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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEPHEN C. BROWN, SR.,
Petitioner,
v.
FRESNO SUPERIOR COURT,
Respondent.

No. 1:16-cv-01463-JLT (HC)
**FINDINGS AND RECOMMENDATION
TO DISMISS PETITION FOR FAILURE
TO STATE A CLAIM**
**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE**
**[TWENTY-ONE DAY OBJECTION
PERIOD]**

On September 30, 2016, Petitioner filed a petition for writ of habeas corpus in this Court. Petitioner is currently detained at the Fresno County Jail awaiting trial on charges of felony assault with a deadly weapon and possession of a deadly weapon. Because comity requires a federal court to abstain from interfering with ongoing state criminal proceedings, the Court will recommend that the petition be DISMISSED WITHOUT PREJUDICE.

I. DISCUSSION

A. Preliminary Review of Petition

Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a petition if it “plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court” Rule 4 of the Rules Governing Section 2254 Cases. The Advisory Committee Notes to Rule 8 indicate that the court may dismiss a petition for writ of

1 habeas corpus, either on its own motion under Rule 4, pursuant to the respondent's motion to
2 dismiss, or after an answer to the petition has been filed. Herbst v. Cook, 260 F.3d 1039 (9th Cir.
3 2001).

4 B. Abstention

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

16 The Supreme Court has further held that federal courts can abstain in cases that present a
17 federal constitutional issue, but which can be mooted or altered by a state court determination.
18 Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 813-14 (1976). In
19 determining whether it should abstain, a federal court should consider problems which can occur
20 when two courts assume jurisdiction over the same claim - the inconvenience of the federal
21 forum, the avoidance of piecemeal litigation, and the order in which the parties filed the state and
22 federal proceedings. Id. at 818-19. Only in special circumstances such as harassment, bad faith
23 prosecutions, and other circumstances where irreparable harm can be proven would pretrial
24 federal habeas intervention be warranted. Carden v. State of Montana, 626 F.2d 82, 83-84 (9th
25 Cir. 1980).

26 The law of habeas corpus also provides guidance on when a district court should abstain
27 from review of a claim. In order to be granted federal habeas corpus relief, the petitioner must have
28 exhausted his available state remedies. 28 U.S.C. § 2254(b). The rule of exhaustion is based on

1 comity to the state court and gives the state court the initial opportunity to correct the state's
2 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991). In the
3 instant case, it appears that Petitioner has never exhausted the claims for which he currently seeks
4 federal relief.

5 To the contrary, Petitioner is currently awaiting trial before the Fresno County Superior
6 Court. Thus, Petitioner is asking this Court to step into the middle of a state criminal trial and
7 interfere with criminal proceedings. The Court recommends declining to do so and abstaining
8 under Younger. The state criminal proceedings are judicial in nature and the proceedings involve
9 the important state interest of protecting the public from criminals. Abstention is justified
10 because Petitioner has not presented the state court with any of his claims, and the state court's
11 resolution of the claims would moot the claims in his federal petition. Further, any violation of
12 the law or the Constitution could be appealed to the state court of appeals and to the California
13 Supreme Court. Therefore, under the rationale of Younger, the Court recommends dismissing the
14 petition without prejudice to re-filing after the criminal proceedings, including any appeals, are
15 completed.

16 **II. ORDER**

17 The Clerk of Court is DIRECTED to assign a District Judge to this case.

18 **III. RECOMMENDATION**

19 Based on the foregoing, the Court RECOMMENDS that the petition for writ of habeas
20 corpus be DISMISSED WITHOUT PREJUDICE.

21 This Findings and Recommendation is submitted to the United States District Court Judge
22 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304
23 of the Local Rules of Practice for the United States District Court, Eastern District of California.

24 **Within twenty-one days** after being served with a copy, Petitioner may file written objections
25 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings
26 and Recommendation." The Court will then review the Magistrate Judge's ruling pursuant to 28
27 U.S.C. § 636 (b)(1)(C). Petitioner is advised that failure to file objections within the specified
28 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153

1 (9th Cir. 1991).

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3 IT IS SO ORDERED.

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Dated: October 6, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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