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

CHILI WILLIE,)	No. C 05-1151 CW (PR)
)	
Petitioner,)	ORDER OF DISMISSAL WITHOUT
)	PREJUDICE
v.)	
)	
MICHAEL MARTEL,)	
Acting Warden,)	
)	
Respondent.)	

Petitioner Chili Willie is a prisoner of the State of California who is incarcerated at Mule Creek State Prison.¹ He filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the validity of his 2001 conviction in Sonoma County Superior Court.

BACKGROUND

On March 21, 2005, Petitioner filed his initial petition for a writ of habeas corpus with the Court. He listed three claims but did not include any facts. Instead, Petitioner requested additional time to "adequately answer, or provide information in support of [his] claims." (Pet. at 6.) In an Order dated January

¹ Petitioner named Jeanne Woodford, former director of the California Department of Corrections and Rehabilitation, as Respondent in this action. Under Rule 2(a) of the Rules Governing Habeas Corpus Cases Under Section § 2254, the proper respondent is Michael Martel, the acting warden at Mule Creek State Prison where Petitioner is incarcerated. See Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994) (holding that the warden where petitioner is incarcerated is the proper respondent). Therefore, Respondent Martel has been substituted as Respondent in place of Respondent Woodford.

1 17, 2006, the Court denied without prejudice Petitioner's request
2 for a stay and instructed Petitioner to file an amended request for
3 a stay "in which he sets out the claims which were raised to the
4 State courts on appeal and which of those claims, if any, he
5 intends to pursue in his federal petition." (Jan. 17, 2006 Order
6 at 3.)

7
8 Petitioner filed an amended request for a stay on April 5,
9 2006, providing additional information about the three claims he
10 intended to pursue. At that time, Petitioner did not have any
11 claims pending in state court. In an Order dated March 28, 2007,
12 the Court noted that Petitioner identified two reasons to stay his
13 case: (1) his inability to develop his ineffective assistance of
14 counsel claim because counsel refused to send his file to him and
15 (2) an investigation of the disappearance of his legal documents.
16 (Mar. 28, 2007 Order at 2-4.) The Court found this insufficient,
17 denied the request for a stay and instructed Petitioner to file an
18 amended petition providing factual and legal bases for his claims.
19 (Id. at 4.)

20
21 Petitioner filed an amended petition on May 1, 2007. He
22 raises three grounds for relief. First, he claims the State
23 improperly impounded his personal funds, "approx \$17,000.00,"
24 during his arrest. (Am. Pet. at 6.) Second, he claims ineffective
25 assistance of trial counsel for many reasons, including counsel's
26 failure to: (1) investigate the victim's background, (2) assist
27 Petitioner in posting bail, (3) ensure that Petitioner was
28

1 competent to stand trial; (4) discuss the charges and possible
2 sentence he was facing, and (5) interview Petitioner's witnesses.
3 (Id.) Finally, Petitioner claims inadequate medical care and
4 obstruction of justice. (Id.) In his amended petition, Petitioner
5 states that these claims are pending in state court. Attached to
6 his amended petition is a "Motion to Amend Petition for Habeas
7 Corpus Relief." In it, Petitioner seeks an order: (1) staying the
8 case; (2) to return his personal funds; (3) instructing his trial
9 attorney to return his legal file; (4) initiating an investigation
10 into lost legal documents; (5) granting an evidentiary hearing; and
11 (6) appointing counsel. (Mot. to Amend at 5.)

12
13 On January 8, 2008, Petitioner informed the Court that the
14 California Supreme Court denied a petition for review on December
15 12, 2007, which he states is "relevant to ground (1) of my writ of
16 habeas corpus now pending in your court"

17
18 DISCUSSION

19 I. Leave to File an Amended Petition

20 Because the Court gave Petitioner leave to file an amended
21 petition in its March 28, 2007 Order, he may amend his petition
22 without leave of Court. Therefore, Petitioner's motion for leave
23 to file an amended petition is DENIED as unnecessary. His first
24 amended petition is accepted for filing.

25 II. Petitioner's Claims

26 On habeas review of a state court conviction, this Court has
27 authority to consider only claims based on alleged violations of
28

1 the federal constitution or federal law.

2 A. Impounding Funds

3 In ground one, Petitioner contends that the State improperly
4 impounded his personal funds during his arrest. He alleges that
5 this deprived him of his "right to counsel of choice, right to
6 investigate, collect evidence, interview witnesses, secure personal
7 papers, see adequate medical care, etc." Petitioner claims that he
8 has fully exhausted ground one of his petition.
9

10 Petitioner's claim does not attack his conviction or
11 incarceration. Although Petitioner alleges in a conclusory manner
12 that his right to a "fair and impartial trial" was violated, it
13 appears that his real contention is that the state court erred in
14 failing to return the estimated \$17,000.00 that was confiscated in
15 violation of state law when he was arrested. Accordingly,
16 Petitioner's claim that the State improperly impounded his personal
17 funds cannot be raised in a federal habeas petition and is
18 DISMISSED without prejudice to filing as a state law claim in state
19 court.
20

21 B. Medical Care and Obstruction of Justice

22 Petitioner's claim of inadequate medical care and obstruction
23 of justice (ground three) also does not attack his conviction or
24 incarceration and thus is not a ground for federal habeas relief.
25 See Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights
26 action is proper method of challenging conditions of confinement);
27 Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979)
28

1 (affirming dismissal of habeas petition on basis that challenges to
2 terms and conditions of confinement must be brought in civil rights
3 complaint). Accordingly, Petitioner's claim of inadequate medical
4 care is DISMISSED without prejudice to refileing as a civil rights
5 claim.

6
7 Petitioner alleges obstruction of justice by stating, "an
8 orchestrated effort to pervert justice became obvious as this case
9 matured, i.e., (1) seizing [his] personal funds before trial;
10 (2) adverse manipulation of medical care before and during trial;
11 (3) refusing to turn over legal file after trial; (4) concealing
12 documents material to an official proceeding; (5) professional
13 misconduct." (Am. Pet at 6.) When construed as a claim brought
14 pursuant to 42 U.S.C. § 1983, his obstruction of justice claim
15 implicates the validity of his state criminal proceedings.

16
17 In order to recover damages for allegedly unconstitutional
18 conviction or imprisonment, or for other harm caused by actions
19 whose unlawfulness would render a conviction or sentence invalid,
20 Petitioner must prove that the conviction or sentence has been
21 reversed on direct appeal, expunged by executive order, declared
22 invalid by a state tribunal authorized to make such determination,
23 or called into question by a federal court's issuance of a writ of
24 habeas corpus. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).
25 A claim for damages bearing that relationship to a conviction or
26 sentence that has not been so invalidated is not cognizable under
27 § 1983. See id. at 487. Whenever a state prisoner seeks damages
28

1 in a § 1983 suit, a district court therefore must consider whether
2 judgment in favor of the plaintiff would necessarily imply the
3 invalidity of his conviction or sentence; if it would, the
4 complaint must be dismissed unless the conviction or sentence has
5 already been invalidated. See id.

6 It appears that Petitioner's conviction has not been
7 invalidated by a state or federal court; therefore, any request for
8 damages pertinent to said proceedings is premature. Accordingly,
9 his obstruction of justice claim is DISMISSED without prejudice to
10 refiling as a civil rights claim once a cause of action has
11 accrued.
12

13 C. Ineffective Assistance of Counsel

14 In his second ground for relief, Petitioner claims that he was
15 "denied effective assistance of counsel, a due process violation of
16 [his] constitutional right to a fair trial." Petitioner has
17 provided the factual and legal bases for this claim. However,
18 Petitioner states that he has not fully exhausted his state
19 judicial remedies as to this claim. Therefore, he requests a stay
20 of proceedings while he exhausts this claim in state court.
21

22 III. Request for Stay

23 Prisoners in state custody who wish to challenge in federal
24 habeas proceedings either the fact or length of their confinement
25 are first required to exhaust state judicial remedies by presenting
26 the highest state court available with a fair opportunity to rule
27 on the merits of each and every claim they seek to raise in federal
28

1 court. See 28 U.S.C. § 2254(b),(c); Rose v. Lundy, 455 U.S. 509,
2 515-16 (1982). If available state remedies have not been
3 exhausted, the district court must dismiss the petition. Id. at
4 510; Guizar v. Estelle, 843 F.2d 371, 372 (9th Cir. 1988). A
5 dismissal solely for failure to exhaust is not a bar to returning
6 to federal court after exhausting available state remedies. See
7 Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

9 The United States Supreme Court has held that a district court
10 may stay mixed habeas petitions to allow the petitioner to exhaust
11 in state court. Rhines v. Webber, 544 U.S. 269, 277-78 (2005). A
12 district court does not have discretion to stay a petition
13 containing only unexhausted claims, however, even where the record
14 shows that there were exhausted claims that could have been
15 included. Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006)
16 (declining to extend the rule in Rhines to completely unexhausted
17 petitions and finding that the district court must dismiss a
18 completely unexhausted petition based on Jimenez v. Rice, 276 F.3d
19 478, 481 (9th Cir. 2001)).

21 Petitioner alleges that his ineffective assistance claim is
22 pending in state court. He asks the Court to stay his federal
23 petition while he exhausts his state remedies. However, there are
24 no exhausted claims currently pending, and the Court has no
25 discretion to stay the instant petition containing an unexhausted
26 ineffective assistance of counsel claim. See Rasberry, 448 F.3d at
27 1154. Accordingly, Petitioner's ineffective assistance of counsel
28

1 claim is DISMISSED without prejudice to filing a new federal habeas
2 petition once he has exhausted state remedies by presenting his
3 ineffective assistance of counsel claim to the highest state court.
4 See Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995)
5 (a dismissal solely for failure to exhaust is not a bar to
6 Petitioner's returning to federal court after exhausting available
7 state remedies).

8
9 CONCLUSION

10 1. Petitioner's claim that the State improperly impounded
11 his personal funds (ground one) is DISMISSED without prejudice to
12 refiling in state court as a state law claim.

13 2. Petitioner's claim of inadequate medical care and
14 obstruction of justice (ground three) is DISMISSED without
15 prejudice to refiling as a civil rights claim pursuant to the
16 requirements outlined above.

17 3. Petitioner's ineffective assistance of counsel claim is
18 DISMISSED without prejudice to filing a new federal habeas petition
19 after he has exhausted state court remedies.

20 4. Petitioner's request for an Order granting the return of
21 his personal funds, instructing his trial counsel to return his
22 legal file, and initiating an investigation into the lost legal
23 documents is DENIED. The Court is without jurisdiction to grant
24 such requests.

25 5. Petitioner's requests for an evidentiary hearing and
26 appointment of counsel are DENIED as premature.
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6. The Clerk of the Court is directed to substitute Michael Martel, the acting warden at Mule Creek State Prison, as Respondent in this action.

7. The Clerk shall enter judgment, close the file, and terminate any pending motions.

IT IS SO ORDERED.

DATED: 2/5/08



CLAUDIA WILKEN
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 WILLIE,

5 Plaintiff,

6 v.

7 WOODFORD et al,

8 Defendant.
9 _____/

Case Number: CV05-01151 CW

CERTIFICATE OF SERVICE

10
11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on February 5, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
16 located in the Clerk's office.

17
18 Chili Willie #T37197
19 Mule Creek State Prison
20 P.O. Box 409000
21 Ione, CA 95640

22 Dated: February 5, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California