

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PREN NOTHNAGEL,

No. C 11-03753 CW (PR)

Petitioner,

ORDER GRANTING MOTION TO
DISMISS

v.

(Docket nos. 7, 10)

CLIFF ALLENBY, Acting Director,
California Department of Mental
Health,

Respondent.

Petitioner is involuntarily committed to Coalinga State Hospital as a sexually violent predator (SVP). In the present petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, he alleges his continued indeterminate confinement as an SVP is unlawful because of federal constitutional violations at his commitment proceeding. Respondent moves to dismiss the petition on abstention grounds. Petitioner opposes the motion and asks the Court to rule on the merits of the petition. For the reasons discussed below, the motion to dismiss is granted and Petitioner's request to rule on the merits of the petition is denied.

BACKGROUND

On March 11, 2009, a Humboldt County jury found true a petition alleging that Petitioner is a SVP under the Sexually Violent Predators Act (SVPA), California Welfare and Institutions Code section 6600 et seq. The superior court ordered Petitioner committed to the custody of the California Department of Mental Health for an indeterminate term. Resp't Ex. A.

On direct appeal, Petitioner raised the claim, among others, that the indeterminate term violates his federal constitutional

1 right to equal protection. See People v. Nothnagel, 2010 WL
2 3065250, *1 (Cal. App. First Dist.).

3 On August 6, 2010, the California Court of Appeal, relying on
4 the California Supreme Court's decision in People v. McKee, 47 Cal.
5 4th 1172 (2010), denied Petitioner's other claims, but reversed the
6 judgment and remanded the case to the trial court for
7 reconsideration of the equal protection claim. Nothnagel, 2010 WL
8 3065250 at *1-2.

9 On October 20, 2010, the California Supreme Court denied
10 Petitioner's petition for review, without citation or comment.
11 Resp't Ex. B.

12 Petitioner then sought state habeas corpus relief from the
13 California Supreme Court on numerous grounds, but did not raise the
14 equal protection claim. Pet. Ex. 2. The court denied the
15 petition summarily on July 20, 2011, with citations to People v.
16 Duval, 9 Cal. 4th 464, 474 (1995), In re Waltreus, 62 Cal. 2d 218,
17 225 (1965), and In re Lindley, 29 Cal. 2d 709, 723 (1947). Pet.
18 Ex. 1.

19 Petitioner filed the present petition on July 29, 2011.

20 DISCUSSION

21 Petitioner raises twenty-seven claims for relief, all of which
22 were presented to the California Supreme Court in his state habeas
23 petition. Claiming the violation of his federal constitutional
24 rights, he seeks release or a new civil commitment trial.

25 Respondent moves to dismiss the petition on abstention grounds,
26 based on the California Court of Appeal's remand of Petitioner's
27 case to the trial court for reconsideration under People v. McKee.

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1 A. The McKee Opinion

2 In McKee, the California Supreme Court addressed federal
3 constitutional due process, ex post facto, double jeopardy and
4 equal protection challenges to Proposition 83, which modified the
5 terms under which SVPs can be released from civil commitment under
6 the SVPA. Proposition 83 changed the length of commitment from a
7 two-year term -- renewable only if the State proved to a jury
8 beyond a reasonable doubt that the individual still met the
9 definition of an SVP -- to an indefinite commitment from which the
10 individual can be released only if he proves by a preponderance of
11 the evidence that he no longer is an SVP. McKee, 47 Cal. 4th at
12 1183.

13 The court in McKee found that the petitioner's due process,
14 ex post facto and double jeopardy challenges to Proposition 83 were
15 without merit. Id. at 1188-1196. With respect to the equal
16 protection challenge, however, the court concluded that "the
17 government has not yet shown that the special treatment of SVP's is
18 validly based on the degree of danger reasonably perceived as to
19 that group, nor whether it arises from any medical or scientific
20 evidence." Id. at 1210. Accordingly, the court remanded the case
21 to the trial court for "the government [to] have an opportunity to
22 justify Proposition 83's indefinite commitment provisions, at least
23 as applied to McKee, and demonstrate that they are based on a
24 reasonable perception of the unique dangers that SVP's pose rather
25 than a special stigma that SVP's may bear in the eyes of
26 California's electorate." Id.

27 In the present case, the Court of Appeal, relying on McKee,
28 similarly found Petitioner's due process, ex post facto and double

1 jeopardy challenges to his continued confinement under Proposition
2 83 to be meritless. The court ruled on his equal protection claim
3 as follows:

4 The Supreme Court recently issued dispositional
5 orders in those cases pending review in light of McKee.
6 The Court directed that "[i]n order to avoid an
7 unnecessary multiplicity of proceedings," the courts are
8 to suspend further proceedings pending finality of the
9 proceedings in McKee. We shall, therefore direct the
10 trial court to suspend proceedings in the matter pending
11 the finality of McKee.

* * *

12 The judgment is reversed and the case is remanded to
13 the trial court for reconsideration of defendant's equal
14 protection claim in light of McKee. The trial court is
15 also directed to suspend further proceedings pending
16 finality of the proceedings in McKee, including any
17 proceeding in the Superior Court of San Diego County in
18 which McKee may be consolidated with related matters.
19 "Finality of the proceedings" shall include the finality
20 of any subsequent appeal and any proceedings in the
21 California Supreme Court. In all other respects, the
22 judgment is affirmed.

23 Nothnagel, 2010 WL 3065250 at *1-2.

24 B. Motion to Dismiss

25 Respondent moves to dismiss the petition on abstention
26 grounds, under Younger v. Harris, 401 U.S. 37 (1971). Petitioner
27 opposes, arguing that he is not raising an equal protection claim
28 in the present petition, and, consequently, he should not have to
wait until the California courts rule on that claim before he can
raise in federal court the other exhausted challenges to his civil
commitment.

Under principles of comity and federalism, a federal court
should not interfere with ongoing state criminal proceedings by
granting injunctive or declaratory relief absent extraordinary
circumstances. Id. at 43-54. The rationale of Younger applies to
non-criminal proceedings when important state interests are
involved. See Middlesex County Ethics Comm. v. Garden State Bar

1 Ass'n, 457 U.S. 423, 432 (1982); SJSVCCPAC v. City of San Jose, 546
2 F.3d 1087, 1092 (9th Cir. 2008). Younger abstention is required
3 when (1) state proceedings, judicial in nature, are pending;
4 (2) the state proceedings involve important state interests; and
5 (3) the state proceedings afford adequate opportunity to raise the
6 constitutional issue. Middlesex, 457 U.S. at 432. A fourth
7 requirement has been articulated by the Ninth Circuit: that "the
8 federal court action would enjoin the state proceeding or have the
9 practical effect of doing so, i.e., would interfere with the state
10 proceeding in a way that Younger disapproves." SJSVCCPAC, 546 F.3d
11 at 1092 (citing cases).

12 The rationale of Younger applies throughout appellate
13 proceedings, requiring that state appellate review of a state court
14 judgment be exhausted before federal court intervention is
15 permitted. See Huffman v. Pursue, Ltd., 420 U.S. 592, 607-11
16 (1975). Moreover, a petitioner who intends to seek federal habeas
17 corpus relief must await the outcome of his state court appeal
18 before doing so; that appeal may result in reversal of the
19 petitioner's conviction on some other ground, thereby mooting the
20 claims raised in his federal habeas petition. See Sherwood v.
21 Tomkins, 716 F.2d 632, 634 (9th Cir. 1983) (citations omitted).

22 Based on the procedural posture of the present petition --
23 Petitioner has filed a fully-exhausted petition that does not
24 include an equal protection claim -- the Court finds Respondent's
25 abstention argument persuasive. Specifically, the state trial
26 court has been charged with reconsidering Petitioner's challenge to
27 the constitutionality of his civil commitment once McKee is
28 decided; the state proceedings in McKee, and application of the

1 outcome to Petitioner's case, involve the important state interest
2 of regulating the detention of SVPs; and those proceedings, as well
3 as California's habeas process, afford an opportunity for
4 Petitioner to raise his constitutional challenge. Further,
5 adjudicating the present petition would interfere with the Court of
6 Appeal's directive to the trial court to reconsider Petitioner's
7 equal protection challenge. Abstention is also appropriate because
8 the trial court's reconsideration of the equal protection challenge
9 could result in the reversal of the outcome of Petitioner's civil
10 commitment proceeding, thus mooting the necessity for federal
11 habeas review.

12 Accordingly, the motion to dismiss the petition on abstention
13 grounds is GRANTED, and Petitioner's request that the Court rule on
14 the merits of the petition is DENIED. As noted by Respondent,
15 dismissal of the petition does not prevent Petitioner from filing,
16 after completion of his state court proceedings and if the state
17 court fails to provide him adequate relief, a new federal habeas
18 corpus petition containing all of his federal constitutional
19 claims.

20 CONCLUSION

21 Respondent's motion to dismiss the petition is GRANTED. The
22 petition is hereby DISMISSED without prejudice.

23 The Clerk of the Court shall enter judgment and close the
24 file.

25 This Order terminates Docket nos. 7 and 10.

26 IT IS SO ORDERED.

27 Dated: 6/26/2012

28 

CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE