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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

ERNEST DEWAYNE JONES, **Petitioner,** **vs.** **MICHAEL MARTEL, Acting Warden of California State Prison at San Quentin,** **Defendant.**	**Case No.: CV 09-02158-CJC** **DEATH PENALTY CASE** **ORDER DENYING WITHOUT PREJUDICE PETITIONER'S MOTION FOR EVIDENTIARY HEARING**

I. INTRODUCTION

On April 6, 2011, the Court ordered supplemental briefing from the parties on Petitioner Ernest Dewayne Jones' Motion for an Evidentiary Hearing, to address "his entitlement to an evidentiary hearing in view of the Supreme Court's holding in *Cullen v. Pinholster*, [131 S. Ct. 1388 (2011)]." (Dkt. No. 62.) Mr. Jones' supplemental briefing advances three central arguments in support of his request for an evidentiary hearing. Mr. Jones argues that: (1) *Pinholster* did not alter the principles governing his right to an

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evidentiary hearing; (2) an evidentiary hearing is warranted given the lack of state court process afforded to him; and (3) that an evidentiary hearing in federal court may be needed to uncover new evidence. For the foregoing reasons, Mr. Jones' motion is DENIED WITHOUT PREJUDICE. Mr. Jones must first demonstrate that he has satisfied the requirements of the Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254(d), based solely on the state court record, before this Court will consider his request for an evidentiary hearing.

II. ANALYSIS

A. Section 2254(d) Limited to State Court Record

Section 2254(d), as amended by AEDPA provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. §2254(d). Recently, in *Pinholster*, the Supreme Court held that when determining whether a petitioner has satisfied section 2254(d), a court may only consider evidence in the state court record. 131 S. Ct. at 1398, 1400 n.7. Specifically, the Supreme Court held that "review under [section] 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits." *Id.* at 1398. The

Supreme Court was also clear that the statutory language of section 2254(d)(2), which requires that a court assess whether a factual determination was unreasonable "in light of the evidence presented in the State court proceeding," 28 U.S.C. § 2254(d)(2), similarly limits a federal court's review under that subsection to the state court record. *See id.* at 1400 n.7.

Mr. Jones asserts that despite the Supreme Court's ruling, this Court ought to grant his motion for an evidentiary hearing before it requires him to demonstrate that based upon the state court record his petition satisfies the requirements of section 2254(d). He argues that "the Supreme Court's decision in *Pinholster* did not alter the well-established principles governing his right to an evidentiary hearing." (Petr.'s Supp. Br., at 4 (capitalization edited).) He explains that "*Pinholster* did nothing more than clarify how a federal court is to conduct the inquiry under section 2254(d)(1)." (*Id.* at 8.) Mr. Jones cites *Wellons v. Hall*, 130 S. Ct. 727, 730 (2010), for the proposition that "[a]n evaluation of the 'deference owed under' section 2254(d)(1) to the state court decision relates to 'whether to grant habeas relief,' not whether to grant an evidentiary hearing." (Petr.'s Supp. Br., at 8 (quoting *Wellons*, 130 S. Ct. at 730).) He argues that "[i]n *Pinholster*, the Supreme Court made it clear that it was not departing from its prior law on evidentiary hearings under the AEDPA" such as *Schriro v. Landrigan*, 550 U.S. 465 (2007), *Michael Williams v. Taylor*, 529 U.S. 420 (2000), and *Townsend v. Sain*, 372 U.S. 293 (1963). According to Mr. Jones, *Pinholster* does not prevent this Court from granting him an evidentiary hearing pursuant to section 2254(e) at this stage of his petition.

Mr. Jones is correct that the Supreme Court in *Pinholster* noted that it "need not decide . . . whether a district court may ever choose to hold an evidentiary hearing before it determines that [section] 2254(d) has been satisfied." 131 S. Ct. at 1411 n.20. However, even if there are limited circumstances in which a district court can conduct an evidentiary hearing before finding section 2254(d) to be satisfied, the Supreme Court

made it clear that a district court is not required to do so. A district court should be very reluctant to conduct an evidentiary hearing especially where, as here, principles of federalism dictate that the district court first determine whether the requirements of section 2254(d) be have been met. *See id.* at 1399 ("[W]hen the state-court record precludes habeas relief under the limitations of [section] 2254(d), at district court is not required to hold an evidentiary hearing" (internal quotation omitted)); *see also id.* (citing, as "consistent . . . with [its] holding," *Landrigan*, 550 U.S. at 474 ("Because the deferential standards prescribed by [section] 2254 control whether to grant habeas relief, a federal court must take into account those standards in deciding whether an evidentiary hearing is appropriate.")).

The Ninth Circuit has found the decision in *Pinholster* to have significant implications for a petitioner's entitlement to an evidentiary hearing. The Ninth Circuit held in *Stokley v. Ryan* that *Pinholster*'s application would "foreclose[] the possibility of a federal evidentiary hearing" for a petitioner to present evidence beyond the state court record. 659 F.3d 802, 809 (9th Cir. 2011). The petitioner in *Stokely*, Stokley, moved the district court for an evidentiary hearing on his claim of ineffective assistance of counsel. In support of his motion, Stokley introduced declarations from four medical experts. The district court denied his motion for an evidentiary hearing and denied the claim. Stokley appealed.

In supplemental briefing to the Ninth Circuit following the decision in *Pinholster*, the state argued "that *Pinholster* applies to preclude consideration of the declarations Stokley supplied for the first time in federal court." *Id.* at 807. Stokley took a different approach, arguing that his federal claim was "fundamentally new and different from the ineffective assistance claim presented to the state courts in his supplemental petition." *Id.* The Ninth Circuit noted that "[i]f accepted, Stokley's argument would mean that *Pinholster* does not apply to his federal claim." *Id.*

The Ninth Circuit held that it need not resolve whether Stokley's claim was, indeed, a new claim, because Stokley was not entitled to relief on the merits in any event. *Id.* Notably, however, the Ninth Circuit observed that "if *Pinholster* applies, it directly bars Stokley from receiving the only relief he seeks—a hearing to present new evidence in federal court." *Id.* The Ninth Circuit emphasized that "*Pinholster*'s limitation on the consideration of Stokley's new evidence" from the medical experts "*forecloses the possibility of a federal evidentiary hearing*, the only relief Stokley currently seeks." *Id* at 809 (emphasis added).

Here, Mr. Jones has made no argument that his federal claims are fundamentally different from those he presented to the state court. The Court, therefore, is not required to hold an evidentiary hearing before Mr. Jones demonstrates his satisfaction of section 2254(d) on the basis of the state court record.

Finally, Mr. Jones argues that *Pinholster* is inapplicable because he has already demonstrated a violation of (d)(2). He asserts that the California Supreme Court erred by summarily denying his case despite his having made a satisfactory prima facie showing of entitlement to habeas relief. The Court does not have an adequate record before it to determine whether Mr. Jones can satisfy the requirements of section 2254(d) based solely on the state court record. Accordingly, the parties must submit briefing regarding whether section 2254(d) bars this Court from granting Mr. Jones the relief he seeks, based solely on the record before the state court.

B. Effect of the State Court Process Afforded to Mr. Jones

Mr. Jones also asserts in his supplemental brief that "[t]o the extent that this Court desires the parties to address the application of section 2254(d)(1), *Pinholster* does not control here, because it addressed only the situation in which a petitioner has received all

state process necessary to develop factually and present his claims." (Petr.'s Supp. Br., at 11.) In *Pinholster*, the California Supreme Court issued an order to show cause ("OSC") why relief should not be granted, and the parties filed a return and a traverse. *See* Docket, *In re Pinholster*, Case No. S034501. The California Supreme Court vacated the order to show cause as improvidently issued and denied the petition. *Id.*; *see also* Brief of Respondent [Pinholster] in Opposition to the Petition for Writ of Certiorari, *Cullen v. Pinholster*, 2010 WL 4148534, May 12, 2010, at * 31 ("The California Supreme Court held no hearing, originally issued an OSC and then withdrew it for unknown reasons, and finally issued a post-card denial of the petition."). Mr. Jones argues that because he was not granted an OSC, his "state court proceedings are materially distinguishable" because "[t]he issuance of an order to show cause critically transforms the state habeas process." (Petr.'s Supp. Br., at 14.)

This argument is unpersuasive. In *Pinholster*, the California Supreme Court made the same determination in the petitioner's case that it did in Mr. Jones' case: that petitioner failed to state a prima facie case for relief. It explicitly considered Pinholster's first state habeas petition to have been "summarily denied" notwithstanding the parties' briefing on an order to show cause at one point in the case. *Pinholster*, 131 S. Ct. at 1396 n.1. The United States Supreme Court explained in *Pinholster*:

> Under California law, the California Supreme Court's summary denial of a habeas petition on the merits reflects that court's determination that the claims made in the petition do not state a prima facie case entitling the petitioner to relief. It appears that the court generally assumes the allegations in the petition to be true, but does not accept wholly conclusory allegations, and will also review the record of the trial . . . to assess the merits of the petitioner's claims.

131 S. Ct. at 1402 n.12 (internal quotation and citations omitted). The Supreme Court in *Pinholster* made clear that federal courts must give deference to all state court decisions ultimately made on the merits under § 2254(d), including summary denials. *Pinholster*,

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131 S. Ct. at 1419 (citing *Harrington v. Richter*, 131 S. Ct. 770, 788 (2011)). In addition, the Supreme Court in *Pinholster* cited and approved of California's practices in capital cases of issuing summary denials without hearings. *Pinholster*, 131 S. Ct. at 1402–03 n.12. The absence of an OSC, evidentiary hearing, or discovery in the state court is therefore no longer a basis for conducting an evidentiary hearing under section 2254(d). Thus, Mr. Jones is not entitled to an evidentiary hearing regarding his claims simply because the state court issued a summary denial on them. While it is possible that, as Mr. Jones asserts, the California Supreme Court violated sections 2254(d)(1) and 2254(d)(2) in summarily denying his claims, the Court cannot make such a determination on the present record, and Mr. Jones must make that showing as to each claim based on the record before the state court.

C. Development of New Evidence

Mr. Jones argues that "evidence first developed on federal habeas may ultimately lead to relief if that evidence forms the basis for a 'new claim[].'" (Petr.'s Supp. Br., at 16 (quoting *Pinholster*, 131 S. Ct. at 1401 n.10).) This argument is similar to that of petitioners in *Carter v. Martel*, No. CV 06-4532 RGK and *Coffman v. Johnson*, CV 06-7304 ABC. In *Carter*, which was quoted by the court in *Coffman*, the district court explained:

> Petitioner's argument refers to the majority's treatment of a hypothetical claim described by Justice Sotomayor in her dissent. Justice Sotomayor considered a *Brady* claim denied on the merits by the state court on the basis that the withheld evidence did not show the requisite materiality. *Pinholster*, 131 S. Ct. at 1417. Before the statute of limitations has run on filing a federal habeas petition, the hypothetical petitioner receives additional withheld documents, but is barred from filing a successive petition under state law. *See id.* at 1418. (citing as an example Virginia's bar on successive petitions). Justice Sotomayor states that if "the new evidence merely bolsters a *Brady* claim that was adjudicated on the merits in state court, it is unclear how the petitioner can obtain federal

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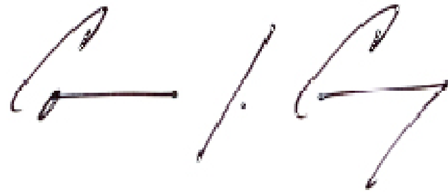
> habeas relief after today's holding." *Id.* In response, the majority stated that "[t]hough we do not decide where to draw the line between new claims and claims adjudicated on the merits, Justice Sotomayor's hypothetical . . . may well present a new claim." *Id.* at 1401 n.10. (citation omitted).
>
> In contrast to Justice Sotomayor's hypothetical, however, the state of California does not bar petitions as successive where they present new facts previously unknown to the petitioner. *See In re Martinez*, 46 Cal. 4th 945, 946 (2009); *In re Martin*, 44 Cal. 3d 1, 26, 27 n.3 (1987). . . .
>
> Because relief might be available from the state court, the "new claim" Petitioner envisions would be unexhausted. *See* 28 U.S.C. § 2254(b)(1). Once the unexhausted claim were before the Court, the proceedings would have to be stayed pursuant to *Rhines v. Weber*[, 544 U.S. 269, 278 (2005)], or the claim would have to be dismissed. . . . In either event, the claim could not proceed to an evidentiary hearing or relief while it remained unexhausted.

Carter v. Martel, CV 06-4532 RGK, Dkt. No. 70, at 5–7 (June 30, 2011). The district court further observed that any request to have an evidentiary hearing on a petitioner's existing, unexhausted claims, in the hopes of developing new evidence to support a new claim, puts forth only a "speculative basis for proceeding with further evidentiary development." *Id.* at 8. Mr. Jones, like the petitioner in *Carter*, "cites no authority to suggest that a federal court should serve as a forum to develop additional evidence in support of fully exhausted claims. To the contrary, 'when the state-court record precludes habeas relief under the limitations of [section] 2254(d), a district court is not required to hold an evidentiary hearing.'" *Id.* (quoting *Pinholster*, 131 S. Ct. at 1399 (internal quotation omitted)). Accordingly, Mr. Jones' contention that he "should be afforded an opportunity to develop facts that may lead to additional claims and or evidence in support of the claims already presented to the California Supreme Court" is unpersuasive. Mr. Jones must demonstrate a violation of section 2254(d)(1) or 2254(d)(2) based upon the state court record in order for this Court to grant him the relief he seeks. Should Mr. Jones uncover new evidence, he may file a successive petition in California state court.

III. CONCLUSION

For the foregoing reasons, Mr. Jones' motion for an evidentiary hearing is DENIED WITHOUT PREJUDICE. The parties shall submit a proposed merits briefing schedule on or before April 16, 2012. Petitioner's merits briefing shall set forth how each claim satisfies section 2254(d)(1) and/or section 2254(d)(2) on the basis of the record that was before the state court that adjudicated the claim on the merits..

DATED: March 26, 2012



CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE