

**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

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 be denied debatable or wrong, or that the issues presented are deserving of encouragement to proceed further.

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

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

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