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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL A. YOCOM,
Petitioner,
v.
ATTORNEY GENERAL,
Respondent.

No. 1:20-cv-01141-DAD-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS DISMISSING
PETITION, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

(Doc. No. 8)

Petitioner Michael A. Yocom is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 8, 2020, the assigned magistrate judge issued findings and recommendations recommending that the pending petition for federal habeas relief be dismissed because petitioner’s direct appeal of his state court judgment of conviction is still pending before the state appellate court. (Doc. No. 8 at 2–3.) Accordingly, the magistrate judge recommended dismissing the petition without prejudice. (*Id.* at 3.) The pending findings and recommendations were served on petitioner with notice that any objections thereto were to be filed within thirty (30) days of the service. (*Id.* at 3–4.) After seeking and receiving an extension of time to do so, petitioner timely filed objections to the pending findings and recommendations on October 23,

1 2020. (Doc. No. 12.) Petitioner also filed a “Declaration of Most Unusual Circumstances to
2 Entitle Him to Have Federal Interposition,” on October 26, 2020. (Doc. No. 13.)

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
4 *de novo* review of the case. Having carefully reviewed the entire file, including petitioner’s
5 objections and declaration, the court concludes that the findings and recommendations are
6 supported by the record and by proper analysis.

7 In his objections, petitioner contends that his criminal appeal is no longer pending in the
8 California Court of Appeal as of October 7, 2020. (Doc. No. 12 at 1.) However, petitioner’s
9 direct appeal remains pending because the Court of Appeal “remanded for the [trial] court to
10 consider whether to exercise its discretion to dismiss the five-year term imposed for the section
11 667, subdivision (a) prior serious felony enhancement,” “strike the true findings and the terms
12 imposed for the section 667.5, subdivision (b) prior prison term enhancements, and recalculate
13 [petitioner]’s credits.” *People v. Yocom*, No. F077786, 2020 WL 5939771, at *20 (Cal. Ct. App.
14 Oct. 7, 2020).¹ Moreover, petitioner appealed from the Court of Appeal’s decision to the
15 California Supreme Court on November 9, 2020. *See* Petition for Review, *People v. Yocom*, No.
16 S265438 (Cal. Nov. 9, 2020),

17 When, as in the present case, an appeal of a state criminal
18 conviction is pending, a would-be habeas corpus petitioner must
19 await the outcome of his appeal before his state remedies are
exhausted, even where the issue to be challenged in the writ of
habeas corpus has been finally settled in the state courts.

20 *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983). Here, petitioner’s direct appeal of his
21 state criminal conviction is still pending before the state appellate courts. Thus, petitioner’s
22 objections do not meaningfully dispute the magistrate judge’s finding that the pending petition
23 must be dismissed. The court will therefore dismiss the pending petition without prejudice to its
24 refiling after petitioner’s direct appeal from his judgment of conviction has come to a conclusion.

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27 ¹ The court “may take notice of proceedings in other courts, both within and without the federal
28 judicial system, if those proceedings have a direct relation to matters at issue.” *U.S. ex rel.*
Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (internal
quotation marks and citation omitted).

