

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Horace Van Vaultz, Jr. v. Edward J. Silva, Acting Warden

Vaultz · No. 2:25-cv-01186-FWS-PD · Decided April 1, 2025

SUMMARY

The United States District Court for the Central District of California issued an order to show cause concerning dismissal of Horace Van Vaultz, Jr.'s 28 U.S.C. § 2254 habeas petition as partially unexhausted. The court identified potentially unexhausted ineffective-assistance, evidentiary, prosecutorial-misconduct, and Eighth Amendment claims. The court ordered Petitioner to respond by May 1, 2025, by demonstrating exhaustion, seeking a stay, filing an amended petition with exhausted claims, or requesting dismissal without prejudice.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Patricia Donahue
JURISDICTION	United States District Court for the Central District of California
DECIDED	April 1, 2025
DOCKET	2:25-cv-01186-FWS-PD
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner filed a counseled petition for a writ of habeas corpus under 28 U.S.C. § 2254. On preliminary review, the district court issued an order to show cause because the petition appeared to contain unexhausted claims.
STANDARD OF REVIEW	Under Rule 4 of the Rules Governing § 2254 Cases, the court conducts preliminary review and must summarily dismiss a petition if it plainly appears from the petition and attached materials that the petitioner is not entitled to relief. Exhaustion is reviewed based on whether each federal claim was fairly presented to the state courts and disposed of on the merits by the state's highest court.
PRECEDENTIAL VALUE	nonprecedential district-court order
PARTIES	Horace Van Vaultz, Jr. v. Edward J. Silva, Acting Warden

TOPICS

federal habeas corpus

post-conviction relief

pleadings

civil procedure

PRACTICE AREAS

federal habeas corpus

post-conviction relief

criminal procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the federal habeas petition should be dismissed or otherwise addressed because several claims had not been exhausted in state court.
2. Whether the petition's ineffective-assistance, certain evidentiary, prosecutorial-misconduct, and Eighth Amendment claims appeared unexhausted on the record before the court.
3. What procedural options should be provided to Petitioner to address a mixed or partially unexhausted petition.

HOLDINGS

1. A district court must conduct preliminary review under Rule 4 and may summarily dismiss a § 2254 petition if it plainly appears from the petition and materials subject to review that the petitioner is not entitled to relief.
2. A federal court may not grant habeas relief under § 2254 unless the petitioner has exhausted available state-court remedies by fairly presenting each claim to the state courts and obtaining merits disposition by the state's highest court.
3. The petition appeared partially unexhausted because Petitioner had not presented his ineffective-assistance claim, certain evidentiary claims, certain prosecutorial-misconduct claims, or his Eighth Amendment claim to the California courts.
4. Petitioner was ordered to show that the identified claims were exhausted or concede their unexhausted status and select an available procedural option, including seeking a Rhines or Kelly stay, amending to proceed only on exhausted claims, or voluntarily dismissing without prejudice.

KEY QUOTATIONS

“Pursuant to Rule 4, the Court must summarily dismiss a petition “[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court.”” (Order text, Discussion section)

“As a matter of comity, a federal court will not entertain a habeas petition unless the petitioner has exhausted the available state judicial remedies on every ground presented in it.” (Order text, Discussion section)

FACTUAL BACKGROUND

In August 2022, a Los Angeles County Superior Court jury convicted Horace Van Vaultz, Jr. of two murders and found true special circumstances involving rape and sodomy. He was sentenced to consecutive life terms without parole. The California Court of Appeal affirmed the judgment, and the California Supreme Court denied review. His federal petition asserted ineffective assistance of counsel, evidentiary and due-process errors, prosecutorial misconduct, and an Eighth Amendment claim, but he had not filed state habeas petitions.

PROCEDURAL HISTORY

A California jury convicted Petitioner of two murders with special-circumstance findings, and he received consecutive life sentences without parole. The California Court of Appeal affirmed the judgment, and the California Supreme Court denied review. Petitioner then filed this federal § 2254 petition without first filing state habeas petitions. The district court did not dismiss the petition immediately; it ordered Petitioner to show exhaustion, concede unexhaustion and seek a stay or amend, or voluntarily dismiss without prejudice.

DISPOSITION

other

CASES CITED

- People v. Vaultz, No. B323590, 2024 WL 1591485 (Cal. Ct. App. Apr. 1, 2024)
- Harris v. County of Orange, 682 F.3d 1126, 1131-32 (9th Cir. 2012)
- Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990)
- Ybarra v. McDaniel, 656 F.3d 984, 991 (9th Cir. 2011)
- Greene v. Lambert, 288 F.3d 1081, 1086 (9th Cir. 2002)
- Rose v. Lundy, 455 U.S. 509, 518-19, 522 (1982)
- Rhines v. Weber, 544 U.S. 269, 277-78 (2005)
- Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), as amended
- Robbins v. Carey, 481 F.3d 1143, 1149 (9th Cir. 2007)
- Mayle v. Felix, 545 U.S. 644, 664 (2005)

OPINION

Horace Van Vaultz, Jr. v. Tammy L. Campbell

PER CURIAM.

1 2 3 4 5 6 7 8 9

UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

11 12 HORACE VAN VAULTZ, JR., Case No. 2:25-cv-01186-FWS-PD 13 Petitioner, ORDER
TO SHOW CAUSE RE: 14

DISMISSAL OF PETITION

v. 15 EDWARD J. SILVA, Acting Warden, 16 17 Respondent. 18 19 20 On February 12, 2025,
Petitioner Horace Van Vaultz, Jr., filed a 21 counseled Petition for Writ of Habeas Corpus by a
Person in State Custody 22 pursuant to 28 U.S.C. § 2254. The Court issues this Order to Show
Cause 23 directed to Petitioner because the Petition appears to be subject to dismissal 24 as
partially unexhausted. 25 26 27 1 Edward J. Silva is the acting warden of Corcoran State Prison,
where Petitioner is 28 housed [see Dkt. No. 1 at 2], and is substituted in under Federal Rule of

Civil 1 I. Procedural History and Petitioner’s Contentions 2 In August 2022, a Los Angeles County Superior Court jury convicted 3 Petitioner of two counts of murder and found true the special circumstances 4 that he committed one of the murders while engaged in rape and sodomy and 5 committed the second murder while engaged in rape. [See Dkt. No. 1 at 2]; 6 *People v. Vaultz*, No. B323590, 2024 WL 1591485, at *1 (Cal. Ct. App. Apr. 1, 7 2024).² He was sentenced to consecutive life terms without parole. [See Dkt.

8 No. 1 at 2]; *Vaultz*, 2024 WL 1591485, at *1.

9 Petitioner appealed, alleging multiple prosecutorial-misconduct claims 10 and two evidentiary-error claims. [See Dkt. No. 1 at 2]; *Vaultz*, 2024 WL 11 1591485, at *3-10. On April 12, 2024, the California Court of Appeal affirmed 12 the judgment, see *Vaultz*, 2024 WL 1591485, at *10, and on June 26, 2024, the 13 California Supreme Court denied review, see Cal. App. Cts. Case Info. [http:// 14 appellatecases.courtinfo.ca.gov/](http://14 appellatecases.courtinfo.ca.gov/) (search for Case No. S285059) (last visited on

15 Apr. 1, 2025). Petitioner has not filed any habeas petitions in either the

16 California Court of Appeal or the California Supreme Court. See *id.* (search 17 for “Horace” and “Vaultz”). 18 On February 12, 2025, Petitioner filed the instant Petition, alleging the 19 following grounds for relief: 20 1. Trial counsel provided ineffective assistance “during all critical 21 stages” of the trial proceedings by failing to “conduct a thorough 22 investigation,” “effectively” question several of the witnesses at trial, retain 23 multiple experts to testify in Petitioner’s defense, “effectively utilize” a private 24 investigator, and “defend” Petitioner’s “constitutional rights.” 25 26 2 The Court takes judicial notice of the California Court of Appeal’s unpublished decision affirming the judgment against Petitioner. See *Harris v. County of Orange*, 27 682 F. 3d 1126, 1131-32 (9th Cir. 2012); *Fed. R. Evid.* 201(b); see also [Dkt. No. 1 at 2 28 (referencing court of appeal’s decision); Dkt. No. 1-1 at 10, 21, 32 (discussing court of 1 2. The trial court violated due process by committing the following 2 “grave procedural errors”: 3 a. allowing the prosecutor to elicit testimony concerning “other 4 crimes” that Petitioner was alleged to have committed; 5 b. excluding evidence of third-party culpability; 6 c. excluding evidence concerning one of the victim’s 7 “promiscuity”; and 8 d. admitting evidence that Petitioner’s possessed “adult 9 pornography depicting bondage.” 10 3. The prosecutor violated Petitioner’s right to a fair trial by 11 committing multiple acts of misconduct during the trial, and Petitioner’s 12 incarceration violates the Eighth Amendment’s ban on cruel and unusual 13 punishment. 14 [Dkt. No. 1-1 at 10-44.] 15 II. Discussion

16 Rule 4 of the Rules Governing § 2254 Cases requires the Court to

17 conduct a preliminary review of the Petition. Pursuant to Rule 4, the Court 18 must summarily dismiss a petition “[i]f it plainly appears from the face of the 19 petition . . . that the petitioner is not entitled to relief in the district court.”

20 Rule 4 of the Rules Governing 2254 Cases; see also *Hendricks v. Vasquez*, 908

21 F.2d 490 (9th Cir. 1990). As explained below, a review of the Petition and 22 materials subject to judicial notice suggests that the Petition should be 23 dismissed as partially unexhausted.

24 Under 28 U.S.C. § 2254(b), habeas relief may not be granted unless a
25 petitioner has exhausted the remedies available in state court. Exhaustion 26 requires that the
petitioner's contentions were fairly presented to the state 27 courts, *Ybarra v. McDaniel*, 656 F.3d
984, 991 (9th Cir. 2011), and disposed of 28 on the merits by the highest court of the state, *Greene*
v. Lambert, 288 F.3d 1 1081, 1086 (9th Cir. 2002). As a matter of comity, a federal court will not 2
entertain a habeas petition unless the petitioner has exhausted the available 3 state judicial
remedies on every ground presented in it. See *Rose v. Lundy*, 4 455 U.S. 509, 518-19 (1982). 5
Here, the Petition appears to be partially unexhausted. Petitioner did 6 not assert an ineffective-
assistance claim on direct appeal, see *Vaultz*, 2024 7 WL 1591485, at *3-10, and he has not filed
any state-court habeas petitions. 8 See Cal. App. Cts. Case Info.
<http://appellatecases.courtinfo.ca.gov/> (search for 9 "Horace" and "Vaultz") (last visited Apr. 1,
2025). As such, Ground One – 10 which alleges only ineffective-assistance claims – appears to be
completely 11 unexhausted. 12 Several of Ground Two's claims likewise appear to be
unexhausted. 13 Although on direct review Petitioner asserted two of the evidentiary errors 14 that
he alleges in Ground Two – namely, his claims that the trial court 15 erroneously excluded
evidence of the victim's alleged "promiscuity" and 16 erroneously admitted evidence concerning
his possession of pornography 17 depicting bondage, see *Vaultz*, 2024 WL 1591485, at *9-10 – he
does not 18 appear to have asserted any claims challenging admission of "other crimes" 19
evidence or exclusion of third-party culpability evidence, *id.* at *3-10, both of 20 which he alleges
in Ground Two, [see Dkt. No. 1-1 at 29].³ 21 22 3 In connection with Ground Two, Petitioner
includes lengthy discussions of the legal standards for sufficiency-of-the-evidence claims, various
instructional-error claims, 23 and judicial-bias claims. [See Dkt. No. 1-1 AT 21-29.] However,
Petitioner did not assert a claim involving sufficiency of the evidence, instructional error, or
judicial 24 bias. It is unclear whether this discussion was cut and pasted from a different 25 habeas
petition, as may have occurred in other portions of the Petition. [See Dkt. No. 1-1 at 20 (alleging
that due to trial counsel's failure to obtain discovery 26 concerning investigating officers and
detectives, counsel in this action "cannot know . . . the extent to which Mr. Rodriguez may have
been prejudiced"), 29 ("The effect of 27 the multiple errors infected the trial with unfairness and
rendered Mr. Rodriguez's 28 conviction a denial of Due Process in violation of his Sixth and
Fourteenth 1 Several claims in the Petition's third ground for relief likewise appear to 2 be
unexhausted. On direct appeal, Petitioner alleged a host of prosecutorial- 3 misconduct claims. See
id. at *4-8. However, he does not appear to have 4 alleged on direct appeal – as he does here – that
the prosecutor introduced 5 false evidence or that "police and prosecutors improperly and unfairly
6 targeted [him] in circumstances where he was acquitted of killing Janna Rowe 7 in Ventura,
California, in 1988." [Dkt. No. 1-1 at 33].⁴ 8 Similarly, it does not 8 appear that Petitioner asserted
an Eighth Amendment challenge on direct 9 review, see *Vaultz*, 2024 WL 1591485, at *3-10, as he
does in the Petition's 10 third ground for relief [see Dkt. No. 1-1 at 44].⁵ 11 Accordingly, it
appears that the Petition is partially unexhausted and 12 should be dismissed unless Petitioner

takes steps to cure the problem. See 13 *Rose*, 455 U.S. at 522. 14 III. Conclusion 15 For the foregoing reasons, the Court ORDERS Petitioner, by no later 16 than May 1, 2025, to either (a) show that he has exhausted his state-court 17 remedies as to the ineffective-assistance claims in the Petition’s Ground One 18 sufficiency-of-the-evidence, instructional-error, or judicial-bias claim, any such claim 19 appears to be unexhausted. 20 4 Petitioner was not charged in the proceedings underlying the Petition with murdering Rowe. In a prior case, he was charged with Rowe’s murder and was 21 acquitted. See *Vaultz*, 2024 WL 1591485, at *1-2. Years after that acquittal, testing 22 showed DNA found in sperm from Rowe’s body “matched [Petitioner’s] DNA.” *Id.* at

*2. Evidence concerning Rowe’s murder was introduced at the trial in the 23 proceedings underlying the Petition. See *id.* at *1-2. 24 5 Ground Three may include numerous other instances of misconduct that Petitioner 25 did not allege on direct review. [See, e.g., Dkt. No. 1-1 at 40-42 (identifying 21 instances where prosecutor allegedly “humiliated” Petitioner).] The Court cannot, 26 however, determine whether those allegations are unexhausted because it does not have a copy of Petitioner’s direct-appeal opening brief, in which he alleged numerous 27 instances of prosecutorial misconduct. See *Vaultz*, 2024 WL 1591485, at *3-8. 28 Petitioner nevertheless should not take that fact as an affirmative finding that he 1 and the claims identified above in Grounds Two and Three or (b) concede that 2 those claims are unexhausted and select one of the following options: 3 (1) File a motion to stay and abey his Petition under *Rhines v. Weber*, 4 544 U.S. 269 (2005), if he believes he can make the required showings. To 5 obtain a stay under *Rhines* of his federal petition while he exhausts his state 6 remedies, a petitioner must comply with the following requirements: (a) he 7 must show good cause for his failure to earlier exhaust the claim in state 8 court; (b) the unexhausted claim must not be “plainly meritless”; and (c) he 9 must not have engaged in “abusive litigation tactics or intentional delay.” 544 10 U.S. at 277-78; 11 (2) File a motion to stay under *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 12 2003) (as amended), overruling on other grounds recognized by *Robbins v. Carey*, 481 F.3d 1143, 1149 (9th Cir. 2007). To obtain a stay under *Kelly*, the 14 petitioner must (a) voluntarily dismiss his unexhausted claims; (b) ask this 15 court to stay the then fully exhausted Petition; and (c) return to state court to 16 attempt to exhaust the unexhausted claims while the federal Petition is held 17 in abeyance – with the understanding that he will be allowed to amend any 18 newly exhausted claim back into the Petition only if it is timely under AEDPA 19 or “relates back” to the original exhausted claims, see *Mayle v. Felix*, 545 U.S. 20 644, 664 (2005); 21 (3) File an amended petition that contains only the Petition’s 22 exhausted claims. The Court hereby notifies Petitioner that if he chooses this 23 option – to dismiss the unexhausted claims without seeking a stay and 24 proceed only with his exhausted claims – then his unexhausted claims may 25 later be time-barred under 28 U.S.C. § 2244(d)(1), and any subsequent § 2254 26 petition containing the currently unexhausted claims may be barred as an 27 unauthorized second or successive petition; or 28 1 (4) File a request that the Petition be dismissed without prejudice 2 || under Federal Rule of Civil

Procedure 41(a)(1), with the understanding that 3 || any later petition may be time barred under §
2244(d)(1). 4 If Petitioner does not respond to this Order by May 1, 2025, the 5 | Court will
recommend that that the Petition be dismissed without 6 || prejudice as partially unexhausted. 7 8
IT IS SO ORDERED. DATED: April 1, 2025 Palaces Mana hoe

11 PATRICIA DONAHUE

UNITED STATES MAGISTRATE JUDGE

13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28