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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

THOMAS MILLS,)
)
 Petitioner,)
)
 v.)
)
 STEWART SHERMAN, Warden,)
)
 Respondent.)
 _____)

Case No. CV 16-9681-DDP(AJW)

**MEMORANDUM AND ORDER
DISMISSING PETITION**

On July 12, 2016, petitioner was convicted of two counts of second degree robbery. [Petition at 2]. Petitioner appealed to the California Court of Appeal, and his appeal is currently pending. [Petition at 5-6]. Petitioner has filed a petition for a writ of habeas corpus in this Court, challenging his 2016 conviction. For the following reasons, the petition is subject to summary dismissal. See Rule 4 of the Rules Governing Section 2254 Cases.

First, it is clear from the face of the petition that petitioner has not exhausted his state court remedies. This court cannot grant habeas corpus relief until he does so. See 28 U.S.C. § 2254(b).

Second, petitioner’s conviction is not yet final. A favorable decision by the state court could moot any federal claim. Because his petition is premature, the petition is dismissed without prejudice to its refiling after petitioner’s conviction has become final and his federal claims have been properly presented to the California Supreme Court. See Deere v. Superior Court of Cal., 330 Fed. Appx. 693, 694 (9th Cir.

1 2009); Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983).¹

2 It is so ordered.

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4 Dated: September 12, 2017



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6 Dean D. Pregerson
United States District Judge

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25 ¹ Petitioner is cautioned that a one year limitation period applies to federal habeas petitions. See
26 28 U.S.C. § 2244(d). Generally, a state conviction is final 90 days after the petitioner's petition for
27 review is denied. See Bowen v. Roe, 188 F.3d 1157, 1158-1159 (9th Cir. 1999). Petitioner would
28 have one year from that date within which to file a federal petition. The one-year period would be
extended if petitioner has a properly filed state application for relief pending or is entitled to
equitable tolling. Nothing in this order should be construed as an opinion as to the timeliness of any
future petition.

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Case No. CV 16-9681-DDP(AJW)

JUDGMENT

It is hereby adjudged that the petition for a writ of habeas corpus is dismissed without prejudice.

Dated: _____

Dean D. Pregerson
United States District Judge