

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL B. WILLIAMS,  
Petitioner,  
v.  
AUDREY KING,  
Respondent.

Case No. [14-cv-01831-PJH](#)

**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS AND  
GRANTING CERTIFICATE OF  
APPEALABILITY**

Petitioner proceeds with a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging the ongoing proceedings in San Francisco County Superior Court to civilly commit him under California's Sexually Violent Predator Act ("SVPA"), see Cal. Welf. & Inst. Code § 6600 et seq. The court ordered respondent to show cause why the writ should not be granted. For the reasons set out below, the petition is denied.

**BACKGROUND**

Petitioner states he was convicted of rape in 1991 and served nine and a half years in state prison. He has been involuntarily detained since 2000 while he waits for a civil commitment trial under the SVPA. Petitioner states that multiple probable cause hearings were held, and probable cause was found to hold petitioner as a Sexually Violent Predator ("SVP") until trial.

Petitioner filed this petition alleging that his appointed counsel was ineffective and that state officials had been conspiring against him. The court dismissed these claims, but found that underlying the claims was the fact that petitioner has been awaiting trial for nearly fourteen years which could potentially state a due process claim.

The court also noted that generally, under principles of comity and federalism, a

1 federal court should not interfere with ongoing state proceedings by granting injunctive or  
2 declaratory relief absent extraordinary circumstances. See *Younger v. Harris*, 401 U.S.  
3 37, 43-54 (1971). Federal courts should not enjoin pending state prosecutions absent a  
4 showing of the state's bad faith or harassment, or a showing that the statute challenged  
5 is "flagrantly and patently violative of express constitutional prohibitions." *Younger*, 401  
6 U.S. at 46, 53-54 (cost, anxiety and inconvenience of criminal defense not kind of special  
7 circumstances or irreparable harm that would justify federal court intervention; statute  
8 must be unconstitutional in every "clause, sentence and paragraph, and in whatever  
9 manner" it is applied). Abstention may be inappropriate in the "extraordinary  
10 circumstance" that (1) the party seeking relief in federal court does not have an adequate  
11 remedy at law and will suffer irreparable injury if denied equitable relief, see *Mockaitis v.*  
12 *Harclerod*, 104 F.3d 1522, 1528 (9th Cir. 1997) (citing *Younger*, 401 U.S. at 43-44), or  
13 (2) the state tribunal is incompetent by reason of bias, see *Gibson v. Berryhill*, 411 U.S.  
14 564, 577-79 (1973).

15 In 2009, petitioner filed a case in this court with similar allegations. *Williams v.*  
16 *Ahlin*, No. C 09-3642 MMC (PR).<sup>1</sup> That case was properly dismissed pursuant to  
17 *Younger*, though several years have passed and based on petitioner's allegations he is  
18 still awaiting the civil commitment trial. The court previously noted that while it is possible  
19 that this delay could be in part caused by petitioner's legal strategy and he has filed  
20 multiple appeals to the state court of appeal and state supreme court, the court would  
21 order service to review an answer from respondent regarding the status of his civil  
22 commitment case.<sup>2</sup> Respondent has filed an answer and petitioner has filed a traverse.

23 \_\_\_\_\_  
24 <sup>1</sup> The Ninth Circuit denied petitioner's request for a certificate of appealability. Docket  
25 No. 15 in No. C 09-3642 MMC (PR).

26 <sup>2</sup> In *Knight v. Ahlin*, No. 10-56211, slip op. at 4-6 (9th Cir. March 13, 2013), *withdrawn*,  
27 714 F.3d 1117 (9th Cir. May 21, 2013), the Ninth Circuit held that *Younger* abstention did  
28 not require the district court to abstain from hearing a habeas petition from a pretrial  
detainee claiming extreme delay in the SVPA commitment proceedings. The *Knight*  
court reasoned that *Younger* abstention "fundamentally requires an ongoing state  
proceeding," *Knight*, slip op. at 5, whereas Knight's proceedings could not be  
characterized as "ongoing" due to the extreme delay and years of inaction. While *Knight*

1 **FACTS**

2 On December 21, 2000, the San Francisco County District Attorney filed a petition  
3 in superior court alleging that petitioner was a SVP. Answer, Ex. A at 105. A probable  
4 cause hearing was held that same day and the court found probable cause that petitioner  
5 qualified as a SVP. *Id.*

6 On April 6, 2001, petitioner moved to set aside the probable cause determination.  
7 *Id.* at 106. In December 2002, the court again found probable cause that petitioner  
8 qualified as a SVP. *Id.* at 106. Trial was continued many times over the next three years  
9 at petitioner's request and at the request of the district attorney. *Id.* at 106-07. On  
10 September 12, 2005, petitioner moved for a new probable cause hearing, and on May 26,  
11 2006, the court again found probable cause that petitioner was a SVP. *Id.* at 106-08.

12 The trial was continued several more times over the next few years. *Id.* at 63-109.  
13 On February 3, 2010, petitioner sought new evaluations and a new probable cause  
14 hearing pursuant to *In re Ronje*, 179 Cal. App. 4th 509 (2009). *Id.* at 57-62. On February  
15 23, 2010, the court granted the motion and vacated the June 11, 2010, trial date. *Id.* at  
16 49. New evaluations were prepared in May 2010. Petitioner requested several motions  
17 to continue and the probable cause hearing was set for April 26, 2012. *Id.* at 30-38. On  
18 March 6, 2012, petitioner filed a motion to dismiss for pretrial delay. Petition, Ex. B. The  
19 hearing began on April 26, 2012. The court denied the motion to dismiss and on October  
20 9, 2012, found for the fourth time, probable cause that petitioner was a SVP. Answer, Ex.  
21 A at 105. On November 7, 2012, petitioner was appointed new defense counsel. *Id.* at  
22 20. From December 5, 2012 to September 2014, petitioner moved to continue the trial at  
23 least nine times. *Id.* at 1-18. Petitioner has also filed approximately seven state habeas  
24 petitions with the California Court of Appeal and seven petitions with the California  
25 Supreme Court. Answer at 2-3.

26  
27 

---

may not be cited as precedent because it was withdrawn, it is possible that the facts of  
28 the instant case would not warrant *Younger* abstention.

1 **DISCUSSION**

2 As grounds for federal habeas relief, petitioner generally asserts that his due  
3 process rights have been violated because he has not yet been tried as an SVP.

4 **LEGAL STANDARD**

5 Under state law “[t]he SVPA does not specify a time by which a trial on a  
6 commitment proceeding under the SVPA must be commenced or concluded.” *People v.*  
7 *Sanders*, 203 Cal. App. 4th 839, 846 (Cal. Ct. App. 2012); *see also Litmon v. Superior*  
8 *Court*, 123 Cal. App. 4th 1156, 1170-71 (Cal. Ct. App. 2004) (“the SVPA sets no time  
9 period within which the probable cause hearing preceding a recommitment must be held.  
10 And, once probable cause is found, the SVPA sets no time period within which the trial  
11 must be held . . . .”); *see also Seeboth v. Allenby*, 789 F.3d 1099 (9th Cir. 2015) (lack of  
12 a time provision in the SVPA for recommitment trial does not deprive SVPs equal  
13 protection of the laws).

14 The Sixth Amendment provides that, “[i]n all criminal prosecutions, the accused  
15 shall enjoy the right to a speedy and public trial.” A speedy trial is a fundamental right  
16 guaranteed to the criminally accused by the Sixth Amendment and imposed on the states  
17 by the Due Process Clause. *Klopper v. North Carolina*, 386 U.S. 213, 223 (1967). Since  
18 a commitment proceeding under the SVPA is not a criminal prosecution, the Sixth  
19 Amendment right to a speedy trial does not apply. *See United States v. Perry*, 788 F.2d  
20 100, 118 (3d Cir. 1986) (“The speedy trial clause deals with the timeliness of criminal  
21 prosecutions, not civil commitment proceedings.”); *see generally Kansas v. Hendricks*,  
22 521 U.S. 346, 364-65 (1997) (the fact that state chose to afford persons undergoing SVP  
23 proceedings certain procedural and evidentiary protections applicable in criminal trials  
24 “does not transform a civil commitment proceeding into a criminal prosecution”).

25 The Supreme Court has not addressed whether there is a due process right to a  
26 speedy civil commitment trial. Nevertheless, some courts have analyzed speedy trial  
27 claims in the SVPA commitment context under the four-part test set forth in *Barker v.*  
28

1 *Wingo*, 407 U.S. 514, 530 (1972), for Sixth Amendment speedy trial claims.<sup>3</sup> See *Page*  
2 *v. Lockyer*, 200 Fed. Appx. 727 (9th Cir. 2006) (analyzing and rejecting Sixth Amendment  
3 speedy trial claim from petitioner's SVPA commitment); *Coleman v. Mayberg*, 2005 WL  
4 1876061, \*6 (N.D. Cal. Aug. 8, 2005) (applying *Barker* analysis to find that five-year delay  
5 in holding commitment hearing did not violate petitioner's speedy trial rights); *People v.*  
6 *Litmon*, 162 Cal. App. 4th 383, 395-406 (2008) (finding that delay in bringing  
7 recommitment petition violated due process under *Barker* and *Mathews v. Eldridge*, 424  
8 U.S. 319 (1976)); *Sisneroz v. California*, 2009 WL 302280, \*7-11 (E.D. Cal. Feb. 6, 2009)  
9 (denying claim that delay in bringing recommitment petition to trial violated due process  
10 because petitioner showed no prejudice).

### 11 ANALYSIS

12 Assuming there is a due process right to a speedy civil commitment trial and  
13 therefore considering the four *Barker* factors, as well as looking to record in this case,  
14 petitioner is not entitled to relief. Respondent concedes and a review of the record  
15 supports that the thirteen-year delay at the time this petition was filed is lengthy and  
16 meets the first *Barker* factor. The court will now look to the remaining three factors.

### 17 Reasons for Delay

18 With respect to the second *Barker* factor, the reason for the delay, much of it has  
19 been due to petitioner's actions. The record reflects numerous continuances, and the  
20 majority of them were at petitioner's request. Nor are there any indications or arguments  
21 that petitioner objected to any continuances requested by the district attorney. Petitioner  
22 also requested new probable cause hearings, new evaluations, and filed numerous  
23 motions in the superior court, as well as more than ten habeas petitions in the California  
24 Court of Appeal and California Supreme Court. In 2008, the district attorney filed a  
25

---

26  
27 <sup>3</sup> The four *Barker* factors are: (1) the length of the delay; (2) the reason for the  
28 delay; (3) the petitioner's assertion of his right; and (4) prejudice to the petitioner. *Barker*,  
407 U.S. at 532.

1 motion to compel interviews because petitioner refused several times between 2005 and  
2 2007 to be interviewed by state doctors for his evaluations. Answer, Ex. A at 92-100.  
3 Petitioner also filed motions to disqualify the various trial judges on November 29, 2005  
4 and August 9, 2014. *Id.* at 4, 129-35. Petitioner has also had multiple appointed  
5 attorneys and on October 9, 2008, filed a complaint against one attorney with the State  
6 Bar of California. Docket No. 1 at 3, 14 in No. C 09-3642 MMC (PR).

7 Deliberate delay by the government “to hamper the defense’ weighs heavily  
8 against the prosecution.” *Vermont v. Brillon*, 556 U.S. 81, 90 (2009) (quoting *Barker*, 407  
9 U.S. at 531). “In contrast, delay caused by the defense weighs against the defendant . . .  
10 under standard waiver doctrine.” *Id.* Because defense attorneys act as a defendant’s  
11 agent, and are not state actors, “delay caused by the defendant’s counsel is also charged  
12 against the defendant” whether counsel is privately retained or appointed by the state.  
13 *Id.* at 90-91; *see also United States v. Shetty*, 130 F.3d 1324, 1331 (9th Cir. 1997) (no  
14 due process violation where defendant failed to object to continuances).

15 Moreover, while petitioner has presented general arguments in his petition and  
16 traverse that his due process rights have been violated, he has failed to present specific  
17 arguments concerning his right to a speedy trial.<sup>4</sup> Nor has petitioner addressed the  
18 specific arguments raised in respondent’s answer attributing the delay in commencing the  
19 trial to petitioner. A review of the record demonstrates that the reasons for delay are due  
20 to petitioner’s actions and the actions of his counsel, not the district attorney’s actions,  
21 thus this *Barker* factor weighs against petitioner.

22 **Assertion of the Right**

23 With respect to the third *Barker* factor, petitioner’s assertion of his right to a  
24 speedy trial, petitioner first asserted his right on March 6, 2012, when he filed a motion to  
25 dismiss for delay in the superior court. Prior to that date, there is no record of petitioner  
26 objecting in the superior court to the delay. Petitioner’s 2009 federal habeas petition in

27 \_\_\_\_\_  
28 <sup>4</sup> The majority of petitioner’s traverse challenges the general constitutionality of  
California’s SVPA law.

1 No. C 09-3642 MMC (PR) contains a general due process claim but does not specifically  
2 describe how the delays in his trial were violating his due process rights. Regardless, the  
3 court will assume that petitioner first asserted his right to a speedy trial in 2009.

4 A petitioner's assertion of his speedy trial right is "entitled to strong evidentiary  
5 weight in determining whether the [petitioner] [was] deprived of the right." *Barker*, 407  
6 U.S. at 531-32. The "failure to assert the right will make it difficult for a [petitioner] to  
7 prove that he was denied a speedy trial." *Id.* at 532. "[I]f delay is attributable to the  
8 [petitioner], then his waiver may be given effect under standard waiver doctrine." *Id.* at  
9 529. However, even repeated assertions of a petitioner's speedy trial right must be  
10 viewed in light of the petitioner's other conduct. *United States v. Loud Hawk*, 474 U.S.  
11 302, 314-15 (1986). A petitioner may not establish that he appropriately asserted his  
12 speedy trial right when at the same time he was asserting the right he was filing motions  
13 and appeals that contributed to the delay in his trial. *See id.* at 314-15 (finding  
14 defendants' repeated assertions of their speedy trial rights were contradicted by their  
15 filings of frivolous petitions in the appellate courts and of repeated and unsuccessful  
16 motions in the trial court, which contributed to delay in their trial).

17 The nine-year delay before petitioner first asserted his right to a speedy trial  
18 weighs against him, as does his conduct after asserting the right. He continued to  
19 request continuances and filed multiple motions in the superior court as well as numerous  
20 appeals in higher courts. In 2010 he sought new evaluations and a new probable cause  
21 hearing, both of which further delayed the proceedings. In light of the nine-year delay  
22 before petitioner first asserted his speedy trial right and considering petitioner's conduct  
23 after asserting the right, the third *Barker* factor weighs heavily against him.

24 **Prejudice**

25 With respect to the fourth *Barker* factor, prejudice to petitioner, he must  
26 demonstrate that he was prejudiced by the delay. While prejudice should be presumed if  
27 respondent is responsible for the delay, in this case, where petitioner is responsible for  
28 the delay, then he must demonstrate actual prejudice. *United States v. Aquirre*, 994 F.2d

1 1454, 1457-58 (9th Cir. 1993). Actual prejudice can be shown in three ways: (1)  
2 oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the  
3 possibility that the accused's defense will be impaired. *Barker*, 407 U.S. at 532.

4 Respondent set forth these standards and relevant case law in the answer to the  
5 habeas petition; however, petitioner has failed to present any arguments regarding how  
6 he has been prejudiced by the delay. Nor does a review of the record in this case  
7 demonstrate actual prejudice. There are no allegations of oppressive pretrial,  
8 incarceration and the conditions of civil commitment are less restrictive than prison  
9 incarceration. In addition, petitioner also has the ability to receive treatment from the  
10 hospital where he is committed. Nor has petitioner demonstrated any anxiety or concern  
11 and if he had made such a showing, much of the delay has been attributed to him.  
12 Finally, petitioner has not shown that his defense has been impaired by the delay. In  
13 fact, the delay could benefit petitioner if he avails himself of the treatment at the hospital  
14 and he has received updated evaluations following several years of commitment that  
15 could reflect positive aspects from his treatment.

16 Petitioner has failed to demonstrate prejudice, and thus this final *Barker* factor is  
17 not met. Petitioner has not shown a speedy trial violation for all the reasons discussed  
18 above. Thus, there has been no due process violation despite the delay.<sup>5</sup> If petitioner is  
19 civilly committed after trial, he may file a habeas petition once he has properly exhausted  
20 the claims.<sup>6</sup>

## 21 **APPEALABILITY**

22 The federal rules governing habeas cases brought by state prisoners require a  
23

---

24 <sup>5</sup> Due to petitioner being responsible for much of the delay, there is no evidence that he  
25 has demanded a trial and the state has refused to allow him his day in court. See *Braden*  
26 *v. 30th Judicial Circuit Court*, 410 U.S. 484, 489-90 (1973) (noting that federal  
27 intervention is appropriate where petitioner seeks state court trial, but prosecution refuses  
28 to bring him to trial). For relief in this petition, petitioner sought to have his ongoing civil  
commitment petition vacated. Petition at 8.

<sup>6</sup> In the alternative, the court finds that after reviewing the pleadings and state court  
records, this case may also be dismissed due to *Younger* abstention as a review of the  
records does not demonstrate extraordinary circumstances for intervention.



1 district court that denies a habeas petition to grant or deny a certificate of appealability  
2 (“COA”) in the ruling. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll.  
3 § 2254 (effective December 1, 2009).

4 To obtain a COA, petitioner must make “a substantial showing of the denial of a  
5 constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district court has rejected the  
6 constitutional claims on the merits, the showing required to satisfy § 2253(c) is  
7 straightforward: The petitioner must demonstrate that reasonable jurists would find the  
8 district court’s assessment of the constitutional claims debatable or wrong.” See *Slack v.*  
9 *McDaniel*, 529 U.S. 473, 484 (2000). Section 2253(c)(3) requires a court granting a COA  
10 to indicate which issues satisfy the COA standard. Here, the court finds that petitioner’s  
11 sole claim in the petition meets the above standard and accordingly GRANTS the COA.  
12 See generally *Miller-El*, 537 U.S. at 327.

13 Accordingly, the clerk shall forward the file, including a copy of this order, to the  
14 Court of Appeals. See Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268,  
15 1270 (9th Cir. 1997). Petitioner is cautioned that the court's ruling on the certificate of  
16 appealability does not relieve him of the obligation to file a timely notice of appeal if he  
17 wishes to appeal.

18 **CONCLUSION**

19 For the foregoing reasons, the petition for a writ of habeas corpus is **DENIED**.

20 A certificate of appealability is **GRANTED**. See Rule 11(a) of the Rules Governing  
21 Section 2254 Cases.

22 The clerk shall close the file.

23 **IT IS SO ORDERED.**

24 Dated: September 8, 2015



25  
26 **PHYLLIS J. HAMILTON**  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 MICHAEL B. WILLIAMS,  
4 Plaintiff,  
5  
6 v.  
7 AUDREY KING,  
8 Defendant.

Case No. [14-cv-01831-PJH](#)

**CERTIFICATE OF SERVICE**

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

11 That on September 8, 2015, I SERVED a true and correct copy(ies) of the attached, by  
12 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
13 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
14 receptacle located in the Clerk's office.

15  
16 Michael B. Williams ID: 542-1  
17 24511 West Jayne Avenue  
18 Post Office Box 5003  
19 Coalinga, CA 93210-5003

20 Dated: September 8, 2015

21  
22 Susan Y. Soong  
23 Clerk, United States District Court

24 By: *Nichole Peric*  
25 Nichole Peric, Deputy Clerk to the  
26 Honorable PHYLLIS J. HAMILTON  
27  
28

United States District Court  
Northern District of California