

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

CIVIL MINUTES – GENERAL

Case No. CV 17-5294 DMG (SS)

Date: July 27, 2017

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Title: Adrian Barragan v. Warden

DOCKET ENTRY: **ORDER TO SHOW CAUSE WHY THE MAGISTRATE JUDGE SHOULD NOT RECOMMEND THAT THE PETITION BE DISMISSED FOR LACK OF JURISDICTION**

PRESENT:

HONORABLE SUZANNE H. SEGAL, UNITED STATES MAGISTRATE JUDGE

Marlene Ramirez
Deputy Clerk

None
Court Reporter/Recorder

None
Tape No.

ATTORNEYS PRESENT FOR PLAINTIFF:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS: (IN CHAMBERS)

On July 5, 2017, Petitioner Adrian Barragan (“Petitioner”), a California state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254. (Petition at 1).¹ In the Petition, Petitioner challenges the amount of the restitution fine imposed pursuant to his 2004 conviction for first degree murder, two counts of attempted murder, and shooting at an occupied motor vehicle. (Id. at 20). However, it appears that the Court lacks jurisdiction over the Petition.

¹ Under the “mailbox rule,” a pleading filed by a pro se prisoner is deemed to be filed as of the date the prisoner delivered it to prison authorities for mailing to the court clerk, not the date on which the pleading may have been received by the court. See Houston v. Lack, 487 U.S. 266, 270 (1988); Stillman v. LaMarque, 319 F.3d 1199, 1201 (9th Cir. 2003). Here, the Petition was signed on July 5, 2017. (Petition at 8). Therefore, the Court will deem the Petition filed on that date. The Court refers to the pages of the Petition as if they were consecutively paginated.

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28 U.S.C. § 2254 empowers the Court to “entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court . . . on the ground that he is in custody in violation of the laws of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). The Court does not have jurisdiction if “it appears from the application that the applicant or person detained is not entitled thereto.” See 28 U.S.C. § 2243; see also Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

Here, the gravamen of Petitioner’s sole claim for relief is that the trial court failed to consider his circumstances and ability to pay when setting the amount of his restitution fine, which Petitioner argues should be reduced from \$10,000 to \$200. (Petition at 26). However, the Ninth Circuit has held that because challenges to restitution fines do not allege that a person is wrongfully in custody, they fail to state a cognizable habeas claim. See, e.g., Bailey v. Hill, 599 F.3d 976, 982 (9th Cir. 2010) (“§ 2254(a) does not confer jurisdiction over a state prisoner’s in-custody challenge to a restitution order imposed as part of a criminal sentence.”); see also United States v. Ross, 801 F.3d 374, 380 (3d Cir. 2015) (“[F]ines, restitution orders, and other monetary penalties are insufficient to meet the ‘in custody’ requirement [of federal habeas statutes].”) (citing cases, including Bailey).

Because Petitioner’s claim challenges only the imposition of his restitution fine, and not the validity of his conviction or the duration of his confinement, the Petition does not appear to confer habeas jurisdiction upon this Court. Petitioner is therefore **ORDERED TO SHOW CAUSE**, within **fourteen (14) days** of the date of this Order, why this action should not be dismissed for lack of jurisdiction.

Instead of filing a response to the instant Order, Petitioner may request a voluntary dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a). A Notice of Dismissal form is attached for Petitioner’s convenience. However, Petitioner is advised that any dismissed claims may be later subject to the statute of limitations under 28 U.S.C. § 2244(d)(1), as amended by AEDPA, which provides that “[a] 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court.”

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Petitioner is expressly warned that the failure to timely file a response to this Order may result in a recommendation that this action be dismissed with prejudice for failure to comply with Court orders and failure to prosecute. See Fed. R. Civ. P. 41(b).

The Clerk of the Court is directed to serve a copy of this Order upon Petitioner at his current address of record.

IT IS SO ORDERED.