UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CAMARAY CARTER, Petitioner, v. ELVIN VALENZUELA, Acting Warden, Respondent.	NO. CV 12-05184 SS **MEMORANDUM DECISION AND ORDER**

I.

INTRODUCTION[1]

On June 14, 2012, Camaray Carter ("Petitioner"), a California State prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus by a Person in State Custody (the "Petition") pursuant to 28 U.S.C. § 2254. The Court has conducted a preliminary review of the Petition, as required by Rule 4 of the Rules Governing Section 2254 Cases. Pursuant to Rule 4, the Court must summarily dismiss the Petition because "it

[1] Elvin Valenzuela, Acting Warden of the California Men's Colony, where Petitioner is currently incarcerated, is substituted as the proper Respondent. See Fed. R. Civ. P. 25(d).

plainly appears from the face of the petition and any exhibits annexed to it that [Petitioner] is not entitled to relief." R. 4 of the Rules Governing Section 2254 Cases; see also O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990) ("[R]ule 4 of the Rules Governing Section 2254 in the United States District Courts explicitly allows a district court to dismiss summarily the petition on the merits when no claim for relief is stated." (internal quotation marks omitted)).

In the Petition, Petitioner challenges his 1999 conviction and sentence. (Petition at 2). However, Petitioner previously filed a federal habeas petition (Case No. CV 08-05973 PSG (SS)) (the "Prior Petition"), which also challenged his 1999 conviction and sentence.[2] On October 23, 2009, the District Judge denied the Prior Petition as untimely and dismissed the action with prejudice. Petitioner appealed the judgment and on July 18, 2011, the U.S. Court of appeals for the Ninth Circuit denied Petitioner's request for a certificate of appealability. On June 19, 2012, the Court issued an Order To Show Cause Why This Action Should Not Be Dismissed As Successive (the "Order to Show Cause"). Petitioner was required to file a response to the Order to Show Cause by July 3, 2012 if he wished to contest the dismissal of this action. As of today, however, Petitioner has failed to file a response.

[2] The Court takes judicial notice of Petitioner's prior proceedings before this Court. See, e.g., United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) ("[W]e may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." (internal quotation marks omitted)).

Petitioner, who is the only party to this action, has consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).[3] (See Docket No. 3). For the reasons

[3] "Upon the consent of the parties," a magistrate judge "may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case." 28 U.S.C. § 636(c)(1). Here, Petitioner is the only "party" to the instant proceeding and has consented to the jurisdiction of the undersigned United States Magistrate Judge. Respondent has not yet been served with the Petition and therefore is not a party to this proceeding. See, e.g., Travelers Cas. & Sur. Co. of Am. v. Brenneke, 551 F.3d 1132, 1135 (9th Cir. 2009) ("A federal court is without personal jurisdiction over a defendant unless the defendant has been served in accordance with Fed. R. Civ. P. 4." (internal quotation marks omitted)). Thus, all parties have consented pursuant to 28 U.S.C. § 636(c)(1). See, e.g, Wilhelm v. Rotman, 680 F.3d 1113, 1119-21 (9th Cir. 2012) (holding that magistrate judge had jurisdiction to dismiss prison inmate's action under 42 U.S.C. § 1983 where prisoner consented and was only party to the action); United States v. Real Property, 135 F.3d 1312, 1317 (9th Cir. 1998) (holding that magistrate judge had jurisdiction to enter default judgment in an in rem forfeiture action even though property owner had not consented to it because 28 U.S.C. § 636(c)(1) only requires the consent of the "parties" and the property owner, having failed to comply with the applicable filing requirements, was not a "party"); Neals v. Norwood, 59 F.3d 530, 532 (5th Cir. 1995) ("The record does not contain a consent from the defendants. However, because they had not been served, they were not parties to this action at the time the magistrate entered judgment. Therefore, lack of written consent from the defendants did not deprive the magistrate judge of jurisdiction in this matter."); see also Patrick Collins, Inc. v. Doe, 2011 U.S. Dist. LEXIS 125671, at *4 n.1 (N.D. Cal. Oct. 31, 2011) ("Here, Plaintiff has consented to magistrate jurisdiction and the Doe Defendants have not yet been served. Therefore, the Court finds that it has jurisdiction under 28 U.S.C. § 636(c) to decide the issues raised in the instant motion(s)."); Third World Media, LLC v. Doe, 2011 WL 4344160, at *3 (N.D. Cal. Sept. 15, 2011) ("The court does not require the consent of the defendants to dismiss an action when the defendants have not been served and therefore are not parties under 28 U.S.C. § 636(c)."); Kukiela v. LMA Prof'l Recovery Group, 2011 U.S. Dist. LEXIS 85417, at *1 n.1 (D. Ariz. Aug. 1, 2011) ("Plaintiff consented to proceed before a United States Magistrate Judge for all proceedings in this case, including entry of final judgment, pursuant to 28 U.S.C. §636(c)(1). (Doc. 7.) Because Defendant did not appear and establish its standing as a party in this action, the Magistrate Judge has jurisdiction to enter the requested default judgment."); Quigley v. Geithner, 2010 WL 3613901, at *1 (D. Idaho Sept.

discussed below, it is recommended that the Petition be DENIED as successive and that this action be DISMISSED without prejudice.

II.

PRIOR PROCEEDINGS

On July 28, 1999, a Los Angeles County Superior Court jury convicted Petitioner of criminal conspiracy in violation of California Penal Code ("Penal Code") section 182(a), attempted murder in violation of Penal Code sections 664 and 187, and robbery in violation of Penal Code section 211. (Petition at 2). On August 18, 1999, the trial court imposed an indeterminate term of thirty-five years to life in state prison. (Carter v. Uribe, Case No. CV 08-05973 PSG (SS)), Report and Recommendation ("R&R") at 2).

On September 28, 2000, the California Court of Appeal affirmed the trial court's judgment. (R&R at 2). Petitioner subsequently filed a petition for review in the California Supreme Court, which was denied on January 10, 2001. (Id.). Several years later, Petitioner filed a petition for writ of habeas corpus in the California Supreme Court, which was denied on June 11, 2008. (Id.).

8, 2010) ("Plaintiff, the only party appearing in this case, has consented to the jurisdiction of a United States Magistrate Judge to enter final orders in this case."); Ornelas v. De Frantz, 2000 WL 973684, at *2 n.2 (N.D. Cal. June 29, 2000) ("The court does not require the consent of defendants in order to dismiss this action because defendants have not been served, and, as a result, are not parties under the meaning of 28 U.S.C. § 636(c).").

On September 12, 2008, Petitioner filed the Prior Petition before this Court. In the Prior Petition, Petitioner raised three claims challenging his 1999 conviction and sentence. On October 23, 2009, the District Judge denied the Prior Petition as untimely and dismissed the action with prejudice. Petitioner appealed the judgment and on July 18, 2011, the U.S. Court of Appeals for the Ninth Circuit denied Petitioner's request for a certificate of appealability. Petitioner filed the instant Petition on June 14, 2012.

III.
PETITIONER'S CLAIM

Petitioner's sole claim for federal habeas relief is that the California Supreme Court erroneously applied a procedural bar (untimeliness) to his state habeas petition. (Petition at 5).

IV.
DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), which effected amendments to the federal habeas statutes, applies to the instant Petition because Petitioner filed it after AEDPA's effective date of April 24, 1996. Lindh v. Murphy, 521 U.S. 320, 336, 117 S. Ct. 2059, 138 L. Ed. 2d 481 (1997). Courts have recognized that the AEDPA generally prohibits successive petitions:

> AEDPA greatly restricts the power of federal courts to award relief to state prisoners who file second or successive

> habeas corpus applications. If the prisoner asserts a claim that he has already presented in a previous federal habeas petition, the claim must be dismissed in all cases. And if the prisoner asserts a claim that was not presented in a previous petition, the claim must be dismissed unless it falls within one of two narrow exceptions. One of these exceptions is for claims predicated on newly discovered facts that call into question the accuracy of a guilty verdict. The other is for certain claims relying on new rules of constitutional law.

Tyler v. Cain, 533 U.S. 656, 661, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001) (citations omitted); see also Pizzuto v. Blades, 673 F.3d 1003, 1007 (9th Cir. 2012).

Here, the instant Petition is successive because it challenges the same 1999 conviction and sentence that Petitioner challenged in the Prior Petition. See, e.g., Burton v. Stewart, 549 U.S. 147, 153, 127 S. Ct. 793, 166 L. Ed. 2d 628 (2007) (holding that a petition was successive because it challenged "the same custody imposed by the same judgment of a state court" as a prior petition). Thus, Petitioner must obtain permission from the U.S. Court of Appeals for the Ninth Circuit before the instant Petition can proceed. See 28 U.S.C. § 2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."); see also Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008) ("Even if a petitioner can demonstrate that he

qualifies for one of these exceptions, he must seek authorization from the court of appeals before filing his new petition with the district court.").

The Court's review of the docket does not demonstrate that Petitioner has either requested or received permission from the Ninth Circuit to file a successive petition. Accordingly, the instant Petition must be dismissed without prejudice to refiling after Petitioner obtains the necessary permission.[4] See Burton, 549 U.S. at 153 ("In short, [the petitioner] twice brought claims contesting the same custody imposed by the same judgment of a state court. As a result, under AEDPA, he was required to receive authorization from the Court of Appeals before filing his second challenge. Because he did not do so, the District Court was without jurisdiction to entertain it."). The Court expressly advised Petitioner that the Petition was successive and provided him an opportunity to respond. Petitioner was required to file a response to the Order to Show Cause by July 3, 2012 if he wished to contest the dismissal of this action. As of today, however, Petitioner has failed to file a response.[5]

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[4] Even if the instant Petition were not successive, Petitioner's sole claim for relief would fail because the Ninth Circuit has held that errors in the state habeas review process are not cognizable on federal habeas review. See Cooper v. Neven, 641 F.3d 322, 331-32 (9th Cir. 2011) (citing Franzen v. Brinkman, 877 F.2d 26, 26 (9th Cir. 1989)); Franzen, 877 F.2d at 26 ("[A] petition alleging errors in the state post-conviction review process is not addressable through habeas corpus proceedings.").

[5] Because Petitioner failed to file a response to the Order to Show Cause, this action is also subject to dismissal for failure to prosecute and obey Court orders pursuant to Federal Rule of Civil Procedure 41(b).

V.

CONCLUSION

IT IS ORDERED that: (1) the Petition is DENIED as successive; and (2) Judgment shall be entered dismissing this action without prejudice.

DATED: July 9, 2012.

/S/
SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE