

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

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## 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)