

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CRAIG SAUNDERS	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	
	:	NO. 05-cv-2740
JEFFREY A. Beard, et al.	:	
Respondents.	:	

MEMORANDUM

Baylson, J.

October 26, 2005

I. Introduction

Petitioner Craig Saunders (“Saunders”) filed a pro se Petition for Habeas Corpus in this Court pursuant to 28 U.S.C. § 2254 on June 9, 2005 and this Court referred the case to Magistrate Judge Timothy R. Rice (“the Magistrate Judge”) on August 4, 2005. On August 5, 2005, the Magistrate Judge issued a Report and Recommendation (“R&R”) (Doc. No. 4) pursuant to 28 U.S.C. § 636(b)(1)(c) suggesting that this Court dismiss the petition without prejudice for failure to exhaust state remedies. On August 19, 2005 (Doc. No. 7), Petitioner filed objections to the R&R. Upon independent and thorough consideration of the record and all filings in this Court, Petitioner’s objections are overruled and the recommendations by the Magistrate Judge are accepted.

II. Background and Procedural History

Following a jury trial in the Court of Common Pleas of Philadelphia County, Saunders was convicted of certain crimes – the details are in dispute – and sentenced to 48-1/2 to 97 years

imprisonment. (Pet at 4). He filed a direct appeal that he claims is still pending in the Superior Court of Pennsylvania, asserting ineffective assistance of counsel, prosecutorial misconduct, insufficient evidence, and error in admission of evidence. He also states that he filed a state writ of habeas corpus in the Common Pleas Court, alleging the denial of the right to be indicted by a grand jury as well as lacking personal jurisdiction. Id. at 5.

In his federal habeas petition, Petitioner Saunders asserted the following grounds: 1) that the trial court lacked personal jurisdiction over him because he is not a United States citizen; 2) that he did not waive his right to be indicted by a grand jury and therefore no subject matter jurisdiction existed and further, that the Philadelphia District Attorney's practice of bringing charges by information is unconstitutional, 3) that counsel was ineffective for failing to raise his first two claims; and 4) judicial and prosecutorial misconduct. (Pet. at 9-10). Saunders concedes that the claims raised have not been exhausted in state court, but asserts that “any appeals in the Pennsylvania courts would be futile” due to the state courts’ “interest or bias.” Id. at 8.

III. Summary of Magistrate Judge’s Report and Recommendation and Petitioner’s Objections

The Magistrate Judge concluded in the R&R that this habeas corpus petition should be dismissed without prejudice for failure to exhaust state remedies. (R&R at 1). This conclusion is based upon the determination that the Petitioner failed to exhaust his state court remedies because his own petition admits that his direct appeal is still pending. Id. at 3, citing Pet. at 5. Moreover, the Magistrate Judge rejected Petitioner’s argument that the exhaustion requirement should be waived because of futility, because the no showing was made in support of this excuse and his subjective belief of futility is not enough. Id.

In his objections, Petitioner Saunders asserts he should not have to return to state court. First, he argues that he cannot pursue his claims in state court because they would be procedurally barred. Objections at 1. Moreover, although rather unclear from the objections, he seems to assert that (1) the state courts will not grant relief because they already ignored his claims raised in a state habeas petition, (2) the exhaustion requirement doesn't apply to procedurally barred claims, and (3) that federal courts are permitted to consider procedurally defaulted claims if he can show cause for the default and actual prejudice as a result of the alleged violation of federal law. Slutzker v. Johnson, 393 F.3d 373 (3d Cir. 2004). Second, petitioner contends that because the Pennsylvania Code specifically confers on the state Supreme Court the right to approve the initiation of criminal proceedings by information instead of indictment, the state court has an interest in the outcome of his case challenging that statute, thus rendering it inherently biased against him. Id. at 4-5.

IV. Discussion

The Court does not find any sound reason to exercise federal jurisdiction at this time. Petitioner presents no proof that he will not receive a fair hearing from the state court on his direct appeal and, if his conviction is affirmed, on a post-conviction petition. For the reasons stated by Magistrate Judge Rice, the Petition will be dismissed.

An appropriate Order follows.

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ORDER

AND NOW, this 26th day of October, 2005, upon careful and independent consideration of the pleadings and record herein, and after review of the Report and Recommendation of the United States Magistrate Judge Timothy R. Rice, it is hereby ORDERED as follows:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. The petition for writ of habeas corpus is DISMISSED without prejudice for failure to exhaust state remedies.
3. There is no probable cause to issue a certificate of appealability.
4. The Clerk of the Court shall mark this case closed.

BY THE COURT:

s/Michael M. Baylson
Michael M. Baylson, U.S.D.J.