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FOR THE NINTH CIRCUIT

MAY 14 2021

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

CHRISTOPHER ALLRED,

Petitioner-Appellant,

v.

STATE OF WASHINGTON,

Respondent-Appellee.

No. 21-35266

D.C. No. 3:21-cv-05103-RSM  
Western District of Washington,  
Tacoma

ORDER

Before: PAEZ and CALLAHAN, Circuit Judges.

This appeal is from the denial of appellant's 28 U.S.C. § 2254 petition and subsequent motion for reconsideration. 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); *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015); *Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (order).

Any pending motions are denied as moot.

**DENIED.**

[Appendix A]

FOR THE NINTH CIRCUIT

JUN 21 2021

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

CHRISTOPHER ALLRED,

Petitioner-Appellant,

v.

STATE OF WASHINGTON,

Respondent-Appellee.

No. 21-35266

D.C. No. 3:21-cv-05103-RSM  
Western District of Washington,  
Tacoma

ORDER

Before: CANBY and LEE, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 6) is denied. *See*  
9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

[Appendix B]

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 CHRISTOPHER ALLEN ALLRED,

9 Petitioner,

10 v.

11 STATE OF WASHINGTON,

12 Respondent.

CASE NO. 3:21-cv-05103-RSM-BAT

**ORDER OF DISMISSAL**

13 Having reviewed the Report and Recommendation of the Honorable Brian A. Tsuchida,  
14 United States Magistrate Judge, any objections or responses to that, and the remaining record,  
15 the Court finds and ORDERS:

- 16 (1) The Court ADOPTS the Report and Recommendation.  
17 (2) The petition is dismissed with prejudice and issuance of a certificate of  
18 appealability is denied.  
19 (3) The Clerk is directed to send copies of this Order to the parties.

20 Dated this 15<sup>th</sup> day of March, 2021.

21  
22 

23 RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE

1 "Motions for reconsideration are disfavored." LCR 7(h)(1). "The Court will ordinarily  
2 deny such motions in the absence of a showing of manifest error in the prior ruling or a showing  
3 of new facts or legal authority which could not have been brought to its attention earlier with  
4 reasonable diligence." *Id.*

5 The Court has reviewed Mr. Allred's Motion and finds no showing of manifest error in  
6 the underlying R&R or the Court's Order adopting it. It was not error to find meritless Mr.  
7 Allred's contention that his federal constitutional rights were violated because he was not charged  
8 in the state court by a grand jury indictment, given the cited holding of *Hurtado v. People of State*  
9 *of California*, 110 U.S. 516 (1884). This Court will not be overturning *Hurtado*, which has been  
10 cited repeatedly in the Ninth Circuit to dismiss the arguments raised by Mr. Allred. Mr. Allred  
11 presents no new facts or legal authority which could not have been brought to its attention earlier  
12 with reasonable diligence. To the extent that Mr. Allred raises entirely new claims in his Motion  
13 that were not part of his petition, they are not properly before the Court and do not serve as a  
14 basis to reconsider the underlying Order.

15  
16 Accordingly, having reviewed the Motion, along with the remainder of the record, the  
17 Court hereby finds and ORDERS that Mr. Allred's Motion for Reconsideration, Dkt. #10, is  
18 DENIED.

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20 DATED this 25<sup>th</sup> day of March, 2021.

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23 RICARDO S. MARTINEZ  
24 CHIEF UNITED STATES DISTRICT JUDGE  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER ALLEN ALLRED,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. 3:21-cv-05103-RSM-BAT

**REPORT AND  
RECOMMENDATION**

Before the Court is petitioner's *pro se* 28 U.S.C. § 2254 petition for writ of habeas corpus challenging his conviction in Clark County Superior Court Case No 15-1-04336-6, Dkt. 1. The matter has been referred to the undersigned Magistrate Judge. Under Rule 4 of the rules governing § 2254 petitions, the Court must promptly examine a habeas petition once it is properly filed and if it plainly appears from the petition and its attachments the petitioner is not entitled to relief, the Court must dismiss the petition.

This is the second § 2254 petition for writ of habeas corpus petitioner has filed challenging his Clark County conviction. The present petition raises claims that lack merit and should be dismissed with prejudice. Leave to amend the petition should not be granted. Although petitioner proceeds *pro se*, no amendment would cure the fatally deficient petition. If the Court adopts this recommendation, a Certificate of Appealability should not be issued.

1           **A.       *Grounds for Relief Alleged***

2           In a brief attached to his habeas petition, petitioner asserts his Fifth and Fourteenth  
3 Amendment rights under the United States Constitution were violated because he was not  
4 charged by Grand Jury Indictment; the Washington Constitution "is vague on how a grand jury is  
5 summoned" and thus illegal; and his federal privileges and rights were abridged because he was  
6 not charged and convicted by Grand Jury Indictment. *See* Dkt. 1 (Brief in Support of Petition).  
7 Assuming without deciding the claims are exhausted, none of the claims have any merit and the  
8 petition should therefore be dismissed.

9           **B.       *Requirement of Grand Jury Indictment***

10          Petitioner contends his federal constitutional rights were violated because he was not  
11 charged in the state court by Grand Jury Indictment. The contention lacks merit because it has  
12 long been settled there is no denial of Federal Constitutional rights involved in the substitution of  
13 the prosecuting attorney's criminal information for the grand jury's indictment. *Hurtado v.*  
14 *People of State of California*, 110 U.S. 516 (1884) (Rejecting claim that grand jury indictment is  
15 essential to due process and that it is a violation of the Fourteenth Amendment for a state to  
16 prosecute a defendant by criminal information). Petitioner's conviction is thus neither contrary to  
17 nor an unreasonably application of law clearly established by the United States Supreme Court  
18 and the habeas petition should be dismissed with prejudice.

19           **C.       *Certificate of Appealability***

20          A petitioner seeking relief under § 2254 may appeal a district court's dismissal of his  
21 federal habeas petition only after obtaining a certificate of appealability (COA) from a district or  
22 circuit judge. A certificate of appealability may issue only where a petitioner has made "a  
23 substantial showing of the denial of a constitutional right." *See* 28 U.S.C.

1 § 2253(c)(3). A petitioner satisfies this standard “by demonstrating that jurists of reason could  
2 disagree with the district court's resolution of his constitutional claims or that jurists could  
3 conclude the issues presented are adequate to deserve encouragement to proceed further.”  
4 *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under this standard, the Court concludes  
5 petitioner is not entitled to a certificate of appealability in this matter.

6 **OBJECTIONS AND APPEAL**

7 This Report and Recommendation is not an appealable order. Thus, plaintiff should not  
8 file a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit until the  
9 assigned District Judge enters a judgment in the case.

10 Objections limited to eight pages, however, may be filed no later than **February 26,**  
11 **2021**. The Clerk should note the matter for **February 26, 2021**, as ready for the District Judge's  
12 consideration. The failure to timely object may affect the right to appeal.

13 DATED this 12th day of February 2021.

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15   
16 BRIAN A. TSUCHIDA  
17 Chief United States Magistrate Judge  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER ALLEN ALLRED,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. 3:21-cv-05103-RSM-BAT

**ORDER OF DISMISSAL**

Having reviewed the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge, any objections or responses to that, and the remaining record, the Court finds and ORDERS:

- (1) The Court ADOPTS the Report and Recommendation.
- (2) The petition is dismissed with prejudice and issuance of a certificate of appealability is denied.
- (3) The Clerk is directed to send copies of this Order to the parties.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
RICARDO S. MARTINEZ  
United States District Judge

United States District Court  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER ALLEN ALLRED,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

**JUDGMENT IN A CIVIL CASE**

Case No. 3:21-cv-05103-RSM-BAT

\_\_\_\_ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

  X   **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT:

The Report and Recommendation is adopted and approved. The petition is dismissed with prejudice and issuance of a certificate of appealability is denied.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WILLIAM M. MCCOOL  
Clerk of Court

\_\_\_\_\_  
Deputy Clerk

Declaration of Timely Submission  
to the 9<sup>th</sup> Circuit Court of Appeals

I, Christopher Allred, do swear or declare or certify that my Motion for Reconsideration to the 9<sup>th</sup> Circuit was timely filed within the 14 day timeframe. I was denied on May 14, 2021 (SEE: Appendix A). I submitted my Motion for Reconsideration on May 26, 2021, through the Coyote Ridge Corrections Center's legal mail process, and it was postmarked by USPS in Connell, WA on May 27, 2021 (SEE: Appendix F), and (SEE: Appendix G).

Yet, my denial (SEE: Appendix B) cites "9<sup>th</sup> Cir. R. 27-10" as the reason for the denial. That rule states: "If you want to file a motion for reconsideration or clarification of an order, you must do so within 14 days of the order's filing date (or 45 days when it is a civil case and there is a federal participant). 9<sup>th</sup> Cir. R. 27-10."

I submitted within the 14 day timeframe. I respectfully ask this U.S. Supreme Court, to not hold this denial against me. I followed the rules.

I, Christopher Allred, declare under penalty of perjury that the foregoing is true and correct. Executed on July 4, 2021

C Allred

Christopher Allred

Petitioner, Pro Se

Christopher Allred, DOC #392466

Unit G, Cell GB-19

Coyote Ridge Corrections Center

P.O. Box 769

Connell, WA 99326

[Appendix E]

7020 0040 0002 1990 0042



POSTAGE TRANSFER  
TRANSFERENCIA DE FONDOS PARA GASTOS DE ENVIO

PLEASE WITHDRAW SUFFICIENT FUNDS FROM MY ACCOUNT TO COVER THE COST OF MAILING THE ATTACHED LETTERPACKAGE  
FAVOR DE RETIRAR LOS FONDOS SUFFICIENTES DE MI CUENTA PARA CUBRIR LOS GASTOS DEL ENVIO DE ESTA CARTA/PAQUETE

POSTAGE DUE  
FRANQUEO PAGADERO  
\$ 6.65

OFFENDER NAME (PLEASE PRINT) NOMBRE DEL INTERNO/INTERNA (LETRA DE MOLDE, POR FAVOR)		DOC NUMBER NUMERO DOC		OFFENDER SIGNATURE FIRMA DEL INTERNO/INTERNA		HALL UNIT PASILLO/UNIDAD		DATE FECHA		LEGAL MAIL CORREO LEGAL	
MAIL OPTIONS/OPCIONES DE CORREO		PROPERTY OPTIONS/OPCIONES DE PROPIEDAD		ITEM WEIGHT/PESO DEL ARTICULO		LBS/LIBRAS		OZ/ONZAS		PARCEL PAQUETE	
<input type="checkbox"/> CERTIFIED ONLY CERTIFICADO SOLAMENTE		<input type="checkbox"/> GROUND COURIER (NO P.O. BOXES ACCEPTED) MENSAJERIA LOCAL (NO APARTADOS POSTALES)		<input type="checkbox"/> U.S. POSTAL SERVICE 1 <sup>ST</sup> CLASS SERVICIO DE CORREO DE LOS EE.UU. - 1 <sup>RA</sup> CLASE		<input type="checkbox"/> U.S. POSTAL SERVICE STANDARD POST SERVICIO DE CORREO DE LOS EE.UU. - ORDINARIO		<input type="checkbox"/> PARCEL PAQUETE		<input type="checkbox"/> FLAT PAQUETE PLANO	
<input type="checkbox"/> INSURED ASEGURADO		<input type="checkbox"/> U.S. POSTAL SERVICE 1 <sup>ST</sup> CLASS SERVICIO DE CORREO DE LOS EE.UU. - 1 <sup>RA</sup> CLASE		<input type="checkbox"/> U.S. POSTAL SERVICE STANDARD POST SERVICIO DE CORREO DE LOS EE.UU. - ORDINARIO		<input type="checkbox"/> PARCEL PAQUETE		<input type="checkbox"/> FLAT PAQUETE PLANO		<input type="checkbox"/> PARCEL PAQUETE	
<input type="checkbox"/> OUTSIDE U.S.A. AFUERA DE LOS EE.UU.		<input type="checkbox"/> INSURANCE SEGURO		<input type="checkbox"/> U.S. POSTAL SERVICE STANDARD POST SERVICIO DE CORREO DE LOS EE.UU. - ORDINARIO		<input type="checkbox"/> PARCEL PAQUETE		<input type="checkbox"/> FLAT PAQUETE PLANO		<input type="checkbox"/> PARCEL PAQUETE	
MAIL ROOM SIGNATURE FIRMA DEL EMPLEADO DEL CUARTO DE CORREO		NAME/NOMBRE		STREET/DIRECCION POSTAL		CITY/CUADRA		COUNTRY/PAIS		STATE/ESTADO	
ZIP/CODIGO POSTAL		CITY/CUADRA		COUNTRY/PAIS		STATE/ESTADO		ZIP/CODIGO POSTAL		DATE MAILED FECHA ENVIADO	
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The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

DOC 02-003 ES (REV. 08/18/14) White - Offender Banking Canary - Mailroom Pink - Offender

[Appendix F]

7020 0640 0002 1990 6242

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☐ Return Receipt (hardcopy) \$ **2.85**  
☐ Return Receipt (electronic) \$ **0.00**  
☐ Certified Mail Restricted Delivery \$ **0.00**  
☐ Adult Signature Required \$ **0.00**  
☐ Adult Signature Restricted Delivery \$ **0.00**

Postage \$ **7.00**

Total Postage and Fees \$ **10.60**

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City, State, ZIP+4® **San Francisco, CA 94119**

PS Form 3800, April 2015 PSN 7530-02-000-9007 See Reverse for Instructions

[Appendix G]

1 This Court may deny relief on the merits, despite the fact Rios's grand jury claims are  
2 unexhausted, because the claims are clearly without merit. *See Ayala v. Chappell*, 829 F.3d 1081,  
3 1096 (9th Cir. 2016) ("[C]ourts are empowered to, and in some cases should, reach the merits of  
4 habeas petitions if they are . . . clearly not meritorious despite an asserted procedural bar.")  
5 (alteration in original) (quoting *Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002)).  
6 AEDPA explicitly authorizes district courts to deny relief on the merits of unexhausted claims.  
7 *See* 28 U.S.C. § 2254(b)(2) (providing that a petition may be denied on the merits  
8 notwithstanding the failure to exhaust state remedies). "[A] federal court may deny an  
9 unexhausted petition on the merits only when it is perfectly clear that the applicant does not raise  
10 even a colorable federal claim." *Cassett v. Stewart*, 406 F.3d 614, 624 (9th Cir. 2005); *see also*  
11 *Rose v. Lundy*, 455 U.S. 509, 525 (1982) (Blackman, J., concurring) ("Remitting a habeas  
12 petitioner to state court to exhaust a patently frivolous claim before the federal court may  
13 consider a serious, exhausted ground for relief hardly demonstrates respect for the state courts.").  
14 Even if Rios returns to state court to properly litigate a grand jury claim and succeeds in obtaining  
15 review on the merits (thereby exhausting state remedies), the claim would still not be cognizable  
16 on habeas review based on *Hurtado* and its progeny. Therefore, Respondent respectfully requests  
17 that the Court dismiss Rios's claim on this alternate basis.

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