

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERNARDO CASTILLO,
Petitioner,
v.
JOHN D'AGOSTINI,
Respondent.

No. 2:19-cv-1626 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Petitioner, an El Dorado County Jail pretrial detainee proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Examination of the request to proceed in forma pauperis reveals that petitioner is unable to afford the costs of suit. Accordingly, the request for leave to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

Petitioner complains about ongoing criminal proceedings in El Dorado County. However, challenges to ongoing criminal proceedings are generally barred by the doctrine set forth in Younger v. Harris, 401 U.S. 37 (1971), and this court is precluded from granting habeas relief until all available state court remedies have been exhausted. 28 U.S.C. § 2254(b)(1). For

1 these reasons, the court cannot afford petitioner relief and must recommend that petitioner's
2 petition for writ of habeas corpus be summarily dismissed.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. Petitioner's request for leave to proceed in forma pauperis (ECF No. 5) is granted; and
- 5 2. The Clerk of the Court assign a district court judge to this case.

6 IT IS HEREBY RECOMMENDED that:

- 7 1. Petitioner's petition for writ of habeas corpus be summarily dismissed; and
- 8 2. This case be closed.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, petitioner may file written
12 objections with the court. Such a document should be captioned "Objections to Magistrate
13 Judge's Findings and Recommendations." In his objections, petitioner may address whether a
14 certificate of appealability should issue in the event he files an appeal of the judgment in this
15 case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or
16 deny a certificate of appealability when it enters a final order adverse to the applicant). Where, as
17 here, a habeas petition is dismissed on procedural grounds, a certificate of appealability "should
18 issue if the prisoner can show: (1) 'that jurists of reason would find it debatable whether the
19 district court was correct in its procedural ruling;' and (2) 'that jurists of reason would find it
20 debatable whether the petition states a valid claim of the denial of a constitutional right.'" Morris
21 v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
22 (2000)). Petitioner is advised that failure to file objections within the specified time may waive
23 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: September 25, 2019

25 
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE

28 1
cast1626.114