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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MAURICE VAN BUREN,

Petitioner,

No. CIV S- 09-1274 KJM

vs.

ED FOULK,

Respondent.

ORDER

Petitioner, a pretrial detainee, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, together with a request to proceed in forma pauperis and a motion for the appointment of counsel.

Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

There currently exists no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice so require.” See Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the interests of justice would be served by the appointment of counsel at the present time.

1 Petitioner raises three claims in this habeas petition. First, he alleges he has been
2 placed twice in jeopardy because the conduct underlying the charges was used to revoke his
3 parole. Second, he contends that his right to a speedy trial has been violated because he was
4 arrested on the charges sometime in 2006 but has not yet been brought to trial. Third, he argues
5 that he is being denied the effective assistance of counsel.

6 “[D]ouble jeopardy does not preclude criminal prosecution for conduct which
7 also serves as the basis for a *parole* or *probation* revocation.” United States v. Soto-Olivas, 44
8 F.3d 788, 789 (9th Cir. 1995) (emphasis in original). Moreover, as the Supreme Court counseled
9 in Younger v. Harris, 401 U.S. 37, 43-44 (1971), principles of federalism and comity dictate that
10 a federal court should abstain from intervening in ongoing state criminal proceedings absent
11 extraordinary circumstances. In this case, petitioner’s claim of ineffective assistance of counsel
12 arises from counsel’s refusal to raise the double jeopardy issue; this does not present an
13 extraordinary circumstance sufficient to justify this court’s interference in the on-going
14 prosecution. However, petitioner’s claimed speedy trial violation may warrant federal court
15 intervention. See McNeely v. Blanas, 336 F.3d 822, 832 (9th Cir. 2003).

16 In accordance with the above, IT IS HEREBY ORDERED that:

- 17 1. Petitioner's request to proceed in forma pauperis (docket no. 2) is granted;
- 18 2. Petitioner’s motion for the appointment of counsel (docket no. 6) is denied
19 without prejudice;
- 20 3. Respondent is directed to file a response to the speedy trial claim only within
21 sixty days from the date of this order. If an answer is filed, respondent shall include with the
22 answer any and all transcripts or other documents relevant to the determination of the speedy
23 trial issue presented in the application;
- 24 4. Petitioner's traverse, if any, is due on or before thirty days from the date
25 respondent's answer is filed; an opposition to a motion to dismiss is due within thirty days of
26 service of the motion to dismiss;

1 5. Petitioner's claims of a double jeopardy violation and ineffective assistance of
2 counsel are dismissed from the action; and

3 6. The Clerk of the Court shall serve a copy of this order, **the**
4 **consent/reassignment form contemplated by Appendix A(k) to the Local Rules of this**
5 **court**, and a copy of petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C.
6 § 2241 on Michael Farrell, Supervising Deputy Attorney General.

7 DATED: October 8, 2009.

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10 U.S. MAGISTRATE JUDGE

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