

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

<b>FEDERICK TORRENCE,</b>	:	<b>CIVIL ACTION</b>
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	<b>NO. 06-3526</b>
	:	
<b>RAYMOND J. SOBINA, et al.,</b>	:	
<b>Respondents.</b>	:	

**MEMORANDUM**

**STENGEL, J.**

**August 31, 2006**

*Pro se* petitioner Federick Torrence filed the present petition for habeas corpus (the “Petition”) pursuant to 28 U.S.C. §§ 2241(c)(3) *et seq.* on August 9, 2006. Twelve days after filing the Petition, Torrence filed a Motion for Emergency Hearing for Writ of Habeas Corpus (the “Motion”). Based upon the reasons set out below, I will deny both the Petition and the Motion prior to receiving the Respondents’ answer.

**I. BACKGROUND**

According to the Petition, Torrence was stopped by the Philadelphia Police Department on March 23, 2005 for a routine traffic stop. During the stop, Torrence produced his valid Pennsylvania Driver’s License, his vehicle’s registration, and his proof of insurance. The police officer making the stop checked Torrence’s Driver’s License and discovered an outstanding warrant for Torrence’s arrest.<sup>1</sup> The police officer then placed Torrence under arrest and searched his person. Torrence avers that the officer’s

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<sup>1</sup>It is unclear whether the arrest warrant was issued for a probation or parole violation(s) stemming from one, or all, of Torrence’s multiple state court convictions.

search of his person incident to the arrest was unconstitutional because: 1) the officer lacked probable cause; 2) it was not made with a search warrant; and 3) the officer only searched Torrence because of his race. Torrence seeks an immediate release from prison and to be compensated for his arrest as a result of the allegedly unlawful search.<sup>2</sup>

## **II. HABEAS CORPUS STANDARD**

Title 28 United States Code Section 2241(c)(3) provides: “(c) The writ of habeas corpus shall not extend to a prisoner unless . . . (3) He is in custody in violation of the Constitution or laws or treaties of the United States . . . .” 28 U.S.C. § 2241(c)(3) (2005). Furthermore, a petition for a writ of habeas corpus on behalf of a defendant shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings, unless the adjudication of that claim: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly-established federal law, as determined by the United States Supreme Court; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. 28 U.S.C. § 2254(d) (2005).

## **III. DISCUSSION**

In this case, Torrence has failed to allege any facts that could possibly be construed to provide him with habeas corpus relief. Torrence’s argument is that a routine search conducted contemporaneously with the execution of an arrest warrant violated his

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<sup>2</sup> The Petition does not allege what, if anything, was recovered during the officer’s search, or if Torrence was charged with any crimes as a result of the search.

constitutional rights. On its face, this argument is not legally supportable and cannot provide the relief requested. It is undisputed that when a police officer arrests a person, the officer may conduct a full search of the person incident to the arrest. United States v. Robinson, 414 U.S. 218, 224-26 (1973). The rationale underlying such a search is the officer's safety. Specifically, a search of the person incident to arrest allows the officer to remove any weapons and to preserve any evidence or fruits of crime that the person may have. Id. at 234. Furthermore, "in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." Id. at 235. See also United States v. Scott, 220 F. Supp. 2d 426 (E.D. Pa. 2002) (admitting evidence seized during a search of the defendant incident to arrest); Aquino v. Englert, No. 96-4577, 1996 U.S. Dist. Lexis 21092 (E.D. Pa. Nov. 12, 1996) (dismissing a section 1983 case against police officers who conducted a valid search of the person incident to arrest).

Furthermore, and in addition to any statute of limitations concerns, a petitioner must exhaust his remedies in state court prior to seeking habeas relief. 28 U.S.C. § 2254(b)(1)(A) (2005); Brown v. Cuyler, 669 F.2d 155, 158 (3d Cir. 1982) (holding that the burden is placed on the petitioner to prove to the court that he has exhausted all of his state court remedies). In the Commonwealth of Pennsylvania, the exhaustion requirements include proceeding on appeal and exercising one's PCRA rights. 42 Pa. Cons. Stat. Ann. § 9541 *et seq.* In this case, Torrence has failed to state whether he had a

trial, whether he appealed his conviction, or whether he has exhausted his PCRA rights. Although the exhaustion requirements for habeas relief may be excused under certain circumstances,<sup>3</sup> there is no reason to believe that the appropriate state court could not or would not grant Torrence's requested relief if warranted. See Commonwealth v. Long, 489 Pa. 369, 373-74 (1980) (upholding a defendant's right to be free from unreasonable searches).

### **III. CONCLUSION**

Even after taking into consideration that Torrence is proceeding *pro se*, I remain unable to construe the Petition in any way that would provide him with relief. His sole argument that the search of his person pursuant to his arrest was unlawful is without legal merit. I will therefore dismiss Torrence's Petition and deny his Motion with prejudice. An appropriate Order follows.

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<sup>3</sup>See Walker v. Vaughn, 53 F.3d 609, 614 (3d Cir. 1995) (finding the exhaustion requirement may be excused due to an inordinate delay rendering the state remedy effectively unavailable) (internal quotations omitted).

