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

OSCAR E. VARGAS,)	Case No. CV 22-0385-JPR
)	
Petitioner,)	
)	MEMORANDUM DECISION AND ORDER
v.)	DISMISSING PETITION AND ACTION
)	WITHOUT PREJUDICE
ROBERT LUNA, ¹)	
)	
Respondent.)	
)	

PROCEEDINGS

On January 14, 2022, Petitioner filed pro se a Petition for Writ of Habeas Corpus by a Person in State Custody under 28 U.S.C. § 2241, challenging an ongoing criminal prosecution against him. On March 22, 2022, Respondent moved to dismiss the Petition under Younger v. Harris, 401 U.S. 37 (1971), and because its claims had not been exhausted in state court. Petitioner opposed on April 15 and May 31, 2022.

Meanwhile, on May 10, 2022, the Court appointed advisory

¹ Robert Luna is the Sheriff of Los Angeles County and is substituted in under Federal Rule of Civil Procedure 25(d) as the proper Respondent.

1 counsel to Petitioner and stayed the proceedings until the state
2 court had resolved the issue of his competency, which Respondent
3 had raised in a May 6 status report. Petitioner was declared
4 competent on July 11, 2022, by the state court. (Resp't's July
5 20 Status Rep., ECF No. 35 at 4.)² This Court lifted the stay
6 and relieved advisory counsel on August 2, 2022. On August 10,
7 2022, Petitioner filed a request that Respondent be made to
8 produce evidence proving the charges against him; he also
9 repeated some of the arguments from his earlier oppositions and
10 requested an evidentiary hearing.

11 On August 23, 2022, Respondent replied to Petitioner's
12 oppositions. Petitioner filed an unauthorized disguised surreply
13 on September 8, 2022, and it was stricken on September 15.³ On
14 November 16, 2022, Petitioner requested an update on the status
15 of his case, indicating that he had recently allegedly been
16 coerced into pleading no contest to avoid being subjected to more
17 mental-health treatment, had since moved to withdraw his plea,
18 and was arrested on new charges six days after his release.
19 (Pet'r's Req. Status Update, ECF No. 48 at 3-4.)⁴

20
21 ² Throughout, the Court uses the pagination generated by its
Case Management/Electronic Case Filing system.

22 ³ This document largely simply repeated arguments from his
23 earlier oppositions. As Respondent points out (Consolidated Reply
24 to Opp'n, Mem. P. & A., ECF No. 42 at 10 n.2), Petitioner filed his
25 first two oppositions during the period when the state court had
26 adjudged him to be incompetent. Because he repeated those
arguments in filings after he was restored to competency, the Court
nonetheless considers them.

27 ⁴ Any claims relating to new charges and any subsequent
28 conviction must be raised in a separate federal habeas petition
filed only once any such conviction becomes final.

1 For the reasons discussed below, Respondent's Motion to
2 Dismiss is granted and the Petition and this action are dismissed
3 without prejudice.

4 **BACKGROUND**

5 On December 30, 2020, Petitioner was charged in Los Angeles
6 County Superior Court with criminal threats, assault with a
7 deadly weapon, two counts of resisting arrest – all felonies –
8 and misdemeanor elder abuse. (Mot. Dismiss, Mem. P. & A., ECF
9 No. 17 at 8-9; Lodged Docs., Ex. 1, ECF No. 17-1 at 5.) He was
10 appointed counsel, was arraigned, and pleaded not guilty to all
11 charges. (Lodged Docs., Ex. 1, ECF No. 17-1 at 5-6.) At his
12 preliminary hearing, on February 11, 2021, he was allowed to
13 represent himself, and the hearing was continued. (Id. at 7-8.)

14 At the hearing on April 20, 2021, the "court found
15 insufficient cause" for one count of resisting an officer and
16 granted the prosecution's motion to dismiss that count and add
17 one for misdemeanor resisting, delaying, or obstructing that
18 officer. (Id. at 9; see id. at 10; see also Suppl. Opp'n, Ex. A,
19 ECF No. 31 at 16.) On May 4, 2021, an information was filed,
20 Petitioner was arraigned, he waived counsel under Faretta v.
21 California, 422 U.S. 806 (1975), and the court granted his motion
22 to continue representing himself. (Lodged Docs., Ex. 1, ECF No.
23 17-1 at 11.)

24 On June 28, 2021, Petitioner moved the state court to
25 dismiss the charges under Penal Code section 995.⁵ (Lodged
26 _____

27 ⁵ This section describes conditions when a court must set
28 aside an indictment or information on which a defendant was
arraigned.

1 Docs., Ex. 2, ECF No. 17-1 at 32.) The court instead “declare[d]
2 a doubt as to [Petitioner’s] mental competency,” “criminal
3 proceedings [we]re adjourned,” and he was transferred to the
4 mental-health division for examination. (Lodged Docs., Ex. 6,
5 ECF No. 17-1 at 76.) On July 19, 2021, after Petitioner had been
6 appointed counsel, he filed pro se a habeas petition in the court
7 of appeal. (Lodged Docs., Ex. 3, ECF No. 17-1 at 37-40.) That
8 court denied the petition on July 29, 2021 (Lodged Docs., Ex. 3,
9 ECF No. 17-1 at 42), and that same day he filed another petition
10 in the same court (Lodged Docs., Ex. 4, ECF No. 17-1 at 44-51).
11 On August 5, 2021, that court “dismissed without prejudice to
12 petitioner’s filing a petition through his appointed counsel,”
13 (id. at 53), and Petitioner appealed (Lodged Docs., Ex. 6, ECF
14 No. 17-1 at 60-61).

15 On August 30, 2021, the trial court noted an August 24
16 minute order from the mental-health court, “which indicate[d]
17 [Petitioner] was found mentally incompetent to stand trial.”
18 (Lodged Docs., Ex. 1, ECF No. 17-1 at 26.) He filed a habeas
19 petition in the supreme court on September 29, 2021. (See Lodged
20 Docs., Ex. 7, ECF No. 17-1 at 91-100.) That court denied it on
21 November 17, 2021, noting that habeas petitions “must include
22 copies of reasonably available document[s]” and “allege
23 sufficient facts with particularity.” (Id. at 101.)

24 On January 27, 2022, the court of appeal appointed counsel
25 for Petitioner. (Lodged Docs., Ex. 6, ECF No. 17-1 at 59; see
26 Consolidated Reply to Opp’n, Mem. P. & A., ECF No. 42 at 18-19
27 n.5 (counsel appointed for limited purpose of contesting judgment
28 of mental incompetency and related order of commitment).)

1 Appointed counsel filed a brief under People v. Wende, 25 Cal. 3d
2 436 (1979), on February 7, 2022.⁶ (Lodged Docs., Ex. 6, ECF No.
3 17-1 at 80-89.) The court affirmed on March 30, 2022. See Cal.
4 App. Cts. Case Info., <http://appellatecases.courtinfo.ca.gov/>
5 (search for case No. B314912 in second appellate district) (last
6 visited Jan. 19, 2023); (Consolidated Reply to Opp'n, Mem. P. &
7 A., ECF No. 42 at 18-19 n.5).

8 On May 2, 2022, Petitioner filed a petition for review in
9 the state supreme court, and it was denied on June 15. See Cal.
10 App. Cts. Case Info., <http://appellatecases.courtinfo.ca.gov/>
11 (search for case No. S274325 in supreme court) (last visited Jan.
12 19, 2023); (Consolidated Reply to Opp'n, Mem. P. & A., ECF No. 42
13 at 18-19 n.5). Petitioner "returned to [the] courtroom" on July
14 12, 2022, because he had been "found mentally competent" by the
15 mental-health court the day before. (Resp't's July 20 Status
16 Rep., ECF No. 35 at 4.) Criminal proceedings resumed. (Id.)

17 On September 24, 2022, Petitioner apparently "pled out due
18 to prosecutorial duress" but then "filed a motion to take back
19 [his] plea." (Pet'r's Req. Status Update, ECF No. 48 at 3-4.)

20 **DISCUSSION**

21 As a general proposition, a federal court will not intervene
22 in a pending state criminal proceeding absent extraordinary
23 circumstances involving great and immediate danger of irreparable
24 harm. See Younger, 401 U.S. at 45-46; see also Fort Belknap

26 ⁶ Under People v. Wende, 25 Cal. 3d 436, 441-42 (1979),
27 counsel may file a brief summarizing the history of the case,
28 raising no specific issue on appeal, and asking the court of appeal
to conduct an independent review of the record for error.

1 Indian Cmty. v. Mazurek, 43 F.3d 428, 431 (9th Cir. 1994).

2 “[O]nly in the most unusual circumstances is a defendant entitled
3 to have federal interposition by way of injunction or habeas
4 corpus until after the jury comes in, judgment has been appealed
5 from and the case concluded in the state courts.” Drury v. Cox,
6 457 F.2d 764, 764-65 (9th Cir. 1972) (per curiam).

7 Younger abstention is appropriate if three criteria are met:
8 the state proceedings (1) are ongoing, (2) implicate important
9 state interests, and (3) provide an adequate opportunity to
10 litigate the petitioner’s federal constitutional claims. See
11 Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n, 457 U.S.
12 423, 432 (1982). The Ninth Circuit has articulated a fourth
13 criterion: that the requested relief would “enjoin” the state
14 proceeding “or ha[ve] ‘the practical effect’” of doing so.
15 Arevalo v. Hennessy, 882 F.3d 763, 765 (9th Cir. 2018) (citation
16 omitted).

17 Even when the Younger abstention criteria are satisfied, a
18 federal court may intervene when a petitioner shows “bad faith,
19 harassment, or some other extraordinary circumstance that would
20 make abstention inappropriate.” Middlesex, 457 U.S. at 435.
21 “[E]xtraordinary circumstances” are limited to “cases of proven
22 harassment or prosecutions undertaken by state officials in bad
23 faith without hope of obtaining a valid conviction,” or “where
24 irreparable injury can be shown.” Brown v. Ahern, 676 F.3d 899,
25 903 (9th Cir. 2012) (citation omitted). The circumstances must
26 create a “pressing need for immediate federal equitable relief,
27 not merely in the sense of presenting a highly unusual factual
28 situation.” Kugler v. Helfant, 421 U.S. 117, 125 (1975).

1 Here, all criteria for abstention are satisfied. First, the
2 Petition was filed during "pre-trial criminal proceedings."
3 (Pet. at 2.) See Beltran v. California, 871 F.2d 777, 782 (9th
4 Cir. 1988) (as amended Mar. 30, 1989) (ongoing status of state
5 proceedings for Younger analysis is determined "at the time the
6 federal action was filed"). Moreover, Petitioner's case remains
7 pending in the trial court, and the next hearing is scheduled for
8 January 19, 2023. See Online Servs., Super. Ct. of Cal., Cnty.
9 of L.A., <http://www.lacourt.org/criminalcasesummary/ui> (search
10 for case number LA094005) (last visited Jan. 19, 2023). "Where,
11 as here, 'no final judgment has been entered' in state court, the
12 state court proceeding is 'plainly ongoing' for purposes of
13 Younger." Page v. King, 932 F.3d 898, 902 (9th Cir. 2019)
14 (quoting San Jose Silicon Valley Chamber of Com. Pol. Action
15 Comm. v. City of San Jose, 546 F.3d 1087, 1093 (9th Cir. 2008));
16 see also Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983)
17 (petitioner must wait until his convictions and sentence are
18 final before filing federal habeas petition).

19 Second, the state has a well-established strong interest in
20 the prosecution of criminal charges and the defense of its
21 convictions and sentences. See, e.g., Younger, 401 U.S. at 51-52
22 (finding that state must be permitted to "enforc[e] . . . laws
23 against socially harmful conduct that the State believes in good
24 faith to be punishable under its laws and the Constitution").

25 Third, nothing indicates that Petitioner would not have an
26 adequate opportunity to raise his claims in the state
27 proceedings. Indeed, he already filed a petition for review and
28 a habeas petition in the supreme court, raising some of the same

1 claims he raises here. (Compare Pet. at 3-4, with Lodged Docs.,
2 Ex. 7, ECF No. 17-1 at 94-95; see also Consolidated Reply to
3 Opp'n, Mem. P. & A., ECF No. 42 at 18-19 n.5); see Middlesex, 457
4 U.S. at 432 ("federal court should abstain 'unless state law
5 clearly bars the interposition of the constitutional claims'"
6 (quoting Moore v. Sims, 442 U.S. 415, 426 (1979))); Gilbertson v.
7 Albright, 381 F.3d 965, 978 (9th Cir. 2004) (en banc) (inquiry is
8 whether petitioner is "barred from litigating federal
9 constitutional issues in [state] proceeding").

10 Fourth, Petitioner seeks federal-court relief that would
11 "enjoin" the ongoing state proceedings. Indeed, he has alleged
12 "illegal criminal prosecution" against him (Pet. at 2) and asks
13 the Court to "[r]elease the petitioner from this illegal
14 incarceration" (Suppl. Opp'n, ECF No. 31 at 5). See Arevalo, 882
15 F.3d at 766 (Younger abstention is appropriate when the petition
16 raises issues that are not "distinct from the underlying criminal
17 prosecution" and would "interfere with it").

18 Moreover, no exception to Younger applies. Petitioner has
19 not sufficiently alleged bad faith or harassment by state
20 officials, and nothing in the Petition explains why he is in
21 immediate need of federal equitable relief or points to any
22 circumstance that could be construed as "extraordinary." See
23 Brown, 676 F.3d at 902-03 (affirming district court's dismissal
24 of habeas petition under Younger for failure to identify
25 extraordinary circumstance warranting federal intervention).
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1 Petitioner alleges "false 911 calls,"⁷ "excessive use of
2 force," "false arrest," "illegal incarceration," and "malicious
3 prosecution behind false charges," all during a "deadly pandemic
4 and state of emergency." (Pet. at 3; see also id. at 11
5 (alleging "illegal search and seizure," "cruel [sic] and unusual
6 punishment," and "violation of due process"); Opp'n, ECF No. 23
7 at 4-5; Suppl. Opp'n, ECF No. 31 at 3-4.) He also alleges that
8 the trial judge was biased against him and "tactically sided with
9 the people." (Pet at 4.) But he offers no facts to support his
10 conclusory claims. See Brown, 676 F.3d at 901 (requiring
11 "proven" instances of bad faith (citing Carden v. Montana, 626
12 F.2d 82, 84 (9th Cir. 1980))). Indeed, that the trial court
13 dismissed a felony charge for "insufficient cause" (Lodged Docs.,
14 Ex. 1, ECF No. 17-1 at 9) and the police included the victim's
15 recantation in their report (Pet. at 8 (excerpt of police
16 report)) undermine claims of harassment and bad faith. See
17 Carden, 626 F.2d at 84 (charging petitioners with 13 unnecessary
18 counts that were subsequently dropped did not constitute
19 harassment). Further, "[i]n the Younger abstention context, bad
20 faith 'generally means that a prosecution has been brought
21 without a reasonable expectation of obtaining a valid
22 conviction.'" Baffert v. Cal. Horse Racing Bd., 332 F.3d 613,

24 ⁷ Petitioner repeatedly claims that the charges against him
25 are "false" because his mother subsequently recanted her statement
26 that he had held a knife against her throat. (See, e.g., Suppl.
27 Opp'n, Ex. B, ECF No. 31 at 28; Pet. at 3, 8.) But of course
28 victims routinely recant earlier statements to the police for all
sorts of reasons – fear, hardship when the defendant supports them
and can't do so if incarcerated, and a desire to avoid further
hassle among them – unrelated to the truth of the allegations.

1 621 (9th Cir. 2003) (quoting Kugler, 421 U.S. at 126 n.6). Here,
2 petitioner apparently has been convicted after pleading no
3 contest.

4 Nor does a claimed speedy-trial violation "suffice[] in and
5 of itself as an independent 'extraordinary circumstance'
6 necessitating pre-trial habeas consideration." Brown, 676 F.3d
7 at 901; see Page, 932 F.3d at 903 ("[E]ven if [petitioner] could
8 establish that the delay in bringing him to trial would support a
9 speedy trial defense . . . it does not follow that the delay is
10 an extraordinary circumstance in the meaning of Younger"). A
11 petitioner seeking "only to demand enforcement of the
12 [government's] affirmative constitutional obligation to bring him
13 promptly to trial" and who has exhausted state remedies toward
14 that end may go forward with a federal habeas petition, however.
15 Braden v. 30th Jud. Cir. Ct. of Ky., 410 U.S. 484, 490 (1973).

16 Here, Petitioner claims violation of his right to a speedy
17 trial. (See Pet. at 3-4, 11.) But he has apparently pleaded no
18 contest, so relief under Braden is inappropriate. And to the
19 extent he seeks dismissal of this action on speedy-trial grounds,
20 "Younger principles preclude the adjudication of constitutional
21 speedy trial claims . . . when a petitioner raises 'a Speedy
22 Trial claim as an affirmative defense to state prosecution.'" Coleman v. Ahlin, 542 F. App'x 549, 551 (9th Cir. 2013) (quoting
23 Brown, 676 F.3d at 900); Wright v. Volland, 331 F. App'x 496, 498
24 (9th Cir. 2009) (noting that "no case 'permit[s] the derailment
25 of a pending state proceeding by an attempt to litigate
26 constitutional defenses prematurely in federal court'" (quoting
27 Braden, 410 U.S. at 493)).
28

1 Lastly, Petitioner alleges “[i]llegal appointment of counsel
2 for Mental Health court competency hearing” in violation of his
3 Faretta rights.⁸ (Pet. at 4; see Opp’n, ECF No. 23 at 2-3.) To
4 start, a Faretta claim is not an extraordinary circumstance
5 involving irreparable injury or otherwise warranting intervention
6 before a conviction has become final because “California courts
7 routinely consider federal constitutional claims arising from an
8 alleged Faretta violation as part of the criminal appellate
9 process.” Jackson v. Villanueva, No. CV 18-6721 TJH(JC), 2019 WL
10 2870875, at *4 (C.D. Cal. May 22, 2019) (citing People v.
11 Buenrostro, 6 Cal. 5th 367, 425-28 (2018)), accepted by 2019 WL
12 2868955 (C.D. Cal. July 3, 2019). Indeed, Petitioner challenged
13 in the state appellate courts the judgment of his mental
14 incompetence and order for commitment.⁹ (See Consolidated Reply
15 to Opp’n, Mem. P. & A., ECF No. 42 at 18-19 n.5; see also Lodged
16 Docs., Ex. 6, ECF No. 17-1 at 83-86). But he has since been
17 found competent, so his request to be relieved of appointed
18

19 ⁸ Petitioner is wrong that there is “[n]o standing U.S.
20 Supreme Court precedent or Landmark case which [sic] precludes one
21 from exercising one’s Faretta [sic] rights.” (Pet. at 4.) In
22 Indiana v. Edwards, 554 U.S. 164, 171 (2008), the Supreme Court
23 stated that “Faretta itself and later cases have made clear that
the right of self-representation is not absolute.” And it held
that the right may be abridged when the defendant has sufficiently
severe mental-health issues. See id. at 177-78.

24 ⁹ Although the Ninth Circuit held in Bean v. Matteucci, 986
25 F.3d 1128, 1135-36 (9th Cir. 2021), that the irreparable-harm
26 exception to Younger abstention may apply in cases of involuntary
27 administration of antipsychotic medication, Petitioner has not
28 raised that issue. (See Pet. at 3-4.) Indeed, in none of his many
filings has he even mentioned the state court’s August 24, 2021
order that he be involuntarily medicated with psychotropic drugs.
(See Lodged Docs., Ex. 6, ECF No. 17-1 at 83.)

1 counsel for his competency hearing is moot.¹⁰ (Resp't's July 20
2 Status Rep., ECF No. 35 at 4); see McCullough v. Graber, 726 F.3d
3 1057, 1059-60 (9th Cir. 2013) (as amended) (petition is moot when
4 relief sought is no longer available).

5 In sum, the Younger abstention criteria are met and
6 Petitioner has not demonstrated any extraordinary circumstance
7 making abstention inappropriate. See Middlesex, 457 U.S. at 432,
8 437. The Petition and the action must be dismissed. See
9 Beltran, 871 F.2d at 782 ("Younger abstention requires dismissal
10 of the federal action." (emphasis in original)).¹¹

11 **ORDER**

12 IT THEREFORE IS ORDERED that Respondent's Motion to Dismiss
13 is granted and the Petition and this action are dismissed without
14 prejudice to Petitioner's timely filing a federal habeas petition
15 once his state-court proceedings become final.

16
17 DATED: January 19, 2023


18 JEAN ROSENBLUTH
19 U.S. MAGISTRATE JUDGE
20
21

22 ¹⁰ Similarly, to the extent the stay of his state-court
23 proceedings during his competency evaluation can be analogized to
24 the complete absence of proceedings in Braden, see 410 U.S. at 490,
any such speedy-trial concern is also now moot because his
prosecution has resumed.

25 ¹¹ Because this case must be dismissed under Younger, the Court
26 need not reach Respondent's exhaustion argument. In any event, as
27 Sherwood makes clear, a petitioner must wait until his convictions
28 and sentence are final before bringing a federal habeas petition,
"even where the issue to be challenged in the writ of habeas corpus
has been finally settled in the state courts." 716 F.2d at 634.