

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Perez v. Parker

Perez · No. 2:24-CV-3285-SCR · Decided May 29, 2025

SUMMARY

The document is an order and findings and recommendations in a 28 U.S.C. § 2254 habeas action challenging the denial of 138 days of presentencing custody credits. The magistrate judge recommends summary dismissal because the petition duplicates a pending habeas action concerning the same conviction and claim. The court grants the petitioner’s motion to proceed in forma pauperis and directs random assignment to a district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 29, 2025
DOCKET	2:24-CV-3285-SCR
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner filed a federal habeas corpus application under 28 U.S.C. § 2254 challenging the denial of 138 days of presentencing custody credits. On preliminary review, the magistrate judge recommended summary dismissal because the petition duplicated a pending habeas action involving the same conviction and claim.
STANDARD OF REVIEW	Under Rule 4 of the Rules Governing Section 2254 Cases, the court conducts preliminary review and may summarily dismiss a habeas petition when it is plain that the petitioner is not entitled to relief. The court also relied on the federal courts' authority to prevent duplicative or unnecessary litigation.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Lisa Marie Perez, aka Lisa Marie Belyew v. Lavelle Parker

TOPICS

federal habeas corpus

motions to dismiss

pleadings

civil procedure

PRACTICE AREAS

federal habeas corpus

post-conviction relief

civil procedure

QUESTIONS PRESENTED

1. Whether the § 2254 petition should be summarily dismissed as duplicative of a pending federal habeas action involving the same conviction and presentencing-credit claim.
2. Whether the petitioner should be granted leave to proceed in forma pauperis.

HOLDINGS

1. The magistrate judge recommended summary dismissal because the petition duplicated the pending federal habeas action *Belyew v. Parker*, No. 2:19-cv-0294-DAD-AC, which challenged the same conviction and presentencing custody-credit issue.
2. The court granted petitioner's motion to proceed in forma pauperis.

KEY QUOTATIONS

“Under Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief.” (at 1)

“Federal courts retain broad powers to control their dockets and to “prevent duplicative or unnecessary litigation.”” (at 1)

“After conducting its preliminary review of the pending § 2254 petition, the undersigned recommends that it be summarily dismissed because it is duplicative of a pending action.” (at 1)

FACTUAL BACKGROUND

Petitioner challenged a 2018 Colusa County Superior Court conviction for assault with a deadly weapon, corporal injury on a spouse, and vandalism, for which she received a thirteen-year sentence. Her conviction was affirmed on direct review, and review was denied by the California Supreme Court in 2020. In this petition, she sought application of 138 days of presentencing custody credits, but the same claim was pending in another federal habeas action concerning the same conviction.

PROCEDURAL HISTORY

Petitioner was convicted in the Colusa County Superior Court and sentenced to thirteen years in prison. The California Court of Appeal affirmed the conviction, and the California Supreme Court denied review in 2020. Petitioner filed several state habeas petitions and a pending federal habeas action, *Belyew v. Parker*, No. 2:19-cv-0294-DAD-AC, raising the same presentencing-credit claim. The magistrate judge recommended that this action be summarily dismissed as duplicative and that the case be closed, subject to review by an assigned district judge.

DISPOSITION

dismissed

CASES CITED

- Slack v. McDaniel, 529 U.S. 473, 478 (2000)
- MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986)
- United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980)
- Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 FOR THE EASTERN DISTRICT OF
CALIFORNIA 9 10 LISA MARIE PEREZ, aka LISA MARIE No. 2:24-CV-3285-SCR BELYEW,
11 Petitioner, 12 ORDER AND v. 13 FINDINGS AND RECOMMENDATIONS LAVELLE
PARKER, 14 Respondent. 15 16 Petitioner is a state prisoner proceeding without counsel in this
habeas corpus action filed 17 pursuant to 28 U.S.C. § 2254.

18 I. Factual and Procedural History 19 Petitioner is challenging her 2018 conviction following a
jury trial in the Colusa County 20 Superior Court for assault with a deadly weapon, corporal injury
on a spouse, and vandalism. 21 ECF No. 1. She was sentenced to 13 years in prison. ECF No. 1.
Her conviction was affirmed 22 by the California Court of Appeal and her petition for review was
denied by the California 23 Supreme Court in 2020.

Petitioner has also filed several state habeas petitions challenging this 24 conviction. 25 In the
pending § 2254 application, petitioner raises a single claim for relief. She contends 26 that the trial
court abused its discretion in denying her 138 days of presentencing custody credits. 27 By way of
relief, she requests this court to order these 138 days of credits be applied to her 28 sentence.

1 II. Legal Standards 2 Under Rule 4 of the Rules Governing Habeas Corpus Cases Under Section
2254 Cases, 3 the court must review all petitions for writ of habeas corpus and summarily dismiss
any petition if 4 it is plain that the petitioner is not entitled to relief. Federal courts retain broad
powers to control 5 their dockets and to “prevent duplicative or unnecessary litigation.” Slack v.
McDaniel, 529 U.S. 6 473, 478 (2000).

7 III. Analysis 8 The court’s own records reveal that petitioner has a pending habeas action
challenging this 9 same conviction in Belyew v. Parker, No. 2:19-cv-0294-DAD-AC (E.D. Cal.).1
Indeed, 10 petitioner raises the same claim challenging her presentencing credits in Belyew v.
Parker, No. 11 2:19-cv-0294-DAD-AC.

On December 10, 2024, the assigned magistrate judge in *Belyew v. Parker* recommended that the habeas application be denied including her claim that the trial court improperly denied her custody credits. See ECF No. 77 at 38 in No. 2:19-cv-0294-DAD-AC. After conducting its preliminary review of the pending § 2254 petition, the undersigned recommends that it be summarily dismissed because it is duplicative of a pending action.

Accordingly, IT IS HEREBY ORDERED that: 1. Petitioner's motion to proceed in forma pauperis (ECF No. 5) is granted. 2. The Clerk of Court shall randomly assign this matter to a District Judge. IT IS FURTHER RECOMMENDED that: 1. Petitioner's habeas corpus application (ECF No. 1) be summarily dismissed as duplicative of *Belyew v. Parker*, No. 2:19-cv-0294-DAD-AC (E.D.

Cal.). 2. The Clerk of Court be directed to close this case. These findings and recommendations are submitted to the District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days after being served with these findings and recommendations, any party may file written objections with the court. A court may take judicial notice of court records.

See *MGIC Indem. Co. v. Weisman*, 803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). 1 | court and serve a copy on all parties. Such a document should be captioned "Objections to 2 | Magistrate Judge's Findings and Recommendations." In her objections petitioner may address 3 | whether a certificate of appealability should issue in the event he files an appeal of the judgment 4 | in this case.

See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must 5 | issue or deny a certificate of appealability when it enters a final order adverse to the applicant). 6 | Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of appealability 7 | "should issue if the prisoner can show: (1) 'that jurists of reason would find it debatable whether 8 | the district court was correct in its procedural ruling;' and (2) 'that jurists of reason would find it 9 | debatable whether the petition states a valid claim of the denial of a constitutional right.'" *Morris* 10 | *v. Woodford*, 229 F.3d 775, 780 (9th Cir.

2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 11 | (2000)). Any response to the objections shall be served and filed within fourteen days after 12 | service of the objections. The parties are advised that failure to file objections within the 13 | specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 14 | F.2d 1153 (9th Cir.

1991). 15 | DATED: May 28, 2025 ° md 17 SEAN C. RIORDAN 18 UNITED STATES
MAGISTRATE JUDGE 19 20 21 22 23 24 25 26 27 28

