

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

Alvaro F. Monterroso v. Rob Jeffreys

Monterroso v. Jeffreys · No. 8:25-cv-00633 · Decided December 2, 2025

SUMMARY

The United States District Court for the District of Nebraska dismissed Alvaro F. Monterroso’s 28 U.S.C. § 2254 habeas petition without prejudice because his state post-conviction proceedings remained pending and he had not exhausted available state remedies. The court determined that dismissal would not prejudice a later federal habeas petition because the federal limitations period was tolled during the pending state proceedings. The court also denied a certificate of appealability.

CASE DETAILS

COURT	United States District Court for the District of Nebraska
WRITING FOR THE COURT	John M. Gerrard
JURISDICTION	United States District Court for the District of Nebraska
DECIDED	December 2, 2025
DOCKET	8:25-cv-00633
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner sought federal habeas relief under 28 U.S.C. § 2254. On preliminary review, the district court dismissed the petition without prejudice because related state post-conviction proceedings remained pending and state remedies had not been exhausted.
STANDARD OF REVIEW	Preliminary review of a petition for writ of habeas corpus; the court determined whether the petition established exhaustion of available state remedies.
PRECEDENTIAL VALUE	Unpublished district court memorandum and order; persuasive rather than precedential.
PARTIES	Alvaro F. Monterroso v. Rob Jeffreys

TOPICS

- federal habeas corpus
- state post-conviction relief
- post-conviction relief
- habeas corpus

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the federal habeas petition under 28 U.S.C. § 2254 was premature because Petitioner had not exhausted available state post-conviction remedies.
2. Whether the petition could be stayed under *Rhines v. Weber*.
3. Whether Petitioner was entitled to a certificate of appealability.

HOLDINGS

1. A state prisoner must exhaust available state post-conviction remedies before seeking federal habeas relief, and a petition filed while those remedies remain pending is premature.
2. A stay under *Rhines* is unavailable for a petition that is not alleged to be mixed, and, in any event, a stay was not appropriate because dismissal would not prejudice Petitioner's ability to seek timely federal review after exhaustion.
3. Petitioner was not entitled to a certificate of appealability.

KEY QUOTATIONS

“A state prisoner must therefore “fairly present” the substance of each federal constitutional claim to the state courts before seeking federal habeas relief.” (Discussion)

“As Petitioner’s postconviction proceedings are currently pending, Petitioner’s petition for relief under 28 U.S.C. § 2254 is premature and subject to sua sponte dismissal by this Court.” (Discussion)

“The petition for writ of habeas corpus, Filing No. 1, is dismissed without prejudice. No certificate of appealability has been or will be issued.” (Order paragraph 1)

FACTUAL BACKGROUND

Petitioner was convicted by a Nebraska jury of first-degree sexual assault of a child and incest. He received consecutive prison sentences of 50 to 70 years on the sexual-assault count, including a fifteen-year mandatory minimum, and 10 to 20 years on the incest count. After his direct appeal concluded, he filed a state post-conviction motion raising claims also presented in his federal petition, but that motion remained pending when he sought federal habeas relief.

PROCEDURAL HISTORY

Petitioner was convicted in the District Court of Lancaster County, Nebraska, and his convictions and sentences were affirmed by the Nebraska Court of Appeals. The Nebraska Supreme Court denied further review, and the mandate issued on January 22, 2025. Petitioner filed a state post-conviction motion on October 3, 2025, which remained pending when he filed this federal habeas petition on October 27, 2025. The federal district court dismissed the petition without prejudice and denied a certificate of appealability.

DISPOSITION

dismissed

CASES CITED

- State v. Monterroso, 12 N.W.3d 282 (Neb. App. 2024)
- Stutzka v. McCarville, 420 F.3d 757, 760 n.2 (8th Cir. 2005)
- O'Sullivan v. Boerckel, 526 U.S. 838, 844-45 (1999)
- Akins v. Kenney, 410 F.3d 451, 454-55 (8th Cir. 2005)
- Rose v. Lundy, 455 U.S. 509, 520 (1982)
- Rhines v. Weber, 544 U.S. 269, 276 (2005)
- McLemore v. Frakes, No. 8:18CV567, 2019 WL 2358433, at *3 n.2 (D. Neb. June 4, 2019)
- Charles v. Payne, No. 4:17 CV 2494 CDP, 2018 WL 3208551, at *2 (E.D. Mo. June 29, 2018)
- Slack v. McDaniel, 529 U.S. 473, 484-85 (2000)

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