

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Vargas v. Borla

Vargas · No. 3:25-cv-00896 (BEN) (MSB) · Decided July 30, 2025

OPINION

Vargas v. Borla

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 ERNESTO VARGAS, Case No.: 25cv0896 BEN (MSB) 12 Petitioner, ORDER: 13 v.

(1) SUMMARILY DISMISSING

14 EDWARD J. BORLA, Warden,

SUCCESSIVE PETITION PURSUANT

15 Respondent. TO 28 U.S.C. § 2244(b)(3)(A) GATEKEEPER PROVISION; 16

17 (2) DENYING RENEWED MOTION TO

PROCEED IN FORMA PAUPERIS [ECF

18

No. 5] AS MOOT; AND

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(3) DECLINING TO ISSUE

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CERTIFICATE OF APPEALABILITY

21 22 On April 11, 2025, Petitioner Ernesto Vargas (“Petitioner”), a state prisoner 23 proceeding
pro se, filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 24 challenging a San
Diego Superior Court judgment of conviction and resultant sentence of 25 32 years and 4 months
in prison, along with a request to proceed in forma pauperis (“IFP”). 26 (ECF Nos. 1-2.) On June
17, 2025, the Court denied Petitioner’s request to proceed IFP 27 and dismissed the Petition
without prejudice for failure to satisfy the filing fee requirement 28 and failure to state a
cognizable federal claim and directed Petitioner that to have the case 1 reopened he must (1)
provide the Court with either the \$5.00 filing fee or with adequate 2 proof that he cannot pay the
\$5.00 filing fee and (2) submit a completed First Amended 3 Petition form that cured the
identified pleading deficiencies. (See ECF No. 3.) On July 4 21, 2025, Petitioner filed a First
Amended Petition challenging his 2003 San Diego 5 Superior Court judgment of conviction and
resultant sentence of 32 years and 4 months in 6 prison. (ECF No. 4.) On July 24, 2025, Petitioner

filed a renewed motion to proceed IFP. 7 (ECF No. 5.) For the reasons discussed below, the Court DISMISSES the First Amended 8 Petition without prejudice, DENIES the renewed motion to proceed IFP as MOOT, and 9 DECLINES to issue a certificate of appealability.

10 PETITION CHALLENGING JUDGMENT IN CASE NUMBER SCD175175

11 BARRED BY GATEKEEPER PROVISION

12 Petitioner now acknowledges the instant Petition is not the first Petition for a Writ 13 of Habeas Corpus Petitioner has submitted to this Court challenging his October 14, 2003, 14 San Diego County Superior Court judgment of conviction in case number SCD175175.1 15 (See ECF No. 4 at 5.) On June 16, 2005, Petitioner filed in this Court a Petition for a Writ 16 17 1 It also appears from the Court's initial review that Petitioner may now also be attempting 18 to challenge more than one matter or judgment in the instant case. Petitioner is advised 19 that pursuant to the Rules Governing Section 2254 Cases, a habeas petitioner must submit a separate petition for each challenge. See R. 2(e), Rules Governing § 2254 Cases (2019) 20 ("A petitioner who seeks relief from judgments of more than one state court must file a 21 separate petition covering the judgment or judgments of each court.") The First Amended Petition lists two trial court case numbers with respect to the judgment of conviction being 22 challenged, SCD175175 and SCD172263, but only lists one date for the judgment of 23 conviction and one sentence, while the prior Petition listed only the 32 years and 4 month sentence, no trial court case number and no date of conviction. (Compare ECF No. 4 at 1 24 with ECF No. 1 at 1-2.) Upon review of the First Amended Petition and as outlined 25 elsewhere in this Order, both the date of the judgment of conviction and the term of sentence imposed clearly correspond to San Diego Superior Court case number 26 SCD175175. Meanwhile, Petitioner fails to identify any date for a judgment of conviction 27 or length of sentence with respect to case number SCD172263. To the extent Petitioner may be attempting to challenge more than one judgment in the instant case, he is advised 28 1 of Habeas Corpus challenging this same 2003 judgment of conviction and sentence of 32 2 years and 4 months in San Diego Superior Court case number SCD175175, of which the 3 Court takes judicial notice. (See ECF No. 1 in *Vargas v. Evans*, S.D. Cal. Case No. 05-cv- 4 1233-L (NLS); see *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) ("[A] court 5 may take judicial notice of its own records in other cases, as well as the records of an 6 inferior court in other cases.") On June 21, 2006, this Court denied that petition on the 7 merits with prejudice and on August 9, 2006, denied a certificate of appealability. (See 8 ECF Nos. 12, 15 in S.D. Cal. Case No. 05-cv-1233-L (NLS).) On March 27, 2007, the 9 Ninth Circuit Court of Appeals denied Petitioner's request for a certificate of appealability. 10 (See ECF No. 18 in S.D. Cal. Case No. 05-cv-1233-L (NLS) (copy of order).) 11 In the instant Petition, Petitioner again indicates he seeks to challenge this same

12 October 14, 2003, judgment of conviction, which he again indicates resulted in a sentence 13 of 32 years and 4 months. (See ECF No. 4 at 1.) Again, Petitioner acknowledges that this 14 is not his first federal petition for a writ of habeas corpus challenging his 2003 San Diego 15 County

judgment of conviction. (See *id.* at 5.) “Before a second or successive application is permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A); see also *Burton v. Stewart*, 549 U.S. 147, 153 (2007) (a petition is “second or successive” where the petitioner challenges “the same custody imposed by the same judgment of a state court” as in a prior petition.) Even were Petitioner able to demonstrate that his petition falls within the statutory provisions allowing for permission to file a second or successive habeas petition, see 28 U.S.C. § 2244(b)(2)(A)-(B), Petitioner must still first obtain authorization from the Ninth Circuit Court of Appeals to file a petition in this District. See 28 U.S.C. § 2244(b)(3)(A); see also *Morales v. Sherman*, 949 F.3d 474, 476 (9th Cir. 2020) (*per curiam*) (recognizing that 28 U.S.C. § 2244(b)(3)(A) is “a provision that bars district courts from entertaining a second or successive petition unless its filing has first been authorized by the court of appeals.”) In the instant case, Petitioner indicates he has not obtained permission from the Ninth Circuit Court of Appeals to file a second or successive petition (see ECF No. 4 at 5), and the Court’s review of the Ninth Circuit’s electronic docket similarly fails to reflect that Petitioner has sought or obtained such permission from the Ninth Circuit. Accordingly, this Court lacks jurisdiction to consider the instant federal Petition.

5 CERTIFICATE OF APPEALABILITY

A certificate of appealability (“COA”) is required to appeal “the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court,” and is warranted “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(1)(A) and (c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that 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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In the instant case, because Petitioner previously filed a petition challenging his 2003 San Diego County judgment of conviction which was denied on the merits, and there is no indication Petitioner has received permission from the Ninth Circuit Court of Appeals to file a second or successive petition, the Court is not persuaded that Petitioner has shown “jurists of reason would find it debatable whether the district court was correct” in dismissing the instant petition for lack of authorization. See 28 U.S.C. § 2244(b)(3)(A); 28 U.S.C. § 2253(c); *Burton*, 549 U.S. at 153; *Slack*, 529 U.S. at 484. Accordingly, the Court declines to issue a COA.

23 CONCLUSION

Because there is no indication that the Ninth Circuit Court of Appeals has granted Petitioner leave to file a second or successive petition challenging his 2003 judgment of conviction in San Diego Superior Court case number SCD175175, this Court cannot consider the Petition.

Accordingly, the Court DISMISSES this habeas action without 28 prejudice to Petitioner filing a petition in this Court challenging that judgment of conviction 1 he obtains the necessary order from the Ninth Circuit Court of Appeals and DENIES 2 || Petitioner's renewed motion to proceed JFP [ECF No. 5] as MOOT. The Court 3 || DECLINES to issue a COA. The Clerk of Court is directed to send Petitioner a blank 4 Ninth Circuit Application for Leave to File a Second or Successive Petition Under 28 5 U.S.C. § 2254 together with a copy of this Order. 6 To the extent Petitioner seeks to challenge a judgment of conviction in case number 7 SCD172263, Petitioner is advised that any such challenge must be brought in a separate 8 ||habeas proceeding. See R. 2(e), Rules Governing § 2254 Cases (2019). 9 || IT IS SO ORDERED. 10 || Dated: July 29, 2025 (: é 11 12 Hon. Roger T. Benitez 13 United States District Judge 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28