

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Wight v. Unknown

Case No. 25cv2504-JAH (DEB) · No. 25cv2504-JAH (DEB) · Decided October 2, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Marvin Meyer Wight’s § 2254 habeas petition without prejudice because he neither paid the filing fee nor submitted an in forma pauperis application and failed to name a proper respondent. The court also notified him that the petition could be dismissed in the future for failure to allege exhaustion of state court remedies as to every claim. The court ordered him to cure the filing-fee defect or submit an in forma pauperis application by December 5, 2025.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	John A. Houston
JURISDICTION	United States District Court for the Southern District of California
DECIDED	October 2, 2025
DOCKET	25cv2504-JAH (DEB)
DISPOSITION	dismissed
PROCEDURAL POSTURE	State prisoner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The district court dismissed the petition without prejudice because the filing fee had not been paid or excused and no proper respondent had been named, while notifying petitioner of options to cure those defects and avoid a later dismissal for failure to allege exhaustion.
STANDARD OF REVIEW	The court applied the facial-screening standard under Rule 4 of the Rules Governing Section 2254 Cases, dismissing when it plainly appeared from the petition that petitioner was not presently entitled to relief.
PRECEDENTIAL VALUE	Unpublished district court order; nonprecedential
PARTIES	Marvin Meyer Wight v. Unknown

TOPICS

federal habeas corpus

post-conviction relief

pleadings

civil procedure

statute of limitations

PRACTICE AREAS

federal habeas corpus

post-conviction relief

civil procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the petition could proceed when petitioner had neither paid the filing fee nor submitted an application to proceed in forma pauperis.
2. Whether the petition could proceed when petitioner failed to name the state officer having custody of him as respondent.
3. Whether the petition was subject to summary dismissal or future dismissal because petitioner had not alleged exhaustion of state remedies for every claim.
4. What procedural options were available to petitioner to cure the filing and pleading defects or preserve his federal habeas claims.

HOLDINGS

1. A federal habeas action may not proceed unless the petitioner pays the required filing fee or qualifies to proceed in forma pauperis; because petitioner did neither, dismissal without prejudice was proper.
2. A state prisoner seeking federal habeas relief must name the state officer having custody of the prisoner as respondent, ordinarily the warden of the institution where the prisoner is confined or the chief officer in charge of state penal institutions.
3. A federal habeas petitioner must allege exhaustion of state court remedies as to every claim presented; a petition containing unexhausted claims is generally subject to dismissal.
4. A petitioner with an unexhausted claim may allege that all claims have been exhausted, voluntarily dismiss the federal petition and return to state court, or move to stay the federal proceedings if the requirements for a stay are met.
5. A new federal habeas petition generally must be filed within the one-year limitations period, subject to applicable statutory or equitable tolling; statutory tolling applies while a properly filed state habeas petition is pending, but the limitations period ordinarily continues to run while a federal habeas petition is pending.

KEY QUOTATIONS

“On federal habeas, a state prisoner must name the state officer having custody of him as the respondent.” (at 1)

“The exhaustion requirement is satisfied by providing the state courts with a “fair opportunity” to rule on Petitioner’s constitutional claims.” (at 2)

“Based on the foregoing, the Court DISMISSES the Petition for failure to satisfy the filing fee requirement and failure to name a proper respondent.” (at 4)

FACTUAL BACKGROUND

Marvin Meyer Wight, a state prisoner proceeding pro se, filed a petition for federal habeas relief under 28 U.S.C. § 2254. He did not pay the required \$5 filing fee or submit an application to proceed in forma pauperis, and he did not identify a proper custodial respondent. Wight stated that claims 1 through 3 had been raised in the California Supreme Court but did not allege that claim 4 had been exhausted.

PROCEDURAL HISTORY

Petitioner filed a federal habeas petition but neither paid the \$5 filing fee nor submitted an application to proceed in forma pauperis. The petition also failed to name a proper custodial respondent and did not allege exhaustion of state remedies for every claim. The district court dismissed the action without prejudice and gave petitioner until December 5, 2025, to cure the filing-fee defect and notify the court of his chosen option.

DISPOSITION

dismissed

CASES CITED

- Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996)
- Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam)
- Rose v. Lundy, 455 U.S. 509, 522 (1982)
- Anderson v. Harless, 459 U.S. 4, 6 (1982)
- Sandgathe v. Maass, 314 F.3d 371, 376 (9th Cir. 2002)
- Duncan v. Walker, 533 U.S. 167, 176, 181-82 (2001)
- Nino v. Galaza, 183 F.3d 1003, 1006 (9th Cir. 1999)
- Carey v. Saffold, 536 U.S. 214, 225-26 (2002)
- Artuz v. Bennett, 531 U.S. 4, 8 (2000)
- Bonner v. Carey, 425 F.3d 1145, 1149 (9th Cir. 2005), as amended, 439 F.3d 993
- Rhines v. Weber, 544 U.S. 269, 277-78 (2005)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 MARVIN MEYER WIGHT, Case No.: 25cv2504-JAH (DEB) 12 Petitioner,
ORDER DISMISSING CASE 13 v. WITHOUT PREJUDICE AND NOTIFYING PETITIONER
OF 14 UNKNOWN, OPTIONS TO AVOID FUTURE 15 DISMISSAL Respondent. 16 17
Petitioner, a state prisoner proceeding pro se, has filed a Petition for a Writ of Habeas 18 Corpus
pursuant to 28 U.S.C. § 2254, but has failed to pay the \$5.00 filing fee or submit a 19 request to
proceed in forma pauperis.

(ECF No. 1.) In addition, Petitioner has failed to 20 name a proper respondent and has failed to allege exhaustion of state court remedies as to 21 every claim presented. 22 FAILURE TO SATISFY FILING FEE REQUIREMENT 23 Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing 24 fee or qualified to proceed in forma pauperis, the Court DISMISSES the case without 25 prejudice.

26 FAILURE TO NAME PROPER RESPONDENT 27 Petitioner has failed to name a proper respondent. On federal habeas, a state prisoner 28 must name the state officer having custody of him as the respondent. *Ortiz-Sandoval v. 1 Gomez*, 81 F.3d 891, 894 (9th Cir. 1996), citing *R. 2(a)*, Rules Governing Section 2254 2 Cases (2019). Federal courts lack personal jurisdiction when a habeas petition fails to 3 name a proper respondent.

See *id.* 4 The warden is the typical respondent. However, “the rules following section 2254 5 do not specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the 6 warden of the institution in which the petitioner is incarcerated... or the chief officer in 7 charge of state penal institutions.’” *Id.*, quoting *R. 2(a)*, Rules Governing Section 2254 8 Cases (2019), 28 U.S.C. foll. § 2254 advisory committee’s note.

9 Here, Petitioner has not named a Respondent. See ECF No. 1 at 1. In order for this 10 Court to entertain the Petition filed in this action, Petitioner must name the warden in 11 charge of the detention facility in which Petitioner is presently confined. *Brittingham v. 12 United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam). 13 FAILURE TO ALLEGE EXHAUSTION OF STATE COURT REMEDIES 14 Generally, applications for writs of habeas corpus which contain unexhausted claims 15 must be dismissed.

Rose v. Lundy, 455 U.S. 509, 522 (1982). The exhaustion requirement 16 is satisfied by providing the state courts with a “fair opportunity” to rule on Petitioner’s 17 constitutional claims. *Anderson v. Harless*, 459 U.S. 4, 6 (1982).

In most instances, a 18 claim is exhausted once it is presented to a state’s highest court, either on direct appeal or 19 through state collateral proceedings. See *Sandgate v. Maass*, 314 F.3d 371, 376 (9th Cir. 20 2002).

The constitutional claim raised in the federal proceedings must be the same as that 21 raised in the state proceedings. *Id.* 22 Petitioner states that although he raised claim 1-3 in the Petition here in the 23 California Supreme Court he did not raise claim 4 in that court. (ECF No. 1 at 6-9.) Rule 24 4 of the Rules Governing Section 2254 Cases provides for summary dismissal of a habeas 25 petition “[i]f it plainly appears from the face of the petition and any attached exhibits that 26 the petitioner is not entitled to relief in the district court...” Rule 4, Rules Governing 27 Section 2254 Cases (2019).

Here, it appears plain from the Petition that Petitioner is not presently entitled to federal habeas relief because he has not alleged exhaustion of state court remedies as to all claims presented in the Petition. *Rose*, 455 U.S. at 522.

The Court hereby notifies Petitioner of his options to avoid the possible future dismissal of his Petition for failing to allege exhaustion of state court remedies.

- i) First Option: Allege Exhaustion Petitioner may allege he has in fact exhausted state court remedies as to all claims.
- ii) Second Option: Voluntarily Dismiss the Petition Petitioner may move to voluntarily dismiss his entire federal petition and return to state court to exhaust his unexhausted claim.

Petitioner may then file a new federal petition containing only exhausted claims. See *Rose*, 455 U.S. at 510, 520-21 (stating that a petitioner who files a mixed petition may dismiss his petition to “return[] to state court to exhaust his claims.”) Petitioner is cautioned that any new federal petition must be filed before expiration of the one-year statute of limitations.

Ordinarily, a petitioner has one year from when his conviction became final to file his federal petition, unless he can show that statutory or equitable “tolling” applies. *Duncan v. Walker*, 533 U.S. 167, 176 (2001); 28 U.S.C. 16 § 2244(d).

The statute of limitations does not run while a properly filed state habeas corpus petition is pending in state court. 28 U.S.C. § 2244(d)(2); see *Nino v. Galaza*, 183 F.3d 18 1003, 1006 (9th Cir. 1999) (“[W]e hold that the statute of limitations is tolled from the time the first state habeas petition is filed until the California Supreme Court rejects the petitioner’s final collateral challenge.”), overruled in part by *Carey v. Saffold*, 536 U.S. 21 214, 225-26 (2002) (holding that if a petitioner unreasonably delays filing a habeas petition in a higher California court after a denial in a lower court, he is not entitled to statutory tolling during the gap between those petitions); but see *Artuz v. Bennett*, 531 U.S. 4, 8 24 (2000) (holding that “an application is ‘properly filed’ when its delivery and acceptance [by the appropriate court officer for placement into the record] are in compliance with the applicable laws and rules governing filings.”); *Bonner v. Carey*, 425 F.3d 1145, 1149 (9th Cir.

2005) (holding that a state application for post-conviction relief which is ultimately dismissed as untimely was neither “properly filed” nor “pending” while it was under consideration by the state court, and therefore does not toll the statute of limitations), as amended 439 F.3d 993.

However, absent some other basis for tolling, the statute of limitations continues to run while a federal habeas petition is pending. *Duncan*, 533 U.S. 4 181-82.

- iii) Third Option: File a Motion to Stay the Federal Proceedings Petitioner may file a motion to stay this federal proceeding while he returns to state court to exhaust his unexhausted claims.

Petitioner must demonstrate there is an arguably meritorious claim(s) which he wishes to return to state court to exhaust, that he is diligently pursuing his state court remedies with respect to

the claim(s), and that good cause exists 10 || for his failure to timely exhaust his state court remedies. Rhines v. Webber, 544 U.S. 269, 11 277-78 (2005) 12 CONCLUSION AND ORDER 13 Based on the foregoing, the Court DISMISSES the Petition for failure to satisfy the 14 || filing fee requirement and failure to name a proper respondent.

The Court also NOTIFIES 15 || Petitioner that if he succeeds in curing those defects, this action is subject to future 16 || dismissal without prejudice for failure to allege exhaustion of state judicial remedies as to 17 || every claim presented. If Petitioner wishes to proceed with this action, he must either pay 18 || the \$5.00 filing fee or submit an application to proceed in forma pauperis and notify the 19 || Court of which option he chooses no later than December 5, 2025.

The Clerk of Court 20 || will send a blank Southern District of California In Forma Pauperis application to Petitioner 21 along with a copy of this Order. 22 IT IS SO ORDERED. M | i 23 Dated: October 2, 2025 ie Hon. John A. Houston / United States District Judge 25 26 27 28