

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cervantes v. Campbell

Cervantes v. Campbell · No. 1:22-cv-00175-KES-SKO (HC) · Decided May 15, 2025

OPINION

(HC) Cervantes v. Pfeiffer

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

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11 CARLOS CERVANTES, No. 1:22-cv-00175-KES-SKO (HC)

12 Petitioner, ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS, DENYING

13 PETITION FOR WRIT OF HABEAS

CORPUS WITH PREJUDICE, DECLINING

14 v. TO ISSUE CERTIFICATE OF

APPEALABILITY, AND DIRECTING

15 CLERK OF COURT TO ENTER JUDGMENT

AND CLOSE CASE

16 TAMMY CAMPBELL, Acting Warden, (Doc. 45) 17 Respondent. 18 19 20 Petitioner Carlos
Cervantes is a state prisoner proceeding with a petition for writ of habeas 21 corpus pursuant to 28
U.S.C. § 2254. This matter was referred to a United States Magistrate 22 Judge pursuant to 28
U.S.C. § 636(b)(1)(B) and Local Rule 302. 23 On August 12, 2024, the assigned magistrate judge
issued findings and recommendations 24 to deny the petition on its merits. Doc. 45. Those
findings and recommendations were served 25 upon all parties and contained notice that any
objections thereto were to be filed within thirty (30) 26 days after service. On September 4, 2024,
petitioner filed objections to the findings and 27 recommendations. Doc. 46. Respondent did not
file a reply. 28 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has
conducted a de 1 novo review of the case. Having carefully reviewed the entire file, including
petitioner's 2 objections, the Court concludes that the magistrate judge's findings and
recommendations are 3 supported by the record and proper analysis. 4 All but one of petitioner's
objections either repeat arguments already made in his petition 5 or fail to meaningfully grapple
with the conclusions of the findings and recommendations. See

6 Doc. 46 at 4–10. Petitioner's objections as to his first claim argue that his Due Process rights

7 were violated because the state court did not retroactively apply amendments to California Penal
8 Code § 859.5, which requires that custodial interrogations be recorded. Doc. 21 ¶¶ 23–26. The 9
state court adjudicated this claim on the merits. See *People v. Cervantes*, 55 Cal. App. 5th 927 10
(Cal. Ct. App. 2020). Petitioner’s claim is plainly foreclosed by the fact that, as he concedes, “the
11 Supreme Court has not explicitly held that applying statutes retroactively is mandatory”
12 Doc. 46 at 2. A court reviewing a federal habeas petition is bound by the strictures of AEDPA,
13 and as such, a court may not grant a writ of habeas corpus unless the state court’s adjudication
of 14 the claim “resulted in a decision that was contrary to, or involved an unreasonable
application of, 15 clearly established Federal law, as determined by the Supreme Court of the
United States.” 28 16 U.S.C. § 2254(d)(1). As the Supreme Court has explained, if “[n]o holding
of [the Supreme 17 Court] required the California Court of Appeal to apply [the petitioner’s
proffered test], [it cannot 18 be said that] the state court’s decision was [] contrary to or an
unreasonable application of clearly 19 established federal law.” *Carey v. Musladin*, 549 U.S. 70,
77 (2006). The cases cited by 20 petitioner, which show that in some instances, the Supreme Court
has applied various statutes 21 retroactively, do not show that the Supreme Court has ever
required a state court to apply a state 22 criminal procedure statute retroactively, and they do not
show that the Supreme Court has found a 23 due process violation based on a state court’s failure
to do so. See Doc. 46 at 3–4. Accordingly, 24 as the findings and recommendations conclude,
habeas relief should be denied. 25 Having found that petitioner is not entitled to habeas relief, the
Court now turns to 26 whether a certificate of appealability should issue. A petitioner seeking a
writ of habeas corpus 27 has no absolute entitlement to appeal a district court’s denial of his
petition, and an appeal is 28 allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S.
322, 335-336 (2003). If a

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1 | court denies a habeas petition on the merits, the court may only issue a certificate of
appealability “if 2 | jurists of reason could disagree with the district court’s resolution of [the
petitioner’s]] constitutional 3 | claims or that jurists could conclude the issues presented are
adequate to deserve encouragement to 4 | proceed further.” *Miller-El*, 537 U.S. at 327; *Slack v.*
McDaniel, 529 U.S. 473, 484 (2000). While the 5 || petitioner is not required to prove the merits of
his case, he must demonstrate “something more than 6 | the absence of frivolity or the existence of
mere good faith on his. . . part.” *Miller-El*, 537 U.S. at 7 | 338. 8 In the present case, the Court
finds that reasonable jurists would not find the Court’s 9 | determination that the petition should be
denied debatable or wrong, or that the issues presented 10 | deserve encouragement to proceed
further. Petitioner has not made the required substantial showing 11 | of the denial of a
constitutional right. Therefore, the Court declines to issue a certificate of 12 | appealability. 13
Accordingly, 14 1. The findings and recommendations issued on August 12, 2024, Doc. 45, are 15
adopted in full; 16 2. The petition for writ of habeas corpus is denied with prejudice; 17 3. The
Clerk of Court is directed to enter judgment and close the case; and 18 4. The Court declines to

issue a certificate of appealability. 19 20

91 | IT IS SO ORDERED. _

22 Dated: _ May 14, 2025 |

33 UNITED STATES DISTRICT JUDGE

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