

United States District Court
Southern District of Texas

ENTERED

May 30, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TYRONE D. RICHARD, a/k/a	§	
TYROND DWAYNE RICHARD,	§	
TDCJ #1816974,	§	
	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO. H-17-1570
	§	
DAN HINDE, et al.,	§	
	§	
Respondents.	§	

MEMORANDUM OPINION AND ORDER

State inmate Tyrone D. Richard, also known as TyronD Dwayne Richard (TDCJ #1816974), has filed a Petition for Extraordinary Relief ("Petition") in the form of a writ of mandamus (Docket Entry No. 1-1). He has also filed a Declaration of Inability to Pay Cost (Docket Entry No. 2), which is construed as a motion for leave to proceed without prepayment of the filing fee. Thus, the court is required to scrutinize the claims and dismiss the case if it "is frivolous, malicious, or fails to state a claim upon which relief may be granted" or "seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). After considering all of the pleadings, the court concludes that this case must be dismissed for the reasons explained below.

I. Background

Richard is currently serving a 30-year prison sentence in the

Texas Department of Criminal Justice - Correctional Institutions Division ("TDCJ") as the result of a 2012 conviction for possession of a controlled substance. See State v. Richard, No. 1336435 (180th Dist. Ct., Harris Cty., Tex.). When Richard was arrested and charged with the offense that resulted in this conviction, officers recovered 26.2 grams of crack cocaine and \$3,698.00 in cash in his possession. See Richard v. State, No. 01-12-00995-CR, 2013 WL 3155957, *1-2 (Tex. App. - Houston [1st Dist.] June 20, 2013, pet. ref'd). After this conviction was entered, the State initiated a civil forfeiture proceedings for the funds that were seized at the time of Richard's arrest. See State v. Approximately \$3,698.00, No. 2012-13937 (269th Dist. Ct., Harris Cty., Tex.).

According to Richard, the State prevailed in the forfeiture action as the result of a judgment entered by the lead respondent in this case, the Honorable Dan Hinde, who is the presiding judge of the 269th District Court of Harris County, Texas.¹ To date, Richard's efforts to set aside that judgment have been unsuccessful.² See In re Tyrone Richard, No. 01-16-00751-CV, 2016 WL 7104014, *1 (Tex. App. - Houston [1st Dist.] Dec. 6, 2016); In re Tyrone Richard, No. 17-0120 (Tex. Sup. Ct. March 17, 2017).

¹Petition, Docket Entry No. 1-1, p. 1. Public records reflect that the district court granted the State's motion for a default judgment in the State's favor on May 8, 2012. See Harris County District Clerk, at <http://www.hcdistrictclerk.com> (last visited May 30, 2017).

²Petition, Docket Entry No. 1-1, p. 1.

Richard now challenges the result of the civil forfeiture proceeding, arguing that the funds were recovered as the result of an unlawful search and were not otherwise subject to forfeiture.³ Richard argues that he filed a "[Motion for] Summary Judgment of Dismissal" that would have resulted in a judgment in his favor in the civil forfeiture proceeding, but that Hinde has failed or refused to rule on that motion.⁴ Richard seeks relief in the form of a writ of mandamus to compel Hinde to rule on his motion and enter a judgment of dismissal in his favor.⁵

II. Discussion

Richard's request for a federal writ of mandamus is governed by 28 U.S.C. § 1361. This statute provides that district courts shall have "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. Richard is not entitled to a writ of mandamus because the respondent is a state official, and not an agent or employee of the United States. A federal district court has no power to issue writs of mandamus to direct state officials in the performance of their duties. See Moye v. Clerk, DeKalb Cty. Superior Ct., 474 F.2d 1275, 1275-76 (5th Cir. 1973).

³Petition, Docket Entry No. 1-1, pp.3-4.

⁴Id. at 4, 8.

⁵Id.

Likewise, to the extent that Richard's arguments call into question the validity of a state court civil judgment, the Rooker-Feldman doctrine bars review of his claims. See Liedtke v. State Bar of Tex., 18 F.3d 315, 317 (5th Cir.1994) (citing Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923) and D.C. Ct. of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L.Ed.2d 206 (1983)). In that regard, the Rooker-Feldman doctrine bars review of "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 125 S. Ct. 1517, 1521-22, 161 L.Ed.2d 454 (2005).

Accordingly, Richard's Petition must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief can be granted.

III. Conclusion and Order

Based on the foregoing, the court **ORDERS** as follows:


1. The motion for leave to proceed without prepayment of the filing fee (Docket Entry No. 2) is **GRANTED**.
2. The TDCJ Inmate Trust Fund is **ORDERED** to deduct funds from the inmate trust account of Tyrone D. Richard, a/k/a Tyron Dwayne Richard (TDCJ #1816974) and forward them to

the Clerk on a regular basis, in compliance with the provisions of 28 U.S.C. § 1915(b), until the entire filing fee (\$350.00) has been paid.

3. The Petition for Extraordinary Relief (Docket Entry No. 1) is **DISMISSED with prejudice** pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim.
4. This dismissal will count as a **STRIKE** for purposes of 28 U.S.C. § 1915(g).

The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the petitioner. The Clerk will also provide a copy by regular mail, facsimile transmission, or e-mail to: (1) the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas 78711, Fax Number (512) 936-2159; (2) the TDCJ Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, fax 936-437-4793; and (3) the Manager of the Three-Strikes List for the Southern District of Texas at: Three_Strikes@txs.uscourts.gov.

SIGNED at Houston, Texas, on this 30th day of May, 2017.



SIM LAKE
UNITED STATES DISTRICT JUDGE