

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

JEROME L. GRIMES, No. C 12-5698 CW (PR)
Petitioner, ORDER OF DISMISSAL
WITHOUT PREJUDICE AND
v. DENYING LEAVE TO
PROCEED IN FORMA
HONORABLE GERALD WONG, et al., PAUPERIS
Respondents. (Docket nos. 2, 4)

Petitioner Jerome L. Grimes is incarcerated at the San Francisco County Jail. At the time he filed the instant pro se habeas corpus action he had not been convicted and was involved in ongoing state criminal proceedings. Petitioner's allegations are not easy to decipher, but he appears to claim that, among other things, the judge presiding over his criminal proceedings has not allowed him to represent himself in propria persona after finding him incompetent to stand trial. He asks this Court to intervene in his ongoing state proceedings.

A federal court has authority to entertain a petition for a writ of habeas corpus by a person in state custody, but not yet convicted or sentenced. See McNeely v. Blanas, 336 F.3d 822, 824 n.1 (9th Cir. 2003); Application of Floyd, 413 F. Supp. 574, 576 (D. Nev. 1976). Such a person is not in custody "pursuant to the judgment of a state court," 28 U.S.C. § 2254, and therefore brings his petition under 28 U.S.C. § 2241(c)(3). McNeely, 336 F.3d at 824 n.1. Although there is no exhaustion requirement for a petition brought under 28 U.S.C. § 2241(c)(3), principles of federalism and comity require that a federal court abstain until

1 all state criminal proceedings are completed and the petitioner
2 exhausts available judicial state remedies, unless special
3 circumstances warranting federal intervention prior to a state
4 criminal trial can be found. See Carden v. Montana, 626 F.2d 82,
5 83-84 & n.1 (9th Cir.), cert. denied, 449 U.S. 1014 (1980); see
6 also United States ex rel. Goodman v. Kehl, 456 F.2d 863, 869 (2d
7 Cir. 1972) (pretrial detainees must first exhaust state remedies).

8 Here, Petitioner alleges no special circumstances warranting
9 the Court's intervention in his ongoing state proceedings. All of
10 his claims are amenable to state court review through available
11 state procedures. Accordingly, the petition is hereby DISMISSED
12 on abstention grounds. The dismissal is without prejudice to
13 Petitioner's filing a petition challenging his criminal
14 proceedings once those proceedings have concluded, and after he
15 has exhausted state judicial remedies by presenting the highest
16 state court available with a fair opportunity to rule on the
17 merits of each and every claim he seeks to raise in federal court.
18 See 28 U.S.C. § 2254(b), (c)); Rose v. Lundy, 455 U.S. 509, 515-16
19 (1982).

20 Petitioner's in forma pauperis application is incomplete.
21 Accordingly, leave to proceed in forma pauperis is DENIED.

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

24 This Order terminates Docket nos. 2 and 4.

25 IT IS SO ORDERED.

26 Dated: 11/20/2012

27 
CLAUDIA WILKEN
United States District Judge