**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 05 2009

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

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| ARTHUR RAY DEERE,<br><br>Petitioner - Appellant,<br><br>v.<br><br>SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE; et al.,<br><br>Respondents - Appellees. | No. 07-56109<br><br>D.C. No. CV-07-00039-R(CW)<br><br>MEMORANDUM* |

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted August 3, 2009**
Pasadena, California

Before: CANBY, WARDLAW, and CALLAHAN, Circuit Judges.

While in state custody awaiting trial, Arthur Ray Deere filed a federal habeas petition under 28 U.S.C. § 2241, alleging numerous violations of his constitutional rights. Section 2241(c)(3) permits federal courts to grant relief to a

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pretrial detainee held "in custody in violation of the Constitution." 28 U.S.C. § 2241(c)(3); *see also McNeely v. Blanas*, 336 F.3d 822, 824 n.1 (9th Cir. 2003). Deere's petition was dismissed for failure to exhaust state remedies.

We granted a Certificate of Appealability on the question whether a § 2241 petitioner must first exhaust his state court remedies. To the extent this question has not been decided, *compare Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 489–91 (1973) (emphasizing that the § 2241 petitioner "exhausted all available state court remedies for consideration of [his speedy trial] constitutional claim"), *and McNeely*, 336 F.3d at 826 (same), *with White v. Lambert*, 370 F.3d 1002, 1008 (9th Cir. 2004) ("If we were to allow White to proceed under 28 U.S.C. § 2241, he would not be subject to . . . state court exhaustion requirements."), we decline to decide it here. Because Deere has been convicted and sentenced in state court, he is no longer a pretrial detainee but is instead "in custody pursuant to a state court judgment." 28 U.S.C. § 2254. "[I]t is only when § 2254 does not apply to a state prisoner (because he is not in custody pursuant to a state court judgment) that he can resort to the Constitution . . . and § 2241 . . . ." *White*, 370 F.3d at 1007. Deere must now proceed with his direct appeal. *See Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983) (holding that a federal habeas petition is premature when the petitioner's direct criminal appeal is pending in state court).

Before filing a federal habeas petition under § 2254, Deere must "exhaust[] the remedies available" in state court. 28 U.S.C. § 2254(b)(1)(A); *see also Picard v. Connor*, 404 U.S. 270, 275 (1971). Moreover, a grant of relief to Deere under the current procedural posture would violate the dictates of *Younger v. Harris*, 401 U.S. 37, 43–44 (1971) (holding that on principles of federalism and comity, federal courts should abstain from intervening in ongoing state criminal proceedings absent extraordinary circumstances).

**DISMISSED.**