

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

CHRISTOPHER PIERCE,

Petitioner,

v.

CASE NO. 22-3012-SAC

JEFF BUTLER,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed by a prisoner in state custody. Petitioner proceeds pro se, and the court grants leave to proceed in forma pauperis.

Nature of the petition

Petitioner was denied parole following his August 2021 hearing before the Kansas Prisoner Review Board. He states at that meeting, the chairperson deliberately infected him with COVID in an attempt to kill him. He seeks a transfer to transitional housing "until this is resolved by the court."

Screening

The court has conducted a review of the petition under Rule 4 of the Rules Governing Habeas Corpus. Rule 4 requires the Court to undertake a preliminary review of the petition and "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief ... the judge must dismiss the petition." Habeas Corpus Rule 4.

Discussion

First, because this petition challenges a parole action, the court liberally construes it as brought under 28 U.S.C. § 2241.

McIntosh v. U.S. Parole Comm'n, 115 F.3d 809, 811 (10th Cir. 1997) (explaining that petitions under § 2241 are used to attack the execution of a sentence as opposed to the validity of a conviction or sentence).

Next, to obtain habeas corpus relief, a petitioner must show that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner's claim of an intentional exposure to COVID does not demonstrate that his present custody, which is based upon his conviction, is unconstitutional and does not entitle him to habeas corpus relief.

IT IS, THEREFORE, BY THE COURT ORDERED the petition for habeas corpus is denied.

IT IS FURTHER ORDERED no certificate of appealability will issue.

DATED: This 18th day of January, 2022, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge