

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**FILED**

JAN 14 2021

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

ANDREW GUY MORET,

No. 20-35989

Petitioner-Appellant,

D.C. No. 6:20-cv-00871-MK
District of Oregon,
Eugene

v.

PATRICK GARRETT; et al.,

ORDER

Respondents-Appellees.

Before: THOMAS, Chief Judge, and BRESS, Circuit Judge.

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.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ANDREW GUY MORET,

Case No. 6:20-cv-00871-MK

Petitioner,

ORDER OF DISMISSAL

v.

PATRICK GARRETT; STATE
OF OREGON; ERWIN; GARCIA;
LINDSEY; MCKEY; BAILEY;
GUTBEZAH; ELISON; OPDS;
WCJ; OSH,

Respondents.

MCSHANE, District Judge:

Petitioner, an inmate at Oregon State Penitentiary, brings this habeas corpus action pursuant to 28 U.S.C. § 2254 and challenges his state court convictions on grounds that his constitutional rights were violated during several pretrial proceedings.

Petitioner is currently appealing his convictions, and he was ordered to show cause why his Petition should not be dismissed without prejudice for failure to exhaust his state court remedies. Pet. at 7-8 (ECF No. 1); *see* 28 U.S.C. § 2254(b)(1)(A) (requiring state prisoners to

1 - ORDER OF DISMISSAL

exhaust available state remedies). In response, petitioner argues that he exhausted his remedies through petitions for habeas corpus relief that he filed in state court prior to his trial.

In order to exhaust state court remedies, a petitioner must fairly present his federal constitutional claims to the State's highest court before seeking federal habeas relief. *Baldwin v. Reese*, 541 U.S. 27, 29 (2004); *Cooper v. Neven*, 641 F.3d 322, 326 (9th Cir. 2011). "A petitioner fully and fairly presents a claim to the state courts if he presents the claim (1) to the correct forum; (2) through the proper vehicle; and (3) by providing the factual and legal basis for the claim." *Scott v. Schriro*, 567 F.3d 573, 582 (9th Cir. 2009) (per curiam) (internal citations omitted).

Petitioner's response fails to demonstrate that his pretrial habeas petitions were the proper vehicles in which to raise his federal constitutional claims and that he fairly presented the factual and legal bases supporting those claims to the Oregon Supreme Court. Given that petitioner may raise his federal claims on direct appeal, petitioner has not exhausted his state court remedies and he cannot seek federal habeas relief.

Petitioner also purports to bring claims that challenge the conditions of his confinement, rather than the validity of his confinement, and these claims are not properly raised in a habeas action. See *Preiser v. Rodriguez*, 411 U.S. 475 (1973). Moreover, petitioner's non-habeas claims are not cognizable under 42 U.S.C. § 1983, because they are time-barred or brought against defendants who are not subject to suit. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65-66 (1989) (states cannot be sued under § 1983); *Van de Kamp v. Goldstein*, 555 U.S. 335, 343 (2009) (prosecutors are entitled to absolute immunity for decisions closely "associated with the judicial phase of the criminal process"); *Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981) (defense attorneys are not subject to suit under § 1983); *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967)

(judges are immune from suit for actions taken in their judicial capacity); *Sain v. City of Bend*, 309 F.3d 1134, 1139 (9th Cir. 2002) (a two-year statute of limitations applies to § 1983 claims). Accordingly, I decline to convert the Petition to a civil rights action under § 1983. *See Nettles v. Grounds*, 830 F.3d 922, 936 (9th Cir. 2016).

CONCLUSION

Petitioner fails to show that he has exhausted his state court remedies. Accordingly, the habeas claims raised in the Petition are DENIED without prejudice, and this action is DISMISSED. A Certificate of Appealability is DENIED on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 26th of October, 2020.

s/ Michael J. McShane
Michael J. McShane
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ANDREW GUY MORET,

Case No. 6:20-cv-00871-MK

Petitioner,

v.

PATRICK GARRETT; STATE
OF OREGON; ERWIN; GARCIA;
LINDSEY; MCKEY; BAILEY;
GUTBEZAH; ELISON; OPDS;
WCJ; OSH,

Respondents.

JUDGMENT

This action is dismissed.

DATED this 26th day of October, 2020.

s/ Michael J. McShane

Michael J. McShane
United States District Judge

SWORN AFFIDAVIT
OF
ANDREW GUY MORET
IN SUPPORT OF
GRANTING
THIS
UNITED STATES SUPREME COURT
PETITION FOR
CERTIORARI

I, Andrew Guy, from the family of Moret, do solemnly swear that the accompanying Petition for Certiorari and its appendices are true and correct according to the best of my knowledge and ability. And, I solemnly swear that on or about February 25th, 2021 I did receive a sealed correspondance from the U.S. Court of Appeals 9th Circuit while I was housed in solitary confinement at: Snake River Corr. Inst. DSU-A B SIDE, Cell # DSA46, 777 Stanton Blvd Ontario, OR 97914. Proof is attached as Appendix (B) (the denial of my petition/motion for rehearing/reconsideration), to this Petition for Certiorari. Appendix (B) was sealed in plastic on or about February 25th, 2021 and is submitted to the U.S. Supreme Court alone.

Notary refused by SREI
Staff on 3/22/21
AGM/CGM

So sworn on March 22nd, 2021 by
X CGM
13.

Andrew G. Moret

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR
WASHINGTON COUNTY

ANDREW GUY MORET,

Plaintiff,

v.

Case No. 18CV52383

PAT GARRETT,

Defendant.

**JUDGMENT DISMISSING
HABEAS CORPUS
PETITION**

A person may not prosecute a Writ of Habeas Corpus to challenge his imprisonment or restraint if that imprisonment or restraint is pursuant to a process issued by a court or judge.¹ If a person is imprisoned or restrained and challenges the conditions of confinement or complains of a deprivation of rights, the petition shall state facts supporting the claim of a deprivation of constitutional rights for which no other remedy is practicably available.²

Petitioner initially claims he is unlawfully imprisoned and restrained. Petitioner's claim is Moot. Petitioner is imprisoned and restrained in Washington County Circuit Court case C152261CR, on charges of murder. On November 28, 2018, Petitioner appeared for a release hearing where the court found that the defendant should be held without pretrial release.

Petitioner then claims a myriad of conditions that "abridges, impairs, impedes and hinders" his access to courts and impairs his defense. Petitioner's claims fail to raise a legitimate deprivation of constitutional right, as such they are hereby denied pursuant to ORS 34.370(6).

Petitioner's speedy trial right claim is denied as Mr. Moret trial in C152261CR was repeatedly delayed when issues regarding Mr. Moret's fitness to proceed due to mental

¹ ORS 34.330.

² ORS 34.362.

Jury Instructions ?

Page | 1

1 health arose and he was repeatedly committed to the Oregon State Hospital to be treated
2 until fit to stand trial. All such trial delays have resulted in the proper application of ORS
3 135.748 time exclusions.

4 For the reasons already stated, Petitioner's due process claim is also Moot.

5 **Accordingly, Petitioner's Petition for Habeas Corpus is denied.**

6 Signed: 12/3/2018 04:23 PM



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8 Andrew R. Erwin
9 Washington County
10 Circuit Court Judge
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Circuit Court Judge, Andrew Erwin

Jury Instructions

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IN THE COURT OF APPEALS OF THE STATE OF OREGON

ANDREW GUY MORET,
Plaintiff-Appellant,

v.

PAT GARRETT, Washington County Sheriff,
Defendant-Respondent.

Washington County Circuit Court
18CV52383

A169563

APPELLATE JUDGMENT

Andrew Erwin, Judge.

Submitted on October 04, 2019.

Before DeHoog, Presiding Judge; Mooney, Judge; and Hadlock, Judge *pro tempore*.

Attorney for Appellant: Andrew G. Moret *pro se*.

No appearance for respondent.

AFFIRMED WITHOUT OPINION

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

No costs allowed.

Appellate Judgment
Effective Date: June 12, 2020

COURT OF APPEALS
(seal)

els

APPELLATE JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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IN THE SUPREME COURT OF THE STATE OF OREGON

ANDREW GUY MORET,
Plaintiff-Appellant,
Petitioner on Review,

v.

PAT GARRETT, Washington County Sheriff,
Defendant-Respondent,
Respondent on Review.

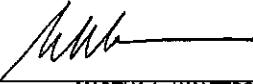
Court of Appeals
A169563

S067218

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
3/5/2020 9:06 AM

c: Elmer M Dickens, Jr.
Andrew Guy Moret

jr

ORDER DENYING REVIEW

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IN THE SUPREME COURT OF THE STATE OF OREGON

ANDREW GUY MORET,
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Petitioner on Review,

v.

PAT GARRETT, Washington County Sheriff,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A169563

S067218

ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
5/21/2020 9:42 AM

c: Elmer M Dickens, Jr.
Andrew Guy Moret

tnb

ORDER DENYING PETITION FOR RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563
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APPENDIX F

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Search Terms: < Select term(s) to navigate >

Clear highlights

139 S.Ct. 2015 (Mem)

**Andrew Guy MORET, petitioner,
v.
Pat GARRETT.**

No. 18-8241.

Supreme Court of the United States

May 13, 2019.

Petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied.

FILED AT 17 months
with no speedy trial,
while this new one filed
orig. at 3 years 6 months
no speedy trial.