

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
(PENSACOLA DIVISION)

IN RE:

JON W. SEARCY,

CASE NO. 99-42360-PNS3

Debtor.

Chapter 7

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ELGIN R. WESTBROOK,  
AUDREY L. WESTBROOK, et al.

Plaintiffs,

v.

ADV. NO. 00-80014

JON W. SEARCY,

Defendant.

**ORDER DENYING MOTION FOR  
WRIT OF HABEAS CORPUS AD TESTIFICANDUM  
(JON W. SEARCY)**

This matter is before the Court on the Defendant's motion for writ of habeas corpus ad testificandum. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The Defendant, John Searcy (hereinafter "Searcy"), moved this Court for a writ of habeas corpus ad testificandum to appear and testify at the trial of the above-styled adversary proceeding. While Searcy's testimony may be essential in his defense of this action, this Court does not have the authority to issue the writ. The bankruptcy court in In re Rainwater, 233 B.R. 126 (Bankr. N.D. Ala. 1999) granted a writ of habeas corpus for a Chapter 13 debtor. However, the United States District Court for the Northern District of Alabama, in an unpublished opinion, vacated the bankruptcy court's order issuing the writ, holding ". . . 28 U.S.C. §2241 makes it clear that only the 'Supreme Court, any

justice thereof, the district courts and any circuit judge within their respective jurisdictions' have the authority to grant writs of habeas corpus. Furthermore, while Congress granted authority to bankruptcy courts to issue writs of habeas corpus in 28 U.S.C. § 2256, the statute was repealed before it ever became effective.” (Citing In re Cornelius, 214 B.R. 588 (Bankr. E.D. Ark. 1997) and In re Williams, 196 B.R. 120 (Bankr. E.D. Ark. 1996)). Patricia L. Bryan, Alabama Probation and Parole Officer and Fred Thompson, Jr. District Attorney of Clay County v. Jeffrey and Janet Rainwater, CV 99-P-1828-E (N.D. Ala. January 11, 2000).<sup>1</sup> The District Court found that the proper procedure would have been to petition the United States District Court. The Rainwater case is distinguishable from the present case because it dealt with releasing the debtor from prison permanently, rather than just for a court appearance. However, the bankruptcy court for the Western District of Wisconsin held that a bankruptcy court does not have clear authority to issue a writ of habeas corpus ad testificandum for a court appearance. In re Larson, 232 B.R. 396, 397 (Bankr. W.D. Wis. 1999). This Court finds that it does not have authority to issue a writ of habeas corpus ad testificandum, and therefore must deny the Defendant’s motion for the writ. The Defendant must seek the writ from the United States District Court. Based on the foregoing, it is hereby

**ORDERED** that the Defendant’s motion for writ of habeas corpus ad testificandum for Jon W. Searcy is **DENIED**.

DATED: July \_\_\_\_, 2000

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WILLIAM S. SHULMAN  
U.S. BANKRUPTCY JUDGE

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<sup>1</sup>This order is currently on appeal before the Eleventh Circuit Court of Appeals.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
(PENSACOLA DIVISION)

IN RE:

JON W. SEARCY,

CASE NO. 99-42360-PNS3

Debtor.

Chapter 7

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ELGIN R. WESTBROOK,  
AUDREY L. WESTBROOK, et al.

Plaintiffs,

v.

ADV. NO. 00-80014

JON W. SEARCY,

Defendant.

**ORDER DENYING MOTION FOR  
WRIT OF HABEAS CORPUS AD TESTIFICANDUM  
(DEBRA S. SELLERS)**

This matter is before the Court on the Defendant's motion for writ of habeas corpus ad testificandum. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The Defendant, John Searcy (hereinafter "Searcy"), moved this Court for a writ of habeas corpus ad testificandum for Debra S. Sellers to appear and testify at the trial of the above-styled adversary proceeding. While Seller's testimony may be essential in the Defendant's defense of this action, this Court does not have the authority to issue the writ. The bankruptcy court in In re Rainwater, 233 B.R. 126 (Bankr. N.D. Ala. 1999) granted a writ of habeas corpus for a Chapter 13 debtor. However, the United States District Court for the Northern District of Alabama, in an unpublished opinion, vacated the bankruptcy court's order issuing the writ, holding "... 28 U.S.C. §2241 makes it clear that only the 'Supreme Court, any justice thereof, the district courts and any

circuit judge within their respective jurisdictions' have the authority to grant writs of habeas corpus. Furthermore, while Congress granted authority to bankruptcy courts to issue writs of habeas corpus in 28 U.S.C. § 2256, the statute was repealed before it ever became effective.” (Citing In re Cornelius, 214 B.R. 588 (Bankr. E.D. Ark. 1997) and In re Williams, 196 B.R. 120 (Bankr. E.D. Ark. 1996)). Patricia L. Bryan, Alabama Probation and Parole Officer and Fred Thompson, Jr. District Attorney of Clay County v. Jeffrey and Janet Rainwater, CV 99-P-1828-E (N.D. Ala. January 11, 2000).<sup>2</sup> The District Court found that the proper procedure would have been to petition the United States District Court. The Rainwater case is distinguishable from the present case because it dealt with releasing the debtor from prison permanently, rather than just for a court appearance. However, the bankruptcy court for the Western District of Wisconsin held that a bankruptcy court does not have clear authority to issue a writ of habeas corpus ad testificandum for a court appearance. In re Larson, 232 B.R. 396, 397 (Bankr. W.D. Wis. 1999). This Court finds that it does not have authority to issue a writ of habeas corpus ad testificandum, and therefore must deny the Defendant’s motion for the writ. The Defendant must seek the writ from the United States District Court. Based on the foregoing, it is hereby

**ORDERED** that the Defendant’s motion for writ of habeas corpus ad testificandum for Debra S. Sellers is **DENIED**.

DATED: July \_\_\_\_, 2000

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WILLIAM S. SHULMAN  
U.S. BANKRUPTCY JUDGE

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<sup>2</sup>This order is currently on appeal before the Eleventh Circuit Court of Appeals.

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
(PENSACOLA DIVISION)  
IN RE:

JON W. SEARCY,

CASE NO. 99-42360-PNS3

Debtor.

Chapter 7

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ELGIN R. WESTBROOK,  
AUDREY L. WESTBROOK, et al.

Plaintiffs,

v.

ADV. NO. 00-80014

JON W. SEARCY,

Defendant.

**REPORT AND RECOMMENDATION**

This matter is before the Court on the Defendant's motion for writ of habeas corpus ad testificandum. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The Defendant, John Searcy (hereinafter "Searcy"), moved this Court for a writ of habeas corpus ad testificandum to appear and testify at the trial of the above-styled adversary proceeding. Searcy also moved for a writ of habeas corpus ad testificandum for Debra S. Sellers (hereinafter "Sellers"), his former employee. The action is one to determine dischargeability under 11 U.S.C. §523(a)(2), (a)(4) based on allegations that Searcy misrepresented material facts while obtaining a \$170,000.00 loan from the Plaintiffs. According to the complaint, Sellers was also instrumental in obtaining the loans.

While Searcy and Sellers' testimony is essential in Searcy's defense of this action, this Court does not have the authority to issue the writ. The bankruptcy court in In re Rainwater, 233 B.R. 126 (Bankr. N.D. Ala. 1999) granted a writ of habeas corpus for a Chapter 13 debtor. However, the United

States District Court for the Northern District of Alabama, in an unpublished opinion, vacated the bankruptcy court's order issuing the writ, holding “. . . 28 U.S.C. §2241 makes it clear that only the ‘Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions’ have the authority to grant writs of habeas corpus. Furthermore, while Congress granted authority to bankruptcy courts to issue writs of habeas corpus in 28 U.S.C. § 2256, the statute was repealed before it ever became effective.” (Citing In re Cornelius, 214 B.R. 588 (Bankr. E.D. Ark. 1997) and In re Williams, 196 B.R. 120 (Bankr. E.D. Ark. 1996)). Patricia L. Bryan, Alabama Probation and Parole Officer and Fred Thompson, Jr. District Attorney of Clay County v. Jeffrey and Janet Rainwater, CV 99-P-1828-E (N.D. Ala. January 11, 2000).<sup>3</sup> The District Court found that the proper procedure would have been to petition the United States District Court. The Rainwater case is distinguishable from the present case because it dealt with releasing the debtor from prison permanently, rather than just for a court appearance. However, the bankruptcy court for the Western District of Wisconsin held that a bankruptcy court does not have clear authority to issue a writ of habeas corpus ad testificandum for a court appearance. In re Larson, 232 B.R. 396, 397 (Bankr. W.D. Wis. 1999). This Court finds that it does not have authority to issue a writ of habeas corpus ad testificandum, and therefore must deny the Defendant's motion for the writ. The Defendant must seek the writ from the United States District Court.

Section 2241(c)(5) provides that “The writ of habeas corpus shall not extend to a prisoner unless-- (5) It is necessary to bring him into court to testify or for trial.” As noted above, the testimony of Searcy and Sellers is vital to Searcy's defense of this action. Searcy cannot duplicate his own testimony from other evidentiary sources. The allegations of misrepresentation make it crucial for the trial court to observe the demeanor of both Searcy and Sellers. It is doubtful that Searcy would be able to present an adequate defense without his own and Sellers' testimony. Therefore, the Bankruptcy

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<sup>3</sup>This order is currently on appeal before the Eleventh Circuit Court of Appeals.

Court reports and recommends that the District Court grant Searcy's motions for writs of habeas corpus ad testificandum. A form of order is attached.

DATED: July \_\_\_\_, 2000

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WILLIAM S. SHULMAN  
U.S. BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DIVISION OF FLORIDA

IN RE:

JON W. SEARCY,

Debtor.

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BANKRUPTCY COURT  
CASE NO. 99-42360-PNS3

Chapter 7

ELGIN R. WESTBROOK,  
AUDREY L. WESTBROOK, et al.

Plaintiffs,

v.

ADV. NO. 00-80014

JON W. SEARCY,

Defendant.

**WRIT OF HABEAS CORPUS AD TESTIFICANDUM**  
**(JON W. SEARCY)**

To: Major James Messick, Director  
Escambia County Jail  
1200 West Leonard Street  
Pensacola, Florida 32501

YOU ARE DIRECTED to have inmate JON W. SEARCY before this Court at the following  
time and place:

**Friday, July 28, 2000, at 9:30 a.m.**  
**United States Bankruptcy Court**  
**Northern District of Florida**  
**Pensacola Division**  
**SunTrust Tower, Seventh Floor**  
**220 West Garden Street**  
**Pensacola, Florida 32501**

to give testimony at the final hearing of this adversary proceeding.

THOMAS GRADY REED, III, Esquire, Florida Bar Number 301116, Thomas A. Reed, III,



P.A., 107 North Palafox Street, P.O. Box 13247, Pensacola, Florida 32591-3247 is directed to pay the costs of supervising, transporting, and housing Mr. Searcy incurred in the execution of this writ.

**ORDERED** this \_\_\_\_ day of July, 2000.

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U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DIVISION OF FLORIDA

IN RE:

JON W. SEARCY,

Debtor.

---

BANKRUPTCY COURT  
CASE NO. 99-42360-PNS3

Chapter 7

ELGIN R. WESTBROOK,  
AUDREY L. WESTBROOK, et al.

Plaintiffs,

v.

ADV. NO. 00-80014

JON W. SEARCY,

Defendant.

**WRIT OF HABEAS CORPUS AD TESTIFICANDUM**  
**(DEBRA S. SELLERS, P08958, C-3, 25U)**

To: Ms. LaRae Jemison  
Gadsden Correction Facility  
P.O. Box 390  
Quincy, Florida 32353

YOU ARE DIRECTED to have inmate DEBRA S. SELLERS, PO8958, C-3, 25U, before this  
Court at the following time and place:

**Friday, July 28, 2000, at 9:30 a.m.**  
**United States Bankruptcy Court**  
**Northern District of Florida**  
**Pensacola Division**  
**SunTrust Tower, Seventh Floor**  
**220 West Garden Street**  
**Pensacola, Florida 32501**

to give testimony at the final hearing of this adversary proceeding.

THOMAS GRADY REED, III, Esquire, Florida Bar Number 301116, Thomas A. Reed, III,

P.A., 107 North Palafox Street, P.O. Box 13247, Pensacola, Florida 32591-3247 is directed to pay the costs of supervising, transporting, and housing Mrs. Sellers incurred in the execution of this writ.

**ORDERED** this \_\_\_\_ day of July, 2000.

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U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DIVISION OF FLORIDA

IN RE:

JON W. SEARCY,

Debtor.

BANKRUPTCY COURT  
CASE NO. 99-42360-PNS3

Chapter 7

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ELGIN R. WESTBROOK,  
AUDREY L. WESTBROOK, et al.

Plaintiffs,

v.

ADV. NO. 00-80014

JON W. SEARCY,

Defendant.

**ORDER**

This matter is before the United States District Court for the Northern District of Florida upon the ***Report*** and ***Recommendation*** of one of the bankruptcy judges of this District on the Defendant's motions for writ of habeas corpus ad testificandum. The Court has jurisdiction to hear this matter under 28 U.S.C. §§ 157 and 1334. Based upon the report and recommendation of the bankruptcy judge, dated July 10, 2000, this Court finds that the Defendant's motions for writ of habeas corpus ad testificandum for Jon W. Searcy and Debra S. Sellers are due to be granted. It is hereby

**ORDERED** that the Defendant's motions for writ of habeas corpus ad testificandum for Jon W. Searcy and Debra S. Sellers are **GRANTED** pursuant to 28 U.S.C. §2241(c)(5).

DATED: July \_\_\_\_, 2000

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U.S. DISTRICT JUDGE