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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 TOMMY LEE WILLIAMS,  
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Petitioner,  
v.  
Respondent.  
RAYTHEL FISHER,

Case No.: 3:22-cv-00524-GPC-NLS

**ORDER:**

**(1) DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS  
[ECF No. 4];**

**(2) DENYING MOTION TO  
APPOINT COUNSEL [ECF No. 6];  
and**

**(3) DISMISSING CASE WITHOUT  
PREJUDICE AND WITHOUT  
LEAVE TO AMEND**

22 On April 14, 2022, Petitioner, a state prisoner proceeding pro se, filed a Petition for  
23 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. The Court dismissed the  
24 action on May 17, 2022 because Petitioner had failed to satisfy the filing fee requirement  
25 and because his criminal case was proceeding in state court; he also failed to state a federal  
26 claim. ECF No. 2. Petitioner was given until July 18, 2022, to either pay the \$5.00 filing  
27 fee or submit adequate proof of his inability to pay the fee. *Id.*

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1 On June 7, 2022, Petitioner filed a First Amended Petition (“Am. Pet.”) and a motion  
2 to proceed in forma pauperis. ECF Nos. 3–5. On June 13, 2022, he filed a motion to appoint  
3 counsel. ECF No. 6.

#### 4 **MOTION TO PROCEED IN FORMA PAUPERIS**

5 Petitioner has filed a prison certificate and a trust account statement in support of his  
6 motion to proceed in forma pauperis which reflects a \$295.92 balance in his prison trust  
7 account. The filing fee associated with this type of action is \$5.00. *See* 28 U.S.C. § 1914(a).  
8 Thus, it appears Petitioner can pay the requisite filing fee. Accordingly, the Court **DENIES**  
9 the request to proceed in forma pauperis

#### 10 **ABSTENTION**

11 Petitioner lists his place of confinement as the Vista Detention Center. *See* Pet., ECF  
12 No. 3 at 1. The San Diego County Sheriff’s Department website shows that Williams is  
13 currently in custody pursuant to San Diego Superior Court case number SCN236445,  
14 which is the same case he seeks to challenge in the current Petition. *See*  
15 [https://apps.sdsheriff.net/wij/wijDetail.aspx?BookNum=2Hy7LraEJgWxDONyxdM1d1j](https://apps.sdsheriff.net/wij/wijDetail.aspx?BookNum=2Hy7LraEJgWxDONyxdM1d1j3%2fOZtk0nJ75nH015zVxQ%3d)  
16 [3%2fOZtk0nJ75nH015zVxQ%3d](https://apps.sdsheriff.net/wij/wijDetail.aspx?BookNum=2Hy7LraEJgWxDONyxdM1d1j3%2fOZtk0nJ75nH015zVxQ%3d) (last visited July 1, 2022). Further proceedings are  
17 scheduled in SCN236445 on July 29, 2022. *Id.*

18 As the Court explained to Petitioner in its May 17, 2022 dismissal Order, under  
19 *Younger v. Harris*, 401 U.S. 37 (1971), federal courts may not interfere with ongoing state  
20 criminal proceedings absent extraordinary circumstances. *Id.* at 45–46; *see Middlesex*  
21 *County Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982) (*Younger*  
22 “espouse[d] a strong federal policy against federal-court interference with pending state  
23 judicial proceedings.”) These concerns are particularly important in the habeas context  
24 where a state prisoner’s conviction may be reversed on appeal, thereby rendering the  
25 federal issue moot. *Sherwood v. Tompkins*, 716 F.2d 632, 634 (9th Cir. 1983). Absent  
26 extraordinary circumstances, abstention under *Younger* is required when: (1) state judicial  
27 proceedings are ongoing; (2) the state proceedings involve important state interests; and  
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1 (3) the state proceedings afford an adequate opportunity to raise the federal issue. *Columbia*  
2 *Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 799 (9th Cir. 2001).

3 In its May 17, 2022 Order, the Court gave Petitioner an opportunity to demonstrate  
4 that extraordinary circumstances exist which would relieve this Court of its obligation to  
5 abstain from interfering with ongoing state criminal proceedings. *Juidice v. Vail*, 430 U.S.  
6 327, 337 (1977) (holding that if *Younger* abstention applies, a court may not retain  
7 jurisdiction but should dismiss the action.) It appears he cannot do so, and thus the Court  
8 must abstain from interfering in his ongoing state criminal case. *Younger*, 401 U.S. at 45–  
9 46.

10 **FAILURE TO STATE A COGNIZABLE FEDERAL CLAIM**

11 Additionally, Petitioner has again failed to allege that his state court conviction or  
12 sentence violates the Constitution of the United States and has therefore failed to state a  
13 cognizable federal claim in accordance with Rule 4 of the rules governing § 2254 cases.  
14 Title 28, United States Code, § 2254(a), sets forth the following scope of review for federal  
15 habeas corpus claims:

16 The Supreme Court, a Justice thereof, a circuit judge, or a district  
17 court shall entertain an application for a writ of habeas corpus in behalf of a  
18 person in custody pursuant to the judgment of a State court only on the  
19 ground that he is in custody in violation of the Constitution or laws or  
treaties of the United States.

20 28 U.S.C. § 2254(a) (emphasis added). *See Hernandez v. Ylst*, 930 F.2d 714, 719 (9th Cir.  
21 1991). Thus, to present a cognizable federal habeas corpus claim under § 2254, a state  
22 prisoner must allege both that he is in custody pursuant to a “judgment of a State court,”  
23 and that he is in custody in “violation of the Constitution or laws or treaties of the United  
24 States.” *See* 28 U.S.C. § 2254(a).

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1 Here, Petitioner claims in ground one “see dismissed USCD case number 3:21-cv-  
2 01167-CAB-WVG.” Am. Pet, ECF No. 2 at 6.<sup>1</sup> He also claims the “crime scene was made  
3 up,” “all of what happened had to do with my race and racism,” “I never tried to kill or  
4 torture no one,” and “I never did any of the things that was said about me.” *Id.* at 6–9.  
5 Petitioner’s claims do not allege he is “in custody in violation of the Constitution or laws  
6 or treaties of the United States.” 28 U.S.C. § 2254.

7 Further, the Court notes that Petitioner cannot simply amend his Petition to state a  
8 federal habeas claim and then refile the amended petition in this case. He must exhaust  
9 state judicial remedies before bringing his claims via federal habeas. State prisoners who  
10 wish to challenge their state court conviction must first exhaust state judicial remedies. 28  
11 U.S.C. § 2254(b), (c); *Granberry v. Greer*, 481 U.S. 129, 133–34 (1987). To exhaust state  
12 judicial remedies, a California state prisoner must present the California Supreme Court  
13 with a fair opportunity to rule on the merits of every issue raised in his or her federal habeas  
14 petition. *See* 28 U.S.C. § 2254(b), (c); *Granberry*, 481 U.S. at 133–34. Moreover, to  
15 properly exhaust state court judicial remedies a petitioner must allege, in state court, how  
16 one or more of his or her federal rights have been violated. The Supreme Court in *Duncan*  
17 *v. Henry*, 513 U.S. 364 (1995) reasoned: “If state courts are to be given the opportunity to  
18 correct alleged violations of prisoners’ federal rights, they must surely be alerted to the fact  
19 that the prisoners are asserting claims under the United States Constitution.” *Id.* at 365–66  
20 (emphasis added). For example, “[i]f a habeas petitioner wishes to claim that an evidentiary  
21 ruling at a state court trial denied him the due process of law guaranteed by the Fourteenth  
22 Amendment, he must say so, not only in federal court, but in state court.” *Id.* (emphasis  
23 added).

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26 <sup>1</sup> On April 14, 2021, Petitioner constructively filed a Petition for Writ of Habeas Corpus in the Ninth  
27 Circuit Court of Appeals, which was transferred to this Court and given case no. 3:21-cv-01167-CAB-  
28 WVG. (*See Williams v. Unknown, et al*, S.D. Cal. case no. 3:21-cv-01167-CAB-WVG). Petitioner was  
granted two extensions of time to correct deficiencies of pleading identified by the Court. (*See* ECF Nos.  
8, 17.) On February 4, 2022, the Court denied Petitioner’s third request for extension of time and told  
Petitioner he would have to file a new petition which would be given a new case number.



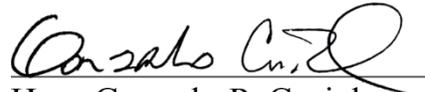
1 Whether counsel should be appointed turns in part on the petitioner's likelihood of success  
2 on the merits. *See Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (per curiam).  
3 Because the Court has determined that it is required to abstain from interfering in  
4 Petitioner's ongoing state criminal case, *see Younger*, 401 U.S. at 45–46, the Court declines  
5 to exercise its discretion and **DENIES** Petitioner's motion for appointment of counsel  
6 [ECF No. 6].

7 **CONCLUSION**

8 For the foregoing reasons, the Court **DENIES** Petitioner's motion to proceed in  
9 forma pauperis [ECF No. 4], **DENIES** Petitioner's motion for appointment of counsel  
10 [ECF No. 6], and **DISMISSES** this case without prejudice and without further leave to  
11 amend because it appears that Petitioner cannot cure the pleading deficiencies outlined in  
12 the Order.

13 **IT IS SO ORDERED.**

14 Dated: August 1, 2022

15   
16 Hon. Gonzalo P. Curiel  
17 United States District Judge  
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