

FEB 02 2015

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIAN KERRY O'KEEFE,

Petitioner - Appellant,

v.

DOUG GILLESPIE, Sheriff; et al.,

Respondents - Appellees.

No. 12-15271

D.C. No. 2:11-cv-02109-GMN-
VCF

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, Chief District Judge, Presiding

Argued and Submitted November 20, 2014
San Francisco, California

Before: THOMAS, Chief Judge, and REINHARDT and CHRISTEN, Circuit
Judges.

Brian Kerry O'Keefe appeals the district court's dismissal of his petition for a writ of habeas corpus due to lack of exhaustion. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253(a). Because the parties are familiar with the history of this case, we need not recount it here.

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

O'Keefe filed his petition under 28 U.S.C. § 2241, seeking to prevent an upcoming retrial on grounds that it would violate his right against double jeopardy. However, in the intervening time between his filing of the petition and our consideration of it, O'Keefe was retried and convicted in state court. His sought relief is therefore no longer available. Therefore, the appeal is moot.

We need not, and do not, address the government's arguments that O'Keefe's appeal is moot because he filed his petition under 28 U.S.C. § 2241 rather than § 2254. Nor need we address the merits of O'Keefe's double jeopardy claims. Our decision is without prejudice to the consideration of those claims in a properly filed § 2254 petition.¹

AFFIRMED.

¹ O'Keefe's pro se motions for judicial notice and for summary judgment are denied. Because O'Keefe is represented by counsel, we decline to entertain O'Keefe's other pro se motions and submissions.