

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILLIE RUSSEL GRIFFIN,  
Petitioner,  
v.  
JOE LIZARAGA,  
Respondent.

Case No. [18-cv-06733-WHO](#) (PR)

**ORDER DISMISSING PETITION  
WITH LEAVE TO AMEND**

**INTRODUCTION**

Petitioner Willie Russel Griffin seeks federal habeas relief from his state convictions. The petition does not state any claim for relief for the reasons discussed below. Accordingly, the petition is DISMISSED with leave to file an amended petition on or before **February 18, 2019**.

**BACKGROUND**

In 2011, Griffin pleaded guilty in state court to voluntary manslaughter. A sentence of 37 years was imposed.

Griffin filed no appeals. In 2018 he sought, but was denied, collateral relief in the state courts. This federal habeas petition followed.

1 **DISCUSSION**

2 This Court may entertain a petition for writ of habeas corpus “in behalf of a person  
3 in custody pursuant to the judgment of a State court only on the ground that he is in  
4 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.  
5 § 2254(a). A district court considering an application for a writ of habeas corpus shall  
6 “award the writ or issue an order directing the respondent to show cause why the writ  
7 should not be granted, unless it appears from the application that the applicant or person  
8 detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate  
9 only where the allegations in the petition are vague or conclusory, palpably incredible, or  
10 patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

11 As grounds for federal habeas relief, Griffin claims that his sentence is illegal under  
12 state laws that forbid multiple punishments for the same crime and the “dual use of facts.”  
13 (Pet., Dkt. No. 1 at 19 and 30.) He fails to state a claim for two reasons. First, violations  
14 of state law are not remediable on federal habeas review, even if state law was erroneously  
15 interpreted or applied. *Swarthout v. Cooke*, 562 U.S. 216, 218-20 (2011). Accordingly,  
16 because Griffin alleges violations of state law, he fails to articulate a claim for federal  
17 habeas relief.

18 Second, after a defendant has entered a plea of guilty, the only challenges left open  
19 on federal habeas corpus review concern the (i) voluntary and intelligent character of the  
20 plea and (ii) adequacy of the advice of counsel. *Womack v. Del Papa*, 497 F.3d 998, 1002  
21 (9th Cir. 2007) (quoting *Hill v. Lockhart*, 474 U.S. 52, 56-57 (1985)).<sup>1</sup> Griffin pleaded  
22 guilty. His habeas claim does not arise from one of the two circumstances listed above.  
23 As a result, his petition will be dismissed with leave to file an amended petition.

24 Because Griffin has not exhausted his claims in state court, he may wish to file a  
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27 <sup>1</sup> There are exceptions to this general bar. For example, a defendant who pleads guilty still  
28 may raise in habeas corpus proceedings the very power of the state to bring him into court  
to answer the charge brought against him, *see Haring v. Prosise*, 462 U.S. 306, 320 (1983)  
(citing *Blackledge v. Perry*, 417 U.S. 21, 30 (1974)), and may raise a double jeopardy  
claim, *see id.* (citing *Menna v. New York*, 423 U.S. 61 (1975)).

1 motion to stay habeas proceedings while he exhausts his claims. Prisoners in state custody  
2 who wish to challenge collaterally either the fact or length of their confinement in federal  
3 habeas proceedings are first required to exhaust state judicial remedies, either on direct  
4 appeal or through collateral proceedings, by presenting the highest state court available  
5 with a fair opportunity to rule on the merits of each and every claim they seek to raise in  
6 federal court. *See* 28 U.S.C. § 2254(b), (c); *Rose v. Lundy*, 455 U.S. 509, 515-16 (1982).  
7 If the claims are unexhausted, respondent will likely file a motion to dismiss on grounds of  
8 nonexhaustion.

9 Griffin must also be aware of the following. If he exhausts his claims and if the  
10 Court allows them to proceed here, respondent will likely file a motion to dismiss the  
11 petition as untimely. He was convicted in 2011 but did not file this habeas action until  
12 2018. Federal habeas petitions must be filed within one year of the latest of the date on  
13 which: (A) the judgment became final after the conclusion of direct review or the time  
14 passed for seeking direct review; (B) an impediment to filing an application created by  
15 unconstitutional state action was removed, if such action prevented petitioner from filing;  
16 (C) the constitutional right asserted was recognized by the Supreme Court, if the right was  
17 newly recognized by the Supreme Court and made retroactive to cases on collateral  
18 review; or (D) the factual predicate of the claim could have been discovered through the  
19 exercise of due diligence. *See* 28 U.S.C. § 2244(d)(1).

20 To successfully challenge such a motion, Griffin will have to demonstrate that he is  
21 entitled to equitable tolling. A federal habeas petitioner is entitled to equitable tolling if he  
22 can show ““(1) that he has been pursuing his rights diligently, and (2) that some  
23 extraordinary circumstance stood in his way’ and prevented timely filing.” *Holland v.*  
24 *Florida*, 560 U.S. 631, 649 (2010) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418  
25 (2005)).

26 **CONCLUSION**

27 The petition is DISMISSED with leave to file an amended petition on or before  
28 **February 19, 2019**. Griffin may wish to file a motion for a stay along with the amended

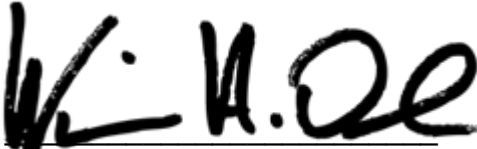
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petition.

The filing fee has been paid.

**IT IS SO ORDERED.**

**Dated:** January 7, 2019



WILLIAM H. ORRICK  
United States District Judge