

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

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.

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
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12 ANTOINE DESHAWN BARNES,) Case No. CV 17-3670-PA (AJW)
13)
14 Petitioner,)
15)
16 v.) MEMORANDUM AND ORDER
17) DISMISSING PETITION
18)
19 NEW FOLSOM STATE PRISON)
20 WARDEN,)
21)
22 Respondent.)
23)
24)
25)
26)

18 Petitioner was convicted of indecent exposure. On February 24,
19 2017, he was sentenced to state prison for a term of 32 months.
20 [Petition at 2].

21 On May 1, 2017, petitioner filed a petition for a writ of habeas
22 corpus in this Court. The petition does not challenge petitioner's
23 conviction. Instead, it challenges the state court's denial of his
24 request for relief under Proposition 57.¹ For the following reasons,
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27 ¹ Proposition 57 ("The Public Safety and Rehabilitation Act of 2016") was
28 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.²

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

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27 ² Rule 4 of the Rules Governing Section 2254 Cases provides that "[i]f it
28 plainly appears from the petition and any attached exhibits that the
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.**

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15 Dated: June 17, 2017



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18 Percy Anderson
United States District Judge
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**Additional material
from this filing is
available in the
Clerk's Office.**