

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 14-4368 PA (MRW) Date June 24, 2014

Title Jaques Fearence v. R. Grounds, Warden

Present: The Honorable Michael R. Wilner

Veronica McKamie

n/a

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Petitioner:

Attorneys Present for Respondent:

n/a

n/a

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: PETITION

Petitioner is a state prisoner serving a 51-years-to-life sentence for murder, drug, and weapons charges. Petitioner was convicted in 2004. This action is his second federal habeas action.¹

Petitioner asserts here that his trial and appellate attorneys were ineffective for several reasons. Petitioner points to no recent change of law to support his claims or to explain the delay in bringing these claims. Further, while Petitioner states that his claims are based on newly discovered evidence, he cites only to information that was readily available to and/or discoverable by Petitioner when he filed his first petition.² Therefore, despite his statement to the contrary, Petitioner cites to no new evidence in support of his claims. (Docket # 1, Part 2 at 4; 5-25.)

Petitioner also failed to obtain permission from the federal appellate court to bring the present habeas action. Federal law prohibits a state prisoner from filing successive habeas actions without advance permission from the United States Court of Appeals. See 28 U.S.C. § 2244(b); Burton v. Stewart, 549 U.S. 147 (2007) (dismissing successive petition for failure to

¹ Jaques Fearence v. B.M. Cash, Warden, CV 10-7152 PA (MRW) (C.D. Cal.).

² Specifically, Petitioner cites to minute orders from his case before the California Superior Court, the index from his trial transcript, affidavits from family members (with no explanation as to why he could not obtain them sooner), and an order this Court issued during his first habeas case. (Docket # 1, Part 2 at 5-25.)

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obtain authorization from court of appeals). However, Petitioner's current habeas petition is not accompanied by a statement of permission from the Court of Appeals.

Based on the face of the current petition, the Court could dismiss the action at this stage of the action with no further proceedings. However, in the interest of justice and to accommodate this pro se litigant, the Court will give Petitioner an opportunity to explain why his action should not be dismissed as an improper successive action under AEDPA.

It is therefore ORDERED that Petitioner shall file a memorandum by or before July 15, 2014, not to exceed 5 pages showing good cause why the case should not be dismissed.

Failure to file a timely response to this Order as directed above will result in a recommendation that this action be dismissed for failure to prosecute and obey Court orders pursuant to Federal Rule of Civil Procedure 41(b).