

FEB 14 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOEL CHRISTOPHER HOLMES,

Petitioner - Appellant,

v.

DANIEL SATTERBERG; KING
COUNTY ATTORNEY OFFICE,

Respondents - Appellees.

No. 11-36069

D.C. No. 2:11-cv-00397-RAJ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Argued and Submitted February 7, 2013
Seattle, Washington

Before: FISHER, GOULD and PAEZ, Circuit Judges.

Joel Holmes appeals the district court’s dismissal of his habeas petition. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm.

The district court properly dismissed Holmes’ habeas petition because Holmes was not “in custody” for purposes of habeas jurisdiction at the time he

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

filed his petition. *See* 28 U.S.C. § 2254; *Bailey v. Hill*, 599 F.3d 976, 978-79 (9th Cir. 2010). The “in custody” requirement is met when a petitioner “is subject to a significant restraint upon his liberty ‘not shared by the public generally.’” *Wilson v. Belleque*, 554 F.3d 816, 822 (9th Cir. 2009) (quoting *Jones v. Cunningham*, 371 U.S. 236, 240 (1963)). The state court’s order that Holmes “shall have no contact with” the victims of his harassment did not place a “severe” and “immediate” restraint on Holmes’ individual liberty, *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973), and thus does not render him “in custody” for habeas purposes. *See Williamson v. Gregoire*, 151 F.3d 1180, 1183 (9th Cir. 1998) (collecting cases holding that the imposition of a fine, suspension of one’s driver’s license, revocation of one’s law license or disqualification as a real estate broker and insurance agent are merely “collateral consequence[s] of conviction and do[] not meet the ‘in custody’ requirement”). Although Washington state law is not entirely clear on the elements of a no contact order violation, it is highly speculative that accidental contact would violate the order – say, if Holmes happened to make eye contact from “across a crowded room,” *Some Enchanted Evening*, South Pacific (1949). *See Dremann v. Francis*, 828 F.2d 6, 7 (9th Cir. 1987) (concluding that where a significant restraint on liberty was merely speculative, federal habeas protection was not warranted). Accordingly, the

district court did not have subject matter jurisdiction and properly dismissed the petition.

AFFIRMED.