

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
OHIO, EASTERN DIVISION AT COLUMBUS

Delshaun Nix v. Warden, Southern Ohio Correctional Facility

Nix · No. 2:26-cv-163 · Decided March 9, 2026

SUMMARY

The United States District Court for the Southern District of Ohio denies Delshaun Nix’s motion for appointment of counsel in his 28 U.S.C. § 2254 habeas case. The court recommends denying his motion for release on bail, concluding that he has not shown exceptional circumstances, a substantial claim warranting interim relief, or extraordinary delay. The court also explains that challenges to prison conditions must be raised in a separate civil rights action rather than in the habeas proceeding.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Eastern Division at Columbus
WRITING FOR THE COURT	Kimberly A. Jolson
JURISDICTION	United States District Court for the Southern District of Ohio, Eastern Division at Columbus
DECIDED	March 9, 2026
DOCKET	2:26-cv-163
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought appointment of counsel and release on bail while his 28 U.S.C. § 2254 habeas petition was pending. The magistrate judge denied the motion for counsel and issued a report and recommendation that the motion for bail be denied.
STANDARD OF REVIEW	Appointment of counsel in a federal habeas proceeding is committed to the district court's discretion, subject to mandatory appointment when an evidentiary hearing is required. Pre-merits habeas bail requires a substantial claim and exceptional circumstances making release necessary in the interests of justice.
PRECEDENTIAL VALUE	Unknown; district court order and report and recommendation
PARTIES	Delshaun Nix v. Warden, Southern Ohio Correctional Facility

TOPICS

federal habeas corpus

post-conviction relief

prisoners rights

civil procedure

PRACTICE AREAS

federal habeas corpus

post-conviction relief

prisoners rights

civil procedure

QUESTIONS PRESENTED

1. Whether the court should appoint counsel for the petitioner in the pending federal habeas proceeding.
2. Whether the petitioner was entitled to release on bail pending a decision on the merits of his habeas petition.
3. Whether allegations concerning an eye injury and denial of protective-control placement could be litigated in the habeas action.

HOLDINGS

1. Appointment of counsel was not warranted because the issues appeared straightforward and capable of resolution on the record, the petitioner had demonstrated an ability to proceed pro se, and no evidentiary hearing was shown to be necessary.
2. A habeas petitioner seeking release on bail before a decision on the merits must demonstrate both a substantial claim of law and exceptional circumstances making release deserving of special treatment in the interests of justice; Nix failed to make that showing.
3. Claims concerning an eye injury and denial of protective-control placement could not be litigated in the § 2254 habeas action because challenges to conditions of confinement must be brought, if at all, in a civil-rights action.

KEY QUOTATIONS

“a habeas petitioner is appealing a presumptively valid state conviction, both principles of comity and common sense dictate that it will indeed be the very unusual case where a habeas petitioner is admitted to bail prior to a decision on the merits in the habeas case.”

“not only a substantial claim of law based on the facts surrounding the petition but also the existence of ‘some circumstance making [the motion for bail] exceptional and deserving of special treatment in the interests of justice.’”

“It will be the rare occasion when an inmate will be able to satisfy this standard.”

FACTUAL BACKGROUND

Nix was serving a twenty-year sentence after pleading guilty to three aggravated robberies and involuntary manslaughter with a gun specification. He alleged an eye injury and the denial of protective-control placement, and he argued that an identically situated codefendant had been free since 2014. The court found no evidence that the eye injury left him gravely ill, no basis to characterize his offenses or sentence as minor or short, and no extraordinary delay in processing his recently filed habeas case.

PROCEDURAL HISTORY

Nix filed a federal habeas petition under 28 U.S.C. § 2254 and then moved for appointment of counsel and release on bail. The court denied appointment of counsel because the issues appeared straightforward and capable of resolution on the existing record and because Nix had demonstrated an ability to proceed pro se. The magistrate judge recommended denial of bail because Nix had not shown a substantial claim together with exceptional circumstances warranting release before a merits decision. The parties were advised of the fourteen-day objection period under Federal Rule of Civil Procedure 72(b).

DISPOSITION

other

CASES CITED

- Cobas v. Burgess, 306 F.3d 441, 444 (6th Cir. 2002)
- Mira v. Marshall, 806 F.2d 636, 638 (6th Cir. 1986)
- Reese v. Fulcomer, 946 F.2d 247, 264 (3d Cir. 1991)
- Terrovona v. Kincheloe, 912 F.2d 1176, 1177 (9th Cir. 1990)
- Ferguson v. Jones, 905 F.2d 211, 214 (8th Cir. 1990)
- Swazo v. Wyoming Department of Corrections State Penitentiary Warden, 23 F.3d 332, 333 (10th Cir. 1994)
- Buoscio v. Stormer, No. 5:12-cv-1824, 2013 WL 451812, at *2 (N.D. Ohio Feb. 6, 2013)
- Dotson v. Clark, 900 F.2d 77, 78-79 (6th Cir. 1990)
- Lee v. Jabe, 989 F.2d 869, 871 (6th Cir. 1993)
- Pouncy v. Palmer, 993 F.3d 461, 463, 465 (6th Cir. 2021)
- Nash v. Eberlin, 437 F.3d 519, 526 n.10 (6th Cir. 2006)
- Greenup v. Snyder, 57 F. App'x 620, 621 (6th Cir. 2003)
- Gideon v. Treglia, No. 3:21-cv-2087, 2021 WL 6031492, at *3 (N.D. Ohio Dec. 21, 2021)
- Blocksom v. Klee, No. 11-cv-14859, 2015 WL 300261, at *4 (E.D. Mich. Jan. 22, 2015)
- Lordi v. Ishee, 22 F. App'x 585, 586 (6th Cir. 2001)
- Puertas v. Overton, 272 F. Supp. 2d 621, 628-32 (E.D. Mich. 2003)
- Aronson v. May, 85 S. Ct. 3, 5 (1964) (Douglas, J., in chambers)
- Thomas v. Arn, 474 U.S. 140 (1985)
- United States v. Walters, 638 F.2d 947 (6th Cir. 1981)

OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION AT COLUMBUS DELSHAUN NIX,; Case No. 2:26-cv-163 Petitioner,;; District Judge Algenon L. Marbley vs.; Magistrate Judge Kimberly A. Jolson WARDEN, SOUTHERN OHIO: CORRECTIONAL FACILITY,; Respondent.; ORDER and REPORT AND

RECOMMENDATION This 28 U.S.C. § 2254 habeas corpus case is before the Court on Motions by Petitioner seeking appointment of counsel (Doc.

6) and release from custody on bail. (Doc. 8). The Motions are addressed in the order they were filed. A. Motion for Appointment of Counsel (Doc. 6) There is no constitutional right to counsel in a federal habeas corpus proceeding. *Cobas v. Burgess*, 306 F.3d 441, 444 (6th Cir. 2002).

Under 18 U.S.C. § 3006A, the Court may permit the appointment of counsel for any financially eligible person seeking relief under 28 U.S.C. § 2254 if “the interests of justice so require.” 18 U.S.C. § 3006A(a)(2). The decision to appoint counsel for a federal habeas petitioner is within the discretion of the court. *Mira v. Marshall*, 806 F.2d 636, 638 (6th Cir.

1986). Factors influencing a court’s decision include the complexity of the factual and legal issues in the case, as well as the petitioner’s ability to investigate facts and present claims. *Reese v. Fulcomer*, 946 F.2d 247, 264 (3d Cir. 1991), superseded on other grounds by statute, 28 U.S.C. § 2254(d). Circuit courts have found no abuse of a district court’s discretion in failing to appoint counsel in a federal habeas corpus proceeding where no evidentiary hearing was required or the issues were straightforward and capable of resolution on the record.

Terrovona v. Kincheloe, 912 F.2d 1176, 1177 (9th Cir. 1990); *Ferguson v. Jones*, 905 F.2d 211, 214 (8th Cir. 1990). Appointment of counsel in a habeas proceeding is mandatory only if the district court determines that an evidentiary hearing is required. See *Swazo v. Wyoming Dept. of Corrections State Penitentiary Warden*, 23 F.3d 332, 333 (10th Cir. 1994); Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts.

After consideration of Petitioner’s Motion, it appears at this juncture in the proceedings that the issues to be decided will be straightforward and capable of resolution on the record. Additionally, Petitioner has shown his capability to proceed pro se in this case by filing his Petition (Doc. 1) and the instant Motions (Docs. 6, 8).

Accordingly, Petitioner’s Motion to appoint counsel (Doc. 6) is DENIED. Before turning to Petitioner’s Motion to be released on bail (Doc. 8), the Court makes an additional observation. Petitioner’s Motion for appointment of counsel includes allegations of an eye injury and of the denial of his request for protective control placement. (Doc. 6, at PageID 207-08).

To the extent that Petitioner seeks to challenge the conditions of his confinement, such claims are not properly raised in a habeas case. See *Buoscio v. Stormer*, No. 5:12-cv-1824, 2013 WL 451812, at *2 (N.D. Ohio Feb. 6, 2013). Instead, such claims “would have to be asserted, if at all, in a civil rights action [or actions].” *Id.* As noted in the Court’s Order granting Petitioner’s Motion to proceed in forma pauperis (Doc.

4), Petitioner has a separate civil rights case currently pending in this Court. See *Nix v. Warden*, No. 1:26-cv-113 (S.D. Ohio) (Deficiency Order (Doc. 3) issued on February 17, 2026). Petitioner may not litigate civil rights claims in this habeas case. B. Motion to be Released on Bail (Doc. 8) Next, the Court turns to Petitioner's Motion to be released on bail pending the outcome of his Petition.

(Doc. 8). Although a federal court has authority to grant bail to a petitioner in a habeas corpus action pending a decision on the merits of the petition, *Dotson v. Clark*, 900 F.2d 77, 78–79 (6th Cir. 1990), such relief is reserved for the extraordinary case. *Lee v. Jabe*, 989 F.2d 869, 871 (6th Cir. 1993), superseded on other grounds by statute as recognized by, *Pouncy v. Palmer*, 993 F.3d 461, 465 (6th Cir.

2021). The Sixth Circuit has explained that because “a habeas petitioner is appealing a presumptively valid state conviction, both principles of comity and common sense dictate that it will indeed be the very unusual case where a habeas petitioner is admitted to bail prior to a decision on the merits in the habeas case.” *Lee*, 989 F.2d at 871.

Therefore, in order to obtain release on bail pending a decision on the merits, the petitioner must show “not only a substantial claim of law based on the facts surrounding the petition but also the existence of ‘some circumstance making [the motion for bail] exceptional and deserving of special treatment in the interests of justice.’” *Id.* (quoting *Dotson*, 900 F.2d at 79, in turn quoting *Aronson v. May*, 85 S.Ct.

3, 5 (1964) (Douglas, J., in chambers)); see also *Pouncy*, 993 F.3d at 463; *Nash v. Eberlin*, 437 F.3d 519, 526 n.10 (6th Cir. 2006); *Greenup v. Snyder*, 57 F. App'x 620, 621 (6th Cir. 2003). “It will be the rare occasion when an inmate will be able to satisfy this standard.” *Pouncy*, 993 F.3d at 463 (citing *Dodson*, 900 F.2d at 79).

In support of his Motion, Petitioner reasserts arguments made in his Petition. He claims that he should be released because his “his identically situated codefendant... has been free since 2014.” (Doc. 8, at PageID 229). He also seeks release based on the eye injury mentioned in his Motion for appointment of counsel. (*Id.* at PageID 231). But “[a] prisoner seeking bail pending review of his habeas petition must, amongst other requirements, convince the district court that exceptional circumstances and the ‘interests of justice’ warrant relief.” *Pouncy*, 993 F.3d at 463 (citing *Dodson*, 900 F. 23 at 79).

District courts have limited exceptional circumstances justifying release during review “to situations where (1) the prisoner was gravely ill, (2) the prisoner committed a minor crime and is serving a short sentence, or (3) possibly where there was an extraordinary delay in processing the habeas petition.” *Gideon v. Treglia*, No. 3:21-cv-2087, 2021 WL 6031492, at *3 (N.D.

Ohio Dec. 21, 2021) (quoting *Blocksom v. Klee*, No. 11-cv-14859, 2015 WL 300261, at *4 (E.D. Mich. Jan. 22, 2015)). Absent a showing of an extraordinary circumstance justifying release in this case, Petitioner's Motion should be denied. See *Greenup*, 57 F. App'x at 621 (upholding the denial of bond in a habeas case, noting that the petitioner had "not demonstrated any unusual circumstances warranting the relief requested"); *Lordi v. Ishee*, 22 F. App'x 585, 586 (6th Cir.

2001) (same). After consideration of Petitioner's Motion, the Undersigned concludes that Petitioner has not demonstrated exceptional circumstances to justify his release pending a decision on the merits of the Petition. He has presented no evidence that his alleged eye injury has left him gravely ill. Cf. *Puertas v. Overton*, 272 F.Supp.2d 621, 628–32 (E.D.Mich.2003) (finding exceptional circumstances where a seventy-six year old petitioner suffered from severe coronary artery disease and bladder cancer).

Nor can Petitioner, who asserts in his February 2026 Petition that he was sentenced to twenty years in prison after pleading guilty to three aggravated robberies and involuntary manslaughter with a gun specification (Doc. 1, at PageID 1-2), argue that he committed a minor crime and is serving a short sentence or show any extraordinary delay in the processing of this recently filed habeas case.

Accordingly, it is RECOMMENDED that Petitioner's Motion to be released on bail (Doc. 8) be DENIED. IT IS THEREFORE ORDERED THAT: Petitioner's Motion for appointment of counsel (Doc. 6) is DENIED. IT IS THEREFORE RECOMMENDED THAT: Petitioner's Motion for bail (Doc. 8) be DENIED. PROCEDURE ON OBJECTIONS: Pursuant to Fed. R. Civ. P. 72(b), WITHIN 14 DAYS after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.

This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs.

A party may respond to another party's objections WITHIN 14 DAYS after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Date: March 9, 2026 /s/ Kimberly A. Jolson KIMBERLY A. JOLSON UNITED STATES MAGISTRATE JUDGE

