

**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

OPINION

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

PER CURIAM.

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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://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 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. 13 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 ISSO ORDERED. DATED: April 1, 2025 Palaces Mana hoe

11 PATRICIA DONAHUE

UNITED STATES MAGISTRATE JUDGE

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