

**FILED**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAY 7 2018

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

ANTOINE DESHAWN BARNES,

Petitioner-Appellant,

v.

NEW FOLSOM STATE PRISON  
WARDEN,

Respondent-Appellee.

No. 17-56521

D.C. No. 2:17-cv-03670-PA-AJW  
Central District of California,  
Los Angeles

ORDER

Before: BYBEE and BEA, 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); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

**DENIED.**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ANTOINE DESHAWN BARNES, ) Case No. CV 17-3670-PA (AJW)  
Petitioner, )  
v. ) MEMORANDUM AND ORDER  
NEW FOLSOM STATE PRISON ) DISMISSING PETITION  
WARDEN, )  
Respondent. )

Petitioner was convicted of indecent exposure. On February 24, 2017, he was sentenced to state prison for a term of 32 months. [Petition at 2].

On May 1, 2017, petitioner filed a petition for a writ of habeas corpus in this Court. The petition does not challenge petitioner's conviction. Instead, it challenges the state court's denial of his request for relief under Proposition 57.<sup>1</sup> For the following reasons,

---

<sup>1</sup> Proposition 57 ("The Public Safety and Rehabilitation Act of 2016") was approved by California voters at the November 8, 2016 general election and took effect the next day. See People v. Mendoza, 10 Cal. App. 5th 327, 343 (2017), petition for review filed, May 8, 2017. Among other things, Proposition 57 changed parole eligibility for adults and juveniles tried in adult court. Mendoza, 10 Cal. App. 5th at 343-344.

1 the petition is subject to summary dismissal.<sup>2</sup>

2 Federal habeas relief is available only when a petitioner has  
3 been convicted or sentenced in violation of the Constitution, laws or  
4 treaties of the United States; it is not available for errors in the  
5 interpretation or application of state law. Swarthout v. Cooke, 562  
6 U.S. 216, 219 (2011); Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).  
7 Petitioner does not allege that he has been deprived of any federally  
8 protected right. Instead, his claims are based solely upon alleged  
9 errors of state law. As a result, the petition fails to state a  
10 cognizable federal claim for relief. See, e.g., Myles v. Rackley, 2016  
11 WL 6298408, at \*2 (E.D. Cal. Oct. 27, 2016) (dismissing a challenge to  
12 the state court's failure to resentence the petitioner under  
13 Proposition 47 - which permits resentencing of prisoners who are  
14 serving a sentence for a conviction of a felony that would have been  
15 a misdemeanor if Proposition 47 had been in effect at the time of the  
16 offense - on ground that "[f]ederal habeas corpus relief is  
17 unavailable for alleged errors in the interpretation or application of  
18 state sentencing laws by a state court"), report and recommendation  
19 adopted, 2016 WL 7212801 (E.D. Cal. Dec. 12, 2016) ; Adams v. Borders,  
20 2016 WL 4523163, at \*3, 2016 (C.D. Cal. July 29, 2016) ("The fact that  
21 Petitioner may be attempting to characterize his claim concerning  
22 resentencing under Proposition 47 as a federal constitutional claim  
23 ... is not sufficient to render it cognizable."), report and  
24 recommendation adopted, 2016 WL 4520906 (C.D. Cal. Aug. 29, 2016).

25 Even if petitioner's allegations were construed as raising a

---

26 <sup>2</sup> Rule 4 of the Rules Governing Section 2254 Cases provides that "[i]f it  
27 plainly appears from the petition and any attached exhibits that the  
28 petitioner is not entitled to relief in the district court, the judge  
must dismiss the petition ...."

1 cognizable federal claim, no such claim has been exhausted. A state  
2 prisoner is required to exhaust all available state court remedies  
3 before a federal court may grant habeas relief. See 28 U.S.C. §  
4 2254(b); O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999). Exhaustion  
5 requires that a petitioner "fairly present" his federal claims to the  
6 highest available state court. Davis v. Silva, 511 F.3d 1005, 1008  
7 (9th Cir. 2008). Petitioner filed a petition in the California Supreme  
8 Court on April 19, 2017, but that petition remains pending. See  
9 <http://appellatecases.courtinfo.ca.gov>. (California Supreme Court Case  
10 No. S241374).

11 For the foregoing reasons, the petition for a writ of habeas  
12 corpus is dismissed without prejudice.

13 **It is so ordered.**

14

15 Dated: June 17, 2017



16  
17 \_\_\_\_\_  
18 Percy Anderson  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Additional material  
from this filing is  
available in the  
Clerk's Office.**