

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Zinman v. California Board of Parole Hearings

Zinman · No. 1:25-cv-00687-HBK (HC) · Decided July 21, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Justin Marcus Zinman’s 28 U.S.C. § 2254 petition challenging the denial of parole because he failed to exhaust state remedies. The magistrate judge also recommends denying a certificate of appealability and advises the parties of a 14-day period to object.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 21, 2025
DOCKET	1:25-cv-00687-HBK (HC)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal of a state prisoner's 28 U.S.C. § 2254 habeas petition for failure to exhaust state remedies and denial of a certificate of appealability.
STANDARD OF REVIEW	Under Rule 4 governing § 2254 cases, the court must dismiss a habeas petition when it plainly appears that the petitioner is not entitled to relief. Exhaustion is a threshold requirement reviewed before reaching the merits.
PRECEDENTIAL VALUE	Unknown
PARTIES	Justin Marcus Zinman v. California Board of Parole Hearings

TOPICS

- [federal habeas corpus](#) [post-conviction relief](#) [civil procedure](#) [due process](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the § 2254 petition should be dismissed because Zinman failed to exhaust available state judicial remedies.
2. Whether the exhaustion requirement should be excused based on Zinman's allegations of bias and prejudice by the State of California.
3. Whether a certificate of appealability should issue when the petition is dismissed on procedural exhaustion grounds.

HOLDINGS

1. A state prisoner seeking federal habeas relief under 28 U.S.C. § 2254 must exhaust state judicial remedies by giving the state's highest court a full and fair opportunity to consider each claim before presenting it to federal court.
2. The exhaustion requirement should not be excused absent a showing that no state corrective process is available or that the state process is ineffective to protect the petitioner's rights.
3. A certificate of appealability should not issue because reasonable jurists would not debate the procedural dismissal for failure to exhaust state remedies.

KEY QUOTATIONS

“Under Rule 4, a district court must dismiss a habeas petition if it “plainly appears” that the petitioner is not entitled to relief.” (at 1)

“Exhaustion is a “threshold” matter that must be satisfied before the court can consider the merits of each claim.” (at 2)

“The exhaustion doctrine is based on comity and permits the state court the initial opportunity to resolve any alleged constitutional deprivations.” (at 2)

“Where, as here, the court denies habeas relief on procedural grounds without reaching the merits of the underlying constitutional claims, the court should issue a certificate of appealability only “if jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”” (at 5)

FACTUAL BACKGROUND

The petition challenges the California Board of Parole Hearings' January 16, 2025 decision denying Zinman parole. Zinman asserted that there was no reasonable nexus for treating him as dangerous or violent, that the Board failed to apply controlling legal principles, and that California Code of Regulations sections 2449.4 and 2449.5 were unconstitutional as applied. He submitted a Ventura County Superior Court order denying a state habeas petition and identified a California Court of Appeal habeas matter, but the record did not show presentation of his claims to the California Supreme Court.

PROCEDURAL HISTORY

Zinman filed a § 2254 petition challenging a January 16, 2025 California Board of Parole Hearings decision denying parole. The case was initially docketed in the Central District of California and transferred to the Eastern District of California. After the court ordered Zinman to show cause regarding exhaustion, he requested that exhaustion be excused but did not show that he had presented his claims to the California Supreme Court. The magistrate judge recommended dismissal, subject to the parties' fourteen-day objection period.

DISPOSITION

dismissed

CASES CITED

- Valdez v. Montgomery, 918 F.3d 687, 693 (9th Cir. 2019)
- Boyd v. Thompson, 147 F.3d 1124, 1127 (9th Cir. 1998)
- Ross v. Williams, 896 F.3d 958, 968 (9th Cir. 2018)
- Day v. McDonough, 547 U.S. 198, 205 (2006)
- Coleman v. Thompson, 501 U.S. 722, 731 (1991)
- Rose v. Lundy, 455 U.S. 509, 518 (1982)
- O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999)
- Duncan v. Henry, 513 U.S. 364, 365 (1995)
- Darr v. Burford, 339 U.S. 200, 218 (1950)
- Fay v. Noia, 372 U.S. 391 (1963)
- Hendricks v. Zenon, 993 F.2d 664, 672 (9th Cir. 1993)
- Ducksworth v. Serrano, 454 U.S. 1, 3 (1981)
- Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)
- United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 JUSTIN MARCUS ZINMAN, Case No. 1:25-cv-00687-HBK (HC) 12
Petitioner, ORDER TO ASSIGN DISTRICT JUDGE 13 v. FINDINGS AND
RECOMMENDATIONS TO DISMISS PETITION1 14 CALIFORNIA BOARD OF PAROLE
HEARINGS, FOURTEEN-DAY OBJECTION PERIOD 15 Respondent. (Doc. No. 1) 16 17 18 19
20 Petitioner Justin Marcus Zinman, a state prisoner proceeding pro se, has pending a petition 21
for writ of habeas corpus under 28 U.S.C. § 2254.

(Doc. No. 1, “Petition”). This matter is before the Court for preliminary review. See Rules Governing § 2254 Cases, Rule 4; 28 U.S.C. § 2243. Under Rule 4, a district court must dismiss a habeas petition if it “plainly appears” that the petitioner is not entitled to relief. See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir.

1998). Courts have “an active role in summarily disposing of facially defective habeas petitions” under Rule 4. *Ross v. Williams*, 896 F.3d 1 (9th Cir. 2018). This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022). 1 F.3d 958, 968 (9th Cir. 2018) (citation omitted).

As more fully set forth herein, based on the facts and governing law, the undersigned recommends that the Petition be dismissed for failure to exhaust state remedies. I. BACKGROUND Petitioner initiated this case by filing the instant Petition, which was docketed in the Central District of California on May 19, 2025 and subsequently transferred to the Eastern District of California on June 4, 2025.

(Doc. Nos. 1, 7). To the extent discernable, the Petition raises three grounds for relief related to the January 16, 2025 Board of Parole’s decision denying him parole: (1) there was no “reasonable nexus for considering the subject of parole as dangerous/violent/criminal”; (2) the Board of Parole failed to apply “controlling legal principles”; and (3) California Code of Regulations § 2449.4 and/or § 2449.5 are unconstitutional as applied under state and federal law.

(Doc. No. 1 at 3-5). Included with the Petition is a copy of the January 16, 2025 Board of Parole decision denying Petitioner parole, a copy of the Ventura County Superior Court’s May 7, 2025 Order denying the state petition for writ of habeas corpus because it fails to state a prima facie claim for relief, and a “Notice of Appeal” directed to the Ventura County Superior Court dated May 14, 2025.

(Doc. No. 1 at 12-24). On June 25, 2025, the Court ordered Petitioner to show cause why the Petition should not be dismissed for failure to exhaust state remedies. (Doc. No. 13). On July 17, 2025, Petitioner responded by asking the Court to excuse exhaustion. (Doc. No. 14). II. APPLICABLE LAW AND ANALYSIS A petitioner in state custody who wishes to proceed on a federal petition for a writ of habeas corpus must exhaust state judicial remedies.

See 28 U.S.C. § 2254(b)(1). Exhaustion is a “threshold” matter that must be satisfied before the court can consider the merits of each claim. *Day v. McDonough*, 547 U.S. 198, 205 (2006). The exhaustion doctrine is based on comity and permits the state court the initial opportunity to resolve any alleged constitutional deprivations. See *Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *Rose v. Lundy*, 455 U.S. 509, 518 (1982).

27 To satisfy the exhaustion requirement, petitioner must provide the highest state court with a full
28 and fair opportunity to consider each claim before presenting it to the federal court. See 1
O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v. Henry, 513 U.S. 364, 365 (1995). 2
The burden of proving exhaustion rests with the petitioner. Darr v. Burford, 339 U.S. 200, 218 3
(1950) (overruled in part on other grounds by Fay v. Noia, 372 U.S. 391 (1963)).

A failure to 4 exhaust may only be excused where the petitioner shows that “there is an absence of
available 5 State corrective process” or “circumstances exist that render such process ineffective to
protect 6 the rights of the applicant.” 28 U.S.C. § 2254(b)(1)(B)(i)-(ii); see also Hendricks v.
Zenon, 993 7 F.2d 664, 672 (9th Cir. 1993) (directing that exhaustion should be excused only “in
rare cases 8 where exceptional circumstances of peculiar urgency are shown to exist.”);
Ducksworth v. 9 Serrano, 454 U.S. 1, 3 (1981) (“An exception is made only if there is no
opportunity to obtain 10 redress in state court or if the corrective process is so clearly deficient as
to render futile any 11 effort to obtain relief.”).

12 Here, as noted in the Court’s June 25, 2025 Order to Show Cause, Petitioner indicated he 13
filed a petition for habeas corpus in the Fifth Appellate Division of the California Court of 14
Appeals with a “date of decision” in 2025 (Case No. F088863). (Doc. No. 1 at 7).

The Court 15 took judicial notice of the California Courts Appellate Courts Case Information
online database 16 pursuant to Rule 201 of the Federal Rules of Evidence, which confirms the
“completion date” of a 17 habeas corpus petition filed in the Fifth Appellate District on January
29, 2025, but does not list 18 any habeas corpus petitions filed in the state supreme court in 2025.2
19 In response to the Court’s Order to Show Cause, Petitioner does not contend that he 20
presented his claims to the California Supreme Court.

Rather, Petitioner argues the Court should 21 excuse the exhaustion requirement because the State
of California “hates him” and has “the 22 objective purpose of denying [him] of federally
protected rights.” (Doc. No. 14 at 1-2). 23 However, Petitioner offers no evidence to support his
arguments concerning bias or prejudice 24 against him by the “State of California,” nor does he
show any lack of opportunity to obtain 25 redress in state court or specific deficiencies in the state
corrective process.

See Ducksworth, 454 26 U.S. at 3. Thus, the Court finds no grounds to excuse the exhaustion
requirement. 27 2 <https://appellatecases.courtinfo.ca.gov/search.cfm?dist=0> (search “Search by
Party” for “Justin Marcus 28 Zinman” and “Justin Zinman”). 1 Because it appears Petitioner has
failed to exhaust his claims, the undersigned 2 recommends that the Court dismiss the Petition for
failure to exhaust state remedies.

If Petitioner 3 presented his claim to the California Supreme Court, he should provide proof of this
filing to the 4 court in his objections to these findings and recommendations. 5 III. CERTIFICATE

OF APPEALABILITY 6 State prisoners in a habeas corpus action under § 2254 do not have an automatic right to 7 appeal a final order. See 28 U.S.C. § 2253(c)(1)(A); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 8 (2003).

To appeal, a prisoner must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(2); 9 see also R. Governing Section 2254 Cases 11 (requires a district court to issue or deny a 10 certificate of appealability when entering a final order adverse to a petitioner); Ninth Circuit Rule 11 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

Where, as here, the court 12 denies habeas relief on procedural grounds without reaching the merits of the underlying 13 constitutional claims, the court should issue a certificate of appealability only “if jurists of reason 14 would find it debatable whether the petition states a valid claim of the denial of a constitutional 15 right and that jurists of reason would find it debatable whether the district court was correct in its 16 procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain procedural bar 17 is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist 18 could not conclude either that the district court erred in dismissing the petition or that the 19 petitioner should be allowed to proceed further.” *Id.* Here, reasonable jurists would not find the 20 undersigned’s conclusion debatable or conclude that petitioner should proceed further.

The 21 undersigned therefore recommends that a certificate of appealability not issue. 22 Accordingly, it is ORDERED: 23 The clerk of court is directed to assign this case to a district judge for the purposes of 24 reviewing these findings and recommendations. 25 It is further RECOMMENDED: 26 1.

The Petition (Doc. No. 1) be DISMISSED for failure to exhaust state remedies. 27 2. Petitioner be denied a certificate of appealability. 28 1 NOTICE TO PARTIES 2 These Findings and Recommendations will be submitted to the United States District 3 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(). Within 14 days 4 | after being served with a copy of these Findings and Recommendations, a party may file written 5 | objections with the Court. /d.; Local Rule 304(b).

The document should be captioned, 6 | “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed fifteen 7 | (15) pages. The Court will not consider exhibits attached to the Objections. To the extent a party 8 | wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its 9 | CM/ECEF document and page number, when possible, or otherwise reference the exhibit with 10 || specificity.

Any pages filed in excess of the fifteen (15) page limitation may be disregarded by 11 | the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 12 | 636(b)d)(C).

A party's failure to file any objections within the specified time may result in the 13 | waiver of certain rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.

2014). 14 Dated: July 21, 2025 Mihaw. Wh. foareh Zaskth 16 HELENA M. BARCH-KUCHTA 7 UNITED STATES MAGISTRATE JUDGE 18 19 20 21 22 23 24 25 26 27 28

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