

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

CARL CRAWFORD,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 98-405-GMS
)	
BEN VARNER, DISTRICT ATTORNEY OF)	
THE COUNTY OF NEW CASTLE, ATTORNEY)	
GENERAL OF THE STATE OF)	
PENNSYLVANIA, and ATTORNEY GENERAL)	
OF THE STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

While incarcerated in Pennsylvania for a parole violation, Carl Crawford was indicted in Delaware on charges of forgery, conspiracy, and theft. He has filed with the court a petition for a writ of habeas corpus,¹ requesting either an immediate trial in Delaware or dismissal of the Delaware charges. The Delaware respondents² ask the court to dismiss Crawford’s petition on the ground that he is now a fugitive from justice. For the reasons that follow, the court will dismiss Crawford’s habeas petition without prejudice.

¹ Crawford filed his habeas petition in the Eastern District of Pennsylvania, which transferred it to the District of Delaware on July 14, 1998. Upon transfer, the matter was assigned to the Honorable Joseph J. Farnan, Jr., but was reassigned to this court on September 28, 1998.

² Crawford has named as respondents Pennsylvania officials, as well as Delaware officials. Only the Delaware respondents have filed an answer to the petition. The Pennsylvania Attorney General’s Office has submitted a letter indicating that the Pennsylvania respondents will not file an answer to the petition. (D.I. 22.) For this reason, the court’s references to the respondents are to the Delaware respondents only.

I. BACKGROUND

On April 14, 1997, Carl Crawford was arrested in Delaware on charges of forgery, conspiracy, and theft. Crawford posted bail, but was immediately arrested based on a Pennsylvania warrant for a parole violation. Crawford was returned to Pennsylvania, and on August 11, 1997, was sentenced to ten months for violating parole.

Meanwhile, a grand jury in the Delaware Superior Court indicted Crawford on the Delaware charges of forgery, conspiracy, and theft. Because Crawford failed to appear for his arraignment, the Superior Court issued a failure-to-appear *capias* on June 20, 1997. Delaware authorities subsequently lodged a detainer against Crawford. Pennsylvania authorities informed Crawford of the Delaware detainer lodged against him.

On December 21, 1997, Crawford filed in the Delaware Superior Court *pro se* motions to dismiss the Delaware charges on speedy trial grounds, for withdrawal of counsel, and to expunge the failure-to-appear *capias* from the record. The Delaware Superior Court informed Crawford that it would not accept *pro se* filings because he was represented by counsel, and forwarded his *pro se* motions to his court-appointed attorney.

On March 4, 1998, Crawford filed the current petition for a writ of habeas corpus, labeled as a petition pursuant to 28 U.S.C. § 2254. In his petition, Crawford alleges that: (1) Delaware violated his constitutional right to a speedy trial; (2) the *capias* issued by the Delaware Superior Court for his failure to appear was falsified; and (3) the Delaware Superior Court wrongly denied his requests for appointment of counsel. Crawford asks the court to order Delaware to either bring him to trial immediately or dismiss the charges against him.

In November 1998, Pennsylvania authorities released Crawford, but immediately arrested him again as a fugitive from Delaware. Crawford posted bail and was released in December 1998 pending extradition to Delaware. An extradition hearing was set for February 19, 1999, but Crawford failed to appear. On March 5, 1999, the Pennsylvania Court of Common Pleas issued a warrant for his arrest. The Delaware authorities listed Crawford as a fugitive on March 11, 1999. According to the respondents, as of August 23, 1999, Crawford was still at large and his whereabouts unknown.

II. DISCUSSION

Initially, the court considers whether Crawford's habeas petition is properly brought pursuant to 28 U.S.C. § 2254. According to the respondents, Crawford's petition is properly brought under 28 U.S.C. § 2241, not § 2254, because Crawford is not "in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(a). Pursuant to § 2241, the power of a federal court to grant a writ of habeas corpus extends to any prisoner who "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Unlike § 2254, § 2241 authorizes federal courts to issue the writ "before a judgment is rendered in a state criminal proceeding." *Moore v. DeYoung*, 515 F.2d 437, 442 (3d Cir. 1975).

Here, Crawford is not challenging a conviction or sentence rendered by a state court, only Delaware's delay in bringing him to trial and its refusal to appoint counsel. For this reason, it appears that Crawford's petition is properly brought pursuant to § 2241, not § 2254.³

³ In treating Crawford's habeas petition as a § 2241 petition, the court is not unmindful of *Coady v. Vaughn*, 251 F.3d 480 (3d Cir. 2001). In *Coady*, the Third Circuit rejected a state prisoner's attempt to rely on § 2241 to challenge the denial of parole. *Id.* at 485. *Coady* suggests that state prisoners must rely on § 2254, not § 2241, when challenging any period of custody "pursuant to

Whether Crawford’s petition is properly treated as a § 2241 petition or a § 2254 petition is largely academic. The determinative question posed by the respondents is whether Crawford, as a fugitive from justice, is disentitled from seeking federal habeas relief. For the reasons that follow, the court concludes that Crawford is not entitled to seek federal habeas relief on his current claims at this time.

The fugitive disentitlement doctrine is based on the power of a court “to disentitle a fugitive from access to its power and authority.” *In re Prevot*, 59 F.3d 556, 562 (6th Cir. 1995)(citing *United States v. Sharpe*, 470 U.S. 675, 681 n.2 (1985)). According to the doctrine, a court has the authority and the discretion to dismiss an action or an appeal brought by a fugitive from justice. *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993); *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970). The doctrine is equitable in nature, not jurisdictional. *Molinaro*, 396 U.S. at 366; *Prevot*, 59 F.3d at 562 n.6. Many courts have applied the doctrine to summarily dismiss habeas petitions brought by fugitives. *See Prevot*, 59 F.3d at 564 (collecting cases); *Clark v. Dalsheim*, 663 F. Supp. 1095, 1097 (S.D.N.Y. 1987)(collecting cases).

The court finds that summary dismissal of Crawford’s habeas petition is appropriate. After applying for federal habeas relief, Crawford unlawfully eluded Delaware authorities, thus preventing Delaware from bringing him to trial. It is entirely incongruous for Crawford to ask a federal court to order Delaware to bring him to trial speedily when his own unlawful actions now make that impossible. Additionally, as a practical matter, an order requiring Delaware to try Crawford immediately would be essentially unenforceable – Delaware simply cannot bring to trial a fugitive it cannot locate. The court

the judgment of a State court.” *Id.* The court does not read *Coady* as proscribing reliance on § 2241 when a state prisoner challenges an incarceration due to an alleged delay in bringing him to trial.

can discern no reason to entertain a habeas petition filed by a fugitive whose own unlawful actions preclude the very relief he seeks.

In short, the court concludes that the fugitive disentitlement doctrine warrants dismissal of Crawford's habeas petition. In reaching this conclusion, the court is cognizant that summary dismissal of an action filed by a *former* fugitive may be inappropriate. *See Ortega-Rodriguez*, 507 U.S. at 249 (disapproving a rule of dismissal where a former fugitive was returned to custody before invoking the court's authority). When Crawford is returned to custody, he will be a *former* fugitive whose habeas petition (should he file one) may not be subject to summary dismissal. For this reason, the court will exercise its discretion and will dismiss Crawford's petition without prejudice.⁴

III. CERTIFICATE OF APPEALABILITY

“At the time a final order denying a petition under 28 U.S.C. § 2254 or § 2255 is issued, the district judge shall make a determination as to whether a certificate of appealability should issue.” Third Circuit Local Appellate Rule 22.2. Rule 22.2 does not expressly apply when the court denies a § 2241 petition. Because the court is treating Crawford's petition as a § 2241 petition, it appears that Rule 22.2 does not require the court to determine whether a certificate of appealability should issue.

Nonetheless, in the event that such a determination may be required, the court finds that

⁴ The court's dismissal without prejudice does not authorize Crawford to file a subsequent habeas petition after he is returned to custody. The Antiterrorism and Effective Death Penalty Act of 1996 imposes a one-year period of limitation on the filing of certain habeas petitions, as well as severe restrictions on filing a second or successive petition. *See* 28 U.S.C. § 2244. At this time, the court does not consider whether these restrictions will preclude Crawford from filing a subsequent habeas petition. The court's dismissal without prejudice reflects only that this court will not entertain Crawford's current claims *at this time* because he is a fugitive from justice.

Crawford is not entitled to a certificate of appealability. The court may issue a certificate of appealability only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requires the petitioner to “demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, the court has concluded that Crawford’s petition should be dismissed because he is a fugitive from justice. The court is persuaded that reasonable jurists would not find its conclusion debatable or wrong. Crawford has, therefore, failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not be issued.

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Crawford’s petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is
DISMISSED WITHOUT PREJUDICE.
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).

IT IS SO ORDERED.

Dated: February 15, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE