

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

David Khourny Pech v. Tristan Lemon

Pech v. Lemon · No. 2:23-CV-1853-DJC-DMC-P · Decided October 22, 2025

SUMMARY

The United States District Court for the Eastern District of California addresses Petitioner’s motion to amend a 28 U.S.C. § 2254 habeas petition after exhausting an ineffective-assistance-of-counsel claim. The court recommends granting amendment only as to trial counsel’s alleged failure to impeach witness Bankeut, finding the remaining ineffective-assistance allegations untimely and unsupported by relation back under Federal Rule of Civil Procedure 15(c). The court also directs the Clerk to terminate former counsel from the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	October 22, 2025
DOCKET	2:23-CV-1853-DJC-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought leave to amend a stayed 28 U.S.C. § 2254 habeas petition to reassert a previously dismissed ineffective-assistance-of-counsel claim after exhausting it in state court. The magistrate judge issued an order and findings and recommendations recommending partial relief.
STANDARD OF REVIEW	An amended habeas claim relates back under Federal Rule of Civil Procedure 15(c)(2) only when it shares a common core of operative facts with a timely claim; a claim supported by facts differing in both time and type does not relate back. The petitioner bears the burden of establishing entitlement to equitable tolling.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	David Khourny Pech v. Tristan Lemon

TOPICS

federal habeas corpus

statute of limitations

motion to amend

post-conviction relief

appellate procedure

PRACTICE AREAS

federal habeas corpus

post-conviction relief

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the newly exhausted ineffective-assistance-of-counsel claim was timely under AEDPA or entitled to equitable tolling.
2. Whether the proposed ineffective-assistance allegations related back to the timely filed habeas claims under Federal Rule of Civil Procedure 15(c)(2).
3. Whether counsel's alleged failure to impeach witness Bankeut shared a common core of operative facts with timely claims concerning prosecutorial argument and the sufficiency of the lying-in-wait evidence.
4. Whether the court should terminate Mr. Spolin as petitioner's counsel after his disbarment.

HOLDINGS

1. The proposed ineffective-assistance claim was untimely, and petitioner was not entitled to equitable tolling because he made no argument demonstrating diligence or an extraordinary circumstance that prevented timely filing.
2. Most of the proposed ineffective-assistance allegations did not relate back because they were supported by facts differing in time and type from the facts underlying the timely claims.
3. The allegation that trial counsel was ineffective for failing to impeach witness Bankeut related back to timely claims and should be permitted as part of the amended petition.

KEY QUOTATIONS

“An extraordinary circumstance must be more than merely “oversight, miscalculation or negligence on the petitioner's part.”” (at 2)

“The claim does not relate back when it asserts a new ground for relief supported by facts that differ in both “time and type” from those the original pleading set forth.” (at 3)

“For these reasons, the undersigned will recommend allowing relation back as to the claim that trial counsel failed to impeach Bankeut.” (at 7)

FACTUAL BACKGROUND

Pech is a California state prisoner challenging a murder conviction and sentence through a § 2254 petition. His timely federal claims concerned prosecutorial burden shifting, prosecutorial argument about matters outside the evidence, sufficiency of the lying-in-wait murder evidence, cruel and unusual punishment, and cumulative prejudice. The proposed ineffective-assistance claim identified numerous alleged failures by trial counsel, including failures involving ballistics evidence, witnesses, jurors, objections, communication, plea negotiations, and impeachment of witness Bankeut.

PROCEDURAL HISTORY

Pech filed a federal habeas petition on August 29, 2023, asserting five exhausted claims and a sixth ineffective-assistance claim. The court voluntarily dismissed Ground Six and stayed the case under *Kelly v. Small* while Pech exhausted that claim in state court. After exhaustion, the stay was lifted and Pech moved to amend; Respondent opposed amendment as untimely and lacking relation back. The magistrate judge recommended granting amendment only for the ineffective-assistance allegation that trial counsel failed to impeach witness Bankeut and denying the remaining proposed amendments.

DISPOSITION

other

CASES CITED

- *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003)
- *Rhines v. Weber*, 544 U.S. 269 (2005)
- *Porter v. Ollison*, 620 F.3d 952, 958 (9th Cir. 2010)
- *Stancle v. Clay*, 692 F.3d 948, 953 (9th Cir. 2012)
- *Holland v. Florida*, 560 U.S. 631, 649 (2010)
- *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)
- *Ramirez v. Yates*, 571 F.3d 993, 997 (9th Cir. 2009)
- *Waldron-Ramsey v. Pacholke*, 556 F.3d 1008, 1011 (9th Cir. 2009)
- *Harris v. Carter*, 515 F.3d 1051, 1055 (9th Cir. 2008)
- *Mayle v. Felix*, 545 U.S. 644, 650, 656-657, 664 (2005)
- *Hebner v. McGrath*, 543 F.3d 1133, 1138 (9th Cir. 2008)
- *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991)