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APPENDIX A.1

Nov 28 2017 Decision

**Ninth Circuit Court
Appeals
Judges Leavy and
Tallman**

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 28 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEDRO RODRIGUEZ,

Petitioner-Appellant,

v.

WILLIAM GORE,

Respondent-Appellee.

No. 17-55344

D.C. No. 3:16-cv-02947-H-MDD
Southern District of California,
San Diego

ORDER

Before: LEAVY and TALLMAN, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 14) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

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APPENDIX A.2
MAY 31, 2018 DECISION
NINTH CIRCUIT COURT
APPEALS
JUDGES FLETCHER AND
WATFORD

A.2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 31 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEDRO RODRIGUEZ,

No. 17-55344

Petitioner-Appellant,

D.C. No. 3:16-cv-02947-H-MDD
Southern District of California,
San Diego

v.

WILLIAM GORE,

ORDER

Respondent-Appellee.

Before: W. FLETCHER and WATFORD, Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Docket Entry No. 20).

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord.

6.11.

No further filings will be entertained in this closed case.

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Appendix A.3
ORDER GRANTING MOTION
TO DISMISS
2/27/2017
Honorable
Marilyn L Huff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PEDRO RODRIGUEZ,

Plaintiff,

V.
WILLIAM GORE, et al.,

Defendant.

Case No.: 16-cv-02947-H-MDD

ORDER GRANTING MOTION TO DISMISS

[Doc. No. 23]

On December 1, 2016, Petitioner Pedro Rodriguez, a state prisoner, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his November 10, 2016 state court conviction. (Doc. No. 1.) On February 8, 2017, Respondent filed a motion to dismiss. (Doc. No. 23.) On February 23, 2017, Petitioner filed an opposition to the motion to dismiss. (Doc. No. 28.) After careful consideration, the Court grants the motion to dismiss and dismisses the petition without prejudice.

Procedural History

On November 10, 2016, Petitioner Pedro Rodriguez, a state prisoner, was convicted by a jury in San Diego County Superior Court of sodomy of a person under the age of eighteen in violation of Cal. Penal Code § 286(b)(1); oral copulation of a person under the

1 age of eighteen in violation of Cal. Penal Code § 288a(b)(1); burglary in violation of Cal.
 2 Penal Code § 459; unlawful sexual intercourse with a person under the age of eighteen in
 3 violation of Cal. Penal Code § 261.5(c); witness intimidation in violation of Cal. Penal
 4 Code § 136.1(b)(1); communication with a minor with the intent to commit a sexual offense
 5 in violation of Cal. Penal Code § 288.3(a); and meeting a minor with the intent to commit
 6 a sexual offense in violation of Cal. Penal Code § 288.4(b). (Doc. No. 1 at 1–2.) The trial
 7 court sentenced Petitioner to thirteen years and eight months in state prison. (Doc. No. 1
 8 at 1.)

9 On December 1, 2016, Petitioner filed in federal court a petition for writ of habeas
 10 corpus pursuant to 28 U.S.C. § 2254, challenging his November 10, 2016 state court
 11 conviction. (Doc. Nos. 1 at 1–2, 1-2 at 2–3.) On December 2, 2016, Petitioner filed a
 12 notice of appeal from his November 10, 2016 state court conviction in the Fourth District
 13 California Court of Appeal, Division One in case number D071405. (Doc. No. 23-1, Ex.
 14 A.) The record on appeal was filed on January 26, 2017, and the case is awaiting briefing.
 15 Id. By the present motion, Respondent moves to dismiss the petition on the basis of
 16 Younger abstention. (Doc. No. 23.)

17 Discussion

18 I. Legal Standards

19 Under traditional principles of comity and federalism, federal courts may not
 20 interfere with pending state criminal proceedings absent extraordinary circumstances.
 21 Younger v. Harris, 401 U.S. 37, 45–46 (1971); Middlesex Cnty. Ethics Comm. v. Garden
 22 State Bar Ass'n, 457 U.S. 423, 431 (1982). These concerns are especially important in the
 23 habeas context where a state prisoner's conviction may be reversed on appeal, thereby
 24 rendering the federal issue moot. Sherwood v. Tompkins, 716 F.2d 632, 634 (9th Cir.
 25 1983). Absent extraordinary circumstances, abstention under the Younger principle is
 26 required when: (1) state judicial proceedings are ongoing, (2) the state proceedings

1 implicate important state interests, and (3) the federal plaintiff is not barred from litigating
 2 federal constitutional issues in the state proceeding, and (4) the federal court action would
 3 enjoin the proceeding or have the practical effect of doing so, i.e., would interfere with the
 4 state proceeding in a way that Younger disapproves. San Jose Silicon Valley Chamber of
 5 Commerce Political Action Comm. v. City of San Jose, 546 F.3d 1087, 1092 (9th Cir.
 6 2008). If Younger abstention applies, a court may not retain jurisdiction but should dismiss
 7 that action. Juidice v. Vail, 430 U.S. 327, 337 (1977); see H.C. ex rel. Gordon v. Koppel,
 8 203 F.3d 610, 613 (9th Cir. 2000) (“When the case is one in which the Younger doctrine
 9 applies, the case must be dismissed.”).

10 When exceptions or extraordinary circumstances exist, a district court may exercise
 11 jurisdiction even when the criteria for Younger abstention are met. See Baffert v.
 12 California Horse Racing Board, 332 F.3d 613, 621 (9th Cir. 2003). Exceptions to
 13 abstention under the Younger doctrine include state proceedings conducted in bad faith or
 14 to harass the litigant, and when the statute at issue flagrantly and patently violates express
 15 constitutional prohibitions in every clause, sentence and paragraph. Id. (citing Younger,
 16 401 U.S. at 53).

17 **II. Analysis**

18 Here all of the Younger criteria are satisfied. First, at the time Petitioner filed the
 19 instant Petition, his criminal case was and still is currently pending in state court. (Doc.
 20 No. 1 at 2.) Thus state judicial proceedings are ongoing. Second, state criminal
 21 proceedings involve important state interests. See Kelly v. Robinson, 479 U.S. 36, 49
 22 (1986) (citing Younger, 401 U.S. at 44–45) (“This Court has recognized that the States’
 23 interest in administering their criminal justice systems free from federal interference is one
 24 of the most powerful of the considerations that should influence a court considering
 25 equitable types of relief.”) Third, Petitioner is not barred from litigating his federal
 26 constitutional issues in state court. Fourth, the present petition threatens to interfere with

1 the state criminal proceedings in a manner that Younger disapproves by inserting federal
2 court oversight into an ongoing state criminal proceeding.

3 Abstention is appropriate here because the present petition satisfies all four elements
4 of Younger abstention. Further, Petitioner has failed to show that exceptions or
5 extraordinary circumstances exist which would require interference.¹ Because this is a case
6 in which the Younger doctrine applies, the Court must dismiss the petition. See Juidice,
7 430 U.S. at 337; see e.g., Espinoza v. Montgomery, 107 F. Supp. 3d 1038, 1041 (N.D. Cal.
8 2015) (dismissing petition for writ of habeas corpus on the basis of Younger abstention
9 where the petitioner's direct appeal was pending in the state court). Accordingly, the Court
10 grants the motion to dismiss, and dismisses the Petitioner's § 2254 petition for habeas
11 corpus without prejudice pursuant to Younger abstention.²

12 **IT IS SO ORDERED.**

13 DATED: February 27, 2017


14 MARILYN L. HUFF, District Judge
15 UNITED STATES DISTRICT COURT

16
17 ¹ The standard for the bad faith exception to Younger abstention is that the prosecution was brought
18 without a reasonable expectation of obtaining a valid conviction. Baffert, 332 F.3d at 621. Petitioner cannot meet
19 that standard. Furthermore, the Court notes that a claimed constitutional violation "does not, by itself, constitute
an exception to the application of Younger abstention." Id.

20 ² Additionally, a federal court shall not grant an application for a writ of habeas corpus on behalf of a person
21 in custody pursuant to a state court judgment unless "the applicant has exhausted the remedies available in the
22 courts of the State." 28 U.S.C. § 2254(b)(1)(A). A petitioner may satisfy the exhaustion requirement in two ways:
23 (1) by providing the highest state court with an opportunity to rule on the merits of the claim, or (2) by showing that
24 at the time the petitioner files the habeas petition in federal court no state remedies are available to the petitioner.
Batchelor v. Cupp, 693 F.2d 859, 862 (9th Cir. 1982) (citations omitted). In habeas corpus cases, "federal courts
may consider *sua sponte* whether the defendant has exhausted state remedies." Stone v. City and County of San
Francisco, 968 F.2d 850, 856 (9th Cir. 1992) (citing Granberry v. Greer, 481 U.S. 129, 134 (1987)).

25 Petitioner has not exhausted the remedies available to him in the state courts. Petitioner's direct appeal is
26 currently pending in state court. Petitioner has not provided the highest state court with an opportunity to rule on
the merits of the claim nor has he shown that there are no state remedies available to him at this time. Accordingly,
the petition is also dismissed for failure to exhaust.

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APPENDIX A.4
MEMORANDUM POINTS
AND AUTHORITIES
IN SUPPORT OF DISMISSAL
PG 3 LINE 18
J

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PEDRO RODRIGUEZ,

Petitioner,

16cv02947 H (MDD)

MEMORANDUM OF POINTS AND AUTHORITIES

WILLIAM GORE, et al.,

Respondent.

Judge: The Honorable
Mitchell D. Dembin

STATEMENT OF THE CASE

22 On November 10, 2016, Rodriguez was convicted by a jury in San Diego
23 County Superior Court case number SCN333477 of sodomy of a person under the
24 age of eighteen, Cal. Penal Code § 286(b)(1); oral copulation of a person under the
25 age of eighteen, Cal. Penal Code § 288a(b)(1); burglary, Cal. Penal Code § 459;
26 unlawful sexual intercourse with a person under the age of eighteen, Cal. Penal
27 Code § 261.5(c); witness intimidation, Cal. Penal Code § 136.1(b)(1);
28 communication with a minor with the intent to commit a sexual offense,

1 Cal. Penal Code § 288.3(a); and meeting a minor with the intent to commit a sexual
2 offense, Cal. Penal Code § 288.4(b). (Doc. 1 at 1-2; Doc. 1-2 at 2-3.) The trial
3 court sentenced Rodriguez to thirteen years eight months in state prison.
4 (Doc. 1 at 1.)

5 On December 2, 2016, Rodriguez filed a notice of appeal in the Fourth District
6 California Court of Appeal, Division One in case number D071405. (Exh. A.) The
7 record on appeal was filed on January 26, 2017, and the case is awaiting briefing.
8 (Exh. A.)

9 ARGUMENT

10 THE COURT SHOULD ABSTAIN FROM INTERCEDING IN THE ONGOING 11 STATE CRIMINAL PROCEEDINGS

12 This Court should abstain from interceding in the ongoing state criminal
13 proceedings against Rodriguez. Under the abstention doctrine of *Younger v.*
14 *Harris*, a federal court is generally precluded from interceding in ongoing state
15 criminal proceedings. *Younger v. Harris*, 401 U.S. at 53-54. Indeed, the United
16 States Supreme Court “has long recognized that in some circumstances
17 considerations of comity and concerns for the orderly administration of criminal
18 justice require a federal court to forgo the exercise of its habeas corpus power.”
19 *Francis v. Henderson*, 425 U.S. 536, 539 (1976).

20 A. federal court

21 must abstain under *Younger* if four requirements are met:
22 (1) a state-initiated proceeding is ongoing; (2) the proceeding
23 implicates important state interests; (3) the federal plaintiff is
24 not barred from litigating federal constitutional issues in the
state proceeding; and (4) the federal court action would
enjoin the proceeding or have the practical effect of doing so,
i.e., would interfere with the state proceeding in a way that
25 *Younger* disapproves. [Citations.]

26 *San Jose Silicon Valley Chamber of Commerce Political Action Committee v. City*
27 *of San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008). As will be demonstrated, each of
28 the four requirements under *Younger* are met in this case.

1 First, state proceedings are ongoing. State proceedings are considered
2 ongoing for purposes of Younger if the defendant's appellate remedies have not
3 been exhausted. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 609 (1975). Rodriguez
4 has filed a notice of appeal and his case is awaiting briefing. (Exh. A.) However,
5 the California Court of Appeal has not issued its opinion in Rodriguez's case and
6 proceedings in that court are ongoing. (Exh. A.)

7 Second, the prosecution of criminal offenses free from federal interference is
8 an important state interest. *See Kelly v. Robinson*, 479 U.S. 36, 49 (1986) (citing
9 *Younger v. Harris*, 401 U.S. at 44-45) ("This Court has recognized that the States'
10 interest in administering their criminal justice systems free from federal
11 interference is one of the most powerful of the considerations that should influence
12 a court considering equitable types of relief."); *Rose v. Mitchell*, 443 U.S. 545, 585
13 (1979) (citing *Younger v. Harris*, 401 U.S. at 44) ("This Court repeatedly has
14 recognized that criminal law is primarily the business of the States, and that absent
15 the most extraordinary circumstances the federal courts should not interfere with
16 the States' administration of that law.").

17 Third, Rodriguez is not barred from raising his claims on appeal in the state
18 courts. The fact that he has previously raised his claims in petitions for writ of
19 habeas corpus in no way precludes him from raising the claims on direct appeal.

20 Finally, considering Rodriguez's federal constitutional claims would interfere
21 with the state court proceedings in a fundamental way by substituting the judgment
22 of the federal court for that of the trial judge on a pretrial motion during the
23 pendency of trial. This is the sort of interference expressly disapproved of by the
24 United States Supreme Court in *Younger*. *See Younger v. Harris*, 401 U.S. at 46
25 ("'No citizen or member of the community is immune from prosecution, in good
26 faith, for his alleged criminal acts. The imminence of such a prosecution even
27 though alleged to be unauthorized and hence unlawful is not alone ground for relief
28

1 in equity which exerts its extraordinary powers only to prevent irreparable injury to
2 the plaintiff who seeks its aid.’ [Citation.]”).

3 **CONCLUSION**

4 For the foregoing reasons, the Petition for Writ of Habeas Corpus should be
5 dismissed without prejudice, all relief, including an evidentiary hearing, should be
6 denied, and any request for a certificate of appealability should be rejected.

7 Dated: February 8, 2017

Respectfully submitted,

8 XAVIER BECERRA
9 Attorney General of California
10 JENNIFER JADOVITZ
11 Deputy Attorney General

12 *s/ Daniel Rogers*
13 DANIEL ROGERS
14 Acting Supervising
15 Deputy Attorney General
16 *Attorneys for Respondent*

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