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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

FRANK VALLES,	)	1:13-cv-00800 BAM HC
	)	
Petitioner,	)	ORDER DISMISSING PETITION FOR WRIT OF
	)	HABEAS CORPUS
v.	)	
	)	ORDER DIRECTING CLERK OF COURT TO
	)	ENTER JUDGMENT AND TERMINATE CASE
LISA GREEN, District Attorney, et al.,	)	
	)	ORDER DECLINING ISSUANCE OF
Respondents.	)	CERTIFICATE OF APPEALABILITY
	)	
	)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has consented to the jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c).

Petitioner is currently in the custody of the California Department of Corrections at the Lerdo Pre-trial Facility pending trial in Kern County Superior Court on a charge of murder for financial gain. Petitioner filed the instant habeas petition on May 28, 2013. He complains of an illegal search and seizure, the denial of a motion to suppress evidence, and ineffective assistance of counsel.

**DISCUSSION**

A. Procedural Grounds for Summary Dismissal

Rule 4 of the Rules Governing Section 2254 Cases provides in pertinent part:

1 If it plainly appears from the petition and any attached exhibits that the petitioner is not  
2 entitled to relief in the district court, the judge must dismiss the petition and direct the  
clerk to notify the petitioner.

3 The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of  
4 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to dismiss,  
5 or after an answer to the petition has been filed. See Herbst v. Cook, 260 F.3d 1039 (9th Cir.2001). A  
6 petition for habeas corpus should not be dismissed without leave to amend unless it appears that no  
7 tenable claim for relief can be pleaded were such leave granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th  
8 Cir. 1971).

9 B. Abstention

10 Under principles of comity and federalism, a federal court should not interfere with ongoing  
11 state criminal proceedings by granting injunctive or declaratory relief except under special  
12 circumstances. Younger v. Harris, 401 U.S. 37, 43-54 (1971). Younger abstention is required when:  
13 (1) state proceedings, judicial in nature, are pending; (2) the state proceedings involve important state  
14 interests; and (3) the state proceedings afford adequate opportunity to raise the constitutional issue.  
15 Middlesex County Ethics Comm. V. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982); Dubinka v.  
16 Judges of the Superior Court, 23 F.3d 218, 223 (9th Cir. 1994). The rationale of Younger applies  
17 throughout the appellate proceedings, requiring that state appellate review of a state court judgment be  
18 exhausted before federal court intervention is permitted. Dubinka, 23 F.3d at 223 (even if criminal  
19 trials were completed at time of abstention decision, state court proceedings still considered pending).

20 In the instant case, Petitioner is still pending trial on the underlying charge. In addition, the  
21 state proceedings involve the important state interest of seeking justice. Lastly, the state proceedings  
22 provide for ample opportunities to raise the constitutional issues, i.e., at trial, on appeal, or in collateral  
23 proceedings. Accordingly, the Court is required to abstain from interfering with the state judicial  
24 process. The petition must be dismissed.

25 C. Certificate of Appealability

26 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district  
27 court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-El v.  
28

1 Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a  
2 certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

3 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
4 district judge, the final order shall be subject to review, on appeal, by the court  
of appeals for the circuit in which the proceeding is held.

5 (b) There shall be no right of appeal from a final order in a proceeding to test the  
6 validity of a warrant to remove to another district or place for commitment or trial  
7 a person charged with a criminal offense against the United States, or to test the  
8 validity of such person's detention pending removal proceedings.

9 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
10 appeal may not be taken to the court of appeals from—

11 (A) the final order in a habeas corpus proceeding in which the  
12 detention complained of arises out of process issued by a State  
13 court; or

14 (B) the final order in a proceeding under section 2255.

15 (2) A certificate of appealability may issue under paragraph (1) only if the  
16 applicant has made a substantial showing of the denial of a constitutional right.

17 (3) The certificate of appealability under paragraph (1) shall indicate which  
18 specific issue or issues satisfy the showing required by paragraph (2).

19 If a court denies a petitioner's petition, the court may only issue a certificate of appealability  
20 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or  
21 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed  
22 further." Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the  
23 petitioner is not required to prove the merits of his case, he must demonstrate "something more than  
24 the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 537 U.S. at 338.

25 In the present case, the Court finds that reasonable jurists would not find the Court's  
26 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
27 deserving of encouragement to proceed further. Petitioner has not made the required substantial  
28 showing of the denial of a constitutional right. Accordingly, the Court hereby **DECLINES** to issue a  
certificate of appealability.

### **ORDER**

Accordingly, IT IS HEREBY ORDERED:

1) The petition for writ of habeas corpus is **DISMISSED**;

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- 2) The Clerk of Court is DIRECTED to enter judgment and terminate the case; and
- 3) The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: August 12, 2013

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE