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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 DOREEN VALDEZ SANDHU,

12 Petitioner,

13 v.

14 FRESNO COUNTY JAIL SHERIFF
15 DEPT.,

16 Respondent.
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No. 1:18-cv-00359-JDP (HC)

FINDINGS AND RECOMMENDATIONS
TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS WITHOUT
PREJUDICE

OBJECTIONS DUE IN 14 DAYS

ECF No. 7

ORDER DIRECTING CLERK OF COURT
TO ASSIGN CASE TO DISTRICT JUDGE

19 Petitioner Doreen Valdez Sandhu, a pretrial detainee at Fresno County Jail, seeks a writ of
20 habeas corpus under 28 U.S.C. § 2254. ECF No. 7. The matter is before the court for
21 preliminary review. Under Rule 4 of the Rules Governing Section 2254 Cases, the court must
22 examine the habeas petition and order a response to the petition unless it “plainly appears” that
23 the petitioner is not entitled to relief.

24 Petitioner seeks federal habeas relief, arguing that she is entitled to compassionate release
25 because she has not been receiving adequate medical care, that she is entitled to a reduced
26 sentence under California’s Proposition 47, and that her custody violates the Double Jeopardy
27 Clause under the Fifth Amendment. This court ordered petitioner to show cause why the court
28 should not dismiss the petition for her failure to exhaust state-court remedies. ECF No. 5.

1 Petitioner responded by stating that she exhausted her state-court remedies by serving an
2 unidentified document upon Fresno County Sheriff and the California Supreme Court. *See*
3 ECF No. 6. In addition, petitioner has filed an amended petition. ECF No. 7. We recommend
4 dismissing the petition for petitioner's failure to exhaust state-court remedies and failure to state a
5 cognizable habeas claim.

6 Generally, a federal court may not grant a state prisoner's petition for a writ of habeas
7 corpus unless the prisoner has exhausted remedies in state court. 28 U.S.C. § 2254(b)(1)(A). To
8 satisfy the exhaustion requirement, a petitioner must "fairly present" her habeas claims "in each
9 appropriate state court . . . including a state supreme court with powers of discretionary review."
10 *Murray v. Schriro*, 882 F.3d 778, 807 (9th Cir. 2018) (quoting *Baldwin v. Reese*, 541 U.S. 27, 30
11 (2004)). The exhaustion requirement, rooted in the principles of comity, ensures that the state
12 courts have "the first opportunity . . . to correct the errors made in the internal administration of
13 their prisons." *Simpson v. Thomas*, 528 F.3d 685, 692 (9th Cir. 2008) (quoting *Preiser v.*
14 *Rodriguez*, 411 U.S. 475, 491-92 (1973)); *accord Beames v. Chappell*, No. 1:10-cv-01429, 2015
15 WL 403938, at *3 (E.D. Cal. Jan. 28, 2015) (collecting cases).

16 Here, petitioner has not exhausted her state-court remedies. Although this court has
17 explained to petitioner how to present habeas claims in state court, ECF No. 5 at 3-4, petitioner
18 states in her response to this court's order to show cause, "I have submitted and have served
19 Fresno County Jail Sheriff Dept Corner Office PO Box 1788 Fresno CA 93717 as well as served
20 also as requested: California Supreme Court 350 Mcallister Street San Francisco CA 94102."
21 ECF No. 6 at 1. Petitioner does not explain what document she served upon Fresno County
22 Sheriff or the California Supreme Court. She also does not allege facts that would allow the court
23 to evaluate whether she has fairly presented her claims in state court.

24 Petitioner fails to state a cognizable claim. She states in her petition that she has not
25 received adequate medical treatment, that she is entitled to reduced penalties under California's
26 Proposition 47, and that her custody violates the Double Jeopardy Clause under the Fifth
27 Amendment. ECF No. 7 at 4-5. As for the first claim, this court has construed it as a claim for
28 compassionate release under California law, which allows courts to release individuals who have

1 incurable conditions that would result in death within six months. *See generally* Cal. Penal Code
2 § 1170 (e)(2)(A). But this court will not grant federal habeas relief relying on state law. *See*
3 *Estelle v. McGuire*, 502 U.S. 62, 67 (1991). Likewise, petitioner’s claim based on California’s
4 Proposition 47, which allows reduced penalties for theft and certain drug-related offenses,
5 concerns state law, not federal law. *See People v. Weir*, No. D073626, __ Cal. Rptr. 3d __, 2019
6 WL 1415115, at *1 (Cal. Ct. App. Mar. 29, 2019).

7 Petitioner’s claim of double jeopardy concerns federal law, but petitioner does not allege
8 enough facts for us to evaluate her claim. She states:

9 Was Convicted in one county Year in custody Fresno Sheriff dept
10 Jail release 4-11-17 complete sentence of conviction resentence on
same case again 9-28-2017 same court room different judge[.]

11 ECF No. 7 at 4. This allegation is difficult to decipher and too conclusory. In addition, being
12 resentenced in a case is not the same as being prosecuted for the same offense twice. We cannot
13 tell whether there has been any violation of federal law or whether petitioner is simply confused
14 about court procedure.

15 In sum, the court should dismiss the petition for petitioner’s failure to exhaust state-court
16 remedies and failure to state a cognizable habeas claim. If petitioner believes that she is entitled
17 to relief under state law, she can vindicate her rights in state court. As for her claim of double
18 jeopardy, she can litigate that claim in state court during her criminal proceeding, presumably
19 with the assistance of counsel, given her status as a pretrial detainee. We have considered
20 converting the petition into a Section 1983 complaint in light of petitioner’s allegation of
21 inadequate medical care. *See Nettles v. Grounds*, 830 F.3d 922, 936 (9th Cir. 2016) (noting that
22 court should consider converting habeas petition into Section 1983 complaint if petition is
23 amenable to such conversion). The petition, however, is too conclusory, so it appears that
24 converting the petition into a Section 1983 complaint would result in a prompt dismissal. *See*
25 Fed. R. Civ. P. 8(a)(2).¹

26 ¹ If petitioner wishes to pursue a civil rights action for being denied medical care, this dismissal
27 without prejudice does not preclude her from filing a Section 1983 action and opening a new
28 case. Likewise, this dismissal without prejudice does not preclude her from filing a habeas
petition raising a meritorious claim in the future.

1 Finally, the court should decline to issue a certificate of appealability. A petitioner
2 seeking a writ of habeas corpus has no absolute right to appeal a district court's denial of a
3 petition; she may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v.*
4 *Cockrell*, 537 U.S. 322, 335-36 (2003). Rule 11 Governing Section 2254 Cases requires that a
5 district court issue or deny a certificate of appealability when entering a final order adverse to a
6 petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th
7 Cir. 1997). A certificate of appealability will not issue unless a petitioner makes "a substantial
8 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard requires
9 the petitioner to show that "jurists of reason could disagree with the district court's resolution of
10 his constitutional claims or that jurists could conclude the issues presented are adequate to
11 deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *accord Slack v.*
12 *McDaniel*, 529 U.S. 473, 484 (2000).

13 Here, petitioner has not made a substantial showing of the denial of a constitutional right.
14 Thus, the court should decline to issue a certificate of appealability.

15 **I. Order**

16 The clerk is directed to assign this case to a U.S. district judge.

17 **II. Findings and recommendations**

18 We recommend that the court dismiss the petition without prejudice for petitioner's failure
19 to exhaust state-court remedies and failure to state a cognizable habeas claim. The court should
20 decline to issue a certificate of appealability.

21 Under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the
22 United States District Court, Eastern District of California, these findings and recommendations
23 are submitted to the United States District Court Judge presiding over this case. Within fourteen
24 days of the service of the findings and recommendations, any party may file written objections to
25 the findings and recommendations with the court and serve a copy on all parties. That document
26 must be captioned "Objections to Magistrate Judge's Findings and Recommendations." The
27 presiding District Judge will then review the findings and recommendations under 28 U.S.C.
28 § 636(b)(1)(C).

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IT IS SO ORDERED.

Dated: April 1, 2019


UNITED STATES MAGISTRATE JUDGE

No. 202