

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Charles Graves v. Unknown

Graves · No. 2:24-cv-2642-JDP (P) · Decided March 3, 2025

OPINION

(HC) Graves v. Unknown

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 CHARLES GRAVES, Case No. 2:24-cv-2642-JDP (P) 12 Petitioner, 13 v. ORDER

14 UNKNOWN,

15 Respondent. 16

17 18 Petitioner, a state prisoner, brings this action under section 2254. ECF No. 1. The 19
petition does not, as articulated, assert a viable federal habeas claim. Nor does it appear 20
exhausted. I will dismiss the current petition and give petitioner an opportunity to amend and 21
explain why this action should proceed. I will also grant petitioner’s application to proceed in 22
forma pauperis. ECF No. 5. 23 The petition is before me for preliminary review under Rule 4 of
the Rules Governing

24 Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine
25 the habeas petition and order a response to the petition unless it “plainly appears” that the 26
petitioner is not entitled to relief. See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019);
27 *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998). 28 Petitioner advances a claim under
California’s Racial Justice Act and argues that he, and 1 | other non-white prisoners, have received
longer sentences than white convicts. ECF No. | at 3. 2 | The claim appears unsuitable to proceed
for two reasons. First, petitioner indicates that he did not 3 | present the claim to the California
Supreme Court, *id.* at 5, as he must have to exhaust it for 4 | federal purposes. See *Gatlin v.*
Madding, 189 F.3d 882, 888 (9th Cir. 1999) (“To exhaust a 5 | habeas claim properly, a petitioner
must present his claim to the state supreme court even if that 6 | court’s review is discretionary.”).
Second, the claim itself appears to invoke only state law and, 7 | thus, raise no colorable federal
habeas claim. See *Estelle v. McGuire*, 502 U.S. 62, 67 (1991) 8 | (“We have stated many times that
federal habeas corpus relief does not lie for errors of state 9 | law.”) (internal quotation marks
omitted). 10 Rather than recommending dismissal of the case, I will dismiss the petition with
leave to 11 | amend. Petitioner may file a new petition that addresses these deficiencies and
explains why, if at 12 all, his claim should proceed. 13 Accordingly, it is ORDERED that: 14 1.

Petitioner's application to proceed in forma pauperis, ECF No. 5, is GRANTED. 15 2. The petition, ECF No. 1, is DISMISSED with leave to amend. 16 3. Within thirty days from service of this order, petitioner shall file either (1) an 17 | amended petition or (2) notice of voluntary dismissal of this action without prejudice. 18 4. Failure to timely file either an amended petition or notice of voluntary dismissal 19 || may result in the imposition of sanctions, including a recommendation that this action be 20 | dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 21 5. The Clerk of Court shall send petitioner a habeas petition form with this order. 22 73 IT IS SO ORDERED. 24 (q Sty — Dated: _ February 28, 2025 ow——

25 JEREMY D. PETERSON

26 UNITED STATES MAGISTRATE JUDGE

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