ice
 VISIBILITY: Clear Cloudy Dusk Night
 WEATHER: Rain Snow Fog No Adverse
 TRAFFIC: Heavy Moderate Light None
 AREA: Business Rural Residential Industry School
 CRASH: Yes No Almost Caused Injury Non-Injury Fatal
 Crash Report Number: _____
 REMARKS _____
 ACCOMPANYING CRIMINAL CHARGE Yes No TOTAL # OFFENSES 6

SUMMONS TO DEFENDANT
 You are summoned and ordered to appear at the Dayton Municipal Court, Traffic Violations Bureau, 301 W. Third St., Dayton, Ohio 45402 at 8:30 p.m.
 Montgomery County Juvenile Court, 303 W. Second St., Dayton, Ohio 45402 at 5:30 p.m.
 COURT DATE LAST DAY TO PAY 6-23-07
 MONTH DAY

If you fail to appear or fail to make proper disposition or payment of this ticket on or before the date shown, you may be arrested. See reverse side for additional important information.
 This summons served personally on the defendant on 6-13 20 07.
 The issuing charging law enforcement officer states under the penalties of perjury and falsification that he has read the above complaint and that it is true.

NOTE: ISSUING OFFICER BE SURE TO VERIFY ADDRESS, IF DIFFERENT FROM LICENSE ADDRESS, WITH PRESENT ADDRESS IN SPACE PROVIDED.
 Issuing Charging Law Enforcement Officer (print): ROBERT L. SAVAGE
 Court Code 2153/2150/230 POA AEN
 Rev'd 12/97

COURT RECORD

SIGNATURE JD SHAW
 (ID ONLY)

PRESENT ADDRESS

PHONE

PHONE

DAYTON MUNICIPAL COURT

ENTRY

CASE NO: 09TRD11748 DEFENDANT: LEO BOYKINS III

8-7-14

Case terminated for
time served - In prison
suspend fines
+ costs *DM*

8-7, 2014
I hereby certify the foregoing to be a true and
correct copy of the original on file in this court.

DAYTON MUNICIPAL COURT
Mark E. Owens, Clerk of Court
By *Aquata Stee* Deputy

REPORT OF ACTION ON CASE

DATE OF ARREST _____ Month / Day / Year _____ Time _____ AM/PM

COURT ACTION

- GUILTY RELEASED TO OTHER AUTHORITY
 NOT GUILTY

OFFICER'S NOTES

Radar # _____ Cal. Times _____
 Laser # _____ Cal. Times _____
 A/V Record # _____
 Owner of Veh. Leased vehicle
 Owner's Add. _____
 Employer _____
 Employer's Add. _____
 Occupation _____

OFFICER'S SUPPLEMENTAL COMMENTS

Direction NB On Brooklyn Onkridge STREET
 Apprehended at 644 Brooklyn (ADDRESS)
 driver Starling Grovel did not stop at stop sign NB Brooklyn / Onkridge, then on Hoover.
 no seatbelt
 passenger rear seat Malcolm Owens
 No Id

WITNESSES:

Name	Address	Telephone
Name	Address	Telephone

VIOLATION: _____ R.C. SECTION _____
 SCALE LOCATION _____
 AMOUNT OF OVERLOAD _____
 OVERLOADED ON: Single Axle Tandem Inner Bridge
 Gross - Length of gross
 PUCO # _____
 DOT # _____
 Permit Holder or Company Name or Vehicle Owner Name _____
 Street Address _____
 City _____ State _____ Zip _____

I hereby certify the foregoing to be a true and correct copy of the original on file in this court.
 DAYTON MUNICIPAL COURT
 Mark E. Owens, Clerk of Court
 By [Signature] Deputy

STATE OF OHIO MONTGOMERY COUNTY CITY OF DAYTON
 IN THE DAYTON MUNICIPAL COURT
 IN THE MONTGOMERY COUNTY JUVENILE COURT

TICKET NO. 1826542
 CASE NO. 11T 3135
 GRANT CODE _____

NAME Leo A. Boykins III
 STREET 826 Huron Av
 CITY, STATE Dayton ZIP 45417

OPERATOR LICENSE/STATE I.D. #	None*	BIRTH DATE	ISSUE DATE	STATE
<u>SK 364976</u>		<u>090982</u>	<u>Expired</u>	<u>OH</u>
CLASS	EXPIRES	ENDORSEMENT(S)/RESTRICTION(S)	SS # (last 4 digits)	
		<input type="checkbox"/> CDL <input type="checkbox"/> MC <input type="checkbox"/> Other	<u>5 5 2 7</u>	
SEX	HEIGHT	WEIGHT	EYES	HAIR
<u>M</u>	<u>6'1"</u>	<u>275</u>	<u>Brn</u>	<u>Blk</u>
RACE	FINANCIAL RESPONSIBILITY PROOF?			
<u>B</u>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			

* If no OL/State ID: REQUIRED documentation attached:
 TO DEFENDANT: COMPLAINT ON Mar 1, 2011 AT 0225 PM, YOU Operated Passenger/Parked/Walked a Passenger Motorcycle Bicycle Other
 Commercial DOT # _____ ≥26,001 lbs <16 Pass. Bus ≥ 16 Pass. Bus Haz. Mat
 VEHICLE: YEAR 2011 MAKE Cadillac MODEL STS
 COLOR silver LICENSE # 717 L6H STATE Ky
 UPON A PUBLIC HIGHWAY, NAMEDLY Brooklyn
 AT/NEAR Hoover (M.P. _____)
 IN THE CITY OF DAYTON, IN MONTGOMERY COUNTY (No. 57) AND THE STATE OF OHIO, AND COMMITTED THE FOLLOWING OFFENSE:

<input type="checkbox"/> SPEED: _____ MPH in _____ MPH zone <input type="checkbox"/> Over limits <input type="checkbox"/> Unsafe for conditions <input type="checkbox"/> ACDA <input type="checkbox"/> Radar <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input type="checkbox"/> Pace <input type="checkbox"/> Laser <input type="checkbox"/> Stationary <input type="checkbox"/> Moving	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> OVI: <input type="checkbox"/> Under the influence of alcohol/drug of abuse, <input type="checkbox"/> Prohibited blood alcohol concentration _____ BAC <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input type="checkbox"/> Refused	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
Prior OVIs: # of prior OVIs _____ Years of prior OVIs _____	
<input type="checkbox"/> DRIVER LICENSE: <input type="checkbox"/> None <input type="checkbox"/> Not on person <input type="checkbox"/> Revoked <input type="checkbox"/> Suspended EXPIRED: <input type="checkbox"/> < 6 months <input type="checkbox"/> 6 months <input type="checkbox"/> Failure to Reinstate Suspension Type _____	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input checked="" type="checkbox"/> SAFETY BELT: Failure to wear <input type="checkbox"/> Driver <input checked="" type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint <input type="checkbox"/> Booster Seat	<input checked="" type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. <u>4513, 26783</u>
<input type="checkbox"/> OTHER OFFENSE _____	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> OTHER OFFENSE _____	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.

DRIVER LICENSE HELD	VEHICLE SEIZED	JUVENILE OFFENDER
PAVEMENT: <input checked="" type="checkbox"/> Dry <input type="checkbox"/> Wet <input type="checkbox"/> Snow <input type="checkbox"/> Ice # of Lanes _____ <input type="checkbox"/> Construction Zone	VISIBILITY <input type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Dusk <input checked="" type="checkbox"/> Night <input type="checkbox"/> Dawn	WEATHER: <input type="checkbox"/> Rain <input type="checkbox"/> Snow <input type="checkbox"/> Fog <input checked="" type="checkbox"/> No Adverse
TRAFFIC: <input type="checkbox"/> Heavy <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Light <input type="checkbox"/> None	AREA: <input type="checkbox"/> Business <input type="checkbox"/> Rural <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industry <input type="checkbox"/> School	CRASH: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Almost Caused <input type="checkbox"/> Non-Injury <input type="checkbox"/> Injury <input type="checkbox"/> Fatal
Crash Report Number: _____		
REMARKS: _____		
ACCOMPANYING CRIMINAL CHARGE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No TOTAL # OFFENSES: <u>1</u>		

SUMMONS TO DEFENDANT
 You are summoned and ordered to appear at the
 Dayton Municipal Court, Traffic Violations Bureau, 301 W. Third St., Dayton, Ohio 45402 at 8:30 a.m.
 Montgomery County Juvenile Court, 380 W. 2nd Street, Dayton, Ohio 45422 at 5:30 p.m.
 COURT DATE/LAST DAY TO PAY
 MONTH Mar DAY 11 2011
 If you fail to appear or fail to make proper disposition or payment of this ticket on or before the date shown, you may be arrested. See reverse side for additional important information.
 This summons served Personally on the defendant on Mar 1, 2011
 The issuing-charging law enforcement officer states under the penalties of perjury and falsification that he has read the above complaint and that it is true.

5720 25274 310
 Court Code PDA ASN
 NOTE: ISSUING OFFICER BE SURE TO VERIFY ADDRESS. IF DIFFERENT FROM LICENSE ADDRESS WRITE PRESENT ADDRESS IN SPACE PROVIDED
 COURT RECORD 76

Issue-Charging Law Enforcement Officer (signature) [Signature]
 Issue-Charging Law Enforcement Officer (printed) Jerry Bew
 Rev. 03/10

JUVENILE COMPLAINT

ALIAS		MARRIED	AGE
SCHOOL		GRADE	
EMPLOYER	ADDRESS		
OWNER OF CAR	ADDRESS		
NO. OF OCCUPANTS	<input type="checkbox"/> WITH OWNER CONSENT	<input type="checkbox"/> WITHOUT CONSENT	
NAME OF FATHER (NATURAL)	PHONE NO.	<input type="checkbox"/> LIVING <input type="checkbox"/> DECEASED	
ADDRESS			
NAME OF MOTHER (NATURAL)	PHONE NO.	<input type="checkbox"/> LIVING <input type="checkbox"/> DECEASED	
ADDRESS			
Marital Status of Parents	<input type="checkbox"/> DIVORCED	<input type="checkbox"/> OTHER SEPARATION	
	<input type="checkbox"/> LEGAL SEPARATION	<input type="checkbox"/> RE-MARRIED	
GUARDIAN	PHONE NO.		
ADDRESS			
Issuing Officer(s)	Assigned to (Unit)		
RELEASED OR PLACE OF DETENTION			
IMPORTANT: HAVE PARENTS OR GUARDIAN BEEN NOTIFIED THAT JUVENILE IS BEING DETAINED?	YES	NO	

STATEMENT OF FACTS CONCERNING THE COMPLAINT

JUVENILE COMPLAINT

Cas. No.

County

Cont'd	NG	G	No Contest
<p>CAPIAS ISSUED</p> <p>MAR 18 2011</p> <p>RET/REC: 8-7-2014</p> <p><i>Kevin E. Nichols</i> W.F.O.</p> <p>8-7-14 WDROR Δ in federal prison for many years to come - 1-27-17</p> <p><i>ESM</i></p> <p>8/7/14 2014</p> <p>I hereby certify the foregoing to be a true and correct copy of the original on file in this court.</p> <p>DAYTON MUNICIPAL COURT Mark E. Owens, Clerk of Court By <i>Dustin</i> Deputy</p>			

WARRANT / F.W. / P.D. ORDERED BY

JUDGE

ATTORNEY FOR DEFENDANT