

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EARL DIEHL,

Petitioner,

v.

JEFFERSON COUNTY CIRCUIT COURT, BR. 3,

Respondent.

ORDER

11-cv-483-bbc

In this petition for a writ of habeas corpus under 28 U.S.C. § 2241, petitioner Earl Diehl alleges that he is being prosecuted in state court for theft under Wis. Stat. § 943.20. He contends that respondent Jefferson County Circuit Court lacks “jurisdiction” because the criminal complaint does not allege sufficient facts and the statute of limitations has expired. He asks for “an injunction forbidding the circuit court from acting any further” in the criminal proceedings. According to the Wisconsin Circuit Court Access Program, <http://wcca.wicourts.gov>, trial is scheduled to begin on September 1, 2011.

The petition suffers from multiple problems. First, relief under the habeas statutes is limited to release from custody. Pischke v. Litscher, 178 F.3d 497, 500 (7th Cir. 1999) (habeas is proper vehicle for presenting claim “if but only if the prisoner is seeking to ‘get

out' of custody in a meaningful sense"). Petitioner states that he "is being restrained of his liberty on signature bond pending the state court proceedings." Although the conditions imposed on pretrial release may qualify as form of "custody" under the habeas statutes, Graham v. Broglin, 922 F.2d 379, 381 (7th Cir. 1991), petitioner is not challenging particular bond conditions; he is challenging the legality of the entire criminal proceedings and is seeking to enjoin them.

Even if I assume that petitioner were correct in bringing a habeas petition rather than a civil action, Younger v. Harris, 401 U.S. 37 (1971), presents a second obstacle for petitioner. That case "requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings." Forty One News, Inc. v. County of Lake, 491 F.3d 662, 665 (7th Cir. 2007). Narrow exceptions to the rule exist, Sweeney v. Bartow, 612 F.3d 571, 573 (7th Cir. 2010), but petitioner does not identify any reason for disregarding the general rule in this case.

Next, even if petitioner could show that he fit within an exception to the Younger doctrine, this would not excuse him from exhausting his remedies in state court. Because petitioner is challenging his pretrial custody, his claim arises under 28 U.S.C. § 2241 rather than 28 U.S.C. § 2254. Jacobs v. McCaughtry, 251 F.3d 596, 597-98 (7th Cir. 2001). Although § 2241 does not include an exhaustion requirement in the text of the statute, "federal courts nevertheless may require, as a matter of comity, that such detainees exhaust

all avenues of state relief before seeking the writ.” United States v. Castor, 937 F.2d 293, 296-97 (7th Cir. 1991). In this case, petitioner says that he sought relief from the Wisconsin Court of Appeals, but he says nothing about the Wisconsin Supreme Court and the Wisconsin Circuit Court Access Program does not show that petitioner filed a petition for review with the supreme court.

Finally, even if I overlooked all of these procedural defects, petitioner has failed to show a violation of federal law. Under the Sixth Amendment, petitioner has the right “to be informed of the nature and cause of the accusation,” but that requirement is satisfied so long as the charging document “contains the elements of the crime, permits the accused to plead and prepare a defense, and allows the disposition to be used as a bar in a subsequent prosecution.” Fawcett v. Bablitch, 962 F.2d 617, 618 (7th Cir. 1992). Petitioner fails to explain how he believes the criminal complaint is deficient in this case.

Petitioner points to a previous version of the criminal complaint that the circuit court declared unconstitutional because it did not give sufficient notice. He seems to believe that the statute of limitations prohibits the state from amending the criminal complaint, but even if that were true, the statute of limitations is a question of state law, which means that it cannot be challenged in a petition under § 2241. Sussman v. Jenkins, 636 F.3d 329, 351-52 (7th Cir. 2011). Petitioner does not argue that he has been deprived of his right to a speedy trial, much less that he has been unfairly prejudiced by any delay in trying him. Barker v.

Wingo, 407 U.S. 514, 534 (1972).

ORDER

IT IS ORDERED that petitioner Earl Diehl's petition for a writ of habeas corpus under 28 U.S.C. § 2241 is DENIED.

Entered this 24th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge