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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MICHAEL SCHMITT,

12 Petitioner,

13 v.

14 JEFFREY BEARD, et al.,

15 Respondents.  
16

Case No.: 17cv0730 MMA (JMA)

**ORDER: (1) GRANTING MOTION  
TO PROCEED IN FORMA  
PAUPERIS; and (2) DISMISSING  
CASE WITHOUT PREJUDICE**

17 On April 10, 2017, Petitioner, a state prisoner proceeding pro se, filed a Petition  
18 for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. The Court dismissed the action  
19 without prejudice on April 13, 2017 because Petitioner had failed to satisfy the filing fee  
20 requirement and because Petitioner challenged his state court conviction, which must be  
21 done via 28 U.S.C. § 2254.

22 On May 10, 2017, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to  
23 28 U.S.C. § 2254 together with a motion to proceed in forma pauperis.

24 **MOTION TO PROCEED IN FORMA PAUPERIS**

25 Petitioner has \$0.80 on account at the California correctional institution in which  
26 he is presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court  
27 **GRANTS** Petitioner's application to proceed in forma pauperis, and allows Petitioner to  
28 prosecute the above-referenced action without being required to prepay fees or costs and

1 without being required to post security. The Clerk of the Court shall file the Petition for  
2 Writ of Habeas Corpus without prepayment of the filing fee.

3 ABSTENSION

4 The Petition must be dismissed because it is clear that this Court is barred from  
5 consideration of his claims by the abstention doctrine announced in *Younger v. Harris*,  
6 401 U.S. 37 (1971). Under *Younger*, federal courts may not interfere with ongoing state  
7 criminal proceedings absent extraordinary circumstances. *Id.* at 45-46; *see Middlesex*  
8 *County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982) (*Younger*  
9 “espouse[d] a strong federal policy against federal-court interference with pending state  
10 judicial proceedings.”) These concerns are particularly important in the habeas context  
11 where a state prisoner’s conviction may be reversed on appeal, thereby rendering the  
12 federal issue moot. *Sherwood v. Tompkins*, 716 F.2d 632, 634 (9th Cir. 1983).

13 Absent extraordinary circumstances, abstention under *Younger* is required when:  
14 (1) state judicial proceedings are ongoing; (2) the state proceedings involve important  
15 state interests; and (3) the state proceedings afford an adequate opportunity to raise the  
16 federal issue. *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 799 (9th  
17 Cir. 2001). All three of these criteria are satisfied here. At the time Petitioner filed the  
18 instant Petition, he states that he has yet to receive a decision on his direct appeal to the  
19 California Court of Appeal. (See Pet. at 2.) Thus Petitioner’s criminal case is still  
20 ongoing in the state courts. Further, there is no question that the state criminal  
21 proceedings involve important state interests.

22 Finally, Petitioner has failed to show that he has not been afforded an adequate  
23 opportunity to raise the federal issues on direct appeal. Petitioner offers nothing to  
24 support a contention that the state courts do not provide him an adequate opportunity to  
25 raise his claims, and this Court specifically rejects such an argument. Indeed, Petitioner’s  
26 claims of ineffective assistance of counsel, and sentencing error under *Blakely v.*  
27 *Washington*, 542 U.S. 296 (2004) are the just type of claims that the state courts provide  
28 an opportunity to raise on direct appeal. Abstention is therefore required. *See Huffman v.*

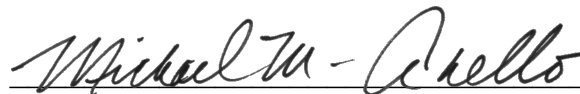
1 *Pursue, Ltd.*, 420 U.S. 592, 608 (1975) (*Younger* applies to state appellate proceedings as  
2 well as ongoing proceedings in state trial court); *see also Drury v. Cox*, 457 F.2d 764,  
3 764-65 (9th Cir. 1972) (“[O]nly in the most unusual circumstances is a defendant entitled  
4 to have federal interposition by way of injunction or habeas corpus until after the jury  
5 comes in, judgment has been appealed from that the case concluded in the state courts.”)

6 **CONCLUSION**

7 For the foregoing reasons, the Petitioner’s request to proceed in forma pauperis is  
8 **GRANTED** and the Petition is **DISMISSED** without prejudice because this Court must  
9 abstain from interfering with the ongoing state criminal proceedings pursuant to the  
10 abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971); *Juidice v. Vail*, 430 U.S.  
11 327, 337 (1977) (holding that if *Younger* abstention applies, a court may not retain  
12 jurisdiction but should dismiss the action.).

13 **IT IS SO ORDERED.**

14 DATE: May 16, 2017

15   
16 HON. MICHAEL M. ANELLO  
17 United States District Judge  
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