

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Alexander R. Soto v. Ken Clark

Soto v. Clark · No. 1:21-cv-0691 JLT HBK (HC) · Decided March 7, 2025

OPINION

(HC) Soto v. Clark

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 ALEXANDER R. SOTO,) Case No.: 1:21-cv-0691 JLT HBK (HC)) 12 Petitioner,)

ORDER ADOPTING THE FINDINGS AND

) RECOMMENDATIONS, DENYING PETITION

13 v.) FOR WRIT OF HABEAS CORPUS,

) DIRECTING CLERK OF COURT TO CLOSE

14 KEN CLARK,) CASE, AND DECLINING TO ISSUE

) CERTIFICATE OF APPEALABILITY

15 Respondent.)) (Docs. 1, 17) 16) 17 Alexander R. Soto is a state prisoner proceeding pro se with his petition for writ of habeas 18 corpus pursuant to 28 U.S.C. § 2254, raising grounds for relief related to: (1) Petitioner’s sixth 19 amendment right to present his defense and testify on his own behalf due to an objection 20 sustained during his testimony, (2) the trial court’s failure to instruct on vehicular manslaughter as 21 a lesser included offense to murder, and (3) inability to present a complete defense due to the trial 22 court’s failure to instruct on vehicular manslaughter. (See generally Doc. 1 at 9-20.) The 23 magistrate judge observed that Petitioner raised each ground on direct appeal, and found each 24 ground was exhausted. (Doc. 22 at 10.) 25 The magistrate judge found that Petitioner was “not entitled to relief on Ground One,” 26 because the record demonstrated “Petitioner had the opportunity to testify and put on a full 27 defense.” (Doc. 22 at 17.) The magistrate judge determined any error by the trial court in 28 sustaining the prosecution’s objection to a question posed to Petitioner on direct examination—as 1 to whether Petitioner thought someone could get hurt while he was driving—was a harmless error 2 and “did not have a substantial and injurious effect or influence the jury’s verdict.” (Id. at 15; see 3 also id. at 10-17.) The magistrate judge determined the state’s “denial of Petitioner’s claim was 4 neither contrary to, nor an unreasonable application of, clearly established federal law as 5 determined by the United States Supreme Court nor based on an unreasonable determination of 6 the facts in light of the evidence presented.” (Id. at 17.) 7 The magistrate judge also found Grounds Two and

Three in the petition, related to jury 8 instructions, were “without merit.” (Doc. 22 at 20, 22; see id. at 17-22.) As an initial matter, the 9 magistrate judge found “this Court is bound by the state court’s conclusion that the vehicular 10 manslaughter instruction was not required under state law.” (Id. at 18, citing *Bradshaw v. Richey*, 11 546 U.S. 74, 76 (2005).) In addition, the magistrate judge agreed with Respondent that “Ground 12 Two fails to state a cognizable federal habeas claim because Petitioner cannot show that the state 13 court’s decision was contrary to clearly established federal law.” (Id. at 20.) Similarly, the 14 magistrate judge found Ground Three was “not cognizable on federal habeas review” because 15 “there is not a federal constitutional right to instructions on lesser included offenses in non-capital 16 cases, and even less of a right to instructions on lesser related offenses.” (Id. at 21, citing 17 *Hopkins v. Reeves*, 524 U.S. 88 (1998).) The magistrate judge explained, “[b]ecause no clearly 18 established Federal law exists to support the proposition that Petitioner’s right to a complete 19 defense includes the right to a jury instruction, relief is unavailable under AEDPA.” (Id. at 22.) 20 The magistrate judge also considered whether the Court should issue a certificate of 21 appealability. (Doc. 22 at 22.) The magistrate judge observed, “[a] petitioner seeking a writ of 22 habeas corpus has no absolute entitlement to appeal; he may appeal only in limited 23 circumstances.” (Id., citing 28 U.S.C. § 2253, *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 24 (2003).) The magistrate judge also noted the Court will not issue a certificate of appealability 25 “unless a petitioner makes ‘a substantial showing of the denial of a constitutional right.’” (Id., 26 quoting 28 U.S.C. § 2253(c)(2).) Because Petitioner did not carry this burden to make a 27 substantial showing of the denial of a constitutional right, the magistrate judge recommended the 28 Court decline to issue a certificate of appealability. (Id.) 1 The Court served the Findings and Recommendations upon Petitioner and informed 2 | Petitioner that the “failure to file objections within the specified time may result in the waiver of 3 | certain rights on appeal.” (Doc. 22 at 22-23, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th 4 | Cir. 2014).) The Court granted several extensions of time for Petitioner to file objections— 5 | totalling more than five months—and ordered Petitioner to submit any objections “no later than 6 | February 24, 2025.” (Doc. 33 at 2 [emphasis omitted]; see also Docs. 25, 27, 29, 31, 33.) 7 | Petitioner did not file objections by the deadline ordered, and the time to do so has expired. 8 According to 28 U.S.C. § 636(b)(1), this Court performed a de novo review of this case. 9 | Having carefully reviewed the matter, the Court concludes the Findings and Recommendations 10 | are supported by the record and proper analysis. In addition, reasonable jurists would not find the 11 Court’s denial of the petition debatable or wrong, or that the issues presented are deserving of 12 | encouragement to proceed further. As the magistrate judge found, Petitioner did not make the 13 || required substantial showing of the denial of a constitutional right. Thus, the Court ORDERS: 14 1. The Findings and Recommendations issued on September 4, 2024 (Doc. 22) are 15 ADOPTED in full. 16 2. The petition for writ of habeas corpus (Doc. 1) is DENIED. 17 3. The Court declines to issue a certificate of appealability. 18 4. The Clerk of Court is directed to close the case. 19 20 IT IS SO ORDERED. 21 | Dated: _Mareh 7, 2025 Charis

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TED STATES DISTRICT JUDGE

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