

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ANTHONY PARKER,  v.  ISIDRO BACA, <i>et al.</i> ,	Petitioner,  Respondents.	Case No. 3:17-cv-00442-MMD-WGC  ORDER
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Before the Court is respondents' motion to dismiss (ECF No. 8). Petitioner has not filed a response within the time allotted by Local Rule LR 7-2, and thus is deemed to consent to the granting of the motion. LR 7-2(d). After reviewing the motion and the supporting exhibits, the Court grants the motion.

Pursuant to a plea agreement, petitioner was convicted in state district court of second-degree murder. (Exh. 40 (ECF No. 10-9).) Petitioner appealed, and the Nevada Supreme Court affirmed. (Exh. 61 (ECF No. 11).)

Petitioner then commenced post-conviction proceedings in the state district court. The state district court denied his petition. (Exh. 79 (ECF No. 11-18).) Petitioner appealed, and the Nevada Court of Appeals affirmed. (Exh. 94 (ECF No. 11-33).)

Petitioner then commenced this action.

Respondents argue correctly that ground 3 of the petition is not cognizable in federal habeas corpus. Petitioner alleges in ground 3 that counsel failed to challenge the propriety of the charge of second-degree murder. This is a claim of a pre-plea

1 constitutional violation, and petitioner is barred from raising it in federal habeas corpus.  
2 *Tollett v. Henderson*, 411 U.S. 258, 267 (1973).<sup>1</sup>

3 Respondents also argue correctly that ground 4 of the petition is not cognizable in  
4 federal habeas corpus. Petitioner alleges in ground 4 that the state district court erred in  
5 admitting evidence at the post-conviction evidentiary hearing. “[A] petition alleging errors  
6 in the state post-conviction review process is not addressable through habeas corpus  
7 proceedings.” *Franzen v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989); *see also Gerlaugh*  
8 *v. Stewart*, 129 F.3d 1027, 1045 (9th Cir. 1997).

9 It is therefore ordered that respondents’ motion to dismiss (ECF No. 8) is granted.  
10 Grounds 3 and 4 of the petition are dismissed.

11 It is further ordered that respondents will have forty-five (45) days from the date of  
12 entry of this order to file and serve an answer, which must comply with Rule 5 of the Rules  
13 Governing Section 2254 Cases in the United States District Courts. Petitioner will have  
14 forty-five (45) days from the date on which the answer is served to file a reply.

15 DATED THIS 4<sup>th</sup> day of January 2018.



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17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE  
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27 <sup>1</sup>Petitioner does claim in ground 1 that counsel provided ineffective assistance in  
28 advising him to plead guilty. That claim is distinct from the claim that counsel should have  
challenged the propriety of a charge to which petitioner later pleaded guilty.