

(11 ATTACHMENT (0311))
UNITED STATES COURT OF APPEALS

FILED

NOV 5 2018

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

ZANE HUBBARD,

Petitioner-Appellant,

v.

EDMUND G. BROWN, Jr. and THE
STATE JUSTICE INSTITUTE ACT OF
1984,

Respondents-Appellees.

No. 18-15620

D.C. No. 1:18-cv-00181-LJO-SKO
Eastern District of California,
Fresno

ORDER

Before: Trott and Wardlaw, Circuit Judges.

The request for a certificate of appealability 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.

(11) ATTACHMENT(S) (E) 11)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

11 ZANE HUBBARD,

No. 1:18-cv-00181-LJO-SKO HC

12 Petitioner.

V.

14 EDMUND G. BROWN, JR. & THE
15 STATE JUSTICE INSTITUTE ACT OF
1984,

Respondents.

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION THAT THE COURT
DENY THE PETITION FOR WRIT OF
HABEAS CORPUS**

(Doc. 5)

18 Petitioner Zane Hubbard is a state prisoner proceeding *pro se* with a petition for writ of
19 habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred the matter to the Magistrate
20 Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

21 On February 20, 2018, the Magistrate Judge filed Findings and Recommendations in
22 which she recommended that the Court dismiss the petition and deny a certificate of appealability.
23 The Findings and Recommendations, which was served on Petitioner on the same date, provided
24 that objections could be served within thirty days. Petitioner filed objections on March 12, 2018.

25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), having carefully reviewed
26 the entire file *de novo*, the Court finds that the findings and recommendations are supported by
27 the record and proper analysis. The Court declines to modify the findings and recommendations

(*"ATTACHMENTS (E/S)"*)

1 based on any points raised in the objections.

2 Accordingly, the Court hereby ORDERS that the findings and recommendations filed
3 February 20, 2018, be adopted in full and the petition be DISMISSED. The Court DECLINES to
4 issue a certificate of appealability.

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6 IT IS SO ORDERED.
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8 Dated: March 29, 2018

/s/ Lawrence J. O'Neill
9 UNITED STATES CHIEF DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

Petitioner,

v.

EDMUND G. BROWN, Jr., and
THE STATE JUSTICE INSTITUTE
ACT OF 1984

Respondents.

No. 1:18-cv-00181-SKO HC

**FINDINGS AND RECOMMENDATIONS
FOR DISMISSAL OF PETITIONER AS
SECOND OR SUCCESSIVE**

**COURT CLERK TO ASSIGN DISTRICT
JUDGE**

(Doc. 1)

Screening Order

Petitioner, Zane Hubbard, is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition alleges two claims: (1) “treason and levy by Govern[o]r Edmund G. Brown, Junior;” and (2) “Governor Jerry Brown has subjected Mexican American Indian(s) to low intensity warfare under the “State Justice Institute Act of 1984.” Because Petitioner has filed two previous habeas petitions concerning the same conviction, the Court will recommend dismissing the petition as second or successive.

I. Procedural and Factual Background

A jury convicted Petitioner of kidnapping to commit robbery, carjacking for the purpose of kidnapping, assault with a semiautomatic firearm, criminal threats, active participation in a criminal street gang, and being a felon in possession of a firearm. *People v. Ramirez*, F062512,

1 2013 WL 943873 (Cal. Ct. App. March 12, 2013). The Kern County Superior Court sentenced
2 Petitioner to an indeterminate term of 15 years to life in prison and a determinate term of 24 years
3 4 months. *Id.* Following a direct appeal, Petitioner unsuccessfully sought habeas relief in
4 California state courts.

5 On October 23, 2013, Petitioner filed a petition for federal habeas relief pursuant to 28
6 U.S.C. §2254. *Hubbard v. Seng*, No. CV 13-2099-RJT, 2014 WL 1761013 (E.D. Cal. April 30,
7 2014). The Court dismissed the petition because Petitioner's claims were barred by judicial
8 immunity. Petitioner filed a second § 2254 petition on the same day. *Hubbard v. Gipson*, No.
9 1:13-cv-01758-LJO-JLT, 2016 WL 5341283 (E.D. Cal. Sept. 22, 2016). The Court denied all of
10 Petitioner's claims. Petitioner filed the above-captioned petition on February 5, 2018.

11 **II. Preliminary Screening**

12 Rule 4 of the Rules Governing § 2254 cases requires the Court to conduct a preliminary
13 review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it
14 plainly appears from the petition . . . that the petitioner is not entitled to relief." Rule 4 of the
15 Rules Governing 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).
16 A petition for habeas corpus should not be dismissed without leave to amend unless it appears
17 that no tenable claim for relief can be pleaded were such leave to be granted. *Jarvis v. Nelson*,
18 440 F.2d 13, 14 (9th Cir. 1971).

19 **III. No District Court Jurisdiction Over a Second or Successive Petition**

20 The circuit court of appeals, not the district court, must decide whether a second or
21 successive petition satisfies the statutory requirements to proceed. 28 U.S.C. § 2244(b)(3)(A)
22 ("Before a second or successive petition permitted by this section is filed in the district court, the
23 applicant shall move in the appropriate court of appeals for an order authorizing the district court
24 to consider the application"). This means that a petitioner may not file a second or successive
25 petition in district court until the petitioner has obtained leave from the court of appeals. *Felker v.*
26 *Turpin*, 518 U.S. 651, 656-57 (1996). In the absence of an order from the appropriate circuit
27 court, a district court lacks jurisdiction over a petition and must dismiss the second or successive
28

1 petition. *Greenawalt v. Stewart*, 105 F.3d 1268, 1277 (9th Cir. 1997).

2 Petitioner has not secured leave from the Ninth Circuit Court of Appeals to file the above-
3 captioned petition. Accordingly, the Court must dismiss the petition for lack of jurisdiction.

4 **III. Certificate of Appealability**

5 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
6 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*
7 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
8 certificate of appealability is 28 U.S.C. § 2253, which provides:

9 (a) In a habeas corpus proceeding or a proceeding under section 2255
10 before a district judge, the final order shall be subject to review, on appeal, by
11 the court of appeals for the circuit in which the proceeding is held.

12 (b) There shall be no right of appeal from a final order in a proceeding
13 to test the validity of a warrant to remove to another district or place for
14 commitment or trial a person charged with a criminal offense against the
United States, or to test the validity of such person's detention pending
removal proceedings.

15 (c) (1) Unless a circuit justice or judge issues a certificate of
16 appealability, an appeal may not be taken to the court of appeals from—

17 (A) the final order in a habeas corpus proceeding in which the
18 detention complained of arises out of process issued by a State court; or

19 (B) the final order in a proceeding under section 2255.

20 (2) A certificate of appealability may issue under paragraph (1)
21 only if the applicant has made a substantial showing of the denial of a
constitutional right.

22 (3) The certificate of appealability under paragraph (1) shall
23 indicate which specific issues or issues satisfy the showing required by
paragraph (2).

24 If a court denies a habeas petition, the court may only issue a certificate of appealability
25 "if jurists of reason could disagree with the district court's resolution of his constitutional claims
26 or that jurists could conclude the issues presented are adequate to deserve encouragement to
27 proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

1 Although the petitioner is not required to prove the merits of his case, he must demonstrate
2 "something more than the absence of frivolity or the existence of mere good faith on his . . .
3 part." *Miller-El*, 537 U.S. at 338.

4 Reasonable jurists would not find the Court's determination that the petition is a second or
5 successive petition to be debatable or wrong, or conclude that the issues presented required
6 further adjudication. Accordingly, the Court recommends declining to issue a certificate of
7 appealability.

9 **IV. Recommendation and Order**

10 Based on the foregoing, the undersigned hereby recommends that the Court dismiss the
11 petition in this action as second or successive and decline to issue a certificate of appealability.

12 These Findings and Recommendations will be submitted to the United States District
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty**
14 (**30**) **days** after being served with these Findings and Recommendations, either party may file
15 written objections with the Court. The document should be captioned "Objections to Magistrate
16 Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and
17 filed within **fourteen (14) days** after service of the objections. The parties are advised that failure
18 to file objections within the specified time may constitute waiver of the right to appeal the District
19 Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v.*
20 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 The Court Clerk is hereby directed to assign a district judge to this action.

25 IT IS SO ORDERED.

27 Dated: February 16, 2018

28 /s/ Sheila K. Oberlo
 UNITED STATES MAGISTRATE JUDGE

(II ATTACHMENTS (F) II)

FILED

SEP 28 2018

JUDICIAL COUNCIL

OF THE NINTH CIRCUIT

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

IN RE COMPLAINT OF

JUDICIAL MISCONDUCT

Nos. 18-90055 and 18-90056

ORDER

Before: **CANBY, BYBEE, M. SMITH, CHRISTEN and MURGUIA,**
Circuit Judges, **MOSKOWITZ, PHILLIPS and SEABRIGHT,**
Chief District Judges, and **AIKEN and MOLLWAY**, District Judges

On July 20, 2018, complainant was ordered to show cause why he should not be sanctioned for his abuse of the misconduct complaint procedure.

Complainant's response to the Order to Show Cause was inadequate.

Pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, we conclude that complainant's right to file further misconduct complaints should be restricted. We direct the Clerk to enter the following pre-filing review order:

Pre-Filing Review Order

(1) This pre-filing review order shall apply to all misconduct complaints or petitions for review filed by complainant.

(2) Any future misconduct complaint or petition for review filed by complainant shall comply with the requirements of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and shall contain the sentence "THIS

COMPLAINT/PETITION IS FILED SUBJECT TO PRE-FILING REVIEW

ORDER No. 18-90055" in capital letters in the caption of the complaint or petition.

(3) If complainant submits a misconduct complaint or petition for review in compliance with this order, the Clerk shall lodge the complaint or petition and accompanying documents. The Clerk shall not file the complaint or petition until complainant's submission is reviewed and a determination is made as to whether it merits further review and should be filed.

(4) This pre-filing review order shall remain in effect until further order of the Judicial Council.

Complainant's failure to comply with this order shall result in any new misconduct complaints or petitions for review being dismissed or not being filed and other sanctions being levied as the Judicial Council may deem appropriate.