

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

WILLIAM R. BOYD,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	
v.	:	NO. 99-4737
	:	
DONALD VAUGHN,	:	
	:	
Respondent.	:	

MEMORANDUM

R.F. KELLY, J.

DECEMBER , 1999

I. BACKGROUND

Petitioner, William Boyd ("Petitioner"), following a jury trial in Allegheny County, Pennsylvania, was convicted of aggravated assault, attempted homicide, conspiracy and weapons violations. He was sentenced to 50 to 100 years incarceration in the State Correctional Institution at Graterford, Pennsylvania. On direct appeal, the Pennsylvania Superior Court affirmed the judgment of sentence and the Pennsylvania Supreme Court denied a petition for allowance of appeal. Petitioner has filed an application under the Pennsylvania Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. § 9541, et seq., which is presently pending in state court.

Petitioner filed the instant pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on September 23, 1999, alleging violations of the Eighth and Fourteenth Amendments

resulting from the conditions of his incarceration. United States Magistrate Judge Charles B. Smith issued a Report and Recommendation ("R & R") on November 9, 1999, recommending that the Petition for Writ of Habeas Corpus be transferred to the United States District Court for the Western District of Pennsylvania.¹ Petitioner then filed an Objection to the R & R. We agree that this case should not be transferred to the Western District, as the matters complained of all arose out of events that took place in this jurisdiction. Nonetheless, for the reasons which follow, Petitioner's petition is dismissed.

II. DISCUSSION

According to 28 U.S.C. § 2254 (b), governing the availability of federal habeas relief, a federal court may not grant habeas relief to a state prisoner until the prisoner has exhausted his remedies in state court. O'Sullivan v. Boerckel, 119 S.Ct. 1728, 1731 (1999); Calderon v. Ashmus, 118 S.Ct. 1694, 1699 (1998)(citing Preiser v. Rodriguez, 411 U.S. 475, 500 (1973)); Pickard v. Connor, 404 U.S. 270, 275-6 (1971). Rather, "the state prisoner must give the state courts an opportunity to act on his claims before he presents those claims to a federal

¹ Magistrate Judge Smith reasoned that transfer was proper because Petitioner was convicted in Allegheny County, Pennsylvania, and therefore the records pertinent to Petitioner's conviction are more readily available to the United States District Court for the Western District of Pennsylvania. Further, the District Attorney required to respond to the petition is situated within that District.

court in a habeas petition." O'Sullivan, 119 S.Ct. at 1731. Underlying this exhaustion requirement is the notion of comity, as our dual system of government requires that state courts have the opportunity to correct a constitutional violation before the federal court intervenes. Picard, 404 U.S. at 275. Therefore, to satisfy the exhaustion requirement, the burden is on the petitioner to show that every claim in the habeas petition has been fairly presented to each level of the state courts. Id. at 1734.

Accordingly, in the instant case, Petitioner had the burden of showing that he presented his claim of unconstitutional conditions of incarceration to each level of the state courts. However, Petitioner does not assert that he has exhausted his state remedies in his Petition for Writ of Habeas Corpus. Therefore, as his Petition is not properly before this Court, it is dismissed.²

An appropriate Order follows.

² The burden on a petitioner under 28 U.S.C. §2254 (b) differs from that of a prisoner plaintiff in an action under 42 U.S.C. § 1983, in that a § 1983 prisoner plaintiff is not always required to exhaust state remedies as a condition precedent to the invocation of federal judicial relief. Heck v. Humphrey, 512 U.S. 477, 480-481 (1994); Preiser v. Rodriguez, 411 U.S. 475, 507 (1973); Georgevich v. Strauss, 772 F.2d 1078, 1085 (3d Cir. 1985).