

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Otiniano v. Macomber

Otiniano · No. 3:24-cv-1230-CAB-LR · Decided March 21, 2025

OPINION

Otiniano v. Macomber

PER CURIAM.

1 2 3 4 5 6 7 8

9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 12 ALBERTO OTINIANO, Case No.: 3:24-cv-1230-CAB-LR 13 Petitioner,

ORDER: (1) RE FINAL DISMISSAL

14 v. OF HABEAS ACTION AND

15

(2) DECLINING TO ISSUE

16 JEFFREY MACOMBER, CERTIFICATE OF

APPEALABILITY

17 Respondent. 18

19 20 On July 15, 2024, Petitioner, a state prisoner proceeding pro se, filed a Petition for 21 Writ
of Habeas Corpus pursuant to 28 U.S.C. § 2254, along with a request to proceed in 22 forma
pauperis (“IFP”). ECF Nos. 1, 2. On July 18, 2024, the Court denied Petitioner’s 23 IFP motion
and dismissed the case because Petitioner’s trust account statement indicated 24 he could afford
the requisite \$5.00 filing fee. ECF No. 3 (citing 28 U.S.C. § 1914(a)). The 25 Court also notified
Petitioner that to have his case reopened he must pay the filing fee by
26 September 9, 2024. See id. Petitioner subsequently submitted two “supplemental
27 documents,” both of which included a copy of a trust account withdrawal request. See ECF
28 Nos. 4, 5. However, the filing fee was not paid and therefore, on December 13, 2024, the
1 Court dismissed the case for failure to pay the filing fee and ordered the Clerk to close the 2 file.
ECF No 6. See 28 U.S.C. § 1914(a). 3 On February 3, 2025, Petitioner filed a “Notice of Filing
Fee,” in which he stated, 4 “enclosed is [the] filing fee for habeas” and asked the Court “reopen”
his case. ECF No. 9. 5 But again, Petitioner did not submit the filing fee. Thus, on February 11,
2025, Court 6 notified Petitioner that his case remained closed. ECF No. 10. In the same order, the
Court 7 declined to extend time for Petitioner to pay the filing fee because the only claims raised 8
in the Petition challenged the imposition of fines and fees (see ECF No. 1 at 6, 8–9) and 9 “[t]he
writ of habeas corpus is limited to attacks upon the legality or duration of 10 confinement.”

Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979); see also Hill v. 11 McDonough, 547 U.S. 573, 579 (2006). 12 Despite the Court's February 11, 2025 Order, Petitioner submitted the filing fee on

13 March 13, 2025. ECF No. 11. The Court, however, again declines to reopen the case
14 because the claims raised challenge only the imposition of fines and fees. Section 2254(a) 15
permits a habeas petition to be entertained only on the ground that the petitioner is in 16 custody
in violation of the Constitution or laws or treaties of the United States, and 17 "explicitly requires
a nexus between the petitioner's claim and the unlawful nature of the 18 custody." Bailey v. Hill,
599 F.3d 976, 980 (9th Cir. 2010). "[T]he elimination or alteration 19 of a money judgment . . .
does not directly impact—and is not directed at the source of the 20 restraint on—[Petitioner's]
liberty." Id. at 981. The Court therefore lacks jurisdiction over 21 the Petition and as such it
remains dismissed. See id. at 982 (concluding "§ 2254(a) does 22 not confer jurisdiction over a
state prisoner's in-custody challenge to a restitution [fine] 23 imposed as part of a criminal
sentence"). 24 Additionally, the Court declines to issue a certificate of appealability ("COA"). A
25 petitioner seeking writ of habeas corpus has no absolute right to appeal; he may appeal 26 only
in limited circumstances. See 28 U.S.C. § 2253; Miller-El v. Cockrell, 537 U.S. 322, 27 335–36
(2003). Rule 11 of the Rules Governing Section 2254 Cases requires that a district 28 court issue
or deny a COA when entering a final order adverse to a petitioner. See Ninth 1 || Circuit Rule 22-
1(a). A COA should issue only "if jurists of reason would find it debatable 2 || whether the petition
states a valid claim of the denial of a constitutional right and that jurists 3 ||of reason would find it
debatable whether the district court was correct in its procedural 4 ||ruling." Slack v. McDaniel,
529 U.S. 473, 484 (2000). Here, the Court declines to issue a 5 because reasonable jurists would
not find the Court's decision to dismiss the petition 6 || for lack of jurisdiction debatable.

7 CONCLUSION AND ORDER

8 Based on the foregoing, the case is DISMISSED for lack of jurisdiction and the 9 || Court
DECLINES to issue a certificate of appealability. The Clerk of Court shall close the 10 || file. 11
IT IS SO ORDERED. 12 || Dated: March 21, 2025 € ZL 13 Hon. Cathy Ann Bencivengo 14
United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28