



Guido Buadillo Camones v. Kamala D. Harris

2012 | Cited 0 times | C.D. California | June 21, 2012

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to the Honorable Percy Anderson, United States District Judge, pursuant to 28 U.S.C. section 636 and General Order 05-07 of the United States District Court for the Central District of California.

PROCEEDINGS

Petitioner filed a "Petition for Writ of Habeas Corpus [State Conviction, 28 USC § 2254]" on June 20, 2012. It plainly appears from the face of the Petition that Petitioner is not entitled to the habeas relief he seeks. Therefore, the Petition should be denied and dismissed without prejudice, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.

DISCUSSION

The Petition seeks to challenge the legality of a 1998 Los Angeles Superior Court conviction (Petition at 1-2). Petitioner previously completed service of the sentence for this conviction (Petition at 2). Petitioner concedes that he currently is not in state custody and has not been in state custody for several years (Petition at 2, 4-8).

Under section 2254 of Title 28 U.S.C., a district court may entertain a habeas petition filed "in behalf of a person in custody pursuant to the judgment of a State court." 28 U.S.C. § 2254(a). Subject matter jurisdiction over such a petition exists only where, at the time of filing, the petitioner is "in custody" under the conviction challenged in the petition. *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989); see *Bailey v. Hill*, 599 F.3d 976, 978 (9th Cir. 2010) ("in custody" requirement is jurisdictional). A habeas petitioner does not remain "in custody" under a conviction once the sentence imposed for the conviction has "fully expired." *Maleng v. Cook*, 490 U.S. at 492.

The sentence for Petitioner's 1998 conviction fully expired years ago. Because Petitioner was not "in custody" under his 1998 conviction at the time he filed the present Petition, federal habeas jurisdiction is unavailable to challenge the legality of that conviction.¹ The Petition must be denied and dismissed without prejudice for lack of subject matter jurisdiction.

RECOMMENDATION



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For the foregoing reasons, IT IS RECOMMENDED that the Court issue an Order: (1) accepting and adopting this Report and Recommendation; and (2) denying and dismissing the Petition without prejudice.

NOTICE

Reports and Recommendations are not appealable to the Court of Appeals, but may be subject to the right of any party to file objections as provided in the Local Rules Governing the Duties of Magistrate Judges and review by the District Judge whose initials appear in the docket number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be filed until entry of the judgment of the District Court.

If the District Judge enters judgment adverse to Petitioner, the District Judge will, at the same time, issue or deny a certificate of appealability. Within twenty (20) days of the filing of this Report and Recommendation, the parties may file written arguments regarding whether a certificate of appealability should issue.

1. Petitioner's alleged immigration "constructive custody" cannot satisfy the "in custody" requirement for a federal challenge to the legality of Petitioner's state conviction. See, e.g., *Resendiz v. Kovensky*, 416 F.3d 952, 956-68 (9th Cir.), cert. denied, 546 U.S. 1043 (2005); *Torres v. Kane*, 2012 WL 2196091, at *3-4 (C.D. Cal. May 29, 2012), adopted, 2012 WL 2196035 (C.D. Cal. June 14, 2012).

