

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Bernard Brown, Jr. v. Marcus Pollard

No. 2:22-cv-06755-FLA (KSx), United States District Court for the Central District of California (April 9, 2025)

SUMMARY

The United States District Court for the Central District of California accepted and adopted a magistrate judge’s report and recommendation concerning the petitioner’s motion to amend his habeas petition. The court denied amendment because the proposed claims were untimely or duplicative and the petitioner’s objections did not warrant a different result.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Fernando L. Aenlle-Rocha
JURISDICTION	United States District Court for the Central District of California
DECIDED	April 9, 2025
DOCKET	2:22-cv-06755-FLA (KSx)
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought leave to amend a pending federal habeas petition to add four claims. After a magistrate judge recommended denying amendment because the proposed claims were untimely or duplicative, the district court conducted de novo review of the objected-to portions of the Report and Recommendation and denied the motion to amend.
STANDARD OF REVIEW	De novo review of the portions of the Report and Recommendation to which objections were made, pursuant to 28 U.S.C. § 636.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Bernard Brown, Jr. v. Marcus Pollard

TOPICS

- motion to amend
- federal habeas corpus
- statute of limitations
- successive petitions
- civil procedure

PRACTICE AREAS

- federal habeas corpus
- civil procedure
- post-conviction relief

QUESTIONS PRESENTED

1. Whether the proposed amendment was governed by the successive-habeas-petition standard.
2. Whether the proposed claims related back to the timely claims because they shared a common core of operative facts.
3. Whether alleged withholding of Petitioner's legal materials supported equitable tolling of the filing deadline.
4. Whether lack of prior exhaustion justified allowing amendment.
5. Whether a duplicative proposed claim rendered amendment futile.

HOLDINGS

1. The action was not a successive habeas petition because no earlier-filed petition by Petitioner had been finally adjudicated.
2. The proposed claims did not relate back because they were not tied to a common core of operative facts with the earlier claims.
3. The alleged withholding of Petitioner's legal materials could not support equitable tolling because it could not have caused the proposed claims' untimeliness.
4. Petitioner was not required to exhaust the proposed claims in state court before filing the motion to amend.
5. The proposed insufficiency-of-the-evidence claim was duplicative of an already-pending insufficiency claim, making amendment futile.
6. Petitioner was not entitled to amend his petition with untimely claims merely because he was required to litigate pro se.

KEY QUOTATIONS

“A habeas petition is successive if, “at a minimum, an earlier-filed petition has been finally adjudicated.””
(at 1)

“For if an extraordinary circumstance is not the cause of a litigant’s untimely filing, then there is nothing for equity to address.” (at 2)

FACTUAL BACKGROUND

Petitioner sought to add four claims to his pending habeas petition. The proposed claims involved different stages of the state criminal proceeding, a different prosecutor, and discrete or separate transactions from those underlying the timely claims. The proposed claims were six months untimely, and alleged withholding of legal materials lasted at most approximately five months. At least one proposed insufficiency-of-the-evidence claim duplicated an already-pending insufficiency claim.

PROCEDURAL HISTORY

The petition remained pending when Petitioner moved to add four claims. The magistrate judge recommended denial because the claims were untimely or duplicative. Petitioner objected, arguing that the successive-petition standard should apply, that some claims related back, that exhaustion and equitable tolling justified amendment, and that one claim was not duplicative. The district court rejected the objections, adopted the Report and Recommendation, and denied the motion to amend.

DISPOSITION

other

CASES CITED

- Balbuena v. Sullivan, 980 F.3d 619, 635 (9th Cir. 2020)
- Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005)
- Waldron-Ramey v. Pacholke, 556 F.3d 1008, 1013 (9th Cir. 2009)
- Smith v. Davis, 953 F.3d 582, 591 (9th Cir. 2020) (en banc)

OPINION

Bernard Brown, Jr. v. Marcus Pollard

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 BERNARD BROWN, JR., Case No. 2:22-cv-06755-FLA (KSx) 12 Petitioner, ORDER
ACCEPTING FINDINGS

13 v. AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE

14 MARCUS POLLARD,
JUDGE

15 Respondent. 16

17 18 19 20 21 22 23 24 25 26 27 28 1 Pursuant to 28 U.S.C. § 636, the court has reviewed the
Motion to Amend,

2 Dkts. 32, 33, the records on file, and the Report and Recommendation of the United

3 States Magistrate Judge (“Report”). Dkt. 43. Further, the court has engaged in a de 4 novo
review of those portions of the Report to which objections have been made.

5 Dkt. 45.

6 Petitioner requests leave to amend his habeas petition, which is still pending, 7 with four
additional claims. Dkt. 33. The Report recommends denial of leave to 8 amend because the
proposed claims are untimely or duplicative. Dkt. 43. 9 Petitioner’s objections to the Report, Dkt.
45, fail to warrant any change to the 10 Report’s proposed findings or recommendations. 11

Petitioner objects to the Report's legal standard, apparently because the 12 standard for successive habeas petitions should apply. Dkt. 45 at 3. A habeas 13 petition is successive if, "at a minimum, an earlier-filed petition has been finally 14 adjudicated." *Balbuena v. Sullivan*, 980 F.3d 619, 635 (9th Cir. 2020). Because 15 there is no earlier-filed petition by this Petitioner that has been finally adjudicated, 16 this action does involve a successive petition. 17 Petitioner objects that three of his proposed new claims are not untimely 18 because they relate back to his earlier, timely claims. Dkt. 45 at 4-5. As the 19 Report found, the proposed new claims and the earlier claims are not tied to a 20 common core of operative facts. Dkt. 43 at 12-13. The proposed new claims, 21 compared to the earlier claims, involved different stages of the state criminal 22 proceeding, a different prosecutor, and discrete or separate transactions. *Id.* 23 Petitioner does not challenge these findings in any substantive manner. 24 Petitioner objects that he diligently exhausted his claim in the state courts in 25 order to seek relief in federal court with his new proposed claims. Dkt. 45 at 6. But 26 Petitioner did not need to exhaust his claims in state court before filing a motion to 27 amend. See *Pace v. DiGuglielmo*, 544 U.S. 408, 416 (2005) (describing the process 28 1 available to prisoners of filing a "protective" petition in federal court and asking for 2 a stay until state remedies are exhausted). 3 Petitioner objects that prison staff kept his legal materials from him, which 4 he apparently raises as a basis for equitable tolling. Dkt. No. 45 at 6-7. Petitioner 5 refers to a letter and attached documents in which he alleged that his legal materials 6 were withheld from him beginning on August 15, 2023, upon his transfer to 7 California Medical Facility. Dkt. 24 at 2. Deprivation of legal materials could be a 8 basis for equitable tolling. See *Waldron-Ramey v. Pacholke*, 556 F.3d 1008, 1013 9 (9th Cir. 2009). Here, however, this alleged circumstance, assuming it might 10 qualify as extraordinary, could not have been the cause of the untimeliness of 11 Petitioner's proposed new claims. The court notified prison officials on October 12 12, 2023, that Petitioner had pending actions that would require the use of his legal 13 materials. Dkt. 27. Moreover, Petitioner was transferred to another prison around

14 January 12, 2024. Dkt. 31. These circumstances, liberally construed, show that the 15 withholding of the legal materials could have lasted, at the longest, for five months. 16 But Petitioner's proposed new claims are untimely by six months. Dkt. 43 at 10. 17 Thus, the alleged withholding of legal materials could not have caused the 18 untimeliness of Petitioner's proposed new claims. See *Smith v. Davis*, 953 F.3d 19 582, 591 (9th Cir. 2020) (en banc) ("For if an extraordinary circumstance is not the 20 cause of a litigant's untimely filing, then there is nothing for equity to address."). 21 Petitioner objects that he asked the court for the appointment of counsel.

22 Dkt. 45 at 7. As the court explained, prisoners are not entitled to counsel in habeas 23 corpus actions, and Petitioner did not show it was warranted in this case. Dkt. 7. 24 The requirement that Petitioner litigate this action as a pro se litigant does not 25 entitle him to amend his petition with untimely claims. 26 Finally, Petitioner appears to object that his proposed new claim, based on 27 insufficiency of the evidence, is not duplicative of an already-pending claim of

28 insufficiency of the evidence. Dkt. No. 45 at 7. As the Report found, the claims 1 || are
duplicative, rendering amendment futile. Dkt. 43 at 14. Petitioner does not 2 || challenge this
finding in any meaningful manner.

3 ORDER

4 It is ORDERED that (1) the Report and Recommendation of the Magistrate 5 || Judge is
ACCEPTED and ADOPTED; and (2) Petitioner's motion to amend his 6 || petition is DENIED. 7
8 IT IS SO ORDERED. 9 10 || Dated: April 9, 2025

11 FERNANDO L. AENLLE-ROCHA

United States District Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28