

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

COMMONWEALTH OF PENNSYLVANIA : CRIMINAL ACTION
 :
 v. :
 :
 ROBERT BRANCH : NO. 99-301-01

MEMORANDUM AND ORDER

HUTTON, J.

July 21, 1999

Presently before this Court is the ex parte Petition for Removal From State Court by Robert Branch ("Defendant") (Docket No. ("Dk") 1). For the reasons stated below, the Defendant's Petition is **DENIED**.

This is a removal action of a state criminal prosecution. The Defendant, Robert Branch, appears pro se. According to the Defendant's petition of removal, the Commonwealth of Pennsylvania is prosecuting him in Philadelphia County on unspecified charges. On May 28, 1999, the defendant filed this ex parte petition seeking removal from state court pursuant to Title 28, U.S.C. § 1446(c)(2).

"A notice of removal of a criminal prosecution shall include all grounds for such removal." 28 U.S.C. § 1446(c)(2). Federal removal jurisdictions derives from federal statutes. The defendant Branch does not cite any federal statute, other than § 1446, as the basis for his removal of the state criminal proceeding. Section 1446 only establishes the procedure for removal. Branch argues in his petition that the Commonwealth of Pennsylvania has denied him his right to a speedy trial pursuant to the Fourth Amendment of the United States Constitution and Article I, § 9 of the Pennsylvania

Constitution. Based on this argument, the "civil rights cases" removal statute, 28 U.S.C. § 1443, is the only statute providing removal jurisdiction that is remotely relevant here.

Section 1443 provides in relevant part:

Any of the following ... criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States ...:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or all persons within the jurisdiction thereof...

28 U.S.C. § 1443. Section 1443(1) removal petitions must meet a two part test. People of State of Colorado v. Lopez, 919 F.2d 131, 132 (10th Cir. 1990). "First, it must appear that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality.' " Johnson v. Mississippi, 421 U.S. 213, 219 (1975) (quoting State of Georgia v. Rachel, 384 U.S. 780, 792 (1966)). "Second, it must appear, in accordance with the provisions of § 1443(1), that the removal petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of [the] State.' " Johnson v. Mississippi, 421 U.S. at 219 (quoting 28 U.S.C. S 1443(1)).

The notice of removal clearly does not satisfy the first prong of this test. The defendant does not allege that he is being denied a right arising under a federal law "providing for specific civil rights stated in terms of racial equality." State of Georgia v. Rachel, 384 U.S. at 792; see Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 621-22 (1979). It is not enough to allege that the "prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination." Johnson, 421 U.S. at 219. The allegations that Branch is being denied the right to a speedy trial does not implicate any specific civil rights protecting racial equality.

A federal district court is to examine promptly the notice of removal of a criminal prosecution. 28 U.S.C. § 1446(c)(3). "If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand." 28 U.S.C. § 1446(c)(3). It plainly appears from the face of the defendant's petition that removal of this criminal prosecution is not permitted under § 1443(1) or any other federal statute.

Moreover, no certificate of service was attached to the Defendant's petition. In Garcia v. United States, Cr.A. No.89-389-18, 1995 WL 657111, (E.D. Pa. Nov.1, 1995) (Pollak, J.), the Court stated that:

All original pleadings and other papers submitted for consideration to the Court in this case are to be filed with the Clerk of this Court. Copies of papers filed in this Court are to be served upon counsel for all other parties (or directly on any party acting pro se). Service may be by mail. Proof that service has been made is provided by a certificate of service. This certificate should be filed in the case along with the original papers and should show the day and manner of service.

Id. at *2. Thus, besides having no legal basis for granting the requested relief, this motion is procedurally deficient. Accordingly, Defendant's petition is denied.

An appropriate Order follows.

