

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Maurice Griffin v. Jeff Macomber

Griffin · No. 3:25-cv-02756-RBM-VET · Decided October 28, 2025

OPINION

Griffin

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MAURICE GRIFFIN, Case No.: 3:25-cv-02756-RBM-VET 12 Petitioner, ORDER: 13 v.

(1) SUMMARILY DISMISSING

14 JEFF MACOMBER,

SUCCESSIVE PETITION PURSUANT

15 Respondent. TO 28 U.S.C. § 2244(b)(3)(A)

GATEKEEPER PROVISION; AND

16

17 (2) DECLINING TO ISSUE

CERTIFICATE OF APPEALABILITY

18 19 On October 6, 2025, Petitioner, who indicates he is a state parolee and proceeding 20 pro se,
filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the 21 Northern
District of California challenging his 2019 judgment of conviction and sentence 22 in San Diego
County Superior Court case number SCD281192. (See Doc. 1 at 1.) After 23 providing notice to
Petitioner that he had not paid the filing fee nor requested to proceed 24 in forma pauperis (see
Doc. 2), on October 16, 2025, the case was transferred to this district. 25 (Docs. 3–5.) For the
reasons discussed below, the Court DISMISSES the Petition without 26 prejudice and DECLINES
to issue a certificate of appealability. 27 /// 28 ///

1 FAILURE TO SATISFY FILING FEE REQUIREMENT

2 Petitioner has failed to pay the \$5.00 filing fee and has failed to move to proceed in 3 forma
pauperis.¹ The Court cannot proceed until Petitioner has either paid the \$5.00 filing 4 fee or
qualified to proceed in forma pauperis. See Rule 3(a), Rules Governing Section 5 2254 Cases
(2019).

6 PETITION BARRED BY GATEKEEPER PROVISION

7 Upon review, the instant Petition is not the first Petition for a Writ of Habeas Corpus 8 Petitioner
has filed in this district challenging this same 2019 judgment of conviction and 9 sentence. On

June 28, 2023, Petitioner filed in this district a Petition for a Writ of Habeas Corpus challenging his 2019 conviction and sentence in San Diego Superior Court case number SCD281192; Petitioner subsequently filed an Amended Petition and Second Amended Petition, with the latter serving as the operative Petition in that habeas action. (See Docs. 1, 4, 9 in S.D. Cal. Civil Case No. 23-cv-1205 LL-JLB.) On September 30, 2024, the assigned Magistrate Judge issued a Report and Recommendation (“R&R”) recommending the Petition be dismissed because Petitioner both failed to exhaust his state court judicial remedies as to his federal habeas claims and because the statute of limitations barred the Petition and recommended Petitioner’s motion to expand the record be denied. (See Doc. 42 in S.D. Cal. Civil Case No. 23-cv-1205 LL-JLB.) On January 3, 2025, the Court adopted in its entirety the Magistrate Judge’s R&R, dismissed the Petition with prejudice, denied as moot Petitioner’s motion to expand the record, and declined to issue a certificate of appealability; the Clerk subsequently entered judgment in accordance with the Court’s Order. (See Docs. 48–49 in S.D. Cal. Civil Case No. 23-cv-1205 LL-JLB.)

The Court recognizes the Northern District previously informed Petitioner of the filing fee requirement and in a notice dated October 6, 2025, instructed that if he did not respond within 28 days, his case would be dismissed. (See Doc. 2.) To date, no response has been docketed. Regardless of that previously imposed deadline, the Court finds this case warrants dismissal for a reason independent of the filing fee requirement, as discussed below.

The Court takes judicial notice of these prior filings and orders. See *United States v. 2 Wilson*, 631 F.2d 118, 119 (9th Cir. 1980) (“[A] court may take judicial notice of its own records in other cases, as well as the records of an inferior court in other cases.”). Petitioner presently seeks to challenge this same 2019 conviction and sentence in San Diego Superior Court case number SCD281192. (See Doc. 1 at 1.) Petitioner acknowledges this is not his first federal petition for a writ of habeas corpus challenging this judgment of conviction and acknowledges he filed a prior federal petition challenging this same conviction, which he indicates was “dismissed because the Supreme Court had not had the chance to rule on my case.” (See Doc. 1 at 3.) Petitioner also generally states: “I was told by the federal court to appeal to the Supreme Court then re-apply w/ the evidence with[h]eld proving my innocence,” but does not provide record support for this assertion, such as citations to any such direction or instruction. (Id.)

Moreover, as noted previously, the January 3, 2025 Order dismissed the prior federal Petition with prejudice. (See Doc. 48 in S.D. Cal. Civil Case No. 23-cv-1205 LL-JLB.) In that same Order, the Court specifically noted with respect to the dismissal with prejudice that: “The Petition is barred by the statute of limitations, rendering amendment futile.” (Id. at 4 n. 2.) The Ninth Circuit has held the “dismissal of a first habeas petition for untimeliness presents a ‘permanent and incurable’ bar to federal review of the underlying claims,” and as such, “dismissal of a section 2254 habeas petition for failure to comply with the statute of limitations renders subsequent petitions second or successive for purposes of the [Antiterrorism and Effective Death Penalty Act of 1996 (‘AEDPA’)].” *McNabb v. Yates*, 576 F.3d 1028, 1029

(9th Cir. 2008) (footnote omitted) (citing *Murray 23 v. Greiner*, 394 F.3d 78, 81 (2nd Cir. 2005) and 28 U.S.C. § 2244(b)). Thus, the Court’s

24 January 3, 2025 decision dismissing Petitioner’s 2023 federal habeas petition with
25 prejudice, which was based in part on the grounds of untimeliness for failure to comply 26 with
the statute of limitations, renders the instant Petition second or successive. 27 “Before a second or
successive application permitted by this section is filed in the 28 district court, the applicant shall
move in the appropriate court of appeals for an order 1 authorizing the district court to consider
the application.” 28 U.S.C. § 2244(b)(3)(A); see 2 also *Burton v. Stewart*, 549 U.S. 147, 153
(2007) (holding that a petition is “second or 3 successive” where the petitioner challenges “the
same custody imposed by the same 4 judgment of a state court” as in a prior petition). While
Petitioner asserts he has an “[a]ctual 5 innocence gateway claim” as to his strike prior (see Doc. 1
at 4), even were he able to 6 demonstrate that the instant Petition falls within the statutory
provisions allowing for 7 permission to file a second or successive habeas petition, see 28 U.S.C.
§ 2244(b)(2)(A)– 8 (B), Petitioner still first must obtain authorization from the Ninth Circuit to
file a petition 9 in the district court. See 28 U.S.C. § 2244(b)(3)(A); see also *Morales v. Sherman*,
949 10 F.3d 474, 476 (9th Cir. 2020) (per curiam) (recognizing that 28 U.S.C. § 2244(b)(3)(A) is
11 “a provision that bars district courts from entertaining a second or successive petition 12 unless
its filing has first been authorized by the court of appeals”). Here, Petitioner does 13 not indicate
he has obtained permission from the Ninth Circuit to file a second or successive 14 petition in the
instant case (see generally Doc. 1), and the Court’s review of the Ninth 15 Circuit’s electronic
docket fails to reflect that Petitioner has sought, much less obtained, 16 such permission from the
Ninth Circuit. Accordingly, this Court lacks jurisdiction to 17 consider the instant Petition.

18 CERTIFICATE OF APPEALABILITY

19 A certificate of appealability (“COA”) is required to appeal to the court of appeals 20 “the final
order in a habeas corpus proceeding in which the detention complained of arises 21 out of process
issued by a State court,” and is warranted “only if the applicant has made a 22 substantial showing
of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(1)(A) and 23 (c)(2). “When the district
court denies a habeas petition on procedural grounds without 24 reaching the prisoner’s
underlying constitutional claim, a COA should issue when the 25 prisoner shows, at least, that
jurists of reason would find it debatable whether the petition 26 states a valid claim of the denial
of a constitutional right and that jurists of reason would 27 find it debatable whether the district
court was correct in its procedural ruling.” *Slack v. 28 McDaniel*, 529 U.S. 473, 484 (2000). 1
Here, because Petitioner previously filed a petition challenging his 2019 judgment 2 ||of
conviction and sentence in case number SCD281192 which was dismissed with 3 || prejudice in
relevant part as barred by the statute of limitations rendering the instant 4 || Petition second or
successive, see *McNabb*, 576 F.3d at 1029, and there is no indication 5 || Petitioner has received
permission from the Ninth Circuit Court of Appeals to file a second 6 successive petition, the
Court is not persuaded that Petitioner has shown “jurists of 7 ||reason would find it debatable

whether the district court was correct” in dismissing the 8 ||instant petition for lack of authorization. See 28 U.S.C. § 2244(b)(3)(A); 28 U.S.C. 9 || § 2253(c); Burton, 549 U.S. at 153; Slack, 529 U.S. at 484. Accordingly, the Court declines 10 to issue a COA.

11 CONCLUSION AND ORDER

12 Because there is no indication that the Ninth Circuit Court of Appeals has granted 13 || Petitioner leave to file a second or successive petition, this Court cannot consider the 14 || Petition, independent of Petitioner’s additional failure to satisfy the filing fee requirement. 15 || Accordingly, the Court DISMISSES this habeas action without prejudice to Petitioner 16 || filing a petition in this Court if he obtains the necessary order from the Ninth Circuit Court 17 ||of Appeals. The Court DECLINES to issue a COA. 18 The Clerk of Court is directed to send Petitioner a blank Ninth Circuit Application 19 || for Leave to File a Second or Successive Petition Under 28 U.S.C. § 2254 together with a 20 || copy of this Order. 21 IT IS SO ORDERED. 22 ||Dated: October 28, 2025 Fe Le ; ? L é >

23 HON. RUTH BERMUDEZ MONTENEGRO

24 UNITED STATES DISTRICT JUDGE

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