

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Tony Wood v. John Henley

Wood v. Henley, No. 3:25-cv-00696-ART-CLB (D. Nev. Dec. 29, 2025) · No. 3:25-cv-00696-ART-CLB ·

Decided December 29, 2025

OPINION

1 2 UNITED STATES DISTRICT COURT 3 DISTRICT OF NEVADA 4 TONY WOOD, Case
No. 3:25-cv-00696-ART-CLB 5 Petitioner, DISMISSAL ORDER v. 6 JOHN HENLEY, 7
Respondent. 8 9 Petitioner Tony Wood filed a Petition for Writ of Habeas Corpus pursuant 10 to
28 U.S.C. § 2254, paid his filing fee, and moved for the appointment of counsel. 11 (ECF Nos. 1-1
("Petition"), 4, 5.)

This matter is before the Court for preliminary 12 review under the Rules Governing Section 2254
Cases. For the reasons discussed 13 below, the Court dismisses the Petition as not cognizable and
denies the motion 14 for counsel. 15 Under Habeas Rule 4, the assigned judge must examine a
habeas petition 16 and order a response unless it "plainly appears" that the petitioner is not
entitled 17 to relief.

Habeas Rule 4; see also *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). A state
prisoner's habeas claim is cognizable under § 2254 only if it 19 falls within the "core" of habeas.
Nettles v. Grounds, 830 F.3d 922, 930 (9th Cir. 2016) (en banc). If success on a habeas claim
would not necessarily lead to a 21 petitioner's immediate or earlier release from custody, the claim
does not fall 22 within "the core of habeas corpus" and must be brought, "if at all," under 42 23
U.S.C. § 1983.

Id. at 931. Said another way, habeas relief is not available for 24 "probabilistic claims," i.e., where
success on the claims "could potentially affect 25 the duration of confinement" or is "likely to
accelerate the prisoner's eligibility for 26 parole." *Id.* at 933–34 (quotation omitted). 27 Here,
Wood started serving his life sentence for first-degree murder in 28 1978.

(ECF No. 1-1 at 2.) Wood explains that he has been found ineligible to be 1 seen by the Nevada
State Board of Pardons Commissioners for commutation of 2 his sentence under Nevada
Administrative Code 213.103, which was enacted in 3 2010. (*Id.*) Wood argues that this violates
the Ex Post Facto Clause of the United 4 States Constitution. (*Id.*) 5 Success on the merits of
Wood's claim would not necessarily lead to his 6 immediate or speedier release because a finding
that Wood could be seen by the 7 Nevada State Board of Pardons Commissioners would not
necessarily lead to a 8 grant of a pardon.

Under Nevada law, the Nevada State Board of Pardons 9 Commissioners has the authority and discretion to grant or deny a pardon. Powell 10 v. State, No. 76448, 2019 WL 1245614, at *1 n.2 (Nev. March 15, 2019) (“The 11 power to pardon and commute lies within the discretion of the Pardons Board.”). 12 Consequently, Wood’s claim does not fall in the “core” of habeas and must be 13 brought—if at all—under 42 U.S.C. § 1983.1 See Stanhope v. Ryan, No. CV-14- 14 00310-TUC-BPV, 2017 WL 1163303, at *8 (D.

Ariz. Mar. 29, 2017) (explaining 15 that “even if Petitioner were to succeed on his claim that he was improperly denied 16 a commutation hearing, it does not necessarily follow that such a determination 17 would result in his immediate release from custody or the shortening of his 18 sentence” because “the absence of a commutation hearing in this case does not 19 compel the grant of clemency”).

The Court dismisses the Petition. 20 It is therefore ordered the Petition (ECF No. 1-1) is dismissed as not 21 cognizable. A certificate of appealability is denied, as jurists of reason would not 22 find dismissal of the Petition to be debatable or wrong. 23 It is further ordered that the motion for counsel (ECF No. 5) is denied. 24 1The Court has not completed a review of other potential issues that may arise if 25 Wood files a § 1983 complaint.

This Order does not explicitly or implicitly find that a § 1983 complaint would be free of deficiencies, procedural or otherwise. In 26 addition, the Court expresses no opinion regarding the exhaustion of 27 administrative remedies, which is a prerequisite to filing a complaint presenting constitutional claims to the federal courts. 42 U.S.C. § 1997e (Prison Litigation 28 Reform Act or “PLRA”); Nettles, 830 F.3d at 932.

1 It is further kindly ordered that the Clerk of the Court (1) add Nevada 2 || Attorney General Aaron D. Ford as counsel for Respondents, (2) electronically 3 || provide Respondents’ counsel copies of the Petition (ECF No. 1-1), this Order, and 4 || all other filings in this matter by regenerating the notices of electronic filing,?

(3) 5 || enter final judgment dismissing this action, and (4) close this case. 6 7 DATED THIS 29th day of December 2025. 8 9 on 1 UNITED STATES DISTRICT JUDGE 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 2No response is required from Respondents other than to respond to any orders 28 || of a reviewing court.