UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARTIN LINVILLE, Petitioner, v. ROBERT NEUSCHMID, Respondent.	No. 2:19-cv-2012-EFB P ORDER AND FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner who, proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has filed an application to proceed in forma pauperis (ECF No. 2) which makes the required showing and is granted. However, as explained below, his petition (ECF No. 1) does not state a viable federal claim.

I. Legal Standards

The court must dismiss a habeas petition or portion thereof if the prisoner raises claims that are legally "frivolous or malicious" or fail to state a basis on which habeas relief may be granted. 28 U.S.C. § 1915A(b)(1),(2). The court must dismiss a habeas petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief[.]" Rule 4, Rules Governing Section 2254 Cases.

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II. Analysis

Petitioner raises only a single ground in his petition: that the trial court in which his conviction was obtained lacked jurisdiction over his case. ECF No. 1 at 12. He appears to allege that jurisdiction was lacking because "the mode and form" of his prosecution was by felony complaint rather than an indictment or information. *Id.* at 13. Petitioner argues that "[t]he felony complaint is an illegal charging instrument and violates the law when filed." *Id.*

This claim sounds entirely in state law insofar as it centers entirely on the proper state procedure for bringing criminal charges in California courts. And it has long been held that federal habeas relief does not lie for errors of state law. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) ("We have stated many times that 'federal habeas corpus relief does not lie for errors of state law.'") (quoting *Lewis v. Jeffers*, 497 U.S. 764, 780 (1990)). Petitioner appears to argue that a want of jurisdiction is an error of such magnitude that it is not susceptible to ordinary bars. *See* ECF No. 1 at 6 ("Time limits and bars . . . cannot be applied to [f]undamental [j]urisdictional issues . . . ."). But other federal courts have indicated that a claim that a state court lacked jurisdiction is not cognizable on federal habeas review. *See, e.g.*, *Willis v. Egeler*, 532 F.2d 1058, 1059 (6th Cir. 1976) ("Determination of whether a state court is vested with jurisdiction under state law is a function of the state courts, not the federal judiciary."); *Hernandez v. Ylst*, 930 F.2d 714, 719 - 20 (9th Cir. 1991) (stating that "[w]e are not persuaded that a constitutional violation necessarily occurs when the convicting state court acts without jurisdiction purely as a matter of state law," but finding it unnecessary to reach issue because state court had jurisdiction); *Wright v. Angelone*, 151 F.3d 151, 157-59 (4th Cir. 1998) (petitioner's claim that state trial court lacked subject matter jurisdiction over certain counts was "not cognizable on federal habeas review" because it "rest[ed] solely upon an interpretation of Virginia's case law and statutes"); *Schweder v. Ryan*, No. CV-16-08306-PCT-GMS (BSB), 2017 U.S. Dist. LEXIS 208436, *28 (D. Ariz., Dec. 18, 2017) ("Because a determination of the trial court's jurisdiction is based on the application of state law, Petitioner's claims challenging the trial court's jurisdiction are not amenable to federal habeas corpus review.") (adopted at *Schweder v. Ryan*, No. CV-16-08306-PCT-GMS, 2018 U.S. Dist. LEXIS 107072 (D. Ariz., June 26, 2018)).

Based on the foregoing, the court concludes that the petition does not state a cognizable federal claim and should be dismissed.

III. Conclusion

Accordingly, it is ORDERED that:

1. The Clerk of Court shall randomly assign a United States District Judge to this case.

2. Petitioner's application to proceed in forma pauperis (ECF No. 2) is GRANTED.

Further, it is RECOMMENDED that the petition (ECF No. 1) be DISMISSED for failure to state a cognizable federal claim.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In his objections petitioner may address whether a certificate of appealability should issue in the event he files an appeal of the judgment in this case. *See* Rule 11, Rules Governing § 2254 Cases (the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant).

DATED: April 23, 2020.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE