

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Gary Doporto v. Attorney General of the State of New Mexico, et al.

Doporto · No. No. 25-cv-0766-KWR-KBM · Decided December 11, 2025

SUMMARY

The United States District Court for the District of New Mexico reviews Gary Doporto’s habeas petition challenging a state probation-revocation order and the calculation of his sentence. The court grants in forma pauperis status and orders Doporto to show cause within 30 days why the petition should not be dismissed without prejudice for failure to exhaust state remedies.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	Kea W. Riggs
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	December 11, 2025
DOCKET	No. 25-cv-0766-KWR-KBM
DISPOSITION	other
PROCEDURAL POSTURE	The petitioner filed a federal habeas petition under 28 U.S.C. § 2254 challenging a state probation-revocation sentence and, separately, the calculation and execution of his state sentence. The district court screened the petition sua sponte under Habeas Corpus Rule 4 and ordered the petitioner to show cause why the petition should not be dismissed without prejudice for failure to exhaust state remedies.
STANDARD OF REVIEW	Sua sponte screening under Habeas Corpus Rule 4; the court reviews whether the petition and attached exhibits plainly show that the petitioner is not entitled to relief.
PRECEDENTIAL VALUE	Unknown; district-court memorandum opinion and order with no reported citation.
PARTIES	Gary Doporto v. Attorney General of the State of New Mexico, et al.

TOPICS

- federal habeas corpus
- post-conviction relief
- habeas corpus
- criminal procedure

PRACTICE AREAS

Federal habeas corpus

Post-conviction relief

Criminal procedure

QUESTIONS PRESENTED

1. Whether the federal habeas petition should be dismissed or otherwise addressed after screening because Doporto failed to exhaust available state remedies.
2. Whether Doporto's challenge to the 2021 probation-revocation sentence is properly brought under 28 U.S.C. § 2254 and whether his challenge to sentence calculation and earned-credit determinations is properly construed under 28 U.S.C. § 2241.
3. Whether the court should permit a stay pending exhaustion if Doporto can satisfy the applicable good-cause, potential-merit, and anti-dilatory-litigation factors.

HOLDINGS

1. A habeas petitioner generally must exhaust available state remedies before obtaining federal habeas relief, and the requirement applies to petitions brought under both 28 U.S.C. § 2241 and § 2254.
2. A challenge to a state conviction or sentence is properly brought under 28 U.S.C. § 2254, while a challenge to the execution of a sentence, including sentence-credit calculations, is properly construed under 28 U.S.C. § 2241.
3. A petitioner seeking a stay of an unexhausted habeas proceeding must show good cause for the failure to exhaust, that the unexhausted claims are potentially meritorious, and that the petitioner has not engaged in intentionally dilatory litigation tactics.

KEY QUOTATIONS

“Habeas Corpus Rule 4 requires a sua sponte review of habeas petitions.” (2)

“ “[A] habeas petitioner is generally required to exhaust state remedies” before obtaining relief.” (2)

“For these reasons, the Court will require Petitioner to show cause in writing why his Petition should not be summarily dismissed for failing to exhaust state remedies.” (3)

FACTUAL BACKGROUND

In 2015, Doporto pleaded guilty in New Mexico state court to trafficking a controlled substance and received a nine-year sentence, with six and a half years suspended, a habitual-offender enhancement, and five years of probation. After his initial incarceration, he was arrested several times for probation violations, and the state court revoked probation in 2018 and again in 2021. Doporto remains incarcerated under the December 20, 2021 revocation order. He did not appeal the state judgment or revocation orders, seek review in the New Mexico Supreme Court, or file a state habeas petition.

PROCEDURAL HISTORY

Doporto pleaded guilty in New Mexico state court to trafficking a controlled substance and later received probation revocations in 2018 and 2021. He did not appeal the state criminal judgment or revocation orders and

did not seek review in the New Mexico Supreme Court or file a state habeas petition. He filed this federal petition on August 11, 2025. The district court granted in forma pauperis status, screened the petition, and issued a thirty-day show-cause order rather than immediately dismissing the action.

DISPOSITION

other

CASES CITED

- Mitchell v. Dowling, 672 Fed. App'x 792, 794 (10th Cir. 2016)
- McIntosh v. U.S. Parole Comm'n, 115 F.3d 809, 811-12 (10th Cir. 1997)
- Yellowbear v. Wyoming Att'y Gen., 525 F.3d 921, 924 (10th Cir. 2008)
- Montez v. McKinna, 208 F.3d 862, 866 (10th Cir. 2000)
- Dever v. Kansas State Penitentiary, 36 F.3d 1531, 1534 (10th Cir. 1994)
- Magar v. Parker, 490 F.3d 816, 818 (10th Cir. 2007)
- United States v. Mitchell, 518 F.3d 740, 746 n.8 (10th Cir. 2008)
- Doe v. Jones, 762 F.3d 1174, 1181 (10th Cir. 2014)
- Rhines v. Weber, 544 U.S. 269 (2005)