

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Jacome v. Newsom

Jacome · No. 3:25-cv-1128-BEN-DDL · Decided July 14, 2025

OPINION

Jacome v. Newsom

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 ALEXANDER ROBERT JACOME, Case No.: 3:25-cv-1128-BEN-DDL 12 Petitioner,

ORDER: (1) GRANTING

13 v. APPLICATION TO PROCEED IN

FORMA PAUPERIS and 14 GAVIN NEWSOM, et al., 15 Respondents. (2) DISMISSING
PETITION

WITHOUT PREJUDICE

16 17

18 INTRODUCTION

19 On May 1, 2025, Petitioner, a state prisoner proceeding pro se, filed a Petition for 20 Writ of
Habeas Corpus pursuant to 28 U.S.C. § 2254, along with a request to proceed in 21 forma
pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). ECF Nos. 1 & 2. On May 6, 2025, 22 the Court
denied Petitioner’s IFP motion and dismissed the case because Petitioner failed 23 to provide the
necessary support for his IFP motion. ECF No. 3. The Court notified 24 Petitioner that to have his
case reopened, he must either pay the \$5.00 filing fee or submit 25 a properly supported IFP
motion by July 18, 2025. See id. On June 20, 2025, Petitioner 26 filed another IFP motion. ECF
No. 4. But Petitioner again failed to provide the Court with 27 sufficient information to determine
his financial status and as such, the Court denied the 28 motion. ECF No. 5. On July 8, 2025,
Petitioner filed another IFP motion. ECF No. 7.

1 MOTION TO PROCEED IN FORMA PAUPERIS

2 Along with his renewed IFP motion, Petitioner has included a copy of his prison 3 certificate
which shows he has insufficient on account at the California correctional 4 institution in which he
is presently confined to pay the \$5.00 filing fee. See ECF No. 7 at 5 2. Thus, the Court GRANTS
Petitioner’s application to proceed IFP and allows Petitioner 6 to prosecute the above-referenced
action without being required to prepay fees or costs and 7 without being required to post security.
The Clerk of the Court shall file the Petition for 8 Writ of Habeas Corpus without prepayment of

the filing fee.

9 FAILURE TO STATE A COGNIZABLE FEDERAL HABEAS CLAIM

10 Upon preliminary review of the Petition, however, it must be dismissed because 11 Petitioner has failed to allege that his state court conviction or sentence violates the 12 Constitution of the United States. Title 28, United States Code, § 2254(a), sets forth the 13 following scope of review for federal habeas corpus claims: 14 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in 15 custody pursuant to the judgment of a State court only on the ground that he 16 is in custody in violation of the Constitution or laws or treaties of the United States. 17 18 28 U.S.C. § 2254(a) (emphasis added). See *Hernandez v. Ylst*, 930 F.2d 714, 719 (9th Cir. 19 1991); *Mannhalt v. Reed*, 847 F.2d 576, 579 (9th Cir. 1988). Thus, to present a cognizable 20 federal habeas corpus claim under § 2254, a state prisoner must allege both that he is in 21 custody pursuant to a “judgment of a State court,” and that he is in custody in “violation of 22 the Constitution or laws or treaties of the United States.” See 28 U.S.C. § 2254(a). 23 Here, Petitioner seeks to have his California “felony term . . . amended to be [a] 24 misdemeanor” and asks to be resentenced accordingly. ECF No. 1 at 6–7. In no way, 25 however, does Petitioner claim he is “in custody in violation of the Constitution or laws or 26 treaties of the United States.” 28 U.S.C. § 2254.

27 Rule 4 of the Rules Governing § 2254 Cases provides for summary dismissal of a 28 habeas petition “[i]f it plainly appears from the face of the petition and any attached 1 exhibits that the petitioner is not entitled to relief in the district court . . .” Rule 4, 28 U.S.C. 2 foll. § 2254. Here, it is plain from the Petition that Petitioner is not presently entitled to 3 federal habeas relief because he has not alleged that the state court violated his federal 4 rights. Thus, there is no ground upon which to entertain the Petition. Accordingly, the 5 Petition must be dismissed. 6 Further, the Court notes that Petitioner cannot simply amend his Petition to state a 7 federal habeas claim and then refile the amended petition in this case. He must exhaust 8 state judicial remedies before bringing his claims via federal habeas. See 28 U.S.C. 9 § 2254(b), (c) (requiring state prisoners who wish to challenge their state court conviction 10 to first exhaust state judicial remedies); *Granberry v. Greer*, 481 U.S. 129, 133–34 (1987). 11 To exhaust state judicial remedies, a California state prisoner must present the California 12 Supreme Court with a fair opportunity to rule on the merits of every issue raised in his or 13 her federal habeas petition. See 28 U.S.C. § 2254(b), (c); *Granberry*, 481 U.S. at 133–34. 14 Moreover, to properly exhaust state court judicial remedies a petitioner must allege, in state 15 court, how one or more of his or her federal rights have been violated. The Supreme Court 16 in *Duncan v. Henry*, 513 U.S. 364 (1995) reasoned: “If state courts are to be given the 17 opportunity to correct alleged violations of prisoners’ federal rights, they must surely be 18 alerted to the fact that the prisoners are asserting claims under the United States 19 Constitution.” *Id.* at 365–66. For example, “[i]f a habeas petitioner wishes to claim that an 20 evidentiary ruling at a state court trial denied him the due process of law guaranteed by the 21 Fourteenth Amendment, he must say so, not only in federal

court, but in state court.” Id. 22 Additionally, the Court cautions Petitioner that under the Antiterrorism and 23 Effective Death Penalty Act of 1996, signed into law on April 24, 1996, a one-year period 24 of limitation shall apply to a petition for a writ of habeas corpus by a person in custody 25 pursuant to the judgment of a State court. The limitation period shall run from the latest of: 26 (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review; 27 28 (B) the date on which the impediment to filing an application created by 1 State action in violation of the Constitution or laws of the United States is 7 removed, if the applicant was prevented from filing by such State action; 3 (C) the date on which the constitutional right asserted was initially A recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral 5 review; or 6 (D) the date on which the factual predicate of the claim or claims presented 7 could have been discovered through the exercise of due diligence. 8 9 U.S.C. § 2244(d)(1)(A)-(D).!

10 CONCLUSION

11 Accordingly, the Court GRANTS Petitioner’s IFP Motion (ECF No. 7) and 12 || DISMISSES this habeas action without prejudice for failure to state a cognizable claim. 13 || See Rule 4, 28 U.S.C. foll. § 2254. The Clerk shall close the file.

14 IT IS SO ORDERED. °

15 || Dated: July 14, 2025 16 Hon. Roger T. Benitez 7 United States District Judge 18 19 20 21 22 23 24 ||' The Court also notes that the statute of limitations does not run while a properly filed state habeas corpus petition is pending. 28 U.S.C. § 2244(d)(2); see *Nino v. Galaza*, 183 F.3d 1003, 1006 (9th

25 Cir. 1999); cf *Artuz v. Bennett*, 531 U.S. 4, 8 (2000) (holding that “an application is ‘properly 26 || filed’ when its delivery and acceptance [by the appropriate court officer for placement into the record] are in compliance with the applicable laws and rules governing filings.”). However, absent 27 || some other basis for tolling, the statute of limitations does run while a federal habeas petition is 28 pending. *Duncan v. Walker*, 533 U.S. 167, 181-82 (2001).