

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

Lance Ian Osband v. Jason Schultz

Osband v. Schultz · No. 2:97-cv-00152-KJM-CSK · Decided December 30, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 Lance Ian Osband, No. 2:97-cv-00152-KJM-CSK. 12 Petitioner, ORDER 13
v. Jason Schultz, 15 Respondent. 16 17 Petitioner Lance Osband is a state prisoner under sentence
of death. He seeks a writ of 18 | habeas corpus.

The matter was referred to the assigned Magistrate Judge under the Local Rules 19 | of this
District. The previously-assigned Magistrate Judge prepared thorough findings and 20 |
recommendations on the application of 28 U.S.C. § 2254(d) to claims I, V, [IX and XX of the 21 |
operative amended petition. ECF Nos. 26, 707.

The parties each object to portions of the 22 | findings and recommendations, and petitioner has
replied to respondent's objections. ECF Nos. 23 | 726,771, 773. The court has reviewed the
matter de novo and has considered the parties' 24 | objections, including those not mentioned
expressly in this order, writing here only to explain 25 | what is necessary to understand the court's
decision: the court adopts the findings and 26 | recommendations in part. Petitioner also filed
pro se objections, ECF No. 710, which the court has disregarded, as he is represented by counsel
in this matter.

1 First, with respect to claim I, the court agrees with the Magistrate Judge's assessment of 2
prejudice under the second part of the two-part test set out in *Strickland v. Washington*, 466 U.S. 3
668 (1984). The state court could reasonably have concluded effective attorneys would not have 4
presented evidence showing third parties, including Richard Thomas and W.J.

Williams, were 5 actually responsible for the death of Lois Skuse. 6 Before trial, Osband had
come to believe his appointed counsel, Burton Loehr, was 7 undermining his defense, in part
because Osband suspected Loehr was persuaded Osband was in 8 fact guilty of Skuse's murder.
See, e.g., F&Rs at 34–35. Osband instructed Loehr not to pursue 9 any defense that could show he
played any role in the murder, and evidence implicating Thomas 10 and Williams could have
implicated him, at least in part, among other reasons because they were 11 Osband's friends or
acquaintances.

See *id.* The court relieved Loehr as Osband's counsel due to 12 Osband's suspicions and distrust,
including his perception Loehr would not follow his 13 instructions; the court appointed substitute

counsel. It would be reasonable for a fair-minded jurist to conclude from this record that substitute counsel gained and maintained Osband's trust at least in part by following Osband's previously expressed wishes, i.e., by not pursuing a defense implicating Thomas and Williams, and thus Osband in turn.

See Respondent's Br. at 116–18 nn. 43–44. The Magistrate Judge's alternative assessment of the record also is reasonable, see F&Rs 18 at 356, but this court must determine whether the state court's decision rested on "a reasonable determination of the facts" under 28 U.S.C. § 2254, *Schriro v. Landrigan*, 550 U.S. 465, 477 (2007), even if the state court did not express that determination in a written opinion, see *Harrington v. Richter*, 562 U.S. 86, 98–99 (2011).

Even if Osband released his substitute attorneys from his previous instruction, reasonable and diligent counsel may very well have concluded that attempting to point the finger at Thomas and Williams would be unproductive.

As the Magistrate Judge and respondent both have detailed, the evidence against Thomas and Williams was thin and potentially inadmissible: Osband has relied in significant part on statements that would likely have been inadmissible hearsay if presented at trial in the form he now offers them; no physical evidence connected Thomas and Williams to the crime scene, whereas the prosecution did have physical evidence connecting Osband to the scene; the evidence against Thomas and Williams did not contradict the physical evidence against Osband; and Osband's own testimony would tend to inculcate him if Thomas and Williams were in fact responsible for the murder.

See F&Rs at 37–47; Respondent's Br. at 117–24 n.44. Because the state court could reasonably have denied relief on this basis, it is not necessary to consider whether counsel's investigation into a potential third-party defense fell short of the constitutional standard. Cf. F&Rs at 25–32 (finding petitioner made a *prima facie* showing of a failure to investigate that could not reasonably have been rejected).

Osband argues the Magistrate Judge erred by ignoring evidence about additional suspects as well. See Pet. Obj. at 21–23. But the evidence Osband cites about these other people is vaguer and weaker than the evidence against Thomas and Williams, and he did not develop arguments about this evidence in his brief. See Pet. Br. at 145–49; Pet. Obj. at 21–22.

Osband's other objections demonstrate no errors in the relevant portions of the Magistrate Judge's findings and recommendations. The court thus adopts in part the Magistrate Judge's findings and recommendations with respect to claim I, as specified above. Second, with respect to claim V, the court adopts the Magistrate Judge's findings and recommendation in full.

As the Magistrate Judge explains, the state trial court was obligated to consider the opinions of the mental health professional, Dr. Janak Mehtani, not in isolation, but rather "in light of the

entire record before it.” F&Rs at 56. Even though Dr. Mehtani initially 19 opined that Osband was not competent, the trial court had observed Osband and spoken with him 20 and his attorneys at multiple hearings.

See *id.* at 56–57. Osband’s substitute counsel represented 21 to the court that other experts had examined him but had not concluded he was incompetent, and 22 counsel believed his symptoms were actually attributable to his poor relationship with Loehr. See 23 *id.* at 57. These representations led the trial court to move forward with the substitution of 24 counsel, and after the substitution, Dr. Mehtani supplemented his opinion in response to the trial 25 court’s request, finding Osband was competent to proceed.

See *id.* at 58; Respondent’s Br. at 26 125, 132–33. A fair-minded jurist could conclude, based on this record, that petitioner was 27 competent to stand trial. 1 Third, with respect to claim IX, the court adopts the findings and recommendations in full. 2 As the Magistrate Judge explains, the state court could reasonably have concluded Osband was 3 competent to testify for essentially the same reasons he was competent to stand trial.

Nor has 4 Osband cited evidence attributing any particular testimony or decision to any particular deficient 5 action or omission by his counsel, rather than to himself. See F&Rs at 62–70. In addition, as the 6 Magistrate Judge correctly notes, counsel could not ethically have assisted petitioner in an 7 attempt to testify untruthfully or misleadingly at trial, and in any event, petitioner had a right to 8 testify in his defense, even if contrary to the best advice of his counsel.

See *id.* at 64–65. 9 Fourth, with respect to subclaim C of claim XX, the court adopts the Magistrate Judge’s 10 findings and recommendations in full. A fair-minded jurist could not reasonably have found 11 Osband fell short of the *prima facie* showing required of him. See F&Rs at 70–93. “[A] 12 mountain of extremely compelling mitigating evidence was... available and could have been 13 presented on [petitioner’s] behalf under clearly established federal law,” and this evidence “may 14 have induced at least one juror to conclude [p]etitioner did not deserve death.” *Id.* at 90–91.

15 Petitioner’s allegations before the state court were “materially indistinguishable from cases where 16 the [United States] Supreme Court has held the petitioner showed penalty phase prejudice from 17 trial counsel’s deficient mitigation investigation.” *Id.* at 91 (citing *Rompilla v. Beard*, 545 U.S. 18 374, 392–93 (2005); *Porter v. McCollum*, 558 U.S. 30, 41 (2009); *Wiggins v. Smith*, 539 U.S. 19 510, 537 (2003); *Williams v. Taylor*, 529 U.S. 362, 398 (2000)).

The court agrees with the 20 Magistrate Judge that petitioner has shown the state court’s decision was in this respect “contrary 21 to, or involved an unreasonable application of, clearly established Federal law, as determined by 22 the Supreme Court of the United States.” 28 U.S.C. § 2254(d)

(1). 23 The Magistrate Judge treated the other subparts of claim 20 as abandoned because Osband 24 did not make arguments about those subparts.

F&Rs at 70 n.17. Osband objects, citing the 25 overview of claim XX. See Pet. Obj. at 72–74 (citing Pet. Br. at 208–10). The arguments he cites 26 do reference some issues encompassed by the other subclaims within claim XX, but after review 27 the court agrees with the Magistrate Judge that petitioner has not “cited authority tending to show 28 that those [other] subclaims were adjudicated in a manner undeserving of deference under 28 1 U.S.C. section 2254(d).” F&Rs at 70 n.17.

The court therefore adopts in part the Findings and 2 Recommendations with respect to the other subclaims in claim XX: the court finds petitioner did 3 not abandon or waive those subclaims, but neither has he shown the state court’s decision is 4 contrary to or an unreasonable application of clearly established law under 28 U.S.C. § 2254(d). 5 Finally, the court has considered Osband’s objection that the Magistrate Judge incorrectly 6 viewed his claims and his counsel’s alleged errors “in isolation,” effectively ignoring their 7 “synergistic effect.” E.g., Pet.

Obj. at 18. Osband has not shown the various instances of 8 allegedly ineffective assistance and other errors compounded with one another, such that no fair- 9 minded jurist could rationally deny relief under the relevant standard, with the exception of claim 10 XX, subclaim C, as explained above. 11 The court finds petitioner is entitled to a certificate of appealability with respect to claims 12 I, V, IX and subclaims A, B, D, E, F and G of claim XX under 28 U.S.C. § 2253(c)(2).

13 Reasonable jurists could find this court’s conclusions and the Findings and Recommendations are 14 debatable or wrong. See *Slack v. McDaniel*, 529 U.S. 473 (2000) (setting forth relevant 15 standard).² 16 In sum, for the reasons above: 17 (1) The Findings and Recommendations are adopted in part as specified in this order. 18 (2) The state court’s denial of relief is not entitled to deference under 28 U.S.C. 19 § 2243(d) to the extent it was based on subclaim (C) of claim XX in the operative 20 amended petition for a writ of habeas corpus.

21 (3) Claims I, V, IX and subclaims A, B, D, E, F and G of claim XX are dismissed. 2 This court also is not persuaded by petitioner’s arguments about the effects of the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo* and declines to issue a certificate of appealability related to arguments based on that case. See Pet. Obj. at 4–17 (discussing 603 U.S. 369 (2024)). “If a precedent of [the Supreme Court] has direct application in a case... a lower court should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.

This is true even if the lower court thinks the precedent is in tension with some other line of decisions.” *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (citations and quotation marks omitted)). 1 (4) Petitioner is entitled to a certificate of appealability on the claims listed in 2

paragraph 3 above. 3 (5) The parties are directed to meet and confer and file, within thirty days, a joint 4 status report proposing a schedule for the further resolution of this matter.

5 (6) The matter is referred back to the assigned Magistrate Judge for further 6 proceedings. 7 IT IS SO ORDERED. 8 DATED: December 29, 2025.