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FILED

7
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6 Attorneys for Respondents.

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8 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SOUTHERN DIVISION

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11 ROBERT CHARLES JORDAN, JR.,

12 Petitioner,

No. 44309

13 vs.

14 C. J. FITZHARRIS, Warden, et al.,

15 Respondents.

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RETURN TO ORDER TO SHOW CAUSE AND
POINTS AND AUTHORITIES IN OPPOSITION
18 TO PETITION FOR WRIT OF HABEAS CORPUS

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Come now Cletus J. Fitzharris, Superintendent of
the California Correctional Training Facility at Soledad,
California, and the People of the State of California, and
for a return to the order to show cause heretofore issued in
the above entitled matter, and returnable on the 22nd day
of November, 1965, state:

I

That petitioner, Robert Charles Jordan, Jr., is
properly imprisoned in the California Correctional Training
Facility at Soledad, California, pursuant to a valid judgment
and commitment of the Superior Court of the State of California,
County of Los Angeles, dated April 14, 1958, in action No.
197961, and entitled "The People of the State of California

1 vs. Robert Charles Jordan," which reflects that petitioner was
2 convicted of the felony of violating section 245 of the
3 California Penal Code. A copy of this judgment is attached
4 hereto, marked "Exhibit A" and incorporated herein by reference.

5 II

6 Petitioner's allegations concerning the conditions
7 of his confinement present no federal question since these
8 allegations are unrelated to the legality of his confinement
9 and a determination favorable to him would not result in his
10 immediate release from custody.

11 III

12 Petitioner's allegations that state officials have
13 interfered with his constitutional right to reasonable access
14 to the courts does not state a ground for issuance of the federal
15 writ of habeas corpus. This allegation is unrelated to the
16 legality of his confinement and a determination favorable to
17 him would not result in his immediate release from custody.

18 WHEREFORE, it is prayed that the Order to Show Cause
19 issued on October 27, 1965, by this Court be discharged and the
20 Petition for Habeas Corpus be denied.

21 Dated: November 22, 1965

22 THOMAS C. LYNCH, Attorney General
of the State of California

23 ROBERT R. GRANUCCI,
24 Deputy Attorney General

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26 DERALD E. GRANBERG,
27 Deputy Attorney General

28 Attorneys for Respondents.
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1 In particular, he complains of the lack of heat, the inadequacy
2 of the ventilation, the inadequacy of lighting, the inadequacy
3 of bathing and toilet facilities, and of conditions of general
4 filth in his cell. While petitioner's allegations, if true,
5 might constitute a violation of state law, see California Penal
6 Code sections 673, 2652, they afford him no basis for relief
7 in a federal habeas corpus proceeding. "The writ of habeas
8 corpus may not be utilized for the purpose of correcting alleged
9 ill-treatment of a petitioner by prison authorities when the
10 prisoner is confined pursuant to a valid commitment." Hodge v.
11 Heinze, 165 F.Supp. 726, 729 (D.C.N.D. Cal. N.D. 1958). In any
12 event conditions of confinement even more deplorable than those
13 alleged by petitioner have been held not to constitute a
14 violation of the federal protection against cruel and unusual
15 punishment.) Ex part Pickens, 101 F.Supp. 285 (D.C. Alaska 1951).

16 II

17 PETITIONER'S ALLEGATIONS THAT STATE
18 OFFICIALS HAVE INTERFERED WITH HIS
19 CONSTITUTIONAL RIGHT TO REASONABLE
20 ACCESS TO THE COURTS DOES NOT STATE
21 A GROUND FOR ISSUANCE OF THE FEDERAL
22 WRIT OF HABEAS CORPUS. THIS ALLEGA-
23 TION IS UNRELATED TO THE LEGALITY OF
24 HIS CONFINEMENT AND A DETERMINATION
25 FAVORABLE TO HIM WOULD NOT RESULT IN
26 HIS IMMEDIATE RELEASE FROM CUSTODY

23 Petitioner's second contention is that he has been
24 denied his constitutional right to reasonable access to the
25 courts. While the federal guarantee of reasonable access to
26 the courts may be asserted in an injunctive proceeding, see e.g.
27 Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir. 1961), it affords
28 no basis for habeas corpus relief. See the Order filed
29 November 12, 1965, in Zollo v. Dunbar, No. 44240, in which the
30 Honorable George B. Harris of this Court concluded that this
31 issue was not available in a habeas corpus proceeding since it

1 did not bear on the validity of the petitioner's confinement.
 2 In any event, the patent invalidity of petitioner's allegation
 3 that he has been denied access to the courts is demonstrated
 4 by the following listing of litigation in which he has been
 5 involved during the past two years. Most of the actions referred
 6 to were applications for writs of mandate or for writs of habeas
 7 corpus and all of them were resolved adversely to petitioner.
 8 For purposes of brevity we refer only to the court, the action
 9 number and the date of the decision.

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Court	Action No.	Date(s) of Decision(s)
Monterey Super. Ct.	57975	Sept. 30, 1964
Marin Super. Ct.	41032	Oct. 6, 1964
		Oct. 28, 1964
		Dec. 22, 1964
U. S. Dist. Ct.	42946	Oct. 30, 1964
Marin Super. Ct.	41514	Nov. 17, 1964
Cal. Dist. Ct. of App.	1 Crim 4844	Nov. 17, 1964
Marin Super Ct.	41587	Nov. 24, 1964
Marin Super. Ct.	41591	Dec. 10, 1964
Monterey Super. Ct.	58365	Dec. 16, 1964
Marin Super. Ct.	41799	Dec. 23, 1964
U.S. Dist. Ct.	43211	Jan. 11, 1965
		Sept. 1, 1965
Cir. Ct. of App.	Misc. 2203	Jan. 19, 1965
U.S. Dist. Ct.	43995	Aug. 5, 1965
Cal. Sup. Ct.	Crim 9165	Aug. 11, 1965
Monterey Super. Ct.	59756	Aug. 11, 1965
Cal. Dist. Ct. of App.	1 Crim 5302	Aug. 27, 1965
Cir. Ct. of App.	Misc. 2444	Sept. 3, 1965
Monterey Super Ct.	59890	Sept. 8, 1965

1	Court	Action No.	Date(s) of Decision(s)
2	U.S. Dist. Ct.	44127	Sept. 15, 1965
3	Cir. Ct. of App.	Misc. 2468	Oct. 11, 1965
4	Solano Super. Ct.	4761	Oct. 13, 1965
5	Monterey Super. Ct.	60115	Oct. 27, 1965

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8 CONCLUSION

9 For the foregoing reasons, it is respectfully

10 submitted that the Order to Show Cause heretofore issued on

11 October 27, 1965, should be discharged and the Petition for

12 Writ of Habeas Corpus should be denied.

13 Dated: November 22, 1965

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15 THOMAS C. LYNCH, Attorney General

16 of the State of California

17 ROBERT R. GRANUCCI,

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19 *Derald E. Granberg*

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