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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IGNACIO ANDRES BULAHAN,
Petitioner,
v.
JOEL D. MARTINEZ,
Respondent.

No. 2:17-cv-00104 KJM GGH

FINDINGS AND RECOMMENDATIONS

Introduction

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U. S. C. § 2254. ECF No. 1. Pending before the court is respondent’s motion to dismiss on the grounds that the petition: (1) is successive under 28 U. S. C. § 2244(b); and (2) is barred by the one-year statute of limitations pursuant to 28 U.S.C. § 2244(d). ECF No. 10. Petitioner has filed an opposition, ECF No. 13, which respondent has filed a reply. ECF No. 14. After carefully reviewing the filings, the court now issues the following findings and recommendations. The petition is successive.

Background

On January 9, 2013, petitioner was convicted in the Sacramento County Superior Court for first degree murder with personal use of a deadly weapon. Resp’t’s Lodg. Doc. No. 1. He was sentenced for an indeterminate term of 26 years to life with the possibility of parole. Id. On

1 June 9, 2014, the California Court of Appeal, Third Appellate District, affirmed the judgment.
2 Resp't's Lodg. Doc. No. 2. On August 13, 2014, the California Supreme Court denied review.
3 Resp't's Lodg. Doc. No. 4. Subsequently from 2014 to 2016, petitioner filed four *pro se*
4 applications for state post-conviction relief.

5 The first state habeas petition was filed in the Sacramento County Superior Court on
6 September 28, 2014, and denied on November 20, 2014. Resp't's Lodg. Doc. Nos. 5, 6. The
7 second state habeas petition was filed in the California Court of Appeal, Third Appellate District
8 on November 26, 2014, and denied on December 4, 2014. Resp't's Lodg. Doc. Nos. 7, 8.
9 Petitioner filed his third state habeas petition in the California Supreme Court on December 8,
10 2014, and denied on February 18, 2015. Resp't's Lodg. Doc. Nos. 9, 10. The fourth state habeas
11 petition was filed on October 6, 2016 with the California Supreme Court, and denied on
12 November 30, 2016. Resp't's Lodg. Doc. Nos. 11, 12.

13 On July 14, 2015, petitioner filed a petition for federal habeas relief in this court. See
14 Bulahan v. Lackner, No. 2:15-cv-01512 KJM GGH (E.D. Cal.), Resp't's Lodg. Doc. No. 13. On
15 April 18, 2016, an Order and Findings and Recommendations recommended the petition be
16 denied on the merits as to ground 1¹ and granted petitioner's request for voluntary dismissal
17 pursuant to Fed. R. Civ. P. 41(a) as to grounds two and three. Resp't's Lodg. Doc. No. 15; see
18 also Bulahan v. Lackner, No. 2:15-cv-01512 KJM GGH, 2016 WL 1559297, at *12 (E.D. Cal.
19 Apr. 18, 2016). On September 28, 2016, the Findings and Recommendations were adopted in
20 full. Resp't's Lodg. Doc. No. 16.

21 The instant petition was filed on January 17, 2017. ECF No. 1. In his petition, petitioner
22 raises only one ground: that there was insufficient evidence to support a conviction of first degree
23 murder. ECF No. 1 at 6-11.

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25 ¹ In Bulahan v. Lackner, petitioner sought federal habeas relief on the following three grounds:
26 "(1) insufficient evidence to support a finding of premeditation and deliberation; (2) CALCRIM
27 No. 362 violates due process, where the language held by this court to rescues the previous
28 pattern instruction (CALJIC No. 2.03) from a due process violation has been replaced with
antithetical language; and (3) ineffective assistance of counsel." Bulahan, 2016 WL 1559297, at
*1 (internal quotations omitted).

1 *Discussion*

2 Successive Petition

3 The Antiterrorism and Effective Death Penalty Act (“AEDPA”) “generally limits a
4 petitioner to one federal habeas corpus motion and precludes second or successive habeas corpus
5 petitions unless the petitioner meets certain narrow requirements. Jones v. Ryan, 733 F.3d 825,
6 834 (9th Cir. 2013) (citing 28 U.S.C. § 2244(b)) (internal quotations omitted). “The statute
7 provides that ‘[a] claim presented in a second or successive habeas corpus application under
8 section 2254 that was not presented in a prior application shall be dismissed unless’ it ‘relies on a
9 new rule of constitutional law, made retroactive to cases on collateral review by the Supreme
10 Court, that was previously unavailable’ or on newly discovered facts that show a high probability
11 of actual innocence.” Jones, 733 F.3d at 834 (citing 28 U.S.C. § 2244(b)(2)(A)-(B), and
12 Gonzalez v. Crosby, 545 U.S. 524, 529-30 (2005)). “ ‘Generally, a new petition is “second or
13 successive” if it raises claims that were or could have been adjudicated on their merits in an
14 earlier petition.’ ” Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008) (quoting Cooper v.
15 Calderon, 274 F.3d 1270, 1273 (9th Cir. 2001)).

16 However, “[e]ven if a petitioner can demonstrate that he qualifies for one of these
17 exceptions, he must seek authorization from the court of appeals before filing his new petition
18 with the district court.” Woods, 525 F.3d at 888 (citing 28 U.S.C. § 2244(b)(3)(A)). A
19 successive habeas petition may not be filed in this district court without prior authorization from
20 the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b). Prior authorization is a jurisdictional
21 requisite. Burton v. Stewart, 549 U.S. 147, 152 (2007). Once a district court recognizes a
22 petition is “second or successive,” it lacks jurisdiction to consider the merits of the petition.
23 Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir. 2001).

24 Petitioner argues that his 2015 habeas petition was not decided on the merits. However
25 that is incorrect. The claim regarding insufficient evidence in the previous petition was

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1 adjudicated upon the merits.² It matters not that petitioner has slightly changed the wording of his
2 insufficient evidence claim in the present petition, or that he has discovered a new case to argue.
3 Because petitioner has not obtained an order from the Ninth Circuit authorizing the district court
4 to consider this successive petition, petitioner cannot proceed with his successive petition unless,
5 and until, he obtains such an order. Therefore, this successive petition should be dismissed
6 without prejudice to its refiling with a copy of an order from the Ninth Circuit authorizing
7 petitioner to file a successive petition.³

8 ***Conclusion***

9 Accordingly, IT IS HEREBY RECOMMENDED that:

- 10 1. Respondent's motion to dismiss (ECF No. 10) be granted; and
11 2. Petitioner's Petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, ECF
12 No. 1, be dismissed without prejudice as second or successive under 28 U.S.C. § 2244(b).

13 If petitioner files objections, he shall also address if a certificate of appealability should
14 issue. A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has
15 made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The

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18 ² This district court denied on the merits ground one from petitioner's 2015 habeas petition. See
19 Bulahan v. Lackner, No. 2:15-cv-01512 KJM GGH, 2016 WL 1559297 (E.D. Cal. Apr. 18,
20 2016). In addressing ground one, which challenged that there was insufficient evidence to
21 support a finding that petitioner had acted with premeditation and deliberation to support a verdict
22 of first degree murder, the district court evaluated the state appellate court's determination and
23 determined that "there was sufficient evidence from which a rational trier of fact could have
24 found beyond a reasonable doubt that petitioner acted with the intent to kill the victim after
25 having deliberated about it." Id. at 11. The court found that the witness' testimony from Metzler,
26 whom petitioner argues in his current petition, provided uncorroborated testimony that was
27 insufficient evidence to support his first degree murder conviction, supported the prosecution's
28 theory of first degree murder. Id. at 10. The court further found that although Metzler did not
have "personal or eyewitness knowledge of the homicide," there was sufficient testimony to
support a theory of first degree murder based on Metzler and other witnesses' testimony. Id. at 9.
Ultimately, the court found that clear and convincing evidence did not exist to support a finding
that the jury's decision to convict was based on insufficient evidence. Id. at 11.

Although the second and third ground in petitioner's 2015 habeas petition were voluntarily
dismissed pursuant to Fed. R. Civ. Proc. 41(a) and Rule 12 of 28 U.S.C. § 2254, these claims
were not presented in the current petition and therefore will not be addressed by the undersigned.

³ The undersigned will not rule on respondent's timeliness claim.

