

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Reyes v. Cisneros

Reyes · No. 1:22-cv-01490-ADA-SKO (HC) · Decided March 13, 2023

SUMMARY

The United States District Court for the Eastern District of California adopted the magistrate judge’s findings and recommendations and dismissed Osbaldo Reyes’s petition for a writ of habeas corpus under 28 U.S.C. § 2254 for lack of jurisdiction. The court dismissed the petition with prejudice, directed the clerk to enter judgment and close the case, and declined to issue a certificate of appealability.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 13, 2023
DOCKET	1:22-cv-01490-ADA-SKO (HC)
DISPOSITION	dismissed
PROCEDURAL POSTURE	State prisoner petition for a writ of habeas corpus under 28 U.S.C. § 2254; the district court reviewed and adopted a magistrate judge’s findings and recommendations to dismiss the petition for lack of jurisdiction.
STANDARD OF REVIEW	De novo review of the magistrate judge’s findings and recommendations under 28 U.S.C. § 636(b)(1)(C). A certificate of appealability requires a substantial showing of the denial of a constitutional right.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is unknown and the opinion has no reporter citation.
PARTIES	Osbaldo Reyes v. Theresa Cisneros

TOPICS

- federal habeas corpus
- subject matter jurisdiction
- appellate procedure
- writ of certiorari
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the magistrate judge's recommendation to dismiss the § 2254 petition for lack of jurisdiction should be adopted after de novo review.
2. Whether Reyes made the substantial showing of the denial of a constitutional right necessary for issuance of a certificate of appealability.

HOLDINGS

1. The magistrate judge's findings and recommendations recommending dismissal for lack of jurisdiction were supported by the record and proper analysis and were adopted in full; the § 2254 petition was dismissed with prejudice.
2. A certificate of appealability was denied because Reyes had not made the required substantial showing of the denial of a constitutional right, and reasonable jurists would not debate the court's determination.

KEY QUOTATIONS

“Reasonable jurists would not find the Court’s determination that petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further.” (at 2)

FACTUAL BACKGROUND

Osbaldo Reyes is a state prisoner proceeding pro se and in forma pauperis. He filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The district court adopted the magistrate judge's determination that the petition should be dismissed for lack of jurisdiction.

PROCEDURAL HISTORY

Reyes filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The assigned magistrate judge issued findings and recommendations on January 17, 2023, recommending dismissal for lack of jurisdiction. No objections were filed. After conducting de novo review under 28 U.S.C. § 636(b)(1)(C), the district court adopted the findings and recommendations in full, dismissed the petition with prejudice, directed entry of judgment and closure of the case, and declined to issue a certificate of appealability.

DISPOSITION

dismissed

CASES CITED

- Miller-El v. Cockrell, 537 U.S. 322, 335-336 (2003)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)
- Barefoot v. Estelle, 463 U.S. 880, 893 (1983)

OPINION

(HC) Reyes v. Cisneros

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 OSBALDO REYES, No. 1:22-cv-01490-ADA-SKO (HC)

12 Petitioner, ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

13 (ECF No. 7) 14 v.

ORDER DISMISSING PETITION FOR WRIT

15 OF HABEAS CORPUS

16 ORDER DIRECTING CLERK OF COURT TO

THERESA CISNEROS, ENTER JUDGMENT AND CLOSE CASE

17 Respondent. ORDER DECLINING TO ISSUE

18 CERTIFICATE OF APPEALABILITY

19 20 Petitioner Osbaldo Reyes (“Petitioner”) is a state prisoner proceeding pro se and in forma 21
pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was
22 referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local
Rule 23 302. 24 On January 17, 2023, the assigned Magistrate Judge issued findings and
recommendations 25 to dismiss the petition for lack of jurisdiction. (ECF No. 7.) Those findings
and recommendations 26 were served upon all parties and contained notice that any objections
thereto were to be filed within 27 twenty-one days after service. (Id. at 2.) No objections have
been filed, and the deadline to do so 28 has expired. 1 In accordance with the provisions of 28
U.S.C. § 636 (b)(1)(C), the Court has conducted a 2 de novo review of the case. Having carefully
reviewed the entire file, the Court concludes that the 3 Magistrate Judge’s findings and
recommendations are supported by the record and proper analysis. 4 In addition, the Court
declines to issue a certificate of appealability. A state prisoner 5 seeking a writ of habeas corpus
has no absolute entitlement to appeal a district Court’s denial of 6 his petition, and an appeal is
only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 7 322, 335-336 (2003). The
controlling statute in determining whether to issue a certificate of 8 appealability is 28 U.S.C. §
2253, which provides as follows: 9 (a) In a habeas corpus proceeding or a proceeding under
section 2255 before a 10 district judge, the final order shall be subject to review, on appeal, by the
Court of appeals for the circuit in which the proceeding is held. 11 (b) There shall be no right of
appeal from a final order in a proceeding to test 12 the validity of a warrant to remove to another
district or place for commitment or trial a person charged with a criminal offense against the
United States, or to test 13 the validity of such person's detention pending removal proceedings. 14

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the Court of appeals from— 15 (A) the final order in a habeas corpus proceeding in which the 16 detention complained of arises out of process issued by a State Court; or 17 (B) the final order in a proceeding under section 2255. 18

(2) A certificate of appealability may issue under paragraph (1) only if the 19 applicant has made a substantial showing of the denial of a constitutional right. 20

(3) The certificate of appealability under paragraph (1) shall indicate which 21 specific issue or issues satisfy the showing required by paragraph (2). 22 If a Court denies a petitioner’s petition, the Court may only issue a certificate of 23 appealability when a petitioner makes a substantial showing of the denial of a constitutional right. 24 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that 25 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have 26 been resolved in a different manner or that the issues presented were ‘adequate to deserve 27 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting 28 1 | *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). 2 In the present case, the Court finds that petitioner has not made the required substantial 3 | showing of the denial of a constitutional right to justify the issuance of a certificate of appealability. 4 | Reasonable jurists would not find the Court’s determination that petitioner is not entitled to federal 5 | habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, 6 | the Court declines to issue a certificate of appealability. 7 Accordingly, 8 1. The findings and recommendations issued on January 17, 2023, (ECF No. 7), are 9 adopted in full; 10 2. The petition for writ of habeas corpus is dismissed with prejudice; 11 3. The clerk of Court is directed to enter judgment and close the case; and 12 4. The Court declines to issue a certificate of appealability. 13 This order terminates the action in its entirety. 14 15 16 | IT IS SO ORDERED. 17 Dated: _ March 10, 2023

is UNITED STATES DISTRICT JUDGE

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