

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Rodney Carter v. L. Martinez

Carter v. Martinez · No. 8:21-cv-01833-JWH-MAR · Decided March 6, 2023

OPINION

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5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF CALIFORNIA 10 11
RODNEY CARTER, Case No. 8:21-cv-01833-JWH(MAR) 12 Petitioner, 13 v. ORDER
ACCEPTING FINDINGS AND RECOMMENDATION OF 14 UNITED STATES
MAGISTRATE JUDGE 15 L. MARTINEZ, 16 Respondent. 17 18 19 20 21 22 23 24 25 26 27 28
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Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for a Writ of 2 Habeas Corpus,
the records on file, and the Final Report and Recommendation of the 3 United States Magistrate
Judge.

The Court has engaged in de novo review of those 4 portions of the Report to which Petitioner has
objected. The Court ACCEPTS the 5 findings and recommendation of the Magistrate Judge,
generally. 6 The Court recognizes that, in the Petition and the Objections, Petitioner raises 7
arguments based on state law, which were not explicitly addressed in the Final Report 8 and
Recommendation.

First, Petitioner argues that his second trial violated state 9 double jeopardy principles, specifically
as provided for under California Penal Code 10 § 1023 and as implemented under California
Penal Code § 1382(a)(2). Dkt. 1 at 29- 11 30; Dkt. 16 at 3 & 5-6.

In addition, Petitioner argues that his trial and appellate 12 counsel were ineffective, in part, for
failing to raise in the state courts these state-law 13 double jeopardy arguments. Dkt. 1 at 13, 18;
Dkt. 16 at 3 & 6.

Finally, Petitioner 14 argues that his trial counsel was ineffective for failing to object to the trial
court's 15 misapplication of California Penal Code § 1382(a)(2) in finding that Petitioner was 16
subject to retrial. Dkt. 1 at 14; Dkt. 16 at 3. Nevertheless, these arguments do not 17 entitle
Petitioner to federal habeas corpus relief. 18 Petitioner's argument that his second trial violated
state double jeopardy 19 principles is not cognizable on federal habeas review.

See *Estelle v. McGuire*, 502 20 U.S. 62, 67-68 (1991) (federal habeas relief is limited to
addressing violations of 21 federal law and does not lie for errors of state law). Although
Petitioner's ineffective 22 assistance of counsel arguments based on the failure to raise state law

issues in the 23 state courts are cognizable here, Petitioner has not shown that his second trial violated 24 either California Penal Code § 1023 or § 1382(a)(2), or any other provision of state 25 law.

Neither Petitioner's trial counsel nor his appellate counsel was ineffective for 26 failing to raise in the state courts meritless arguments based on these state law double 27 jeopardy arguments. See *Juan H. v. Allen*, 408 F.3d 1262, 1273-74 (9th Cir. 2005) (as 28 amended) ("The California Court of Appeal was not objectively unreasonable in 2 Case 8]21-cv-01833-JWH-MAR Document 19 Filed 03/06/23 Page 3of3 Page ID #:2639 1 | holding that the performance of counsel did not fall below an "objective standard of 2 | reasonableness" on account of not raising this meritless objection."); see also 3. | *Wildman v. Johnson*, 261 F.3d 832, 840 Oth Cir.

2001) ("[Petitioner] cannot sustain 4 | his claim for ineffective assistance of appellate counsel because the issues he raises are 5 | without merit."). 6 For those reasons, the Court hereby ORDERS that Judgment shall be entered 7 | DISMISSING this action with prejudice. 8 IT IS SO ORDERED. 10 | Dated: March 6, 2023 VY 11 12 United States Dittrict Judge 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28