

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Anthony Eugene Martinez v. Kevin McMahill, et al.

Martinez · No. 2:26-cv-00073-CDS-MDC · Decided January 20, 2026

OPINION

Martinez

PER CURIAM.

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2 UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

3 4 Anthony Eugene Martinez, Case No. 2:26-cv-00073-CDS-MDC 5 Petitioner Dismissal Order
6 v. [ECF Nos. 1, 1-1] 7 Kevin McMahill, et al., 8 Respondents 9 10 Pro se petitioner Anthony
Eugene Martinez has filed a petition for writ of habeas corpus 11 under 28 U.S.C. § 2241 and an
application for leave to proceed in forma pauperis (“IFP”). ECF Nos. 1 12 (“IFP application”), 1-1
13 (“petition”). I find good cause exists to grant Martinez’s IFP Application. 13 However, following a
review of the petition under the Rules Governing Section 2254 Cases 14 (“Habeas Rules”),1 I find
that the petition is unexhausted and federal abstention is required. 15 II. Discussion 16 Martinez is
a pretrial detainee in custody at the Clark County Detention Center in Las 17 Vegas, Nevada. ECF
No. 1-1 at 1. Martinez has been charged with residential burglary, grand 18 larceny, and grand
larceny auto in case number C-25-393189-1 before the Eighth Judicial District 19 Court of
Nevada.2 It appears that Martinez’s trial is set to commence on March 23, 2026. In his 20 petition,
Martinez alleges that his trial counsel has been ineffective regarding his duties of 21 diligence,
communication, and investigation. ECF No. 1-1. Martinez requests that this Court 22 dismiss his
state charges due to this violation of his due process rights. Id. at 7. 23 24 25 1 I exercise my
discretion to apply the rules governing § 2254 petitions to this § 2241 action. See Habeas
26 Rule 1(b).

2 I take judicial notice of the online docket records of the Eighth Judicial District Court,
accessible at <https://www.clarkcountycourts.us/portal>. 1 Habeas Rule 4 requires federal district
courts to examine a habeas petition and order a 2 response unless it “plainly appears” that the
petitioner is not entitled to relief. This rule allows 3 courts to screen and dismiss petitions that are
patently frivolous, vague, conclusory, palpably 4 incredible, false, or plagued by procedural
defects. See Valdez v. Montgomery, 918 F.3d 687, 693 (9th

5 Cir. 2019); Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases). Because
a

6 federal habeas petitioner incarcerated by a state must give state courts a fair opportunity to act
on 7 each of his claims before he presents them in a federal habeas petition, federal courts will not

8 consider his petition for habeas relief until he has properly exhausted his available state remedies 9 for all claims raised. See *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998). A claim remains 10 unexhausted until the petitioner has given the highest available state court the opportunity to 11 consider the claim through direct appeal or state collateral-review proceedings. *O’Sullivan v. Boerckel*, 526 U.S. 838, 844–45 (1999); *Peterson v. Lampert*, 319 F.3d 1153, 1158 (9th Cir. 2003) (en banc). The federal constitutional implications of a claim, not just issues of state law, must have 14 been raised in the state court to achieve exhaustion. *Woods v. Sinclair*, 764 F.3d 1109, 1129 (9th Cir. 15 2014); *Castillo v. McFadden*, 399 F.3d 993, 999 (9th Cir. 2005) (fair presentation requires both the 16 operative facts and federal legal theory upon which a claim is based). 17 Although it appears that numerous motions to dismiss counsel have been filed in the 18 state court, Martinez has not raised this issue with the Nevada appellate courts.³ As such, 19 Martinez has not demonstrated that he has fully exhausted his state court remedies. See *Picard v. Connor*, 404 U.S. 270, 276 (1971) (holding that to properly exhaust state remedies on each claim, 21 the habeas petitioner must “present the state courts with the same claim he urges upon the 22 federal court”); *Bland v. California Dep’t of Corrections*, 20 F.3d 1469, 1473 (9th Cir. 1994) (holding that 23 a claim is not exhausted unless the petitioner has presented to the state court the same operative 24 facts and legal theory upon which his federal claim is based). As a matter of simple comity, this 25 26 3 I also take judicial notice of the online docket records of the Nevada appellate courts, accessible at <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>. 1 Court is not inclined to intervene prior to giving the Nevada courts an opportunity to redress any 2 violation of Martinez’s constitutional rights. See *Coleman v. Thompson*, 501 U.S. 722, 731 (1991) 3 (explaining that the exhaustion requirement is “grounded in principles of comity; in a federal 4 system, the States should have the first opportunity to address and correct alleged violations of 5 state prisoner’s federal rights”). 6 Further, Martinez seeks federal judicial intervention in a pending state criminal 7 proceeding, which is simply not available to him. The comity-based *Younger* abstention doctrine 8 prevents federal courts from enjoining pending state court criminal proceedings, even if there is 9 an allegation of a constitutional violation, unless there is an extraordinary circumstance that 10 creates a threat of irreparable injury. *Younger v. Harris*, 401 U.S. 37, 53–54 (1971). The United States 11 Supreme Court has instructed that “federal-court abstention is required” when there is “a parallel, 12 pending state criminal proceeding.” *Sprint Commc’ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013) (emphasis 13 added); *Gilbertson v. Albright*, 381 F.3d 965 (9th Cir. 2004) (federal courts generally abstain from 14 granting any relief that would interfere with pending state judicial proceedings). This case does 15 not present extraordinary circumstances. Defendants in state criminal proceedings routinely 16 allege that state criminal proceedings violate their constitutional rights, including fundamental 17 rights, which makes this a regular occurrence, not an extraordinary circumstance. Martinez’s 18 situation is no different in substance from that of any criminal defendant facing the potential loss 19 of constitutional rights—including the most

fundamental right to liberty—in a pending criminal 20 prosecution. Because Martinez faces no extraordinary or irreparable injuries, federal abstention is 21 required. 22 Given the unexhausted nature of Martinez’s petition and Martinez’s failure to 23 demonstrate that federal abstention should be set aside, I dismiss the petition without prejudice. 24 25 26 TIL. Conclusion 2 It is therefore ordered that the IFP application [ECF No. I] is granted. 3 It is further ordered that the petition [ECF No. 1-1] is dismissed without prejudice. 4 || Martinez is denied a certificate of appealability, as jurists of reason would not find dismissal of 5 ||the Petition for the reasons stated herein to be debatable or wrong. 6 It is further kindly ordered that the Clerk of Court (1) file the petition (ECF No. 1-1), (2) 7 ||add Nevada Attorney General Aaron D. Ford as counsel for the respondents,’ (3) informally serve 8 ||the Nevada Attorney General with the petition (ECF No. 1-1), this order, and all other filings in Q||this matter by sending a notice of electronic filing to the Nevada Attorney General’s office, (4) 10 final judgment, and (5) close this case. ‘) ul Dated: January 20, 2026 / , / B Criscin Silva Un tl States District Judge 14 [, 15 16 17 18 19 20 21 22 23 24 25 26 + No response is required from the respondents other than to respond to any orders of a reviewing court.