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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEPHEN MORELAND REDD,
Plaintiff,
vs.
CALIFORNIA SUPREME COURT
Defendant.

Case No.: CV 16-1540-DMG
ORDER OF DISMISSAL

I. BACKGROUND¹

Plaintiff is a former Los Angeles County Sheriff’s Deputy who committed a series of commercial armed robberies. During one such robbery at a grocery store in Yorba Linda, California, he shot and killed a store employee, Timothy McVeigh. A jury convicted Plaintiff of the first degree murder of Timothy McVeigh, as well as the attempted murders of James Shahbakhti and Chris Weidmann, two private security officers who responded to a suspicious person call at another grocery store. Plaintiff shot at Weidmann, who pretended to have been hit, and succeeded in shooting Shahbakhti in the back as Shahbakhti was running

¹ The factual recitation of Plaintiff’s criminal conduct is taken from *People v. Redd*, 48 Cal. 4th 691 (2010).

1 away. The jury also convicted Plaintiff of two counts of second degree robbery,
2 and two counts of second degree commercial burglary. The jury found true the
3 special circumstances that the murder was committed while Plaintiff was engaged
4 in the commission of robbery and of burglary. The jury also found true the
5 allegations that Plaintiff personally used a firearm in the commission of each of the
6 seven crimes, and that Plaintiff, with the specific intent to inflict such injury,
7 personally inflicted great bodily injury upon James Shahbakhti. Plaintiff had been
8 previously convicted of five serious or violent felonies at the time of the offenses
9 in question.

10 Following the penalty phase of the trial, the jury returned a verdict of death.
11 Plaintiff moved for a new trial and for modification of the penalty to life
12 imprisonment without the possibility of parole. The trial court denied those
13 motions and sentenced him to death. The court also sentenced him to a term of
14 111 years to life in prison with respect to the other charges on which he was
15 convicted, and ordered restitution in the amount of \$10,000. The California
16 Supreme Court affirmed the conviction and sentence on direct appeal on April 29,
17 2010. Plaintiff's conviction and sentence became final when his Petition for Writ
18 of Certiorari to the United States Supreme Court was denied on October 4, 2010.²

19 Plaintiff has not yet had state habeas counsel appointed, though the
20 California Appellate Project filed a habeas petition asserting a limited number of
21 claims (a so-called "shell" petition) on his behalf. That petition was filed on
22 October 5, 2010, the day after the United States Supreme Court denied the Petition
23 for Writ of Certiorari. Plaintiff has attempted to file *pro se* motions with the
24 California Supreme Court, primary among them being motions to recall the
25 remittitur and reopen briefing on his direct appeal. He has also written letters to
26 the State Supreme Court requesting the appointment of habeas counsel. That Court
27

28 ² The docket in Plaintiff's case on direct appeal is found on the California Supreme Court website located at:
http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1791273&doc_no=S059531

1 has rejected Plaintiff's *pro se* filings and has also notified him that it is still
2 attempting to find counsel to appoint for his state habeas case.

3 Plaintiff has previously filed premature habeas corpus petitions in this Court,
4 the first of which was filed in 2013. (*See* CV 13-7238 ABC.) The Court, the Hon.
5 Audrey B. Collins presiding, dismissed that case for Plaintiff's failure to exhaust
6 state law remedies and declined to issue a certificate of appealability because
7 Plaintiff had not made a substantial showing of the denial of a constitutional right.
8 Plaintiff filed a motion for reconsideration, which the Court also denied. Plaintiff
9 appealed the dismissal and denial of his *pro se* habeas petition.

10 The Ninth Circuit Court of Appeals invited Plaintiff to seek a certificate of
11 appealability in that court and in response, Plaintiff apparently filed a document
12 urging that court to issue an order "mandating that the California Supreme Court
13 accept and file his *pro se* motion to recall the remittitur on direct appeal for
14 consideration of eyewitness identification and search issues. Plaintiff insists the
15 California Supreme Court's alleged refusal to consider his recall of the remittitur
16 motion violates his rights to due process, equal protection, and access to the
17 courts." (*See* CV 13-7238 ABC [Doc. # 11].) The Court of Appeals declined to
18 issue a certificate of appealability because "[w]hether a remittitur is recalled on
19 direct appeal raises an issue of state law that is not cognizable on federal habeas."
20 *Id.*

21 Plaintiff then petitioned for a Writ of Certiorari from the United States
22 Supreme Court. The Supreme Court denied the petition for writ of certiorari.
23 *Redd v. Chappell*, 135 S. Ct. 712 (2014). Though the Supreme Court denied the
24 petition, Justice Sotomayor issued a statement, joined by Justice Breyer, respecting
25 the denial. In doing so, she stated:

26 I vote to deny the petition for certiorari because it is not clear that
27 Plaintiff has been denied all access to the courts. In fact, a number of
28 alternative avenues may remain open to him. He may, for example,
seek appointment of counsel for his federal habeas proceedings. See
18 U. S. C. §3599(a)(2). And he may argue that he should not be
required to exhaust any claims that he might otherwise bring in state

1 habeas proceedings, as “circumstances exist that render [the state
2 corrective] process ineffective to protect” his rights. 28 U. S. C.
3 §2254(b)(1)(B)(ii). Moreover, Plaintiff might seek to bring a 42
4 U.S.C. §1983 suit contending that the State’s failure to provide him
5 with the counsel to which he is entitled violates the Due Process
6 Clause. Our denial of certiorari reflects in no way on the merits of
7 these possible arguments. Finally, I also note that the State represents
8 that state habeas counsel will be appointed for Plaintiff “[i]n due
9 course”—by which I hope it means, soon.

10 Id. at 713.

11 Most recently, Plaintiff filed a request for appointment of federal habeas
12 counsel. That request was denied on the same bases as the prior habeas denials
13 and dismissals. (*See* CV 15-1460 DMG.)

14 Encouraged by Justice Sotomayor’s statement, Plaintiff filed this action
15 pursuant to 42 U.S.C. § 1983 on March 4, 2016. The complaint consists of four
16 causes of action, or claims.

17 Claim 1 – Equal Protection Violation.

18 Plaintiff asserts that because the California Supreme Court has not yet
19 appointed habeas corpus counsel for him, he has been prejudiced in bringing what
20 he believes are meritorious habeas claims. The gravamen of this claim, however,
21 as evidenced by Plaintiff’s statement of facts, is that the state supreme court’s
22 rulings on direct appeal not only improperly shifted proof burdens to him but also
23 misconstrued and misapplied California statutory law on the admissibility of
24 evidence. He also states that the California Supreme Court is biased against him,
25 and all death row inmates, because of the disparity between that court’s reversal
26 rate under former Chief Justice Rose Bird and the affirmance rate in the years since
27 she and two other justices were recalled by the voters.

28 Claim 2 – Denial of Effective Corrective Process.

Plaintiff asserts that the fact that he has awaited the appointment of habeas
counsel for 19 years demonstrates that there is lack of effective corrective process.
Further, Plaintiff believes that the California Attorney General misrepresented
facts to the United States Supreme Court when, in its opposition to the petition for

1 writ of certiorari, that office informed the high court that Plaintiff’s direct appeal
2 counsel was still available to assist him, which though factually true is not in fact
3 accurate because, as Plaintiff also complains, his direct appeal counsel refuses to
4 consult with him to process his recall of the remittitur.³

5 Claim 3 – Denial of Access to the Courts

6 Plaintiff asserts that though the California Supreme Court has a policy of
7 supplying state habeas counsel at the same time as the appointment of direct appeal
8 counsel, or as soon thereafter as possible, the court does not actually follow that
9 policy. He believes that the court compounds this problem by refusing to allow
10 inmates to file habeas petitions on a *pro se* basis. He also complains that the
11 California Supreme Court came up with new theories of evidentiary admissibility
12 that bolstered the state’s case, which he believes that court was not allowed to do.
13 According to Plaintiff, the State Supreme Court exacerbated its mistake when it
14 failed to offer the parties the opportunity to brief those new theories of
15 admissibility. This is the source of his desire to recall the remittitur in his case.
16 Because Plaintiff’s appellate counsel does not see things as he does, a dispute has
17 arisen between them. He believes that the state Supreme Court has taken
18 advantage of that rift and continues to plague his attempts to recall the remittitur
19 and obtain a fair review of his case.

20 Claim 4 – Violation of Due Process

21 Plaintiff here complains that the lengthy delay⁴ in having his case
22 adjudicated amounts to a violation of his due process rights. He also complains
23 that the “bias shown by the [California Supreme Court] since Rose Bird’s ouster”

24 ³ Rule 26(c) of the California Rules of Court, authorizes an appellate court to recall the remittitur and
25 reinstate the appeal for good cause. Recall of the remittitur is appropriate where an error has occurred
26 which would entitle a defendant to habeas corpus relief. *People v. Mutch*, 4 Cal. 3d 389, 396-97 (1971).

27 ⁴ Plaintiff was sentenced to death on February 28, 1997. Counsel was appointed for him on direct appeal
28 in June 2001 and after receiving multiple extensions of time, Plaintiff filed his opening brief on appeal on
January 12, 2005. His conviction and sentence were affirmed on April 29, 2010. The United States
Supreme Court denied Plaintiff’s Petition for Writ of Certiorari on October 4, 2010. The California
Appellate Project filed a placeholder habeas corpus petition on Plaintiff’s behalf on October 5, 2010. As
of this date, counsel has not been appointed in Plaintiff’s state habeas case.

1 as shown by the sharp decline in death sentence reversals by that court
2 demonstrates that he is not receiving adequate due process. Finally, he again
3 complains that the state Supreme Court's interpretation of California law amounts
4 to a violation of due process.

6 **II. DISCUSSION**

7 Habeas corpus is the exclusive remedy for a prisoner who is challenging the
8 fact or duration of his confinement and seeking immediate or speedier release. *See*
9 *Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (citing *Preiser v. Rodriguez*, 411
10 U.S. 475, 488-90 (1973)). On the other hand, a prisoner who is seeking monetary
11 damages because of an alleged violation of constitutional rights must file a civil
12 rights action pursuant to 42 U.S.C. § 1983, provided the claim does not call into
13 question the validity of the prisoner's confinement. *See Heck*, 512 U.S. at 482-83;
14 *Wolff v. McDonnell*, 418 U.S. 539, 553-54 (1974); *see also Bivens v. Six Unknown*
15 *Named Narcotics Agents*, 403 U.S. 388 (1971) (acknowledging civil rights action
16 for federal prisoners). If the civil rights claim necessarily implies the invalidity of
17 the conviction or sentence, the “§ 1983 plaintiff must prove that the conviction or
18 sentence has been reversed on direct appeal, expunged by executive order, declared
19 invalid by a state tribunal authorized to make such determination, or called into
20 question by a federal court's issuance of a writ of habeas corpus.” *Heck*, 513 U.S.
21 at 486-87. Otherwise, such a claim is not cognizable under § 1983. *See id.* at 487.

22 If the prisoner files a 42 U.S.C. § 1983 complaint that also seeks relief
23 available only under habeas corpus, this Court should construe that portion of the
24 complaint as a habeas corpus petition. *See Tucker v. Carlson*, 925 F.2d 330, 332
25 (9th Cir. 1992); *see also Valdez v. Rosenbaum*, 302 F.3d 1039, 1049 (9th Cir.
26 2002) (noting that § 1983 claim barred by *Heck* could be asserted in a habeas
27 corpus petition). Likewise, if the prisoner files a habeas corpus petition that also
28 seeks relief available under 42 U.S.C. § 1983, the district court should construe

1 that portion of the habeas petition as a civil rights claim. *See Tucker*, 925 F.2d at
2 332. Additionally, failure to construe a misfiled § 1983 action as a habeas petition
3 could raise potential problems with the statute of limitations.

4 Federal courts should convert a § 1983 action into a habeas claim when the
5 prisoner's intentions are clear. *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 586
6 (9th Cir. 1995) (*per curiam*). The district court should not do so, however, when
7 that intention is unclear to avoid usurping the prisoner's only chance at a habeas
8 petition and prematurely deciding certain issues or failing to consider potential
9 claims. *See Id.* (citing *McClesky v. Zant*, 499 U.S. 467 (1991)). No such
10 reservations are present when the district court converts a § 1983 action and then
11 dismisses it for lack of exhaustion of state remedies, because a dismissal on those
12 grounds does not render later petitions second or successive. *See Id.*

13 Plaintiff's *pro se* complaint is understandably somewhat rambling. The
14 Court is cognizant of, and sympathetic to, the difficulties created by delays that
15 Plaintiff and other death row inmates experience in trying to get their cases before
16 the California state courts. Nonetheless, as the case law demonstrates, Plaintiff has
17 no remedy available to him. This is made abundantly clear in the request for relief
18 found in Section E of his complaint. In that section, Plaintiff complains that he
19 was subjected to an unlawful search and detention by law enforcement. Such a
20 claim is clearly within the ambit of those claims that are or can be raised on direct
21 appeal. In fact, they were raised on direct appeal and addressed by the California
22 Supreme Court. It is that Court's interpretation of California law⁵ regarding the
23 authority of federal park police officers operating off of federal land that has given
24 rise not only to this complaint, but also Plaintiff's prior habeas cases and the
25 disagreement with his counsel regarding his desire to recall the remittitur. It is

26
27 ⁵ In Plaintiff's view, the California Supreme Court invented authority and misinterpreted or
28 misapplied the California Penal Code. The California Supreme Court is, of course, the ultimate
source of authority on the scope and interpretation of California law and thus cannot "invent
authority" or misapply state law.

1 important to note that the United States Supreme Court had the opportunity to
2 address the California Supreme Court's decision regarding the propriety of the
3 federal park police officer's search and seizure on direct appeal, but declined to do
4 so. It is also noteworthy that irregularities in the trial or appellate process that
5 render a prisoner's incarceration constitutionally infirm are the very claims that are
6 to be brought on habeas review. They cannot be made part of a civil rights
7 complaint.

8 In addition to these shortcomings, the proposed relief that Plaintiff seeks is
9 not available in federal court, under either habeas corpus or civil rights
10 jurisprudence. He asks the Court to review the California Supreme Court's
11 determination that his detention by the federal park police officer, and the
12 subsequent inventory search of his vehicle, were permissible under California law.
13 Plaintiff specifically asks the Court to invalidate that finding, order the California
14 Supreme Court to accept and file his *pro se* motion to recall the remittitur, or in the
15 alternative, order the state court to appoint counsel for him.

16 Absent extraordinary circumstances, federal courts may not interfere with
17 pending state court proceedings on constitutional grounds. *See Younger v. Harris*,
18 401 U.S. 37, 49-53 (1971). This abstention avoids unnecessary friction in state-
19 federal relations where federal court intervention could be interpreted as reflecting
20 negatively upon the state court's ability to enforce constitutional principles. *Moore*
21 *v. Sims*, 442 U.S. 415, 426 (1979). That is particularly the case here where
22 Plaintiff's claim is that his federal due process rights are being violated by the
23 California Supreme Court's interpretation of California law. It is not within this
24 Court's purview to tell the California courts how to interpret California law, or
25 how to manage their caseloads. Indeed, this Court is bound by the decisions of the
26 California Supreme Court on matters of California law.

27 In cases where the relief sought is equitable in nature or otherwise
28 discretionary, federal courts not only have the power to stay the action based on

1 abstention principles, but can also, in otherwise appropriate circumstances, decline
2 to exercise jurisdiction altogether by either dismissing the suit or remanding it to
3 state court. *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 717 (1996) (citations
4 omitted). Federal courts must abstain where state court proceedings are pending
5 when the federal action is filed, implicate important state interests, and provide
6 adequate opportunity to raise the federal claims. *Middlesex County Ethics*
7 *Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982); *Dubinka v.*
8 *Judges of the Sup. Ct.*, 23 F.3d 218, 223 (9th Cir. 1994). Federal courts have the
9 power to abstain in cases raising issues intimately involved with the state's
10 sovereign prerogative. *Quackenbush*, 517 U.S. at 717 (citations omitted).

11 These cases make clear why this Court cannot exercise jurisdiction over
12 Plaintiff's complaint. The relief Plaintiff seeks is equitable in nature, as he
13 requests that this Court order the California state court to reverse itself on its own
14 decisional law, allow petitioner to file certain documents, or appoint counsel to
15 represent him. The Court's equitable powers do not extend to such matters.
16 Moreover, Plaintiff will have an adequate forum to raise any proper constitutional
17 claims in future state habeas proceedings. The California Supreme Court's
18 authority as the ultimate arbiter of California law implicates the state's most
19 important sovereign interests and prerogatives and this Court has no authority in
20 our federal system to interfere.


21 22 **III. CONCLUSION AND ORDER**

23 Plaintiff's requests for relief are not cognizable in an action brought under
24 42 U.S.C. § 1983 because they call into question the validity of his confinement.
25 These are claims that can only be pursued in habeas corpus proceedings.
26 Moreover, Plaintiff is asking this court to order the California Supreme Court to
27 reverse itself on a matter of decisional law that is solely within that court's purview
28 to decide. In accordance with the abstention doctrines discussed herein, and in the

1 interest of comity and federalism on which they are based, the Court hereby
2 dismisses Plaintiff's complaint with prejudice.

3 **IT IS SO ORDERED.**

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5 DATED: October 3, 2017



6 DOLLY M. GEE
7 UNITED STATES DISTRICT JUDGE
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