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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JENNA MULLINS,

Petitioner,

v.

STATE OF NEVADA,

Respondents.

Case No. 2:18-cv-00668-GMN-VCF

ORDER

Petitioner has filed a “motion for emergency hearing for writ of habeas corpus.” (ECF No. 2). Petitioner asserts in her motion that she is in custody pursuant to an “illegal sentence.” (*Id.*) It would therefore appear that petitioner is attempting to challenge her custody pursuant to a state court judgment of conviction. The Court construes the motion as an attempt to file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition will be dismissed due to numerous defects.

First, petitioner has not properly commenced the action by paying the filing fee or filing a complete pauper application. LSR 1-1 & 1-2.

Second, petitioner has not filed the petition on the Court’s form as required by LSR 3-1.

Third, it appears unlikely that petitioner has exhausted her state court remedies. Petitioner must first exhaust her state court remedies before filing a habeas petition in federal court. 28 U.S.C. § 2254(b)(1)(A). To satisfy this exhaustion requirement, the claim be fairly presented to the state courts completely through to the highest state court level of review available. *E.g., Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003) (en banc); *Vang v. Nevada*, 329 F.3d 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must refer to the specific federal constitutional

1 guarantee upon which she relies and must also state the facts that entitle her to relief on that federal
2 claim. *E.g., Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir. 2000). That is, fair presentation
3 requires that the petitioner present the state courts with both the operative facts and the federal
4 legal theory upon which the claim is based. *E.g., Castillo v. McFadden*, 399 F.3d 993, 999 (9th
5 Cir. 2005). The exhaustion requirement insures that the state courts, as a matter of federal state
6 comity, will have the first opportunity to pass upon and correct alleged violations of federal
7 constitutional guarantees. *See, e.g., Coleman v. Thompson*, 501 U.S. 722, 731 (1991).

8 While the Court is unable to verify the status of petitioner's criminal proceedings, it notes
9 that there are no results for her name in a search of either the Eighth Judicial District Court's docket
10 or the Supreme Court of Nevada's docket. It therefore would appear that petitioner has not
11 exhausted her state court remedies.

12 Fourth, petitioner was arrested on the offense for which she is currently in custody only
13 recently -- on February 20, 2018 -- and has been sentenced.¹ It is therefore possible that criminal
14 proceedings remain ongoing in some fashion. As a general rule, even when the claims in a petition
15 have been fully exhausted in the state courts, a federal court will not entertain a habeas petition
16 seeking intervention in a pending state criminal proceeding, absent special circumstances. *See,*
17 *e.g., Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983); *Carden*, 626 F.2d at 83-85;
18 *Davidson v. Klinger*, 411 F.2d 746 (9th Cir. 1969). This rule of restraint ultimately is grounded in
19 principles of comity that flow from the abstention doctrine of *Younger v. Harris*, 401 U.S. 37
20 (1971). Under the *Younger* abstention doctrine, federal courts may not interfere with pending state
21 criminal proceedings absent extraordinary circumstances.

22 Finally, petitioner has filed her petition against the State of Nevada. Petitioner may not
23 proceed in federal court against the State of Nevada due to the state sovereign immunity recognized
24 by the Eleventh Amendment. *See, e.g., Pennhurst State School & Hospital v. Halderman*, 465
25 U.S. 89, 100-01 (1984) (a State may not be sued in federal court regardless of the relief sought).
26 Petitioner must name, in any newly filed petition, her immediate physical custodian.

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¹ See <https://www5.lasvegasnevada.gov/InmateSearch/> (last visited April 13, 2018).

1 It does not appear that a dismissal without prejudice would materially impact the
2 application of the limitation period in a promptly filed new action or otherwise cause substantial
3 prejudice. It therefore is ordered that this action shall be dismissed without prejudice. Petitioner
4 shall file any new petition, and either pay the filing or fee or submit a complete pauper application,
5 in a new action only, and shall not file any more documents in this case. This action is closed, and
6 petitioner must pursue any further requests for relief in a new action under a new docket number.

7 It further is ordered that a certificate of appealability is denied. Jurists of reason would not
8 find debatable whether the Court was correct in its dismissal of the action without prejudice on
9 procedural grounds, for the reasons discussed herein.

10 It further is ordered, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, that
11 the Clerk shall make informal electronic service upon respondents by adding Nevada Attorney
12 General Adam P. Laxalt as counsel for respondents and directing a notice of electronic filing of
13 this order to his office. No response is required from respondents other than to respond to any
14 orders of a reviewing court.

15 The Clerk of Court shall send petitioner a copy of her papers in this action, along with two
16 copies each of the form and instructions for an inmate pauper application and the form for § 2254
17 habeas petitions.

18 The Clerk of Court shall enter final judgment accordingly, dismissing this action without
19 prejudice.

20 DATED THIS 18 day of April 2018.

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24 GLORIA M. NAVARRO
25 UNITED STATES DISTRICT JUDGE
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