

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LEO WILLIAM THOMPSON, ID # 2238303, Petitioner, vs. LORIE DAVIS, Director, Texas Department of Criminal Justice, Correctional Institutions Division, Respondent.)))))))))))	 No. 3:20-CV-0103-C-BH Referred to U.S. Magistrate Judge¹
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MEMORANDUM OPINION AND ORDER

Before the Court is the petitioner’s *Motion for Appeal Bond*, received August 24, 2021 (doc. 27). Based on the relevant filings and applicable law, the motion is **DENIED**.

Leo William Thompson (Petitioner), an inmate currently incarcerated in the Texas Department of Criminal Justice correctional facility in Bridgeport, Texas, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging his convictions in the 413th District Court of Johnson County, Texas, for possession of a controlled substance, and the revocation of his probation for theft of property on November 28, 2018. (*See* doc. 3 at 2; doc. 18 at 3-4.)² He now seeks to be released on bond pending determination of his habeas petition, citing the Texas Code of Criminal Procedure. (*See* doc. 27 at 2.)

There are no federal statutes or rules that authorize federal district courts to grant a state prisoner release pending determination of a federal habeas corpus petition. *See In re Wainwright*, 518 F.2d 173, 174 (5th Cir.1975) (per curiam). Despite the “lack of specific statutory authorization,” however, federal district courts have inherent power and jurisdiction to release

¹ By *Special Order No. 3-251*, this habeas case has been automatically referred for full case management.

² Citations to the record refer to the CM/ECF system page number at the top of each page.

prisoners, including state prisoners, on bail pending that determination. *See id.*³ In order to show entitlement to release pending determination of his federal habeas petition, a state prisoner must show either that he “has raised substantial constitutional claims upon which he has a high probability of success,” or that “extraordinary and exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.” *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974) (per curiam)⁴; *see also Nelson v. Davis*, 739 F. App’x 254 (5th Cir. 2018) (per curiam) (applying *Calley* standard to denial of bail pending determination of a state prisoner’s § 2254 petition); *Watson v. Goodwin*, 709 F. App’x 311 (5th Cir. 2018) (per curiam) (same); *Beasley v. Stephens*, 623 F. App’x. 192 (5th Cir. 2015) (same). *Nelson* noted that examples of “extraordinary circumstances” justifying release, including “‘serious deterioration of the petitioner’s health while incarcerated’; where a short sentence for a relatively minor crime is ‘so near completion that extraordinary action is essential to make collateral review truly effective’; and possibly where there has been an ‘extraordinary delay in processing a habeas corpus petition.’” 739 F. App’x at 255 (quoting *Calley*, 496 F.2d at 702 n.1).

Here, “[r]egardless of the merits of [Petitioner’s] claims, on which the district court has not yet ruled, [he] has not shown the existence of any ‘extraordinary or exceptional circumstances’ necessitating his release on bond to make the post-conviction remedy effective.” *United States v. Roberts*, 250 F.3d 744, 2001 WL 274751, at *1 (5th Cir. 2001) (per curiam). Petitioner has not

³ In *Wainright*, the Fifth Circuit Court of Appeals “observe[d] without deciding that it that it is probably within the power of a United States magistrate [judge] to enlarge a state prisoner on bail pending district court consideration of his habeas corpus action.” *Id.* at n. 1 (citing 28 U.S.C. § 636(a)(1)).

⁴ The Fifth Circuit has noted that although *Calley* involved a habeas petitioner whose underlying conviction was in the military court system, it drew the legal standard in that case from *Aronson v. May*, 85 S.Ct. 3 (1964), which involved a civilian challenging his convictions in federal district court. *See United States v. Pfluger*, 522 F. App’x 217, 218 n. 1. (5th Cir. 2013) (per curiam).

alleged any exceptional or “extraordinary circumstances” such as those identified in *Calley*, or any circumstances similar or analogous to the examples set out in that case. The motion for release on bond is **DENIED**.

SIGNED this 26th day of August, 2021.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE