

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Poslof v. Attchley

No. 1:21-cv-00339-JLT-HBK (HC) (E.D. Cal. June 18, 2025) · No. 1:21-cv-0339 JLT HBK (HC) · Decided June 18, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted the magistrate judge’s findings and recommendations and denied Lonnie Lee Poslof, Jr.’s petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court also denied leave to amend, declined to issue a certificate of appealability, and directed the clerk to close the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jennifer L. Thurston
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 18, 2025
DOCKET	1:21-cv-0339 JLT HBK (HC)
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought federal habeas relief under 28 U.S.C. § 2254 from state convictions. After a magistrate judge recommended denial of the petition, petitioner filed nonspecific objections, notices of appeal, requests for a certificate of appealability, and a motion to amend. The district court conducted de novo review, adopted the findings and recommendations, denied habeas relief and leave to amend, declined to issue a certificate of appealability, and closed the case.
STANDARD OF REVIEW	De novo review under 28 U.S.C. § 636(b)(1) of the magistrate judge’s findings and recommendations. For the habeas claims, the court applied the deferential standards governing review under 28 U.S.C. § 2254. For a certificate of appealability, the court applied whether reasonable jurists could debate the resolution of the constitutional claims or whether the issues deserved encouragement to proceed further.
PRECEDENTIAL VALUE	unreported district-court order; precedential status unknown

PARTIES

Lonnie Lee Poslof, Jr. v. M. Attchley

TOPICS

federal habeas corpus

post-conviction relief

pleadings

appellate procedure

constitutional law

PRACTICE AREAS

federal habeas corpus

post-conviction relief

appellate procedure

civil procedure

constitutional law

evidence

QUESTIONS PRESENTED

1. Whether the magistrate judge's findings and recommendations should be adopted after petitioner filed general rather than specific objections.
2. Whether petitioner was entitled to federal habeas relief on his Confrontation Clause, due-process, and evidentiary claims.
3. Whether petitioner's restitution-related claims were cognizable in a § 2254 proceeding.
4. Whether petitioner demonstrated grounds for a certificate of appealability.
5. Whether petitioner should be granted leave to amend the habeas petition after filing a second petition more than four years after filing the traverse and after issuance of the recommendation to deny relief.

HOLDINGS

1. A general objection to a magistrate judge's findings and recommendations is insufficient and does not require the district court to reconsider the unchallenged findings.
2. Petitioner was not entitled to federal habeas relief because the state court's adjudication of Grounds One through Four was not contrary to or an unreasonable application of clearly established federal law and was not based on an unreasonable determination of the facts.
3. Claims concerning restitution were not cognizable under § 2254 because they did not affect the duration of petitioner's confinement.
4. A certificate of appealability was properly denied because reasonable jurists would not find the denial of the petition debatable or wrong, and petitioner did not make a substantial showing of the denial of a constitutional right.
5. Leave to amend was denied because petitioner showed no good cause for seeking amendment more than four years after filing the traverse and only after the magistrate judge recommended denial.

KEY QUOTATIONS

“Thus, Petitioner’s general objection to the findings of the magistrate judge is insufficient.” (at 2)

“Reasonable jurists would not find the Court’s determination that the petition should be denied debatable or wrong, or that the issues presented are deserving of encouragement to proceed further.” (at 4)

FACTUAL BACKGROUND

Poslof, a California state prisoner, challenged convictions arising from proceedings in Merced County Superior Court. His federal petition asserted Confrontation Clause and due-process violations, evidentiary errors involving statements by a child victim and an alleged plot to commit arson and murder witnesses, and claims concerning restitution and his absence from the restitution hearing. The magistrate judge recommended denial, finding the constitutional and evidentiary claims failed under § 2254 and that the restitution-related claims were not cognizable because they did not affect the duration of confinement.

PROCEDURAL HISTORY

Poslof challenged convictions entered by the Merced County Superior Court. The magistrate judge concluded that the state court's adjudication of the constitutional and evidentiary claims was not contrary to or an unreasonable application of clearly established federal law and that the restitution-related claims were not cognizable on habeas review. Poslof's appeals from the nonfinal findings and recommendations were dismissed by the Ninth Circuit for lack of jurisdiction. The district court then overruled or rejected the nonspecific objections, adopted the recommendations in full, denied the petition and motion to amend, and declined to issue a certificate of appealability.

DISPOSITION

other

CASES CITED

- Howard v. Sec'y of Health & Human Servs., 932 F.2d 505, 509 (6th Cir. 1991)
- Lockert v. Faulkner, 843 F.2d 1015, 1019 (7th Cir. 1988)
- Miller-El v. Cockrell, 537 U.S. 322, 327, 335-36, 338 (2003)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)
- Woods v. Carey, 525 F.3d 886, 890 (9th Cir. 2008)
- Burton v. Stewart, 549 U.S. 147, 157 (2007)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 LONNIE LEE POSLOF, JR.,) Case No.: 1:21-cv-0339 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 M. ATTCHLEY,) CASE, AND DECLINING TO ISSUE) CERTIFICATE OF
APPEALABILITY 15 Respondent.)) (Docs.

1, 39)) 16 17 Lonnie Lee Poslof, Jr. is a state prisoner proceeding pro se with a petition for writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254, seeking to challenge his convictions in Merced 19
County Superior Court, Case No. CRM028634 on the following grounds: (1) violation of his 20

sixth amendment right to confront and cross-examine the child victim, (2) violation of his 21 fourteenth amendment due process rights, (3) error by the trial court in admitting the child- 22 victim's statements, (4) error by the trial court in admitting evidence of a plot to commit arson 23 and murder witnesses, (5) error by the court in its imposition of restitution, (6) split of authority 24 regarding preservation of a claim, and (6) prejudice due to Petitioner's absence from the 25 restitution hearing.

(See generally Doc. 1.) 26 The magistrate judge found Petitioner was not entitled to relief on the grounds raised. 27 (Doc. 39.) The magistrate judge determined that the state court's conclusions related to Grounds 28 One, Two, Three, and Four were "not contrary to, or an unreasonable application of, clearly 1 established federal law, nor ... based on an unreasonable determination of the facts in light of the 2 evidence presented in the state court proceeding." (Id. at 19; see also id. at 20, 26-27, 30.)

In 3 addition, the magistrate judge found Grounds Five, Six, and Seven "are not cognizable on habeas 4 review," because they do "not affect the duration of Petitioner's confinement." (Id. at 31-32.) 5 Finally, the magistrate judge recommended the Court deny a certificate of appealability, because 6 Petitioner did not make "a substantial showing of the denial of a constitutional right." (Id. at 32.)

7 On March 13, 2025, Petitioner filed a document entitled "Notice of Appeal; and, 8 Application for Hearing Requesting a Certificate of Appealability and Objections to Magistrate's 9 Recommendations and Findings for Denial of Habeas Corpus." (Doc. 42.)

The Court processed 10 the appeal to the Ninth Circuit, which dismissed the appeal for lack of jurisdiction—explaining 11 the Findings and Recommendations were "not final or appealable"—on March 27, 2025. (Doc. 12 45.) Days after the Ninth Circuit issued its mandate, Petitioner filed a second appeal and request 13 for a certificate of appealability. (Doc. 47.)

Again, the Ninth Circuit found that it lacked 14 jurisdiction and dismissed the appeal on May 22, 2025. (Doc. 51.) The Court issued its mandate 15 on June 13, 2025. (Doc. 52.) 16 In the objections filed concurrently with the notice of appeal, Petitioner did not address 17 any of the specific findings made by the magistrate judge related to the grounds raised in his 18 petition.

(See generally Doc. 42.) Petitioner focuses his argument on whether a certificate of 19 appealability should be issued and—in support of this assertion—Petitioner restates arguments 20 related to the alleged violation of his right to due process and to a fair trial, and the admission of 21 evidence in violation of the Confrontation Clause of the Sixth Amendment.

(Id. at 5-8.) 22 It also appears that Petitioner raises a general objection to the findings of the magistrate 23 judge. (See Doc. 42 at 1.) However, objections to any findings and recommendations must be 24 "specific." Fed. R. Civ. P. 72(b)(2); see also *Howard v. Sec'y of*

Health & Human Servs., 932 25 F.2d 505, 509 (6th Cir. 1991) (“A general objection to the entirety of the magistrate’s report has 26 the same effects as would a failure to object”); Lockert v. Faulkner, 843 F.2d 1015, 1019 (7th Cir.

27 1988) (general objections do not preserve arguments for appellate review and stating that “[a] 28 district judge should not have to guess what arguments an objecting party depends on when 1 reviewing a magistrate judge’s report”).

Thus, Petitioner’s general objection to the findings of 2 the magistrate judge is insufficient. 3 Petitioner’s argument that the magistrate judge erred in recommending the court decline to 4 issue a certificate of appealability is unavailing. An appeal is only permitted in certain 5 circumstances, and a petitioner seeking a writ of habeas corpus has no absolute entitlement to 6 appeal.

Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003); 28 U.S.C. § 2253. If the Court denies 7 a habeas petition on the merits, it may only issue a certificate of appealability “if jurists of reason 8 could disagree with the district court’s resolution of [the petitioner’s] constitutional claims or that 9 jurists could conclude the issues presented are adequate to deserve encouragement to proceed 10 further.” Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Though 11 Petitioner is not required to prove the merits of his case, he must demonstrate “something more 12 than the absence of frivolity or the existence of mere good faith on his... part.” Miller-El, 537 13 U.S. at 338. Reasonable jurists would not find the Court’s determination that the petition should 14 be denied debatable or wrong, or that the issues presented are deserving of encouragement to 15 proceed further.

Further, Petitioner did not make the required substantial showing of the denial of 16 a constitutional right. 17 According to 28 U.S.C. § 636(b)(1), this Court performed a de novo review of this case. 18 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations 19 are supported by the record and proper analysis. 20 On April 30, 2025, after the magistrate judge issued the Findings and Recommendations, 21 Petitioner filed a second petition.

The Court construed this as a motion to amend the petition 22 pursuant to Woods v. Carey, 525 F.3d 886, 890 (9th Cir. 2008). (See Case No. 1:25-0505-SKO, 23 Doc. 5 at 1.) Thus, Petitioner seeks leave to amend more than four years after he filed the 24 traverse in this action, and only after the magistrate judge issued a recommendation regarding the 25 denial of his petition.

The Court reviewed the proposed petition and finds there is no good cause 26 for permitting the amendment. See Fed. R. Civ. P. 81(a)(2) (Federal Rules of Civil Procedure are 27 “applicable to habeas corpus proceedings”); Rule 11 of the Rules Governing 2254 Cases; see also 28 Fed. R. Civ. P. 15 (governing amendments of pleadings).

Accordingly, leave to amend will not be permitted. Based upon the foregoing, the Court ORDERS: 1. The Findings and Recommendations issued on February 21, 2025 (Doc. 39) are ADOPTED in full. 2.

The petition for writ of habeas corpus (Doc. 1) is DENIED. 3. Petitioner's motion to amend the petition (Doc. 50) is DENIED. 4. The Court declines to issue a certificate of appealability. 5. The Clerk of Court is directed to close the case. 6 IT IS SO ORDERED. 7 Dated: June 18, 2025 Cerin | Tower TED STATES DISTRICT JUDGE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 | 1 To the extent that the petition may be construed as a successive petition, Petitioner is informed that he must seek leave from the Ninth Circuit to file any such second or successive petition.

Unless the Court of Appeals grants leave, the district court lacks jurisdiction over a successive petition. *Burton v. Stewart*, 549 U.S. 147, 157 (2007).