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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARCUS FLETCHER,)	CV 13-4988 RGK
Petitioner,)	ORDER DISMISSING PETITION
v.)	
KEVIN CHAPPELL, Warden,)	
California State Prison at San Quentin,)	
Respondent.)	

I. BACKGROUND

Petitioner was convicted and sentenced to death in Riverside County for the April 2005 murder of Rafi Ibrahim, a convenience store clerk, and the attempted murder of Celesdino Olea, a customer at the store. The crimes were committed during the course of a robbery.¹ The judgment of death was entered against Petitioner on November 18, 2011 and he applied for counsel on direct appeal with the Supreme Court of California on December 23, 2011.² Counsel has not yet been appointed.

¹ As this matter is still on direct appeal, the facts of the underlying offense have been taken from a news article in the Riverside Press Enterprise found at <http://www.pe.com/local-news/local-news-headlines/20110727-temecula-death-to-clerk-s-killer-jury-says.ece>.
² Procedural information on the underlying appeal has been taken from the California Supreme Court docket located at http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1998485&doc_no=S198309

1 On July 11, 2013, Petitioner filed a document entitled “28 U.S.C. § 2403(b)
2 Intervention by United States or State: ‘Constitutional Question’”. (Docket No. 1.)
3 On July 26, 2013 Petitioner filed a second document entitled “Notice of
4 Amendment to Complaint.” (Docket No. 3.) At the time of his sentence,
5 Petitioner was ordered to pay statutorily mandated restitution. He is apparently
6 seeking mandamus or injunctive relief from this Court directing the State of
7 California to stop taking 55% of all money Petitioner obtains in prison in
8 satisfaction of the restitution order. Petitioner believes the state’s actions amount
9 to an unconstitutional taking or seizure since his direct appeal is still pending and
10 thus there is no final adjudication of his guilt or the reasonableness of his sentence.

11 II. DISCUSSION

12 Petitioner has cited 28 U.S.C. § 2403(b) apparently for the proposition that
13 he should be allowed to bring his putative constitutional claims in federal court.
14 That statute provides that a state may be allowed to intervene in an action where
15 the constitutionality of a state law is in question. *Id.* However, it specifically
16 limits those instances to cases where, for obvious reasons, the state or one of its
17 officials or employees is not already a party to the action. *Id.* Kevin Chappell, the
18 Warden of the State Prison at San Quentin where Petitioner is housed, is an
19 employee of the State of California and the respondent in this action. For that
20 reason, the provisions of 28 U.S.C § 2403(b) allowing for intervention do not
21 apply. Petitioner cannot invoke this Court’s jurisdiction by way of that statute.

22 Further, Petitioner cannot secure this Court’s jurisdiction through the Anti-
23 Terrorism and Effective Death Penalty Act of 1996 (AEDPA) codified at 28
24 U.S.C. § 2254. Though AEDPA will provide a mechanism for Petitioner’s
25 challenges to his conviction and sentence when his direct appeal is complete, it
26 does not provide the mechanism through which Petitioner may challenge the
27 state’s actions in seizing money in satisfaction of the restitution order. Habeas
28 proceedings are not designed to provide an avenue for prisoners to challenge the

1 imposition of or execution of a restitution order. This is because the language of
2 section 2254 precludes federal courts from reviewing challenges to the non-
3 custodial portion of criminal sentences. *Bailey v. Hill*, 599 F.3d 976, 981 (9th
4 2010).

5 Petitioner may believe that the All Writs Act applies to this case. Other pro
6 se litigates have recently sought to invoke federal court jurisdiction by way of that
7 statute. In an effort to avoid unnecessary future pro se filings in that regard, the
8 Court will address that statute here. The All Writs Act empowers federal courts to
9 issue “all writs necessary or appropriate in aid of their respective jurisdictions and
10 agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). But Petitioner
11 cannot establish this Court’s jurisdiction over his state court conviction and
12 sentence and the All Writs Act does not create that jurisdiction. By its plain
13 language it allows the Court to issue orders in support of its jurisdiction in a given
14 case. However, federal court jurisdiction is a necessary prerequisite to the issuance
15 of those orders or writs. That jurisdiction does not exist here. Petitioner’s direct
16 appeal is pending before the California Supreme Court and he is free to raise his
17 claims in that forum. Principles of comity and federalism limit this Court’s ability
18 to interfere with state court appellate proceedings that may vindicate the very
19 rights that Petitioner seeks to have considered in this forum. Petitioner may yet
20 obtain relief from the restitution order.

21 Finally, addressing Petitioner’s claim that the collection of the restitution
22 before his appeal has been heard creates a due process violation, the Court notes
23 that Petitioner’s conviction and sentence are presumptively valid. He was charged,
24 tried, and convicted by a jury of his peers. That same jury made a sentencing
25 recommendation based on evidence before it and the trial judge imposed sentence,
26 including the restitution order, consistent with state statute. He has been afforded
27 the process he was due. Well established state appellate procedures continue to
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1 afford him due process in the review of the propriety of his conviction and
2 sentence. It is not this Court's role to interfere with those proceedings.

3 For all of the forgoing reasons, this matter is dismissed with prejudice.

4 **IT IS SO ORDERED.**

5 Dated this 8th day of August, 2013



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7 R. GARY KLAUSNER
8 UNITED STATES DISTRICT JUDGE
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