

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Edward Don Brown v. B. Cates

No. 2:05-cv-1195 DAD CSK P (E.D. Cal. June 11, 2025) · No. No. 2:05-cv-1195 DAD CSK P · Decided June 11, 2025

SUMMARY

The United States District Court for the Eastern District of California placed and disregarded the petitioner’s letter concerning possible resentencing and continued incarceration in a closed habeas action. The court explained that any second or successive habeas petition requires authorization from the Ninth Circuit and directed the petitioner not to file further documents in the closed case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 11, 2025
DOCKET	No. 2:05-cv-1195 DAD CSK P
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner sought to submit a letter concerning resentencing and continued incarceration in a closed federal habeas action. The court treated the filing as procedurally improper and ordered that it be placed in the file and disregarded.
PRECEDENTIAL VALUE	unpublished
PARTIES	Edward Don Brown (Petitioner) v. B. Cates (Respondent)

TOPICS

- successive petitions
- federal habeas corpus
- post-conviction relief
- appellate procedure

PRACTICE AREAS

- federal habeas corpus
- post-conviction relief
- appellate procedure

QUESTIONS PRESENTED

1. Whether Brown could initiate or pursue a second or successive federal habeas petition in the Eastern District of California without prior authorization from the Ninth Circuit.
2. Whether Brown's June 5, 2025 letter should be treated as a permissible filing in the closed habeas action.

HOLDINGS

1. A second or successive federal habeas petition under 28 U.S.C. § 2254 may not be filed in the Eastern District of California unless the Ninth Circuit first authorizes the filing.
2. The letter was to be placed in the court file and disregarded, and Brown was directed not to file anything further in the closed case.

KEY QUOTATIONS

“Once petitioner complies with the Ninth Circuit’s order and if the Ninth Circuit grants him permission to file a second or successive petition, only then may petitioner file a new petition for writ of habeas corpus in the Eastern District of California.” (1)

“Accordingly, IT IS HEREBY ORDERED that petitioner’s letter (ECF No. 50) is placed in the Court file and disregarded.” (3)

FACTUAL BACKGROUND

Brown is a California state prisoner who asserted that his lengthy incarceration and California Proposition 57 and other laws entitled him to resentencing. The record indicated that he had received parole hearings since 2016 and had a tentative parole-suitability hearing scheduled for April 2027. His underlying federal habeas action had been closed for many years, and the Ninth Circuit had not authorized him to file a second or successive § 2254 petition.

PROCEDURAL HISTORY

Brown's federal habeas action under 28 U.S.C. § 2254 was closed and judgment was entered on March 31, 2009. In 2025, the court denied without prejudice a motion for a new state-court trial, subject to Brown first obtaining authorization from the Ninth Circuit to file a second or successive federal habeas petition. The Ninth Circuit denied Brown's authorization application without prejudice on May 28, 2025, identifying filing requirements under Ninth Circuit Rule 22-3. Brown then filed the letter addressed in this order.

DISPOSITION

other

CASES CITED

- Brown v. Cates, No. 25-712 (9th Cir. 2025)
- Bennett v. Medtronic, Inc., 285 F.3d 801, 803 n.2 (9th Cir. 2002)
- United States v. Basher, 629 F.3d 1161, 1165 (9th Cir. 2011)
- Foley v. Martz, 2018 WL 5111998, at *1 (S.D. Cal. Oct. 19, 2018)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 EDWARD DON BROWN, No. 2:05-cv-1195 DAD CSK P 12 Petitioner, 13
v. ORDER 14 B. CATES, 15 Respondent. 16 17 Petitioner is a state prisoner proceeding pro se
and in forma pauperis.

The matter was 18 referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 19 302. This action seeking habeas relief under 28 U.S.C. § 2254 was closed
on March 31, 2009, 20 and judgment was entered. (ECF Nos. 22, 23.) Petitioner filed a motion for
new state court trial, 21 and on January 17, 2025, this Court recommended that the motion be
denied.

(ECF Nos. 42, 44.) 22 On February 19, 2025, the district court adopted this Court's findings and
recommendations (ECF 23 No. 44) in full, and denied petitioner's motion for a new state court
trial without prejudice to the 24 filing of a second or successive federal habeas petition if
authorized by the United States Court of 25 Appeals for the Ninth Circuit.

(ECF No. 45.) 26 On June 5, 2025, petitioner filed a letter stating that he has been incarcerated
since he was 27 19 years old and believes he should have been released by now because of
California's 28 1 Proposition 57 and other new laws that would entitle him to resentencing.¹ (ECF
No. 50.) 2 However, as petitioner was informed in the district court's February 19, 2025 order, 3
petitioner cannot file a federal habeas petition in this Court until the United States Court of 4
Appeals for the Ninth Circuit grants petitioner authorization to file a second or successive petition
5 for writ of habeas corpus in the Eastern District of California.

(ECF No. 45.) On May 28, 2025, 6 the Ninth Circuit denied petitioner's application for leave to
file a second or successive § 2254 7 petition. *Brown v. Cates*, No. 25-712 (9th Cir. 2025). The
Ninth Circuit wrote: 8 The application for authorization to file a second or successive 28 U.S.C. §
2254 habeas corpus petition in the district court is denied 9 without prejudice to filing a new
application that complies with Ninth Circuit Rule 22-3.

Specifically, the application must: 10 (1) include the proposed second or successive § 2254
petition that the applicant seeks to file in the district court; and (2) state as to each 11 claim
presented whether it previously has been raised in any state or federal court and, if so, the name of
the court and the date of the order 12 disposing of the claim(s); and (3) state how the requirements
of § 2244(b) have been satisfied.

13 14 No. 25-712 (ECF No. 8).² Once petitioner complies with the Ninth Circuit's order and if the
15 Ninth Circuit grants him permission to file a second or successive petition, only then may 16
petitioner file a new petition for writ of habeas corpus in the Eastern District of California.

In 17 other words, any second or successive habeas petition must be filed as a new action, accompanied 18 by an application to proceed in forma pauperis or the appropriate filing fee, and a copy of an 19 order from the Ninth Circuit expressly authorizing the filing of such second or successive 20 petition. 21 22 1 In 2016, California voters approved Proposition 57 which, in pertinent part, requires that “[a]ny person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for 23 parole consideration after completing the full term for his or her primary offense.” Cal. Const.

24 Art. I, § 32(a)(1). The “full term for the primary offense” is defined as “the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, 25 consecutive sentence, or alternative sentence.” Id. § 32(a)(1)(A). 26 2 A court may take judicial notice of court records. See, e.g., *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir.

2002) (“[W]e may take notice of proceedings in other courts, both 27 within and without the federal judicial system, if those proceedings have a direct relation to matters at issue”) (internal quotation omitted). 28] Further, the CDCR California Incarcerated Records and Information Search (“CIRIS”) 2 | reflects that petitioner has had parole hearings since 2016, and currently has a tentative date for 3 | parole suitability hearing scheduled in April 2027.° To the extent petitioner is asking the Court 4 || how to challenge his continued incarceration or his sentence imposed by the California trial court, 5 || petitioner is advised that the Court is unable to provide legal advice.

6 As petitioner was informed in the April 8, 2025 order, this action, No. 2:05-ev-1195 DAD 7 || CSKP, is closed. Thus, petitioner shall not file anything further in this closed case. Because this 8 | case is closed, petitioner is cautioned that the Court may not respond to any further filings in this 9 || closed case. 10 Accordingly, IT IS HEREBY ORDERED that petitioner’s letter (ECF No. 50) is placed in 11 || the Court file and disregarded.

Petitioner shall not file anything further in this closed case, and 12 || the Court may not respond to any future filings in this closed case. 13 14 Dated: June 11, 2025 7 _- 15 CHI SOO KIM 16 UNITED STATES MAGISTRATE JUDGE 17 || //erow1195.den2 18 19 20 21 22 23 24 25 | — SSS 3 This information was obtained from the CDCR Inmate Locator website, 26 || <https://ciris.mt.cder.ca.gov/> (accessed June 9, 2025).

The Court may take judicial notice of public records available on online inmate locators. See *United States v. Basher*, 629 F.3d 1161, 1165 27 | (9th Cir. 2011) (taking judicial notice of Bureau of Prisons’ inmate locator available to the public); see also *Foley v. Martz*, 2018 WL 5111998, at *1 (S.D. Cal. Oct. 19, 2018) (taking 28 | judicial notice of CDCR’s inmate locator).