

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

Victor Manuel Quintero v. Tristan Lemon

Quintero v. Lemon · No. 1:22-cv-01568 JLT SAB (HC) · Decided February 25, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 VICTOR MANUEL QUINTERO,) Case No.: 1:22-cv-01568 JLT SAB
(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 TRISTAN LEMON,) CASE, AND DECLINING TO ISSUE)
CERTIFICATE OF APPEALABILITY 15 Respondent.)) (Docs.

1, 25) 16) 17 Victor Manuel Quintero is a state prisoner proceeding with a petition for writ of
habeas 18 corpus pursuant to 28 U.S.C. § 2254, raising five grounds related to sufficiency of the
evidence 19 and prosecutorial misconduct. (See generally Doc.

1. at 7-28.) The magistrate judge found 20 Petitioner was not entitled to habeas relief on the
grounds raised in his petition, and recommended 21 the Court deny the petition. (Doc. 25 at 4-22.)
22 The Court served the Findings and Recommendations on Petitioner and notified him that 23
any objections were due within 30 days. (Doc. 25 at 22.) Petitioner then filed an appeal to the 24
Ninth Circuit, which the Court dismissed for lack of jurisdiction.

(Docs. 26, 29.) After the Ninth 25 Circuit issued its mandate (Doc. 30), the Court granted a 30-day
extension for Petitioner to file 26 objections. (Doc. 31.) Thus, any objections were due no later
than January 20, 2025. (See *id.* at 27 1.)

The Court also reminded Petitioner the “failure to file objections within the specified time 28 may
waive the right to appeal....” (*Id.* at 2, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 1 | (9th
Cir. 2014).) Petitioner did not file objections, and the time to do so expired. 2 According to 28
U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.

3 | Having carefully reviewed the matter, the Court concludes the Findings and Recommendations
4 | are supported by the record and proper analysis. Further, the Court declines to issue a
certificate 5 | of appealability. 6 A petitioner seeking a writ of habeas corpus does not have an
absolute entitlement to 7 | appeal, and an appeal is only allowed in certain circumstances.

Miller-El v. Cockrell, 537 □□□□ 8 | 322, 335-36 (2003); 28 U.S.C. § 2253. If a court denies a
habeas petition on the merits, it may 9 | only issue a certificate of appealability “if jurists of reason
could disagree with the district court’s 10 | resolution of [the petitioner’s] constitutional claims or

that jurists could conclude the issues 11 | presented are adequate to deserve encouragement to proceed further.” Miller-El, 537 U.S. at 327; 12 | Slack v. McDaniel, 529 U.S. 473, 484 (2000).

While Petitioner is not required to prove the merits 13 | of his case, he must demonstrate “something more than the absence of frivolity or the existence of 14 | mere good faith on his... part.” Miller-El, 537 U.S. at 338.

The Court finds reasonable jurists 15 | would not find the determination that the petition should be denied debatable or wrong, or that the 16 || issues presented are deserving of encouragement to proceed further. Because Petitioner does not 17 | make the required substantial showing of the denial of a constitutional right, the Court declines to 18 || issue a certificate of appealability.

Thus, the Court ORDERS: 19 1. The Findings and Recommendations issued on October 7, 2024 (Doc. 25) are 20 ADOPTED in full. 21 2. The petition for writ of habeas corpus (Doc. 1) is DENIED. 22 3. The Court declines to issue a certificate of appealability. 23 | /// 24 | /// 25 | /// 26 4.

The Clerk of Court is directed to close the case. 27 28 IT IS SO ORDERED. TINTITCH cRA TES NIeTRICT WMHee 1 Dated: February 25, 2025 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28