

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

JAMES GIRARD HUSOVSKY,

Petitioner

v.

THOMAS LAVAN, et al.,

Respondents

CIVIL ACTION

No. 04-2716

MEMORANDUM

July 19, 2005

James Girard Husovsky was convicted of third-degree murder in 1980, and sentenced to 10 to 20 years in a Pennsylvania correctional institution. He was released on parole in 1990, but his parole was revoked in 1996 after he pled guilty to state charges of driving under the influence of marijuana and disorderly conduct. He was again granted parole in 1997, but was recommitted in 1999 for technical, drug-related parole violations. On June 18, 2004, after the Pennsylvania Board of Probation and Parole (“Parole Board”) had refused to re-parole Mr. Husovsky in 2000, 2001, 2002, and early 2004, he filed the instant *pro se* petition for writ of habeas corpus, challenging the Parole Board’s refusal to grant him parole. On September 29, 2004, Mr. Husovsky was again granted parole.

United States Magistrate Judge Peter B. Scuderi has issued a Report and Recommendation (“R&R”) finding that, because Mr. Husovsky has now been granted parole, his petition is moot, and must be denied. Mr. Husovsky has filed objections to the

R&R, and an additional document which appears to raise new claims. I agree with the Magistrate Judge's recommendation, and will adopt his R&R, but I also find that Mr. Husovsky's new claims require some brief additional discussion.¹

It appears from Mr. Husovsky's Objections to the R&R that he now also seeks to challenge the conditions of his parole, as it was granted in September 2004: namely, his release to a particular community corrections center, Keenan House, in Allentown, Pennsylvania. Mr. Husovsky claims that Keenan House is an inappropriate placement for him, so much so that it violates his constitutional rights in various ways.

However, this new challenge must also be rejected. Mr. Husovsky has apparently not taken up his challenge to the Keenan House placement with the state authorities in any way. Thus, he has not exhausted his state remedies, and accordingly this court is without authority to consider his claims.² *See* 28 U.S.C. § 2254(b). Accordingly, for the reasons set forth in Judge Scuderi's R&R, which I will adopt, and for failure to exhaust state remedies for his additional claims, Mr. Husovsky's petition for a writ of habeas corpus will be denied.

¹I will treat Mr. Husovsky's discussion of new claims as an attempt to amend his initial petition, although they are not so labeled, and will allow that amendment. Mr. Husovsky's *pro se* status and the general federal policy of liberally granting amendments to pleadings, including habeas corpus petitions, favor this result.

²Although it appears that Mr. Husovsky could now also seek to challenge his parole proceedings under § 1983, under the Supreme Court's recent decision in *Wilkinson v. Dotson*, 125 S. Ct. 1242 (2005), some degree of exhaustion would still be required even if he did so. *See Porter v. Nussle*, 534 U.S. 516, 524 (2002); 42 U.S.C. § 1997e(a).

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ORDER

July 19, 2005

After review of the Report and Recommendation of United States Magistrate Judge Peter B. Scuderi dated October 13, 2004, and for the reasons stated in the accompanying memorandum, it is hereby ORDERED that:

- (1) Petitioner's Objections to the Report and Recommendation (Docket #10) are OVERRULED;
- (2) The Report and Recommendation (Docket #9) is APPROVED and ADOPTED;
- (3) The Petition for Writ of Habeas Corpus (Docket #1) is DENIED in its entirety and DISMISSED; and
- (4) There is no basis for the issuance of a certificate of appealability.

Pollak, J.