UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 7 2020

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

MICHAEL R. SPENGLER, Petitioner-Appellant, v. LOS ANGELES COUNTY DISTRICT ATTORNEY, Respondent-Appellee.	No. 20-55242 D.C. No. 2:20-cv-00356-DOC-SP Central District of California, Los Angeles ORDER

2:20-55080
2:19 cv 08259 DOE SP
V. Alex Villanueva

Before: M. SMITH and LEE, 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); *Wilson v. Belleque*, 554 F.3d 816, 825-26 (9th Cir. 2009).

Any pending motions are denied as moot.

DENIED.

Clerk vs Court of Appeals 9th cir.

po box 193939
SF CA 94119-3939

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL R. SPENGLER, Petitioner, v. LOS ANGELES COUNTY DISTRICT ATTORNEY, Respondent.	Case No. CV 20-356-DOC (SP) MEMORANDUM AND ORDER DENYING MOTION TO STAY STATE PROCEEDINGS AND SUMMARILY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

I.

INTRODUCTION

On January 13, 2020, petitioner Michael R. Spengler, an inmate at the Twin Towers Correctional Facility ("TTCF"), filed a "Pre-Trial" Petition for Writ of Habeas Corpus ("Petition"). Petitioner is a pretrial detainee, and claims he faces irreparable injury because he is being retried in violation of the Double Jeopardy Clause. On the same day, petitioner also filed a Motion to Stay State Proceedings ("Motion"). In the Motion, petitioner seeks a stay of his state criminal case to allow this Court time to intervene in the state criminal case.

For the reasons that follow, the Petition will be summarily denied.

Petitioner cannot show that he is being retried in violation of the Double Jeopardy Clause. Moreover, under the *Younger* Abstention Doctrine, this Court may not intervene in petitioner's pending state criminal case, as petitioner asks the Court to do. *See Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971). Consequently, petitioner's Motion to stay his state proceedings will also be denied.

II.

BACKGROUND

This is not petitioner's first attempt to convince this Court to intervene in his state criminal proceedings. He has done so in numerous other cases, including by way of civil rights complaints (case numbers CV 17-450-DOC (SP), CV 17-3078-DOC (SP), CV 17-4100-DOC (SP), CV 17-6552-DOC (SP), CV 18-97-RGK (JPR), CV 17-2078-DOC (SP), CV 17-8665-DOC (SP), CV 17-7510-DOC(SP), CV 18-91-DOC (SP)), and in two other habeas petitions (case numbers CV 19-8259-DOC (SP) and CV 17-884-DOC (SP)). The Court has denied all such efforts, repeatedly finding and advising petitioner that, inter alia, the Court must abstain from interfering with the state criminal case under the *Younger* Abstention Doctrine.

In the instant Petition and Motion, petitioner again seeks this Court's assistance with his pending state criminal case. He alleges the prosecution's re-use of evidence that was used against petitioner's co-defendant in a previous trial, in which the co-defendant was acquitted, violates his right against double jeopardy since petitioner is being retried as an aider and abettor to the acquitted principal. Petitioner argues he faces irreparable injury because he is being retried in violation of the Double Jeopardy Clause, and as such the *Younger* Abstention Doctrine is inapplicable. He asks this Court to stay his state criminal case and intervene to protect his federal rights.

III.

FACTS OF WHICH THE COURT TAKES JUDICIAL NOTICE

A fact subject to judicial notice is one that is "not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A court "may take judicial notice on its own; or must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c). Courts "'may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.'" *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citation omitted); *see Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 n.3 (9th Cir. 2005) (taking judicial notice of the docket in a related case; "'[m]aterials from a proceeding in another tribunal are appropriate for judicial notice'") (citation omitted); *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002) (taking judicial notice of opinion and briefs filed in another proceeding).

The Court here takes judicial notice of the records from the state criminal proceedings that the respondent submitted in case number CV 19-8259-DOC (SP), consisting of Los Angeles County Superior Court records, specifically, docket records, minute orders, complaint, information, and trial transcript from case numbers KA105957 and BA451330. *See* case no. CV 19-8259, docket no. 12 ("Response"), Exs. 1-6. These records reflect the following facts, of which the Court also and specifically takes judicial notice.

Petitioner was charged in an information filed on December 17, 2014 in the Los Angeles County Superior Court in case number KA105957 with murder in violation of California Penal Code § 187(a). Response, Ex. 1 at 10. At a

preliminary hearing held two weeks prior to the information's filing, petitioner was held to answer in that case for the murder of Michael Meza. *Id.* at 7-8. On October 31, 2016, a jury found petitioner not guilty of the crime of first degree murder of Michael Meza, but the jury was unable to reach a verdict on the lesser included offense of second degree murder. *Id.*, Ex. 1 at 41; Ex. 3 at 98-101. The court declared a mistrial on the second degree murder charge against petitioner. *Id.*, Ex. 1 at 41; Ex. 3 at 101. The jury acquitted petitioner's co-defendant, Fernando Gonzalez, in the same case of both first and second degree murder. *Id.*, Ex. 2 at 91; Ex. 3 at 95. On December 2, 2016, the prosecution dismissed case number KA105957 without prejudice over petitioner's objection. *Id.*, Ex. 1 at 43.

Meanwhile, petitioner had been charged in case number BA451330 in the Los Angeles County Superior Court with the murder of Marcus Nieto in violation of California Penal Code § 187(a). *See id.*, Ex. 5 at 113; *see also id.*, Ex. 4 at 108. That complaint was amended on November 18, 2016 to also charge petitioner with Meza's murder. *Id.*, Ex. 4 at 108; Ex. 5 at 114. Petitioner was held to answer on both charges at a preliminary hearing held on December 20, 2017. *Id.*, Ex. 5 at 129-30. In the two-count information ultimately filed on January 3, 2018 in case number BA451330, petitioner was charged in count one with the February 16, 2013 murder of Marcus Nieto, and in count two with the January 9, 2013 murder of Michael Meza. *Id.*, Ex. 5 at 132; Ex. 6 at 158-60. That case remains pending and was set for jury trial on January 13, 2020. *Id.*, Ex. 5 at 156.

According to the Los Angeles County Superior Court's online criminal case records of which this Court also takes judicial notice, petitioner's trial in case number BA451330 is now set for March 23, 2020. *See* www.lacourt.org/criminalcasesummary.

//

//

IV.

DISCUSSION

Rule 4 of the Rules Governing Section 2254 Cases authorizes the Court to summarily dismiss a habeas petition "[i]f it plainly appears from the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court." Rule 4 also authorizes dismissals on procedural grounds. *See* 28 U.S.C. foll. § 2254, Rule 4 Advisory Committee Note (1976); *White v. Lewis*, 874 F.2d 599, 602 (9th Cir. 1989). Here, the Petition must be dismissed because, as discussed below, it does not raise a colorable claim for habeas relief, and because it asks this Court to intervene in a pending state criminal case in contravention of the *Younger* Abstention Doctrine. For the same reasons, the Motion to stay the state proceedings will also be denied.

The *Younger* Abstention Doctrine prohibits federal courts from staying or enjoining pending state criminal court proceedings or "considering a pre-conviction habeas petition that seeks preemptively to litigate an affirmative constitutional defense unless the petitioner can demonstrate that extraordinary circumstances warrant federal intervention." *Brown v. Ahern*, 676 F.3d 899, 901 (9th Cir. 2012) (internal quotation marks omitted); *see Younger*, 401 U.S. 37. *Younger* abstention is appropriate when: (1) the state court proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise the constitutional claims. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982); *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 617 (9th Cir. 2003).

The first two *Middlesex* elements for the *Younger* Abstention Doctrine to be invoked are plainly present here. There is an ongoing state proceeding, i.e., the criminal case against petitioner. And the criminal proceeding implicates important

state interests because it involves an alleged violation of state criminal law that is being adjudicated in state court. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13, 107 S. Ct. 1519, 95 L. Ed. 2d 1 (1987) (enforcement of state court judgments and orders implicates important state interests); *see also People of State of Cal. v. Mesa*, 813 F.2d 960, 966 (9th Cir. 1987) ("A [state's] ability to protect its citizens from violence and other breaches of the peace through enforcement of criminal laws is the centermost pillar of sovereignty.").

Petitioner's arguments and assertions in the Petition implicitly challenge the third *Middlesex* element, in that he maintains he faces irreparable injury because his federal civil rights are being violated in the prosecution of him. Petitioner claims he has no forum to present his claims, but that plainly is not the case. For example, the double jeopardy violation he alleges may be challenged before and during the state criminal trial, and in any appeal he might bring if he is convicted. It is thus apparent that, contrary to petitioner's argument, the state court criminal proceedings have provided and will provide an adequate opportunity for petitioner to litigate his constitutional claim. And if petitioner is convicted, he may raise the claim on appeal. "The 'adequate opportunity' prong of *Younger* . . . requires only the absence of 'procedural bars' to raising a federal claim in the state proceedings." *Commc'ns Telesystems Int'l v. Cal. Pub. Util. Comm'n*, 196 F.3d 1011, 1020 (9th Cir. 1999). Petitioner here faces no such procedural bars.

Petitioner argues, however, that he faces irreparable injury due to being retried in violation of the Double Jeopardy Clause, and as such the *Younger* Abstention Doctrine is inapplicable. *See Mannes v. Gillespie*, 967 F.2d 1310, 1312 (9th Cir. 1992) ("A claim that a state prosecution will violate the Double Jeopardy Clause presents an exception to the general rule of *Younger* . . . ."); *Auvaa v. City of Taylorsville*, 506 F. Supp. 2d 903, 915 (D. Utah 2007) ("'*Younger* abstention is unwarranted where a criminal accused presents a colorable claim that a

forthcoming second state trial will constitute a violation of her double jeopardy rights'") (quoting *Walck v. Edmondson*, 472 F.3d 1227, 1234 (10th Cir. 2007)). "Because full vindication of the right [against double jeopardy] necessarily requires intervention before trial, federal courts will entertain pretrial habeas petitions that raise a colorable claim of double jeopardy." *Mannes*, 967 F.2d at 1312 (citations omitted).

But petitioner here does not raise a colorable claim of double jeopardy. Petitioner does not appear to be claiming that he is being retried on a claim for which he was acquitted, and as set forth above, he is not. Instead, he is arguing that he cannot be tried under an aiding and abetting theory where the principal he is alleged to have aided has been acquitted. However, "[n]othing in the Double Jeopardy Clause or the Due Process Clause forecloses putting petitioner on trial as an aider and abettor simply because another jury has determined that his principal was not guilty of the offenses charged." *Standefer v. U.S.*, 447 U.S. 10, 22 n.16, 100 S. Ct. 1999, 64 L. Ed. 2d 689 (1980). Thus, petitioner fails to raise a colorable claim of double jeopardy since he may be tried as an aider and abettor even though the named principal he was alleged to have aided was acquitted of the charged offense.

Moreover, the state court records plainly reflect that the jury in petitioner's first trial was unable to reach a verdict on the lesser included offense of second degree murder, and a mistrial on that charge was declared. "It is well settled that retrial of an accused after a mistrial because the jury is unable to agree is not a denial of the constitutional right against double jeopardy." *Forsberg v. U.S.*, 351 F.2d 242, 244 (9th Cir. 1965) (citing *Downum v. U.S.*, 372 U.S. 734, 735, 83 S. Ct. 1033, 10 L. Ed. 2d 100 (1963)). In *Forsberg*, as here, the jury deadlocked on the lesser offense and acquitted on the greater offense, and the court found double jeopardy was not implicated by retrial on the lesser offense. *Id.* at 248; *accord*

U.S. v. Jose, 425 F.3d 1237, 1243 (9th Cir. 2005) (retrial on one offense following acquittal on related offense "does not violate the Double Jeopardy Clause notwithstanding that jeopardy has terminated on, what is for double jeopardy purposes, the 'same' offense – its greater or lesser included concomitant").

For this Court to stay the pending state criminal case, or even to allow this case to proceed, would amount to interfering with the investigation and trial of petitioner's state criminal case. There are no "extraordinary circumstances" present here that would warrant federal intervention. The Ninth Circuit found under *Perez v. Ledesma*, 401 U.S. 82, 91 S. Ct. 674, 27 L. Ed. 2d 701 (1971), the Supreme Court has "limited the category of 'extraordinary circumstances' to encompass only 'cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction,' or where 'irreparable injury can be shown.'" *Brown*, 676 F.3d at 901 (citing *Carden v. State of Montana*, 626 F.2d 82, 84 (9th Cir. 1980)); *see Juidice v. Vail*, 430 U.S. 327, 338, 97 S. Ct. 1211, 51 L. Ed. 2d 376 (1977). Petitioner's allegations do not indicate he is being prosecuted without reasonable hope of conviction. Indeed, a jury hung on a charge against him, and he will be retried on that and another charge. Nor, as discussed above, does petitioner allege he faces irreparable injury "other than that incidental to every criminal proceeding brought lawfully and in good faith." *Younger*, 401 U.S. 47 (internal quotation marks omitted) (quoting *Douglas v. City of Jeannette*, 319 U.S. 157, 164, 63 S. Ct. 877, 87 L. Ed. 1324 (1943)). Petitioner's arguments do not demonstrate extraordinary circumstances that warrant this Court's intervention in the state court proceedings.

In sum, petitioner cannot show that he is being retried in violation of the Double Jeopardy Clause, which is the sole claim raised in the Petition. Petitioner also has not shown that extraordinary circumstances warrant the Court's intervention in his pending state criminal case.

V.

CONCLUSION

IT IS THEREFORE ORDERED that: (1) petitioner's Motion to Stay State Proceedings (docket no. 2) is DENIED; and (2) Judgment be entered summarily denying the Petition and this action with prejudice.

DATED: February 4, 2020

David O. Carter

HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

Presented by:

SHERI PYM
UNITED STATES MAGISTRATE JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 11 2020

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

MICHAEL R. SPENGLER,

Petitioner-Appellant,

v.

LOS ANGELES COUNTY DISTRICT ATTORNEY,

Respondent-Appellee.

No. 20-55242

D.C. No. 2:20-cv-00356-DOC-SP
Central District of California,
Los Angeles

ORDER

Before: TROTT and N.R. SMITH, Circuit Judges.

Appellant's motion for reconsideration en banc (Docket Entry No. 11) 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.

C15