

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Rafael Villalobos Hernandez v. Roberto A. Arias

Hernandez v. Arias · No. 1:25-cv-00812-KES-SKO (HC) · Decided November 21, 2025

OPINION

Arias

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 RAFAEL VILLALOBOS HERNANDEZ, No. 1:25-cv-00812-KES-SKO (HC)

12 Petitioner, ORDER VACATING FINDINGS AND

RECOMMENDATION

13

v. FINDINGS AND RECOMMENDATION

14 TO DENY RESPONDENT’S MOTION TO

DISMISS PREMATURE PETITION

15 ROBERTO A. ARIAS,

[TWENTY-ONE DAY OBJECTION

16 Respondent. DEADLINE] 17 18 Petitioner is a state prisoner proceeding pro se with a petition
for writ of habeas corpus 19 pursuant to 28 U.S.C. § 2254. He filed the instant petition
challenging his conviction on June 9, 20 2025. On September 5, 2025, Respondent filed a motion
to dismiss the petition as premature. 21 (Doc. 16.) Petitioner did not file an opposition.¹ On
October 7, 2025, the Court issued Findings 22 and Recommendation to grant the motion to
dismiss. (Doc. 17.) The parties were granted twenty- 23 one (21) days to file objections. On
November 19, 2025, Petitioner filed objections. (Doc. 18.) 24 Having considered the objections,
the Court will vacate the earlier Findings and 25 Recommendations and recommend the motion be
denied. 26 27 1 In his objections, Petitioner complains that he was not served with a copy of
Respondent’s motion to dismiss and therefore was unable to oppose the motion. The point is moot
as the Court has considered the 28 arguments raised in his objections and will recommend denying
the motion.

1 DISCUSSION

2 A. Preliminary Review of Petition

3 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a

4 petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not
5 entitled to relief in the district court” Rule 4 of the Rules Governing Section 2254 Cases. 6
The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of
7 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to 8
dismiss, or after an answer to the petition has been filed. *Herbst v. Cook*, 260 F.3d 1039 (9th Cir. 9
2001). 10 B. Background 11 Petitioner is incarcerated at Calipatria State Prison pursuant to a 2022
judgment of the 12 Kings County Superior Court. (Doc. 15-1 at 1.) Petitioner appealed the
conviction and sentence to 13 the California Court of Appeal, Fifth Appellate District (“Fifth
DCA”). (Doc. 15-2.) On August 14 7, 2024, the Fifth DCA vacated the sentence and remanded the
matter for resentencing. (Doc. 15- 15 2 at 50.) The judgment was otherwise affirmed. On October
23, 2024, the California Supreme 16 Court denied the petition for review. (Doc. 15-4.) On August
14, 2025, Petitioner was 17 resentenced. He appealed the judgment and the appeal is pending.
(Doc. 15-5.) 18 C. Younger Abstention 19 Under principles of comity and federalism, a federal
court should not interfere with 20 ongoing state criminal proceedings by granting injunctive or
declaratory relief except under 21 special circumstances. *Younger v. Harris*, 401 U.S. 37, 43-54
(1971). Younger abstention is 22 required when: (1) state proceedings, judicial in nature, are
pending; (2) the state proceedings 23 involve important state interests; (3) the state proceedings
afford adequate opportunity to raise the 24 constitutional issue; and (4) the requested relief
‘seek[s] to enjoin’ or has ‘the practical effect of 25 enjoining’ the ongoing state judicial
proceeding.” *Duke v. Gastelo*, 64 F.4th 1088, 1094 (9th Cir. 26 2023); *Middlesex County Ethics*
Comm. v. Garden State Bar Ass’n, 457 U.S. 423, 432 (1982); 27 *Dubinka v. Judges of the*
Superior Court, 23 F.3d 218, 223 (9th Cir. 1994). The rationale of 28 Younger applies throughout
the appellate proceedings, requiring that state appellate review of a 1 state court judgment be
exhausted before federal court intervention is permitted. *Dubinka*, 23 2 F.3d at 223 (even if
criminal trials were completed at time of abstention decision, state court 3 proceedings still
considered pending). 4 In his objections, Petitioner clarified that the current appeal concerned
only resentencing 5 issues and did not provide him with an opportunity to raise constitutional
challenges to the 6 conviction. He also states that he has abandoned his appeal and notified the
California Court of 7 Appeal of the same. In *Duke*, the Ninth Circuit held that the third
requirement for Younger 8 abstention was not satisfied when a federal habeas petition was filed
while a petitioner's state 9 resentencing proceedings were ongoing, when the state resentencing
proceeding did not provide 10 the petitioner the opportunity to raise the constitutional challenge
brought in his federal petition.” 11 *Duke*, 64 F.4th at 1094-99. 12 Here, the appellate court
determined that Petitioner was improperly sentenced on Counts 2 13 through 6. (Doc. 15-2 at 49.)
The court remanded the case to the trial court to resentence 14 Petitioner and forward the amended
abstract of judgment to the Department of Corrections and 15 Rehabilitation. (Doc. 15-2 at 50.) In
all other respects, including Petitioner’s constitutional 16 claims, the judgment was affirmed.
(Doc. 15-2 at 50.) Thus, Petitioner is correct that the third 17 requirement for Younger abstention

is not met, because the due process claims raised in his 18 federal petition were already presented and denied by the state courts, and he did not have the 19 opportunity to re-raise them in his resentencing proceeding. Further, Petitioner states he has 20 abandoned his appeal so there are no ongoing state proceedings. Younger's comity concerns are 21 therefore not implicated. This Court has previously held that Younger abstention is not 22 appropriate in such a case. See *Larios v. Alomari*, 2025 WL 82303 (E.D. Cal. Jan. 13, 2025).

23 ORDER

24 Accordingly, the Court VACATES the Findings and Recommendations of October 7, 25 2025 (Doc. 17).

26 RECOMMENDATION

27 For the foregoing reasons, the Court RECOMMENDS that Respondent's motion to 28 dismiss be DENIED and Respondent be directed to file a response to the petition. 1 This Findings and Recommendation is submitted to the United States District Court Judge 2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the 3 Local Rules of Practice for the United States District Court, Eastern District of California. Within 4 twenty-one (21) days after being served with a copy of this Findings and Recommendation, a 5 party may file written objections with the Court and serve a copy on all parties. Id. The document 6 should be captioned, "Objections to Magistrate Judge's Findings and Recommendation" and shall 7 not exceed fifteen (15) pages, except by leave of court with good cause shown. The Court will not 8 consider exhibits attached to the Objections. To the extent a party wishes to refer to any 9 exhibit(s), the party should reference the exhibit in the record by its CM/ECF document and page 10 number, when possible, or otherwise reference the exhibit with specificity. Any pages filed in 11 excess of the fifteen (15) page limitation may be disregarded by the District Judge when 12 reviewing these Findings and Recommendations pursuant to 28 U.S.C. § 636 (b)(1)(C). The 13 parties are advised that failure to file objections within the specified time may result in the waiver 14 of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014). This 15 recommendation is not an order that is immediately appealable to the Ninth Circuit Court of 16 Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, 17 should not be filed until entry of the District Court's judgment. 18 IT IS SO ORDERED. 19 20 Dated: November 21, 2025 /s/ Sheila K. Oberto .

UNITED STATES MAGISTRATE JUDGE

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