

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DIJANTE LEE JOHNSON,  
Petitioner,  
v.  
FRESNO COUNTY SUPERIOR COURT,  
Respondent.

No. 1:17-cv-01668-JLT (HC)  
**ORDER DIRECTING CLERK OF COURT  
TO ASSIGN DISTRICT JUDGE**  
**FINDINGS AND RECOMMENDATION  
TO DISMISS PREMATURE PETITION**  
**[TWENTY-ONE DAY OBJECTION  
DEADLINE]**

Petitioner filed a habeas petition in this Court on December 12, 2017. He is currently detained at the Fresno County Jail being tried for first degree murder. The Court finds the petition to be premature and will recommend the petition be DISMISSED.

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

1 Cir.2001).

2 B. Younger Abstention

3 Petitioner is currently incarcerated in the Fresno County Jail. He states the criminal  
4 process is ongoing in Case No. 12-56603. He raises a number of claims concerning his trial.

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 law of habeas corpus also provides guidance on when a district court should abstain  
17 from review of a claim. In order to be granted federal habeas corpus relief, the petition must have  
18 exhausted his available state remedies. 28 U.S.C. § 2254(b). The rule of exhaustion is based on  
19 comity to the state court and gives the state court the initial opportunity to correct the state's  
20 alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991). The  
21 exhaustion requirement can be satisfied by providing the highest state court with a full and fair  
22 opportunity to consider each claim before presenting it to the federal court. Picard v. Connor, 404  
23 U.S. 270, 276 (1971)

24 In the instant case, state criminal proceedings are ongoing. California has an important  
25 interest in passing upon and correcting violations of a defendant's rights. Roberts v. Dicarlo, 296  
26 F.Supp.2d 1182, 1185 (C.D. Cal. 2002) (citing Koerner v. Grigas, 328 F.3d 1039, 1046 (9th Cir.  
27 2003). Finally, the California Court of Appeal and the California Supreme Court are adequate  
28 forums for Petitioner to seek relief for his claims. Roberts, 296 F.Supp.2d at 1185. Therefore,

1 the Court recommends that the petition be dismissed pursuant to Younger.

2 **RECOMMENDATION**

3 Accordingly, the Court RECOMMENDS that the petition be DISMISSED WITHOUT  
4 PREJUDICE as premature.

5 This Findings and Recommendation is submitted to the United States District Court Judge  
6 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304  
7 of the Local Rules of Practice for the United States District Court, Eastern District of California.  
8 Within twenty-one days after being served with a copy, any party may file written objections with  
9 the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
10 Recommendation.” The Court will then review the Magistrate Judge’s ruling pursuant to 28  
11 U.S.C. § 636 (b)(1)(C). Failure to file objections within the specified time may waive the right to  
12 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9<sup>th</sup> Cir. 1991).

13  
14 IT IS SO ORDERED.

15 Dated: December 16, 2017

/s/ Jennifer L. Thurston  
16 UNITED STATES MAGISTRATE JUDGE  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28