

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Hung Duong Nguon v. James S. Hill

Nguon · No. 2:24-cv-02297-PA (SK) · Decided April 22, 2025

SUMMARY

The United States District Court for the Central District of California revised its order accepting the Report and Recommendation to grant the respondent's motion to dismiss Hung Duong Nguon's amended habeas petition under 28 U.S.C. § 2254. The court held that the petition was untimely, rejected arguments concerning equitable tolling, *Miller v. Alabama*, a subsequent resentencing denial, and newly discovered evidence, and ratified the prior judgment dismissing the action with prejudice.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Percy Anderson
JURISDICTION	United States District Court for the Central District of California
DECIDED	April 22, 2025
DOCKET	2:24-cv-02297-PA (SK)
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed and accepted a magistrate judge's Report and Recommendation recommending dismissal of a first amended petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court considered Petitioner's objections, although untimely, and again granted Respondent's motion to dismiss.
STANDARD OF REVIEW	The district court independently reviewed the Report and Recommendation and the Petitioner's objections under 28 U.S.C. § 636. The court applied the one-year federal habeas limitations period and the standards governing equitable tolling and delayed accrual.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Hung Duong Nguon v. James S. Hill, Warden

TOPICS

federal habeas corpus

statute of limitations

post-conviction relief

sentence modification

cruel and unusual punishment

PRACTICE AREAS

federal habeas corpus

post-conviction relief

constitutional law

QUESTIONS PRESENTED

1. Whether Petitioner's objections established a basis for equitable tolling of the federal habeas limitations period.
2. Whether Petitioner's belief that he would be released in 2005 excused the delay in filing his 2024 petition.
3. Whether *Miller v. Alabama* provided a delayed limitations starting date that made the petition timely.
4. Whether the denial of resentencing relief constituted a new judgment restarting the limitations period for challenging the original 1997 conviction.
5. Whether 28 U.S.C. § 2244(d)(1)(D) delayed accrual based on allegedly new evidence concerning Petitioner's dangerousness.

HOLDINGS

1. Petitioner was not entitled to equitable tolling because he did not show that he had been pursuing his rights diligently or that an extraordinary circumstance prevented timely filing.
2. The denial of resentencing relief does not constitute a new judgment that restarts the federal habeas limitations period for challenging the original conviction when the proceeding does not result in a new judgment.
3. Even assuming that *Miller v. Alabama* could defer the limitations starting date, the petition would still be untimely by ten years.
4. Section 2244(d)(1)(D) did not delay accrual because Petitioner's argument was factually unfounded: the record showed that he received life with the possibility of parole plus three years, not life without parole or death.

KEY QUOTATIONS

“Petitioner has not made any such showing, nor is it apparent how he could, given that he filed this Petition more than 25 years after his conviction became final.”

“Even if such a state court judgment exists, it would not be a new judgment that would have restarted the statute of limitations for Petitioner to challenge his 1997 conviction.”

“Under 28 U.S.C. § 2244(d)(1)(D), the limitations starting date may be delayed until “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.””

FACTUAL BACKGROUND

Petitioner challenged a 1997 state conviction and sentence in a federal habeas petition filed in 2024, more than 25 years after the conviction became final. He was sentenced to life with the possibility of parole plus three years, not life without parole or death. He argued that equitable tolling, a later state resentencing ruling, the *Miller v. Alabama* decision, and allegedly new evidence delayed or restarted the limitations period.

PROCEDURAL HISTORY

Nguon filed a federal habeas petition in 2024 challenging his 1997 conviction and sentence. A Report and Recommendation recommended dismissal as untimely, and the district court entered judgment dismissing the action with prejudice on March 31, 2025. In this revised order, the court considered the Petitioner's objections, found that they did not alter the Report and Recommendation's conclusions, accepted the recommendation, ratified the prior judgment, and ratified its denial of a certificate of appealability.

DISPOSITION

dismissed

CASES CITED

- *Smith v. Davis*, 953 F.3d 582, 588 (9th Cir. 2020) (en banc)
- *Miller v. Alabama*, *Miller v. Alabama*, 567 U.S. 460 (2012)
- *Cole v. Sullivan*, 480 F. Supp. 3d 1089, 1097 (C.D. Cal. 2020)
- *Nguyen v. Acevedo*, 2023 WL 8478535, at *2 (E.D. Cal. Dec. 6, 2023)
- *Hernandez v. Koenig*, 2023 WL 7169573, at *5 (C.D. Cal. Sept. 11, 2023)
- *Branham v. Montana*, 996 F.3d 959, 968 (9th Cir. 2021)

OPINION

Hung Duong Nguon v. James S. Hill

PER CURIAM.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HUNG DUONG NGUON, Case No. 2:24-cv-02297-PA (SK) Petitioner, REVISED ORDER
ACCEPTING

v. REPORT AND RECOMMENDATION

TO GRANT RESPONDENT'S

JAMES S. HILL, Warden, MOTION TO DISMISS PETITION

Respondent. Pursuant to 28 U.S.C. § 636, the Court has reviewed the filed Report and Recommendation to grant Respondent's Motion to Dismiss Habeas Petition (ECF 21) and any relevant records as needed. The Court has also now reviewed Petitioner's Objections, even though they were not timely filed or received. (ECF 25). The Court still finds, however, that nothing in

those Objections changes or affects the material findings and conclusions in the Report and Recommendation. Petitioner objects that he has “basis for equitable tolling” based on the Eighth Amendment. (ECF No. 22 at 2-3). This is not a valid basis for equitable tolling, which requires him to show “(1) that he has been pursuing his right diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Smith v. Davis*, 953 F.3d 582, 588 (9th Cir. 2020) (en banc) (citation and quotation marks omitted). Petitioner has not made any such showing, nor is it apparent how he could, given that he filed this Petition more than 25 years after his conviction became final. (ECF No. 21 at 2). Petitioner objects that his claims are not untimely, and that he could not have raised them earlier, because he believed he would be released from prison in 2005. (ECF No. 22 at 3). This objection does not suggest any explanation, however, why Petitioner did not file this Petition until 19 years later, in 2024. Petitioner objects that his sentence is grossly disproportionate given his youth when he committed the crimes, and cites *Miller v. Alabama*, 567 U.S. 460 (2012). (ECF No. 22 at 9.) As the Report found, however, even if it is assumed that the limitations starting date would be deferred based on a newly-established constitutional right under *Miller*, the instant Petition still would be untimely by 10 years. (ECF No. 21 at 4). Petitioner objects that he had a new state court judgment “that started a new statute of limitations clock.” (ECF No. 22 at 12). The allegedly new state court judgment was the denial of Petitioner’s request for resentencing relief, apparently under a variety of recent state laws. (*Id.*) Even if such a state court judgment exists, it would not be a new judgment that would have restarted the statute of limitations for Petitioner to challenge his 1997 conviction. See *Cole v. Sullivan*, 480 F. Supp. 3d 1089, 1097 (C.D. Cal. 2020) (state court’s denial of resentencing relief does “not open the door for a petitioner to bring a new challenge to an old conviction”); *Nguyen v. Acevedo*, 2023 WL 8478535, at *2 (E.D. Cal. Dec. 6, 2023) (“There is . . . no basis on which to conclude that the denial [of resentencing] restarted the statute of limitations for the original, underlying conviction.”); *Hernandez v. Koenig*, 2023 WL 7169573, at *5 (C.D. Cal. Sept. 11, 2023) (when sentence review does not result in imposition of a new judgment, the proceeding “does not restart the limitation period”) (quoting *Branham v. Montana*, 996 F.3d 959, 968 (9th Cir. 2021)). Petitioner objects that the State presented “new evidence” of Petitioner’s dangerousness that “required him to receive a sentence of [life without parole] or death,” thereby warranting a deferred limitations starting date under 28 U.S.C. § 2244(d)(1)(D). (ECF No. 25 at 13). Under 28 U.S.C. § 2244(d)(1)(D), the limitations starting date may be delayed until “the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.” Petitioner’s argument is factually unfounded because there is no evidence that he was sentenced to life without parole or death. He was sentenced to life with the possibility of parole plus three years. (ECF No. 10-1 at 17). THEREFORE, the Court (again) accepts the Report and Recommendation as filed and (again) orders that Respondent’s motion to dismiss the first amended petition under 28 U.S.C. § 2254 be granted. If necessary, the March 31, 2025 judgment dismissing this action with prejudice is ratified as the final judgment, as of the date of this revised

order. (ECF 23). The Court's March 31, 2025 order denying a certificate of appealability is also ratified, as needed, as of the date of this revised order.

IT IS SO ORDERED. \

Ae DATED: April 22, 2025 walle "UCU

PERCY ANi!ERSON

United States District Judge