

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hatchett v. Clark

Hatchett · No. 2:24-cv-03744-EFB (PC) · Decided August 7, 2025

SUMMARY

The court recommends denying the petitioner's application to proceed in forma pauperis and motion for release on bail. It further recommends dismissing the habeas petition without leave to amend because it is successive and requires prior authorization from the Ninth Circuit under 28 U.S.C. § 2244(b)(3).

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 CECIL JEROME HATCHETT, No. 2:24-cv-03744-EFB (PC) 12 Petitioner,
13 v. ORDER AND FINDINGS AND RECOMMENDATIONS 14 KEN CLARK, 15 Respondent.
16 17 Petitioner, a state prisoner proceeding pro se, has filed a petition for writ of habeas corpus,
18 a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, and a motion for
19 release on bail.

ECF Nos. 1, 2, 5. For the reasons that follow, it is recommended that the district 20 judge deny to
proceed in forma pauperis and the motion for release, and dismiss the petition 21 without leave to
amend. 22 I. Leave to Proceed In Forma Pauperis 23 Petitioner has filed an application to proceed
in forma pauperis but has not included a 24 certified copy of his inmate trust account statement for
the six-month period immediately 25 preceding the filing of the complaint.

28 U.S.C. § 1915(a)(2). Thus, the court must deny the 26 application. 27 //// 28 //// 1 II. Motion
for Release on Bail 2 Petitioner asks the court to order his release on bail while he litigates his
habeas petition. 3 ECF No. 5. It is an open question in the Ninth Circuit whether district courts
may grant 4 provisional release from incarceration to a habeas petitioner pending resolution of her
petition.

5 United States v. McCandless, 841 F.3d 819, 822 (9th Cir. 2016); In re Roe, 257 F.3d 1077 (9th 6
Cir. 2001). If courts do possess such authority, provisional release is reserved for extraordinary 7
cases involving special circumstances or a high probability of success. McCandless, 841 F.3d at 8
822.

Because the court lacks jurisdiction over the successive petition (see below), the motion for 9
release must be denied. 10 III. Screening 11 Petitioner is currently incarcerated at Mule Creek

State Prison. ECF No. 1 at 1. While his 12 allegations are garbled, it appears that petitioner challenges a 1994 Yolo County criminal 13 conviction for first-degree murder, possibly another criminal conviction out of Monterey County, 14 and the revocation of his parole.

ECF No. 1 at 7 (stating that petitioner was in jail when the 15 murder occurred), 8 (stating that “the facts prove that petitioner is factually innocent at Yolo 16 Monterey [sic] and Monterey case convictions” and that petitioner was unlawfully deprived of 17 counsel at his parole revocation proceeding). 18 This court previously rejected petitioner’s parole revocation claim and his challenges to 19 the Yolo County and Monterey convictions.

Hatchett v. Clark, No. 2:24-cv-1627 AC P, 2024 20 U.S. Dist. LEXIS 172338, at *3-8 (E.D. Cal. Sept. 24, 2024). These claims, presented again in 21 the instant petition, are successive, and the court is without jurisdiction to consider them unless 22 and until petitioner obtains authorization from the Ninth Circuit under 28 U.S.C. § 2244(b)(3). 23 Accordingly, the petition must be dismissed.

24 IV. Order and Recommendation 25 In accordance with the above, it is hereby ORDERED that the Clerk of Court randomly 26 assign a district judge to this action. 27 It is further RECOMMENDED that: 28 1. The motion for leave to proceed in forma pauperis (ECF No. 2) be DENIED;] 2.

The motion for release on bail (ECF No. 5) be DENIED; 2 3. The petition be dismissed without leave to amend as successive; and 3 4. The Clerk of Court be directed to close the case. 4 These findings and recommendations are submitted to the United States District Judge 5 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 6 || after being served with these findings and recommendations, any party may file written 7 || objections with the court and serve a copy on all parties.

Such a document should be captioned 8 | “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the 9 || objections shall be served and filed within fourteen days after service of the objections.

The 10 || parties are advised that failure to file objections within the specified time may waive the right to 11 || appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez 12 | v. Yist, 951 F.2d 1153 (9th Cir. 1991). 13 14 | Dated: August 7, 2025 i Bouin Z □ BE
L pA I5 UNITED STATES MAGISTRATE JUDGE 16 17 18 19 20 21 22 23 24 25 26 27 28