

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF TEXAS  
 TYLER DIVISION

TODD PATRICK ALLEY	§	
v.	§	CIVIL ACTION NO. 6:17cv664
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Todd Alley, proceeding *pro se*, filed this application for writ of habeas corpus under 28 U.S.C. §2254 complaining of a pending prosecution in state court. This Court referred the matter to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Alley stated that he is a pre-trial detainee being held in the Smith County Jail and is being denied due process because he does not have access to legal research material or discovery. He asserted that Judge Christi Kennedy forced an attorney named Lajuanda Lacy on him on October 26, 2017, even though Alley had filed a bar grievance against Lacy. Alley complained that this was retaliation by Judge Kennedy and asked that the charges against him be dismissed or moved to a different county or a different district court.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice for failure to exhaust state remedies. The Magistrate Judge observed that in response to a question on the standard habeas corpus form concerning exhaustion, Alley stated that he had sought relief from the Texas State Commission on Judicial Conduct. He did not allege that he had sought relief from the Texas state appellate courts and the on-line records

of the Texas Court of Criminal Appeals do not show that Alley had sought relief from that court. Instead, the on-line records of Smith County, Texas showed that Alley was represented by a retained attorney named Edward Estrada and the case was set for trial in January of 2018.

Alley did not file objections to the Report. However, after the Report issued, he filed a document entitled “Motion to suspend and post-pone the trial of cause no. 114-1204-17, State of Texas v. Todd Alley in the 114th District Court of Smith County, Texas.” In this motion, Alley asks that his case “be transferred to a different court because of violations of due process and my rights to a fair trial, by the 114th District Court of Smith County, Texas.” He does not give any further details, nor does he mention the Report of the Magistrate Judge.

Even assuming Alley’s motion could be construed as objections, the Magistrate Judge correctly determined that Alley failed to exhaust his state remedies and thus cannot obtain federal habeas corpus relief, and Alley’s motion does not dispute this. Instead, he asks that his case be transferred to another court. This Court cannot order cases transferred from one state district court to another, and Alley has wholly failed to show any legal basis for removal of the prosecution from state to federal court. *See* 28 U.S.C. §1443(1); *Johnson v. Mississippi*, 421 U.S. 213, 219, 95 S.Ct. 1591, 44 L.Ed.2d 121 (1975) (removal under §1443(1) requires a showing that the right allegedly denied the removal petitioner arises under a federal law providing for specific civil rights stated in terms of racial equality, and the removal petitioner cannot enforce the specified federal rights in the courts of the state, as manifest in a formal expression of state law). To the extent Alley’s motion may be read as objections to the Magistrate Judge’s Report, these have no merit.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge’s proposed findings and recommendations to which the Plaintiff objected. *See* 28 U.S.C. §636(b)(1) (District Judge shall “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”) Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and the Plaintiff’s objections are without merit. It is accordingly

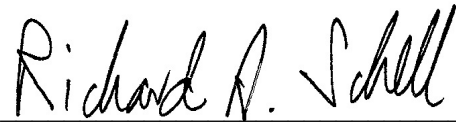
**ORDERED** that the Petitioner's objections, as found in his motion to suspend and postpone the trial of his case in state court, are overruled and the Report of the Magistrate Judge (docket no. 6) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled application for the writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state remedies. It is further

**ORDERED** that the Petitioner Todd Alley is **DENIED** a certificate of appealability *sua sponte*. The denial of the certificate of appealability relates only to an appeal of the present case and has no effect upon Alley's right to present his claims and defenses to the courts of the State of Texas, nor upon his right to again seek relief in federal court in the event that he does not obtain the relief which he seeks in state court. Finally, it is

**ORDERED** that any and all motions which may be pending in this action, specifically including but not limited to the motion to suspend and postpone his trial in state court, are hereby **DENIED**.

**SIGNED this the 29th day of March, 2018.**



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RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE