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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 DESMOND MCGILL,) Case No. CV 09-5572-VBF(RC)
11)
12) Petitioner,)
13 vs.)
14) JOHN MARSHALL (WARDEN),) OPINION AND ORDER ON A
15) PETITION FOR HABEAS CORPUS
16) Respondent.)
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26 On July 30, 2009, petitioner Desmond McGill, a person in state
27 custody proceeding pro se, filed a petition for a writ of habeas
28 corpus under 28 U.S.C. § 2254, challenging his 2007 conviction and
sentence for carjacking and robbery in Los Angeles Superior Court case
no. SA065045,¹ following a plea of nolo contendere. Petition at 2.
The petition shows on its face that petitioner has a petition for writ
of certiorari pending in the United States Supreme Court. Petition at
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¹ The Court, pursuant to Fed. R. Evid. 201, takes judicial notice of the documents filed in two previous habeas corpus cases brought by petitioner: (1) McGill v. State of California, case no. CV 09-1073-VBF(RC) ("McGill I"); and (2) McGill v. State of California, case no. CV 09-1361-VBF(RC) ("McGill II"), which establish the Superior Court case number.

1 Judges of the Superior Court, 23 F.3d 218, 223 (9th Cir. 1994).

2 Second, the state undeniably has an important interest in protecting
3 the public by the filing and prosecuting of criminal proceedings.

4 Seling v. Young, 531 U.S. 250, 262, 121 S. Ct. 727, 734, 148 L. Ed. 2d
5 734 (2001). Third, the state court criminal proceedings afford an
6 opportunity for petitioner, who is the defendant, to raise constitu-
7 tional claims, such as he raises herein. Finally, the remedy the
8 petitioner seeks, a writ of habeas corpus, would clearly interfere
9 with the ongoing state criminal proceeding, see Preiser v. Rodriguez,
10 411 U.S. 475, 484, 93 S. Ct. 1827, 1833, 36 L. Ed. 2d 439 (1973)
11 ("[T]he essence of habeas corpus is an attack by a person in custody
12 upon the legality of that custody, and . . . the traditional function
13 of the writ is to secure release from custody."), and petitioner has
14 not identified any "extraordinary circumstances" warranting an
15 exception to the Younger doctrine.

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17 Rule 4 of the Rules Governing Section 2254 Cases in the United
18 States Courts provides that "[i]f it plainly appears from the petition
19 and any attached exhibits that the petitioner is not entitled to
20 relief in the district court, the judge must dismiss the petition and
21 direct the clerk to notify petitioner." The instant petition shows

22 _____
23 the time for filing a certiorari petition expires." Clay v.
24 United States, 537 U.S. 522, 527, 123 S. Ct. 1072, 1076,
25 155 L. Ed. 2d 88 (2003); see also Wixom v. Washington,
26 264 F.3d 894, 897 (9th Cir. 2001) ("[U]nder [§ 2244(d)], a
27 judgment becomes 'final' in one of two ways - either by the
28 conclusion of direct review by the highest court, including the
United States Supreme Court, to review the judgment, or by the
expiration of the time to seek such review, again from the
highest court from which such direct review could be sought."),
cert. denied, 534 U.S. 1143 (2002).

1 that petitioner's state court criminal judgment is not yet final;
2 thus, the petition must be dismissed without prejudice.

3
4 **ORDER**

5 IT IS ORDERED that Judgment be entered DISMISSING without
6 prejudice the petition for writ of habeas corpus and action.

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8 IT IS FURTHER ORDERED that the Clerk of Court shall notify
9 petitioner of the dismissal without prejudice.

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12 DATE: August 4, 2009

Valerie Baker Fairbank

VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE

13 PRESENTED BY:

14
15 DATE: July 30, 2009

16 /S/ ROSALYN M. CHAPMAN
17 ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

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