

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Rogers v. Montgomery

Rogers v. Montgomery · No. 2:20-cv-02421-DAD-AC · Decided May 22, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 DEANDRE MARQUIS ROGERS, No. 2:20-cv-02421-DAD-AC 12
Petitioner, 13 v. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND
DISMISSING 14 WARREN L. MONTGOMERY, PETITION 15 Respondent. (Doc. No. 21) 16
17 18 Petitioner DeAndre Marquis Rogers, a state prisoner proceeding through counsel, filed an
19 application for a writ of habeas corpus pursuant to 29 U.S.C. § 2254.

This matter was referred to 20 a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 21 On October 9, 2024, the assigned magistrate judge issued findings and
recommendations 22 recommending that petitioner’s federal habeas petition be dismissed because
the state court’s 23 denial of petitioner’s claims was not objectively unreasonable within the
meaning of 28 U.S.C. 24 § 2254(d).

(Doc. No. 21 at 14.) Specifically, the magistrate judge concluded that the evidence 25 cited by the
state court, construed in the light most favorable to the verdict, supported the jury’s 26 third-strike
conviction of petitioner for possession of a firearm by a felon such that the state court 27
reasonably applied the federal right to due process. (Id. at 8–11.)

Furthermore, the magistrate 28 judge concluded that the petitioner’s sentence of 30 years to life in
prison was not grossly 1 disproportionate such that the state court reasonably applied the eighth
amendment’s prohibition 2 on cruel and unusual punishment. (Id. at 11–14.) 3 The pending
findings and recommendations were served on the parties and contained 4 notice that any
objections thereto were to be filed within twenty-one (21) days after service, and 5 that any replies
were to be served and filed within fourteen (14) days after service of the 6 objections.

(Id. at 14.) Following the granting of extension of time in which to do so (Doc. Nos. 7 22, 23),
petitioner filed his objections to the findings and recommendations on November 21, 8 2024.
(Doc. No. 24.) Respondent did not file a reply to petitioner’s objections, and the time in 9 which
to do so has passed. 10 In his objections, petitioner argues that the magistrate judge erred
regarding his due 11 process claim because no reasonable jury could have found that petitioner
had knowledge of the 12 presence of a firearm or intent to possess a firearm where the evidence at
trial established 13 petitioner was in the backseat of a car that had a firearm in the front seat.

(Id. at 31.) Petitioner 14 argues for alternative interpretations of the evidence presented, for instance arguing that 15 petitioner’s alleged statement of “grab it, grab it” did not reference a gun but rather marijuana that 16 was also present in the car. (Id. at 32.)

However, “[t]he relevant question is whether after 17 viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could 18 have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 19 443 U.S. 307, 307 (1979) (emphasis removed). Petitioner’s alternative interpretations of the 20 evidence admitted at his trial therefore do not render the state court’s application of federal law 21 objectively unreasonable.

Viewing the evidence in the light most favorable to the prosecution, 22 the court agrees with the magistrate judge and the state court that a rational trier of fact could 23 have found the essential elements of the crime beyond a reasonable doubt. 24 Petitioner further argues that the magistrate judge erred regarding his eighth amendment 25 claim because petitioner’s sentence of 30 years to life in prison, imposed when he was 25 years 26 old, was grossly disproportionate to the crime committed—fleeting, constructive possession of a 27 firearm, for which the maximum sentence is typically three years.

(Doc. No. 24 at 39.) As the 28 magistrate judge reasoned, proportionality does not merely weigh the sentence against the offense 1 conduct but also considers the state’s legitimate interest in dealing harshly with recidivists. (Doc. 2 No. 21 at 11–12) (citing *Ewing v. California*, 538 U.S. 11, 29–30 (2003)). Further, the United 3 States Supreme Court has upheld, as not grossly disproportionate, indeterminate life sentences 4 imposed for nonviolent property offenses where the defendants were sentenced as having suffered 5 their third felony strike conviction.

Ewing, 538 U.S. at 17–18, 30–31; *Lockyer v. Andrade*, 538 6 U.S. 63, 66, 77 (2003). Therefore, the state court’s application of the eighth amendment could 7 not have been objectively unreasonable. 8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a 9 de novo review of the case.

Having carefully reviewed the entire file, including petitioner’s 10 objections, the undersigned concludes that the magistrate judge’s findings and recommendations 11 are supported by the record and proper analysis.

Therefore, the findings and recommendations 12 will be adopted and petitioner’s request for federal habeas relief will be denied on the merits of 13 his presented claims. 14 In addition, the court declines to issue a certificate of appealability. A petitioner seeking a 15 writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition, 16 and an appeal is only allowed in certain circumstances.

Miller-El v. Cockrell, 537 U.S. 322, 335– 17 36 (2003); 28 U.S.C. § 2253. If a court denies a habeas petition on the merits, the court may only 18 issue a certificate of appealability if “jurists

of reason could disagree with the district court's 19 resolution of [the petitioner's] constitutional claims or that jurists could conclude the issues 20 presented are adequate to deserve encouragement to proceed further." Miller-El, 537 U.S. at 327; 21 see also Slack v. McDaniel, 529 U.S. 473, 484 (2000).

While the petitioner is not required to 22 prove the merits of his case, he must demonstrate "something more than the absence of frivolity 23 or the existence of mere good faith on his... part." Miller-El, 537 U.S. at 338.

In the present 24 case, the court concludes that reasonable jurists would not find the court's determination that the 25 petition should be denied debatable or wrong, or that the issues presented are deserving of 26 encouragement to proceed further. Petitioner has not made the required substantial showing of 27 the denial of a constitutional right.

Therefore, the court will decline to issue a certificate of 28 appealability. 1 Accordingly: 2 1. The findings and recommendations issued on October 9, 2024 (Doc. No. 21) are 3 ADOPTED in full; 4 2. The petition for a writ of habeas corpus (Doc. No. 1) is DENIED on the merits; 5 3.

The court declines to issue the certificate of appealability; and 6 4. The Clerk of the Court is directed to CLOSE this case. 7 IT IS SO ORDERED. * | Dated: _ May 21, 2025 Dab A. 2, sxe 9 DALE A. DROZD 10 UNITED STATES DISTRICT JUDGE 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28