

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Scott v. Cates

No. 3:22-cv-1101-RSH-JLB (S.D. Cal. Apr. 14, 2025) · No. 3:22-cv-1101-RSH-JLB · Decided April 14, 2025

OPINION

Scott v. Cates

PER CURIAM.

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9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 12 ELLIS BERNARD SCOTT, Case No.: 3:22-cv-1101-RSH-JLB 13 Petitioner,

ORDER ADOPTING MAGISTRATE

14 vs. JUDGE’S REPORT AND

RECOMMENDATION AND

15 B. CATES, et al.,

GRANTING SUMMARY

16 JUDGMENT TO DEFENDANTS

Respondents. 17 [ECF No. 25] 18 19 Petitioner Ellis Bernard Scott (“Petitioner”), an inmate proceeding pro se, filed a 20 Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254. ECF No. 1. 21 Petitioner challenges his 2018 conviction in San Diego Superior Court for assault with a 22 deadly weapon. Id. at 1; ECF No. 13-1 at 211. 23 On July 25, 2022, Petitioner filed a motion to proceed in forma pauperis (“IFP”). 24 ECF No. 2. On August 2, 2022, the Court denied Petitioner’s motion, ECF No. 2, because 25 it appeared Petitioner could pay the filing fee; dismissed the case without prejudice; and 26 directed that, if Petitioner wished to proceed with the instant case, he must submit either 27 the \$5.00 filing fee or adequate proof of his inability to pay no later than September 30, 28 1 2022. ECF No. 3. On August 26, 2022, Petitioner filed a renewed motion to proceed IFP 2 together with a trust account statement, which reflects a \$123.85 balance in his prison trust 3 account. ECF No. 4. The Court again denied Petitioner’s motion to proceed IFP, dismissed 4 the case without prejudice, and directed that, if Petitioner wished to proceed with the case, 5 he must submit either the \$5.00 filing fee or adequate proof of his inability to pay no later 6 than October 31, 2022. ECF No. 5. On September 26, 2022, Petitioner paid the filing fee, 7 ECF No. 6, and the Court reopened the case, ECF No. 7. 8 On January 12, 2023, respondent, Brian Cates, Warden of California Correctional 9 Institution, Tehachapi of the California Department of Corrections and Rehabilitation 10 (“Respondent”), filed a motion to dismiss the Petition and a notice of lodgment, ECF Nos. 11 12, 13, and a supplemental lodgment pursuant to a

court order on June 21, 2023, ECF No. 12 18. On July 7, 2023, the Court denied Respondent's motion to dismiss. ECF No. 19. On

13 September 25, 2023, Respondent filed a response to the Petition. ECF No. 22. Petitioner 14 did not file a Traverse. See Docket. 15 U.S. Magistrate Judge Jill L. Burkhardt issued a report and recommendation in favor 16 of denying the Petition. ECF No. 49. Judge Burkhardt ordered that any objections be filed 17 no later than April 1, 2025. Id. Neither party filed an objection. 18 A district court's role in reviewing the report and recommendation is set forth in 19 Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Rule 72(b) 20 provides in part: 21 (2) Objections. Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written 22 objections to the proposed findings and recommendations. . . . 23

(3) Resolving Objections. The district judge must determine de novo

24 any part of the magistrate judge's disposition that has been properly 25 objected to. 26 Fed. R. Civ. P. 72(b). Likewise, 28 U.S.C. § 636(b)(1)(C) provides in part: 27 Within fourteen days after being served with a copy, any party may 28 serve and file written objections to such proposed findings and l recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is 3 made. 4 28 U.S.C. § 636(b)(1)(C) (emphasis added). > In the absence of a timely objection, "the Court need only satisfy itself that there is 6 no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72 advisory committee's note (citing *Campbell v. U.S. Dist. Ct.*, 510 F.2d 196, 206 8 (9th Cir. 1974)); see also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1119 (9th Cir. 9 2003) ("[T]he district judge must review the magistrate judge's findings and 10 recommendations de novo if objection is made, but not otherwise.") (emphasis in original). Here, neither party has objected to Judge Burkhardt's Report and Recommendation. No clear error appears on the face of the record. The Report and Recommendation 1s clear, 13 thorough, and well-reasoned. Accordingly, the Court ADOPTS Judge Burkhardt's report and recommendation and DENIES Petitioner's habeas petition. The Clerk shall enter 15 judgment accordingly. 16 IT IS SO ORDERED. Kebkut C be M7 Dated: April 14, 2025 18 Hon. Robert S. Huie 19 United States District Judge 20 21 22 23 24 25 26 27 28 3 ee □□