

MAR 29 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY D. EASLEY,

Petitioner - Appellant,

v.

STATE OF CALIFORNIA; ATTORNEY
GENERAL OF THE STATE OF
CALIFORNIA,

Respondents - Appellees.

No. 08-16406

D.C. No. 2:07-CV-00629-WBS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Gary D. Easley appeals pro se from the district court's judgment dismissing his habeas corpus petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The government contends that dismissal of Easley’s petition was proper in light of the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971). We agree. As a threshold matter, the government’s failure to raise the *Younger* argument in the district court does not prevent us from addressing it on appeal. *See H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000) (“*Younger* abstention may be raised sua sponte at any point in the appellate process.”). In light of the ongoing state criminal proceedings at the time Easley filed his federal habeas petition, dismissal was appropriate under *Younger*. *See Younger*, 401 U.S. at 43-44 (holding that on principles of federalism and comity, federal courts should abstain from intervening in ongoing state criminal proceedings absent extraordinary circumstances).

AFFIRMED.