



(HC)McCoy v. Warden at USP Atwater

2024 | Cited 0 times | E.D. California | April 17, 2024

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

REGGIE L. MCCOY,

Petitioner,

v.

WARDEN, USP ATWATER,

Respondent.

No. 1:24-cv-00121-JLT-SKO (HC) ORDER ADOPTING FINDINGS AND RECOMMENDATIONS (Docs. 5, 11) ORDER DENYING MOTION FOR INJUNCTIVE RELIEF, DISMISSING PETITION FOR WRIT OF HABEAS CORPUS, DENYING RENEWED MOTION TO SUPPLEMENT, DENYING WITHOUT PREJUDICE CRIMINAL RULES 35 AND 36 MOTION, AND DIRECTING CLERK OF COURT TO ENTER JUDGMENT, TERMINATE OUTSTANDING MOTIONS AND CLOSE CASE (Docs. 10, 17, 18) ORDER DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY

Reggie L. McCoy is a federal prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The assigned magistrate judge issued Findings and Recommendations to dismiss the petition for lack of jurisdiction. (Doc. 5.) Petitioner filed objections. (Doc. 9.) A few days later, Petitioner filed a motion for injunctive relief. (Doc. 10.) The magistrate judge issued Findings and Recommendations to deny the motion for injunctive relief. (Doc. 11.) The Court served those Findings and Recommendations on the Petitioner and notified him that any objections were due within 14 days. (Id. (Id., citing *Martinez v. Ylst*, 951 F.2d

1153 (9th Cir. 1991).) Plaintiff did not file objections to the Findings and Recommendations, and the time to do so has passed.

According to 28 U.S.C. § 636(b)(1)(C), this Court performed a de novo review of this case. Having



(HC)McCoy v. Warden at USP Atwater

2024 | Cited 0 times | E.D. California | April 17, 2024

carefully reviewed the matter, including the objections, the Court concludes both sets of Findings and Recommendations are supported by the record and proper analysis.

In addition, on February 29, 2024, Petitioner filed a motion to supplement the petition. (Doc. 12.) The Magistrate Judge denied the motion on March 4, 2024. (Doc. 13.) On March 21, 2024, Petitioner filed another motion to supplement the petition. (Doc. 17.) The motion e Findings and Recommendations dismissing the petition, the renewed motion to supplement is

DENIED.

On April 2, 2024, Petitioner filed a motion pursuant to Federal Rules of Criminal Procedure 35 and 36, asserting that the Judgment and Commitment issued by the United States District Court for the Middle District of Florida, pursuant to which he is presently incarcerated at 8.) This motion is not cognizable in this Court. Fed. R. Civ. P. 35 advisory committee s note to 1991, 2002, 2007 amendments (indicating Rule 35 is intended to provide a mechanism for the sentencing court to correct errors in its judgments); United States v. Dickie, 752 F.2d 1398, 1400 (9th Cir. 1985) (in discussing the appropriate the sentencing court is in a unique position to know the actual terms of the sentence Because this Court did not sentence Petitioner, it cannot adjudicate a Rule 35 or Rule 36

challenge to his Judgment and Commitment. Therefore, that motion is DENIED WITHOUT PREJUDICE.

Finally, the Court declines to issue a certificate of appealability. A prisoner seeking a writ an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336 (2003). A certificate of appealability is required for a successive § 2255 motion that is disguised as a § 2241 petition. Harrison v. Ollison, 519 F.3d 952, 958 (9th Cir. 2008); Porter v. Adams, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held. (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings. (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or (B) the final order in a proceeding under section 2255. (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right. (3) The certificate of appealability under paragraph (1)



(HC)McCoy v. Warden at USP Atwater

2024 | Cited 0 times | E.D. California | April 17, 2024

shall indicate which specific issue or issues satisfy the showing required by paragraph (2).
appealability when a petitioner makes a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that deserve

Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

In the present case, the Court finds that Petitioner has not made the required substantial showing of the denial of a constitutional right to justify the issuance of a certificate of appealability. Reasonable jurists would not find any of the above rulings debatable, wrong, or deserving of encouragement to proceed further. Thus, the Court declines to issue a certificate of appealability. Accordingly,

1. The Findings and Recommendations issued on January 30, 2024, (Doc. 5), and

February 26, 2024, (Doc. 11), are ADOPTED IN FULL. 2. The petition for writ of habeas corpus is dismissed with PREJUDICE. 3. The motion for injunctive relief (Doc. 10) is DENIED. 4. The renewed motion to supplement the petition is DENIED. 5. The motion brought pursuant to Criminal Rules 35 and 36 is DENIED

WITHOUT PREJUDICE. 4. The Clerk of Court is directed to enter judgment, terminate outstanding motions,

and close the case. 5. The Court declines to issue a certificate of appealability. This order terminates the action in its entirety.

IT IS SO ORDERED. Dated: April 17, 2024

