

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DEVON ANTHONY BROWN,                    )  
  )  
                  Petitioner,                )  
  )  
v.    )           Civ. A. No. 02-1443-KAJ  
  )  
RAPHAEL WILLIAMS, Warden,            )  
  )  
                  Respondent.             )

MEMORANDUM OPINION

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Devon Anthony Brown. *Pro se* Petitioner.

Loren Meyers, Chief of Appeals Division, Delaware Department of Justice, Wilmington, Delaware. Attorney for Respondent.

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June 4, 2004  
Wilmington, Delaware

**JORDAN, District Judge**

**I. INTRODUCTION**

Petitioner Devon Anthony Brown was in pre-trial custody at the Howard R. Young Correctional Center in Wilmington, Delaware. Currently before the Court is Brown's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 2.) For the reasons that follow, I will dismiss the petition as moot.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

On March 9, 2002, Brown was arrested and charged in the Delaware Family Court with one count of harassment in violation of 11 DEL. CODE ANN. § 1311. He was incarcerated pending sentencing in the Superior Court because he had pled guilty in December 2001 to resisting arrest and possession of controlled substances within 1000 feet of a school. On June 28, 2002, the Superior Court sentenced Brown to time served on the possession charge. For resisting arrest, the Superior Court sentenced him to 6 months imprisonment, suspended for 6 months.

According to Brown, he was released from prison on July 2, 2002. A case review was scheduled for July 16 in the Family Court, but Brown contends he did not hear about the review until July 18, 2002. Because he did not appear, a capias for his arrest was issued. Brown surrendered and he was committed in default of \$5000 bail.

A Family Court Commissioner denied Brown's request to reduce his bail, and also denied his request to proceed *pro se*. On August 27, 2002, a Family Court Commissioner dismissed the case without prejudice.

Meanwhile, in papers dated August 14, 2002, Brown filed in this Court a *pro se* petition for the writ of habeas corpus pursuant to 28 U.S.C. § 2254. (D.I. 2). Reading his petition in conjunction with a letter filed in this Court, Brown appears to assert three claims: (1) the \$ 5,000 bail bond was excessive; (2) he was denied a speedy trial; and (3) he was denied his constitutional right to self-representation. (D.I. 2; D.I. 4.)

The State asks the Court to dismiss Brown's § 2254 petition as moot due to the Family Court's dismissal of Brown's case.

## **II. DISCUSSION**

Pursuant to § 2254, a federal court can only "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(a). Here, when Brown filed his habeas petition, he was not in custody pursuant to a State court judgment. Rather, he was in custody awaiting trial in the Family Court. Thus, § 2254 does not authorize this Court to review Brown's habeas petition.

Nevertheless, a pre-trial detainee can challenge his custody pursuant to 28 U.S.C. § 2241 "before a judgment is rendered in a state criminal proceeding." See *Moore v. DeYoung*, 515 F.2d 437,

442 (3d Cir. 1975). Thus, rather than dismiss Brown's petition for failure to assert the correct statutory authority, I will analyze Brown's claims as if he had proceeded under § 2241 rather than § 2254.

The State contends that Brown's petition is moot because the state court dismissed his case. As a threshold matter, if the petition is moot, the court lacks jurisdiction over Brown's petition. *Chong v. District Director, INS*, 264 F.3d 378, 383-84 (3d Cir. 2001). The basic question is whether "the standing [Brown] apparently had when he filed [his] habeas petition continues to exist now." *Id.* (citing *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)).

A litigant has standing to pursue a case or controversy in federal court only if "throughout the litigation, [he] ... 'suffer[s] ... [or is] threatened with, an actual injury traceable to the [respondent] and likely to be redressed by a favorable judicial decision.'" *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis v. Continental Bank Corp.* 494 U.S. 472, 477 (1990)); *Chong*, 264 F.3d at 384. When a habeas petitioner challenges his conviction and/or sentence, and he is released during the pendency of his habeas petition, federal courts presume that "a wrongful criminal conviction has continuing collateral consequences" sufficient to satisfy the injury requirement. *Spencer*, 523 U.S. at 8; see *Steele v. Blackman*, 236

F.3d 130, 134 n.4 (3d Cir. 2001). However, when a petitioner does not attack his conviction, the injury requirement is not presumed; rather, the petitioner must demonstrate continuing collateral consequences sufficient to satisfy the injury requirement. *Chong*, 264 F.3d at 384.

Here, Brown does not challenge the legality of any conviction. Rather, he challenges his pre-trial custody. Once the state court dismissed Brown's case, the basis for Brown's habeas petition ceased to exist. Brown has not alleged, and I cannot discern, any continuing collateral consequences from his pre-trial custody. See, e.g., *Murphy v. Hunt*, 455 U.S. 478, (1982) (claim regarding denial of pre-trial bail becomes moot upon conviction in state court). Moreover, I cannot discern any injury that can possibly be redressed through this habeas petition. See *Harris v. Williams*, 2002 WL 1315453, at \*2 (D. Del. June 14, 2002). Therefore, Brown does not have standing to maintain this action, the petition is moot, and the court lacks jurisdiction. The petition must therefore be dismissed.

### **III. CERTIFICATE OF APPEALABILITY**

Finally, I must decide whether to issue a certificate of appealability. See Third Circuit Local Appellate Rule 22.2. A certificate of appealability may only be issued when a petitioner makes a "substantial showing of the denial of a constitutional right" by demonstrating "that reasonable jurists would find the

district court's assessment of the constitutional claims debatable or wrong." 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

When a federal court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the court is not required to issue a certificate of appealability unless the petitioner demonstrates that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. *Id.* "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Id.*

I have concluded that Brown's habeas petition is moot and must be dismissed. Reasonable jurists would not find this conclusion to be unreasonable. Consequently, I decline to issue a certificate of appealability.

#### **IV. CONCLUSION**

For the reasons stated, Brown's application for habeas relief pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 2241 is denied. An appropriate Order shall issue.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DEVON ANTHONY BROWN,	)	
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Petitioner,	)	
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v.	)	Civ. A. No. 02-1443-KAJ
	)	
RAPHAEL WILLIAMS, Warden,	)	
	)	
Respondent.	)	

**ORDER**

At Wilmington, this 4<sup>th</sup> day of June, 2004, consistent with the memorandum opinion issued this same day;

IT IS HEREBY ORDERED that:

1. Petitioner Devon Anthony Brown's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DISMISSED, and the relief requested therein is DENIED. (D.I. 2.)
  
2. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c) (2).

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE