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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LISA MARIE BELYEW.

No. 2:19-cv-0294 ACP

Petitioner,

ORDER

MIKE PALLARES,

Respondent.

Petitioner, a state prisoner proceeding pro se and in forma pauperis, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 18, 2021, petitioner filed a motion for release on her own recognizance pending appeal. ECF No. 11. For the reasons stated below, the motion will be denied.

I. RELEVANT FACTS

In the instant motion, petitioner references two 2018 state cases of hers – one in Butte County (16CF06270) and one in Colusa County (CR-57771) – in which she was eventually convicted of criminal offenses. See ECF No. 11 at 1-2. It is the conviction in the Colusa matter that petitioner challenges in the first amended petition. See ECF No. 7 at 1.

The instant motion indicates that petitioner is requesting release based on the fact that in the matter out of Butte County, the California Supreme Court has “granted review” of the case

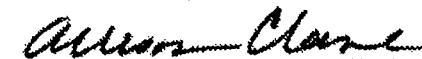
1 and has remanded it back to the Butte County Superior Court for diversion. See ECF No. 11 at 1.
2 In support of this request, petitioner cites to 18 U.S.C. § 3142, a federal statute which provides
3 the parameters for release or detention of a defendant pending trial. See ECF No. 11 at 4; see
4 generally 18 U.S.C. § 3142.

5 II. DISCUSSION

6 The motion must be denied. Petitioner is in state custody having been convicted of crimes
7 in Colusa County. See generally ECF No. 7 at 1. The claims at issue in the instant action relate
8 to that Colusa County conviction and sentence. See generally ECF No. 7. Any remand for
9 diversion that may be pending in petitioner's pending Butte County case has no effect on her
10 Colusa County conviction. Furthermore, even if state-ordered diversion was related to
11 petitioner's Colusa County case, the Younger abstention doctrine,¹ as extended by the Supreme
12 Court to civil cases and state administrative proceedings in Ohio Civil Rights Comm'n v. Dayton
13 Christian Sch., Inc., 477 U.S. 619, 627 (1986), would prevent this court from granting petitioner's
14 motion for release.² Finally, 18 U.S.C. § 3142 is not applicable in this matter, as petitioner is not
15 a defendant who is facing trial in this court.

16 Accordingly, IT IS HEREBY ORDERED that petitioner's motion for release on her own
17 recognizance pending appeal (see ECF No. 11) is DENIED.

18 DATED: February 25, 2021

19 
20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE

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25 ¹ Younger v. Harris, 401 U.S. 37 (1971). Younger held that a federal court should not enjoin a
26 pending state criminal proceeding except when necessary to prevent great and immediate
irreparable injury. It is based on concerns for comity and federalism. See generally Ohio Civil
Rights Comm'n, v. Dayton Christian Sch., Inc., 477 U.S. 619, 620 (1986).

27 ² The court notes that in 2018, petitioner filed a very similar motion in Belyew v. California, No.
28 2:18-cv-2269 DMC P, 2019 WL 2387216, at *1 (E.D. Cal. June 6, 2019). In that case,
respondent's motion to dismiss was ultimately granted. See id. at *2.

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APPENDIX

B

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

APR 19 2021

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

LISA MARIE BELYEW,

Petitioner-Appellant,

v.

MIKE PALLARES, Warden,

Respondent-Appellee,
and

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

No. 21-15527

D.C. No. 2:19-cv-00294-AC
Eastern District of California,
Sacramento

ORDER

Before: CLIFTON, MURGUIA, and BRESS, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See* 28 U.S.C. § 1291; *In re San Vicente Med. Partners Ltd.*, 865 F.2d 1128, 1131 (9th Cir. 1989) (order) (magistrate judge order not final or appealable); *see also Land v. Deeds*, 878 F.2d 318 (9th Cir. 1989) (denial of bail pending a decision on a habeas corpus petition is not appealable). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 11 2021

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

LISA MARIE BELYEW,

Petitioner - Appellant,

v.

MIKE PALLARES, Warden,

Respondent - Appellee,

and

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

No. 21-15527

D.C. No. 2:19-cv-00294-AC
U.S. District Court for Eastern
California, Sacramento

MANDATE

The judgment of this Court, entered April 19, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7