

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Brooks v. Pierce

Brooks · No. 22-cv-06334-JST · Decided March 31, 2025

OPINION

Brooks v. McDowell

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MARCEL BROOKS, Case No. 22-cv-06334-JST 8 Petitioner,

ORDER OF DISMISSAL; DENYING

9 v. CERTIFICATE OF APPEALABILITY

10 CHRISTOPHER PIERCE,

Respondent. 11 12 13 Petitioner Marcel Brooks, an inmate at Ironwood State Prison, filed a pro se
petition for a 14 writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging a conviction from
Alameda 15 County Superior Court. ECF Nos. 1, 5. For the reasons set forth below, the Court
DISMISSES 16 the petition for failure to exhaust state court remedies, and DENIES a certificate
of appealability.

17 DISCUSSION

18 The petition states the following cognizable claim for federal habeas relief: trial counsel 19 was
ineffective because he failed to review all the discovery, was unaware of exculpatory text 20
messages, and did not hire a private investigator to interview two key witnesses who would have
21 proven Petitioner's innocence. ECF Nos. 5, 14. 22 On February 10, 2025, the Court granted
Respondent's motion to dismiss, finding that 23 Petitioner had not exhausted state court remedies
for his ineffective assistance of counsel claim. 24 ECF No. 21. The Court ordered Petitioner to
elect whether he wished to (1) voluntarily dismiss 25 this petition and return to state court to
exhaust his claim before filing a new federal petition 26 presenting only fully-exhausted claims ;
or (2) stay and abey this petition while he returns to state 27 court to exhaust his claims. Id. The
Court instructed Petitioner to notify the Court of his election 1 result in this action being dismissed
for failure to exhaust, or failure to prosecute or obey a court 2 order pursuant to Fed. R. Civ. P.
41(a)(2). Id. The deadline has passed, and Petitioner has not 3 informed the Court how he wishes
to proceed, or communicated with the Court at all. The sole 4 || claim in this federal habeas
petition is unexhausted. ECF No. 21. The Court is therefore barred 5 from considering this claim,
and must dismiss this petition. See 28 U.S.C. § 2254(b)(1)(A)-(B) 6 (district court may not grant

habeas writ unless state court remedies are exhausted); *Rhines v. Weber*, 544 U.S. 269, 273 (2005) (federal district court must dismiss federal habeas petition containing any claim as to which state remedies are unexhausted). Pursuant to 28 U.S.C. § 2254(b)(1) and Fed. R. Civ. P. 41(b), the Court DISMISSES this petition for failure to exhaust state court remedies. The federal rules governing habeas cases brought by state prisoners require a district court that issues an order denying a habeas petition to either grant or deny therein a certificate of appealability. See Rules Governing § 2254 Case, Rule 11(a). A judge shall grant a certificate of appealability “only if the applicant has made a substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and the certificate must indicate which issues satisfy this standard. *Id.* § 2253(c)(3). “Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: [t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Here, Petitioner has not made such a showing, and, accordingly, a certificate of appealability will be denied.

CONCLUSION

For the reasons set forth above, the Court DISMISSES the petition for a writ of habeas corpus, and DENIES a certificate of appealability. Judgment is entered in favor of Respondent and against Petitioner. The Clerk shall close the case. IT IS SO ORDERED. Dated: March 31, 2025 .

JON S. TIGAR

United States District Judge