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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

MYRON E. PHILLIPS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 2:20-cv-2093
	)	
VERMILLION COUNTY SHERIFF AND VERMILLION COUNTY JAIL,	)	
	)	
Respondents.	)	

ORDER

This matter is before the Court on a Petition for Writ of Habeas Corpus under § 2241 (Doc. 1). One of Petitioner Myron E. Phillips's grounds survived merit review. (Doc. 4). Respondents filed a Response (Doc. 8) and Petitioner filed a letter (Doc. 14) and a Reply (Doc. 15). This matter is therefore ripe for review.

BACKGROUND

Petitioner was arrested on March 14, 2020. Since that time, he has been in the custody of Respondent Vermillion County Sheriff, held in pretrial detention by Respondent Vermillion County Jail. On March 15, 2020, the State's Attorney signed an information charging Petitioner with possession of a controlled substance in violation of 720 ILCS 570/402(c), two counts of being a felon in possession of a firearm in violation of 720 ILCS 5/24-1.1(a) (one specifically for having a forcible felony), and one count of being an armed habitual criminal in violation of 720 ILCS 5/24-1.7(a). (Doc. 10).

On March 16, 2020, Petitioner had his initial appearance. (Doc. 11). He declined to have an attorney. (Doc. 11 at 3–4). Petitioner interrupted the Assistant State's Attorney (ASA) to assert he was due to get a medical procedure done; the court asked if he was certain he did not want an attorney, to which Petitioner responded he wanted to get his procedure done first and "work on a lawyer" when he came back to court. (Doc. 11 at 4–5). Then, the following exchange occurred:

> The Court: All right. Request for bond?
> [ASA]: Judge, the State's asking for a bond of five hundred thousand ten percent. The -- it's a Category A offense --
> The Court: We will set bond in the amount of five hundred thousand ten percent (500,000 10%). Sir, you're going to receive a notice for, uh, April 7th at 10:30 in Courtroom 107. Uh, if you post bond you need to be sure to be there. If you fail to appear a warrant could issue for your arrest. Uh, --
> [Petitioner]: Excuse me, Your Honor, that's too excessive -- that's too high.
> The Court: All right. Mr. Phillips, at that time it can be reconsidered and think maybe it'd be in your best interest to have a lawyer I would suggest you ask at that --
> [Petitioner]: But I don't --
> The Court: -- at this time you can go back with the Officer.

(Doc. 11 at 5–6). The hearing was then concluded. (Doc. 11 at 6).

Petitioner's state docket reflects a video hearing occurred on April 7, 2020, in which Petitioner represented himself and pled not guilty. (Doc. 8-5 at 2). The record does not reflect any discussion of the bond at that hearing.

Petitioner sent the instant Petition to an intermediary on April 6, 2020; it was filed on April 14, 2020. (Doc. 1). In his initial Petition, he asserted his arrest was unlawful and his bail was excessive; the Court determined only the claim relating to bail survived merit review. (Doc. 4).

DISCUSSION

A person detained pre-trial by a state may pursue claims through a petition under 28 U.S.C. § 2241. *Jackson v. Clements*, 796 F.3d 841, 843 (7th Cir. 2015). Although § 2241 does not have a statutory exhaustion requirement of exhaustion, "courts apply a common-law exhaustion rule." *Mays v. Dart*, ___ F. Supp. 3d ___, No. 20 C 2134, 2020 WL 1987007, at *14 (N.D. Ill. Apr. 27, 2020) (citing *Richmond v. Scibana*, 387 F.3d 602, 604 (7th Cir. 2004)). "A pretrial detainee must 'exhaust all avenues of state relief' before seeking a writ of habeas corpus through a section 2241 action." *Id.* (citing *United States v. Castor*, 937 F.2d 293, 296–97 (7th Cir. 1991)).

Respondents argue Petitioner has made no showing he exhausted his state court remedies, either by moving for a reduction in bail or by appealing the bail determination. (Doc. 8 at 3). Petitioner replies that his remedies "are stressed and exhausted in the Circuit Court and was denied unless I get a lawyer or Attorney for which I felt blackmailed and prejudice towards." (Doc. 15 at 2–3). He notes that he made a verbal motion and raised his medical procedure and asserts "the Judge could have adjusted the bond or set a hearing date but instead told me to get a lawyer." (Doc. 15 at 3).

As an initial matter, Petitioner's recollection of the hearing does not accord with the official transcript; the court had already set the April 7th hearing when he made what may be fairly construed as an oral motion for a reduction, and responded that he could raise such a motion at that hearing. (Doc. 11 at 6). It is true the court encouraged Petitioner to retain or allow the appointment of an attorney, but there is

nothing problematic in that. The court did not state or imply that it would not grant a bail reduction unless he did so.

Moreover, the Illinois court system provides ample opportunity for a criminal defendant to seek a reduction in bail. First, the trial court may entertain such a motion. 725 ILCS 5/110-6(a). Second, although "[a]ppeals of bail orders are exceedingly rare," they are allowed pursuant to Illinois Supreme Court Rule 604(c). *People v. Simmons*, 2019 IL App (1st) 191253, ¶1. Even if the Court assumes Petitioner fully exhausted all available remedies in the trial court—and this Court thinks it more than likely Petitioner has not and could yet make a motion for a reduction to the trial court—it is undisputed that he did not appeal or attempt to appeal. Therefore, Petitioner has not exhausted his state remedies.

And while "the common law allows of exceptions" to the exhaustion rule, "the hurdle is high." *Richmond*, 387 F.3d at 604. Whether an exception applies is a matter of "sound judicial discretion," requiring the Court to "balance the individual and institutional interests involved, taking into account the nature of the claim presented and the characteristics of the particular administrative procedure provided." *Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004) (citation and internal quotation marks omitted). The Seventh Circuit has held

> exhaustion may be excused if: (1) requiring exhaustion of administrative remedies causes prejudice, due to unreasonable delay or an indefinite timeframe for administrative action; (2) the agency lacks the ability or competence to resolve the issue or grant the relief requested; (3) appealing through the administrative process would be futile because the agency is biased or has predetermined the issue; or (4) where substantial constitutional questions are raised.

Iddir v. I.N.S., 301 F.3d 492, 498 (7th Cir. 2002) (citation and internal quotation marks omitted).

Petitioner does not raise any particular exception but, construing his *pro se* filings liberally as the Court is bound to do, it is possible to read his Reply as claiming a motion to reduce bond in the state courts would be futile because the state trial court has decided the issue adversely to him and would not reconsider unless he retained or consented to the appointment of counsel. (Doc. 15 at 2–3). This argument, however, would fail for two reasons. First, as discussed above, it is contradicted by the official transcript; the state trial court appeared willing to entertain a further discussion of bond at the April 7 hearing. Second, it would not excuse Petitioner's failure to appeal the determination of bond because the argument has no bearing on whether such appeal would be fruitful. Nothing else in Petitioner's submissions even hints at another exception. His state court remedies being inexcusably unexhausted, his Petition must be denied.

A final comment is necessary on Petitioner's purported "Ground Three." Petitioner states "I have never agreed, gave power of attorney or waived my rights and jurisdiction over to the court. A preliminary hearing is scheduled for April 7th 2020 for which I was informed that court dates was being cancelled I was also informed that a grand jury indictment may be imposed." (Doc. 1 at 3). The second sentence the Court took to merely provide further context on Ground Two—and, as the state court docket reflects, the hearing was indeed held. This first sentence, however, the Court never addressed; it does so now.

Petitioner appears to be advancing a species of "sovereign citizen" argument, that he is not subject to the laws and government of the State of Illinois, when he suggests the state court lacks jurisdiction over him. *See Moore v. Krueger*, No. 3:16-cv-3295, 2017 WL 3185843, at *3 n.2 (C.D. Ill. July 26, 2017). Such arguments must be "rejected summarily, however they are presented." *United States v. Benabe*, 654 F.3d 753, 767 (7th Cir. 2011). At any rate, it too was not presented to the state courts and therefore remains unexhausted.

CONCLUSION

Petitioner's Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 is DENIED without prejudice. This matter is TERMINATED.

SO ORDERED.

Entered this 21st day of May 2020.

s/ Joe B. McDade
JOE BILLY McDADE
United States Senior District Judge