

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

FILED  
KENNETH J. MURPHY  
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U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
WESTERN DIV. DAYTON

MICHAEL A. GALLUZZO,

Plaintiff,

Case No. C-3-01-174

-vs-

Chief Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

CHAMPAIGN COUNTY COURT  
OF COMMON PLEAS, et al.,

Defendant.

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**REPORT AND RECOMMENDATIONS**

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This case is before the Court on Plaintiff's Motion for Temporary Restraining Order (Doc. No. 3).

Plaintiff was heard orally in open court at 2:00 p.m. on Friday, April 27, 2001. While his court papers are unclear, he made it clear on the record that he seeks a temporary restraining order to prevent execution of a commitment to the Champaign County Jail which is set to occur at 5:00 p.m. today. The commitment is on a finding of civil contempt by Defendant Judge Roger Wilson, ordering that Plaintiff be incarcerated for thirty days or until he has paid some or all of the child support arrearage he owes<sup>1</sup>.

Because the relief sought is release from custody on a state judgment of conviction of contempt, the relief sought is in the nature of habeas corpus. Plaintiff advised that he had not

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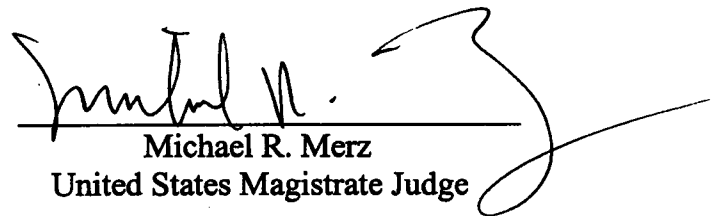
<sup>1</sup>No copy of the commitment papers or underlying citation in contempt were presented to the Court. The Magistrate Judge is proceeding solely on Plaintiff's oral description.

sought relief from the Ohio Court of Appeals for Champaign County<sup>2</sup>.

A district court cannot grant release from confinement in a §1983 action; to do so would frustrate the habeas exhaustion requirements. *Preiser v. Rodriguez*, 411 U.S. 475, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973). A state prisoner seeking federal habeas corpus relief must first exhaust the remedies available to him in the state courts. 28 U.S.C. §2254(b) and (c); *Picard v. Connor*, 404 U.S. 270, 92 S. Ct. 509, 30 L. Ed. 2d 438 (1971).

Because Plaintiff has not sought relief from the Ohio Court of Appeals (or the Ohio Supreme Court), his Motion for Temporary Restraining Order should be denied<sup>3</sup>.

April 27, 2001.

  
Michael R. Merz  
United States Magistrate Judge

## NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail and 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 Recommendations are based in whole or in part upon matters occurring of 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 ten days after being served with a copy thereof.

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<sup>2</sup>The Court notes that Plaintiff, although proceeding *pro se* in this Court, is represented by counsel in the Champaign County proceedings.

<sup>3</sup>Because of the very short time available for consideration of Plaintiff's Motion and the absence of representation for the Defendants, the Magistrate Judge has not attempted a thorough analysis of the Motion. Nothing said in the Motion suggests the exhaustion doctrine is not applicable.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See, United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).