

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

SHANE E. RITTMILLER,

Petitioner,

ORDER

v.

05-C-0093-C

SAWYER COUNTY CIRCUIT COURT,

Respondent.

Shane E. Rittmiller has filed what purports to be a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. I have granted his application for leave to proceed in forma pauperis in a separate order. Petitioner asserts that he is presently confined at the Hampshire County Jail, House of Corrections in Northampton, Massachusetts. He further asserts that he has a bail jumping charge pending against him in the Circuit Court for Sawyer County.

As grounds in support of his petition, petitioner alleges the following:

On September 17, 2003, Shane E. Rittmiller, myself, was in E-block at Hampshire County Jail House of Corrections (H.J.H.C.) When approached by Lieutenant William Martinez, William Martinez had Wisconsin correspondence from Sawyer County Circuit Court. Lieutenant Martinez stated to a fellow employee, "Tell them he refused to sign," consequently, I have not stated this.

In a document that he attached to his petition, petitioner indicates that the "correspondence" from Sawyer County was extradition papers.

Petitioner does not appear to be challenging the propriety of any state conviction or sentence. Although the petition is extremely sparse, I infer from the fact that petitioner has named the Sawyer County Circuit Court as the respondent that petitioner is challenging Wisconsin's failure to extradite him on the pending bail jumping charge. Because petitioner has not yet been tried on the Wisconsin charge, any "custody" to which he is subject as a result of that charge is pretrial custody. Challenges to pretrial custody are appropriate only under 28 U.S.C. § 2241, not 28 U.S.C. § 2254. Soler v. State of Indiana, 47 F.3d 1173 n. 1 (7th Cir. 1995) (citations omitted).

While applicants for habeas relief under § 2241 are not subject to the statutory requirement of exhaustion of remedies, 28 U.S.C. § 2254(b) (exhausting state remedies required of "person in custody pursuant to the judgment of a State court"), "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). Although petitioner asserts that he presented his claim to a federal district judge in Massachusetts, he does not aver that he has presented his failure-to-extradite claim to the state courts of Wisconsin. In Wisconsin, challenges to the propriety of extradition or speedy trial claims can be litigated by means of a petition for a writ of habeas corpus. See, e.g., State ex rel. Graves v. Williams, 99 Wis. 2d 65, 298 N.W. 2d 392 (Ct. App. 1980). Petitioner must seek relief from the state courts before he can obtain relief from this court.

I note that a letter attached to the petition indicates that the Wisconsin Public Defender's Office has appointed attorney Paul Modenhauer to represent petitioner on the Sawyer County bail jumping charge. I am forwarding a copy of the petition and this order to attorney Moldenhauer for his information. Petitioner is advised to communicate with attorney Moldenhauer about any concerns he has in connection with the Wisconsin proceedings. Attorney Moldenhauer is in the best position to assist petitioner in obtaining relief, should petitioner be entitled to any.

ORDER

Accordingly, the petition of Shane E. Rittmiller for a writ of habeas corpus is DISMISSED for his failure to exhaust his state court remedies.

Entered this 23rd day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge