

**United States Bankruptcy Court  
Northern District of Illinois  
Western Division**

**Transmittal Sheet for Opinions for Posting**

**Will this opinion be Published? No**

**Bankruptcy Caption: In re James R. Thompson**

Bankruptcy No. 16-80445

**Adversary Caption: N/A**

Adversary No. N/A

**Date of Issuance: May 18, 2016**

**Judge: Thomas M. Lynch**

**Appearance of Counsel:**

Attorney for Debtor: Debtor Pro Se

U.S. Trustee: Carole J. Ryczek U.S. Trustee's Office

**United States Bankruptcy Court, Northern District of Illinois**

<b>NAME OF ASSIGNED JUDGE</b>	Thomas M. Lynch	<b>CASE NO.</b>	16-80445
<b>DATE</b>	May 18, 2016	<b>ADV. NO.</b>	
<b>CASE TITLE</b>	In re: <b>James R. Thompson,</b> Debtor.		
<b>TITLE OF ORDER</b>	ORDER		

**DOCKET ENTRY TEXT**

The Debtor James R. Thompson's Petition for Writ of Habeas Corpus *Ad Testificandum* (ECF No. 16) is DENIED.

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**STATEMENT**

The Debtor, James R. Thompson, asks this court to grant his Petition for Writ of Habeas Corpus *Ad Testificandum*. For the reasons set forth below, the Debtor's petition will be denied.

**I. FACTUAL SUMMARY <sup>1</sup>**

Debtor James R. Thompson filed a voluntary Chapter 7 petition *pro se* on February 26, 2016. On March 11, the United States Trustee sent Debtor a letter to notify him that he had not filed certain necessary documents, namely his Official Form B22A, schedules of assets and liabilities,

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<sup>1</sup> The following sets forth the court's findings of fact as required by Fed. R. Bankr. P. 7052. To the extent any findings of fact constitute conclusions of law, they are adopted as such, and to the extent that any conclusions of law constitute findings of fact, they are adopted as such.

schedules of current income and current expenses, statement of financial affairs, and certificate of credit counseling. (ECF No. 13.)

Mr. Johnson responded to the letter by moving for an extension of these documents, explaining that he is currently incarcerated at the Dixon Correctional Center. (ECF No. 10, ¶ 2.) In addition to the filing extension, the Debtor requested that the court order the Clerk of the Court send him the necessary forms.

On April 11, 2016, this court granted Debtor's motion "so that he may have until May 13, 2016 to file all necessary documents." (ECF No. 14.) Denying the Debtor's request for the Clerk of the Court to send him the Official Forms, the April 11th order provided instead that a "family member or other representative of the Debtor may obtain the forms of the Debtor from the Clerk of the Court by requesting those forms as the Debtor may wish to have...." (*Id.*)

On April 18, 2016, Debtor filed the pending Petition for Writ of Habeas Corpus *Ad Testificandum*. (ECF No. 16.) The caption of the petition lists the Debtor as the "Petitioner or Plaintiff" and Patrick S. Layng, the United States Trustee as the "Respondent or Defendant." (*Id.*) Although Debtor nominally attempts to bring an action against the U.S. Trustee, he asks this court to "issue an order, pursuant to Illinois Revised Statutes, ch. 110, secs. 2-5001 [see 735 ILCS 5/2-1501] and 10-101 *et seq.*, directed to the said [sic] warden and the Illinois Department of Corrections, commanding them to have said petitioner brought before the honorable court." (*Id.*) To his petition the Debtor attached an Affidavit Letter that again requested that the Clerk be ordered to send the forms requested in his original motion. (*Id.*)

## II. DISCUSSION

Debtor purports to bring his petition for a writ of habeas corpus *ad testificandum* pursuant to state law. Illinois law recognizes four purposes for which a trial court may enter an order of habeas corpus *ad testificandum* to bring an inmate before the court: "(1) to testify, (2) to be surrendered in discharge of bail, (3) to attend the inmate's own criminal proceedings, and (4) to testify in out-of-state criminal proceedings." *People v. Freed*, 328 Ill. App. 3d 459, 466 (2002) (citing 735 ILCS 5/10-135). Debtor has not demonstrated that his request falls within any of the four categories. Instead, his "Affidavit Letter" suggests that he is asking this court to reconsider its earlier ruling on Debtor's request for forms. However, the relief sought through a writ for habeas corpus pursuant to state law may not be used in place of a motion to reconsider. *See, e.g., People ex rel. Gwartney v. Meyer*, 33 Ill. App. 3d 705, 709, 341 N.E.2d 732, 735 (1975) ("Habeas corpus may not be employed as a substitute

for a writ of error or appeal to review errors of a nonjurisdictional nature.”). To the extent that Debtor is asking this court to reconsider its April order, this court has already heard, considered and ruled on that motion, and as Debtor presents no basis for reconsideration, his request is denied.

To the extent that the Debtor actually seeks relief via a writ of habeas corpus *ad testificandum* pursuant to Illinois law, he seeks relief from the wrong court. An application for a writ of habeas corpus *ad testificandum* pursuant to Illinois statute should be made in Illinois courts. As the statute in question, 735 ILCS 5/10-103, provides “[a]pplication for the relief shall be made to the Supreme Court or to the circuit court of the county in which the person whose behalf the application is made, is imprisoned or restrained, or to the circuit court of the county from which such person was sentenced or committed.” See *United States ex rel. Miller v. Bensko*, 2002 U.S. Dist. LEXIS 17397, at \*9 (N.D. Ill. Sep. 16, 2002) (“Under Illinois law, a prisoner may seek habeas corpus relief in the Illinois state courts.”).

Indeed, with regard to the application to a federal court, 28 U.S.C.S. § 2254(b)(1) states that “[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State.” “A federal court may grant a writ of habeas corpus on behalf of a prisoner held in custody pursuant to a state court judgment only if the petitioner is held in custody, in violation of the Constitution, laws or treaties of the United States.” *Bensko*, 2002 U.S. Dist. LEXIS 17397, at \*10-11 (citing 28 U.S.C. §§ 2254(a), 2241(c)(3)). Here, Debtor does not raise an issue under the Constitution or federal law concerning his confinement. Moreover, the authority for a federal court to issue a writ of habeas corpus is described in 28 U.S.C. § 2241(a) which states that “[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.” This statute empowers the Supreme Court, circuit judges and district judges to issue a writ of habeas corpus but does not provide bankruptcy courts with the authority to do so. See *In re Dreier LLP*, No. 08-15051 (SMB), 2014 WL 3767430, at \*1 (Bankr. S.D.N.Y. July 31, 2014). As summarized by the bankruptcy court in *In re Kluever*, 373 B.R. 163, 164 (Bankr. M.D. Fla. 2007), “[s]ection 2241(a) does not imbue bankruptcy courts with the authority to issue writs of habeas corpus. Accordingly, bankruptcy courts lack such authority.”

Accordingly, Debtor's petition will be denied.

ENTER:

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Thomas M. Lynch  
United States Bankruptcy Judge