

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

EARL H. SMITH,)	
)	
Petitioner)	
)	
)	Civil Docket No. 97-45-P-H
)	
MICHAEL P. CANTARA,)	
York County District Attorney,)	
)	
Respondent)	

RECOMMENDED DECISION ON PETITION FOR WRIT OF HABEAS CORPUS

The petitioner seeks a writ of habeas corpus pursuant to 22 U.S.C. § 2254 following his receipt of a letter from York County District Attorney Michael P. Cantara advising the petitioner that a warrant for his arrest is outstanding as a result of his alleged failure to comply with conditions of probation set by the Maine Superior Court (York County) in connection with a conviction for reckless conduct. The petitioner originally filed his application in the United States District Court for the Northern District of Iowa. That court granted the petitioner’s request for leave to proceed *in forma pauperis*, and then ordered the matter transferred here pursuant to 28 U.S.C. §§ 1404(a) (providing for inter-district transfers of civil litigation “in the interest of justice”) and 2241(d) (habeas petitions properly brought only in district where petitioner confined or district where conviction occurred).

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires this court to order the respondent to answer the petition unless “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court,” in which case the petition is subject to summary dismissal. Pursuant to Rule 4, I

recommend summary dismissal of the petition.

The petition contains three grounds. The first alleges that the petitioner was unlawfully convicted in the Maine Superior Court on a charge of reckless conduct. He avers, however, that he has never initiated any post-conviction review proceedings in state court as to this conviction. This court is explicitly not authorized to entertain a petition for habeas corpus relief “unless it appears that the applicant has exhausted the remedies available in the courts of the State,” absent circumstances not present here. 28 U.S.C. § 2254(b)(1). Maine’s post-conviction review statute explicitly permits a person serving a term of probation to seek post-conviction review in state court. 15 M.R.S.A. § 2124(1)(B).

The remaining two grounds seek to challenge the petitioner’s extradition from Iowa to Maine. Nothing in the petition suggests that extradition proceedings have commenced, and the petitioner is therefore not in custody as required by section 2254 for purposes of habeas review of any extradition proceedings. Moreover, even if the petitioner were in custody, the existence of at least one claim in his petition as to which state court remedies are not exhausted requires the dismissal of his entire petition. *Rose v. Lundy*, 455 U.S. 509, 510 (1982).

For the foregoing reasons, I recommend that the petition for a writ of habeas corpus be **DENIED** summarily.

NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.

Dated this 19th day of February, 1997.

David M. Cohen
United States Magistrate Judge