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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DERRICK JOHNSON,
Petitioner,

v.

STEVEN D. BARNES,
Respondent.

Case No. 1:21-cv-00177-SAB-HC

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF
PETITION FOR WRIT OF HABEAS
CORPUS

(ECF Nos. 1, 6)

ORDER DIRECTING CLERK OF COURT
TO RANDOMLY ASSIGN DISTRICT
JUDGE

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

I.

BACKGROUND

On January 29, 2021, Petitioner commenced the instant proceeding by filing a petition for writ of habeas corpus in the Sacramento Division of the United States District Court for the Eastern District of California. (ECF No. 1). On February 3, 2021, the petition was transferred to this Court. (ECF No. 3). On February 4, 2021, the Court received another petition that is almost identical to the initial petition. (ECF No. 6).

Here, Petitioner challenges his conviction in King County Superior Court case number 18CM-0401 on the following grounds: (1) Petitioner’s conviction was incident to an illegal

1 arrest; (2) Petitioner was held to answer for a crime without presentment or indictment of a grand
2 jury, in violation of the Fifth Amendment; and (3) as Petitioner has not been duly convicted, he
3 is in custody in violation of the Thirteenth Amendment. (ECF No. 1 at 1–2; ECF No. 6 at 1–2).¹

4 II.

5 DISCUSSION

6 By statute, federal courts “shall entertain an application for a writ of habeas corpus in
7 behalf of a person in custody pursuant to the judgment of a State court only on the ground that he
8 is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
9 § 2254(a). “[T]he second use of ‘in custody’ in the statute requires literally that the person
10 applying for the writ is contending that he is ‘in custody’ in violation of the Constitution or other
11 federal laws.” Bailey v. Hill, 599 F.3d 976, 979 (9th Cir. 2010). See Dickerson v. United States,
12 530 U.S. 428, 439 n.3 (2000).

13 Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts
14 requires preliminary review of a habeas petition and allows a district court to dismiss a petition
15 before the respondent is ordered to file a response, if it “plainly appears from the petition and any
16 attached exhibits that the petitioner is not entitled to relief in the district court.” See McFarland v.
17 Scott, 512 U.S. 849, 856 (1994).

18 A. Unlawful Arrest

19 Petitioner appears to argue that he is entitled to habeas relief because his conviction
20 stemmed from an illegal arrest. However, it is an “established rule that illegal arrest or detention
21 does not void a subsequent conviction.” Gerstein v. Pugh, 420 U.S. 103, 119 (1975) (citing
22 Frisbie v. Collins, 342 U.S. 519 (1952); Ker v. Illinois, 119 U.S. 436 (1886)). See Rose v.
23 Mitchell, 443 U.S. 545, 576 (1979) (Stewart, J., concurring) (“It is well settled that deprivations
24 of constitutional rights that occur before trial are no bar to conviction unless there has been an
25 impact upon the trial itself. A conviction after trial . . . represents a break in the chain of events
26 which has preceded it in the criminal process.” (footnote, internal quotation marks, and citations
27 omitted)). Accordingly, Petitioner is not entitled to habeas relief on this ground.

28 ¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 **B. Right to Presentment or Indictment by Grand Jury**

2 Petitioner argues that he was held to answer for a crime without presentment or
3 indictment of a grand jury, in violation of the Fifth Amendment. However, there is “no due
4 process right to a grand jury indictment before criminal prosecution in state court.” Peterson v.
5 California, 604 F.3d 1166, 1170 (9th Cir. 2010) (citing Hurtado v. California, 110 U.S. 516,
6 534–35 (1884)). Accord Gault v. Lewis, 489 F.3d 993, 1003 n.10 (9th Cir. 2007) (The “Fifth
7 Amendment right to presentment or indictment by a grand jury . . . has not been incorporated
8 into the Fourteenth Amendment so as to apply against the states.”); Stumpf v. Alaska, 78 F.
9 App’x 19, 21 (9th Cir. 2003) (“Because the right to a grand jury has not been applied to the
10 states via the Fourteenth Amendment, Stumpf’s Fifth Amendment challenge to the grand jury
11 proceedings does not raise a question of federal law and is not cognizable on habeas review.”
12 (citation omitted)). Accordingly, Petitioner is not entitled to habeas relief on this ground.

13 **C. Thirteenth Amendment**

14 Lastly, Petitioner asserts that as he has not been duly convicted, he is in custody in
15 violation of the Thirteenth Amendment. The Thirteenth Amendment provides that “[n]either
16 slavery nor involuntary servitude, except as a punishment for crime whereof the part shall have
17 been duly convicted, shall exist within the United States, or any place subject to their
18 jurisdiction.” U.S. Const. amend. XIII. “Where a person is duly tried, convicted, sentenced, and
19 imprisoned for crime in accordance with law, no issue of peonage or involuntary servitude arises.
20 The Thirteenth Amendment has no application where a person is held to answer for a violation of
21 a penal statute.” Draper v. Rhay, 315 F.2d 193, 197 (9th Cir. 1963) (citations omitted). As set
22 forth above, illegal arrest does not void a subsequent conviction and there is no right to a grand
23 jury indictment before criminal prosecution in state court. Petitioner has not alleged facts which
24 refute that he was duly tried, convicted, sentenced, and imprisoned. Accordingly, Petitioner is
25 not entitled to habeas relief on this ground.

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1 **III.**

2 **RECOMMENDATION & ORDER**

3 Accordingly, the undersigned HEREBY RECOMMENDS that the petition for writ of
4 habeas corpus be DISMISSED without leave to amend for failure to state a cognizable federal
5 habeas claim. See Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971) (per curiam) (“[A] petition
6 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.”).

8 Further, the Clerk of Court is DIRECTED to randomly ASSIGN this action to a District
9 Judge.

10 This Findings and Recommendation is submitted to the United States District Court
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
12 of the Local Rules of Practice for the United States District Court, Eastern District of California.
13 Within **THIRTY (30) days** after service of the Findings and Recommendation, Petitioner may
14 file written objections with the Court and serve a copy on all parties. Such a document should be
15 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” The assigned
16 District Judge will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C.
17 § 636(b)(1)(C). Petitioner is advised that failure to file objections within the specified time may
18 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
19 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20 IT IS SO ORDERED.

21 Dated: March 1, 2021

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24 UNITED STATES MAGISTRATE JUDGE
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