

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Paul Hupp v. Warden

No. 5:21-cv-01670-RSWL-MAR, United States District Court for the Central District of California (March 13, 2023)

SUMMARY

The United States District Court for the Central District of California accepted the magistrate judge’s Report and Recommendation and overruled Paul Hupp’s objections. The court denied the habeas corpus petition as procedurally barred, denied a certificate of appealability, and dismissed the action with prejudice.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Ronald S.W. Lew
JURISDICTION	United States District Court for the Central District of California
DECIDED	March 13, 2023
DOCKET	5:21-cv-01670-RSWL-MAR
DISPOSITION	dismissed
PROCEDURAL POSTURE	Federal habeas corpus proceeding under 28 U.S.C. § 2254. The district court reviewed the magistrate judge's Report and Recommendation de novo as to the portions challenged by the petitioner and denied the petition.
STANDARD OF REVIEW	De novo review of the portions of the magistrate judge's Report and Recommendation to which specific objections were made, pursuant to Federal Rule of Civil Procedure 72(b)(3). For a certificate of appealability, the petitioner must make a substantial showing of the denial of a constitutional right.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is not established in the source metadata.

TOPICS

- federal habeas corpus
- post-conviction relief
- default
- appellate procedure
- standard of review

PRACTICE AREAS

Federal habeas corpus

Post-conviction relief

Appellate procedure

QUESTIONS PRESENTED

1. Whether the petition was procedurally barred because the petitioner had no available state remedies.
2. Whether the petitioner could overcome the procedural default through a potentially meritorious ineffective-assistance-of-counsel claim.
3. Whether a certificate of appealability should issue.

HOLDINGS

1. Because Hupp had no state remedies available, his habeas claim was procedurally barred.
2. Hupp could not overcome the procedural default because his ineffective-assistance-of-counsel claim was meritless.
3. A certificate of appealability was denied because reasonable jurists could not debate the court's ruling that Hupp's claims were procedurally defaulted.

KEY QUOTATIONS

“To be clear, Petitioner has no state remedies available to him and his claim is procedurally barred.” (2)

“Therefore, the Petition is DENIED.” (3)

“Here, reasonable jurists could not debate the Court’s ruling that Petitioner’s claims are procedurally defaulted.” (3)

FACTUAL BACKGROUND

The opinion provides no detailed account of the underlying criminal or evidentiary facts. Hupp pursued a state-prisoner habeas claim alleging ineffective assistance of counsel. The district court concluded that no state remedies remained available, that the claim was procedurally barred, and that the ineffective-assistance claim was meritless.

PROCEDURAL HISTORY

Paul Hupp filed a petition for a writ of habeas corpus. The magistrate judge issued a Report and Recommendation, and Hupp filed objections. The district court overruled the objections, accepted the Report and Recommendation, denied the petition, denied a certificate of appealability, and dismissed the action with prejudice.

DISPOSITION

dismissed

CASES CITED

- Cooper v. Neven, 641 F.3d 322, 327 (9th Cir. 2011)
- Carter v. Ryan, No. CV 17-04105-PHX-DGC (MHB), 2019 U.S. Dist. LEXIS 143781, at *20 (D. Ariz. Aug. 22, 2019)
- Miller-El v. Cockrell, 537 U.S. 322, 327 (2003)

OPINION

Paul Hupp v. Warden

PER CURIAM.

Case 5:21-cv-01670-RSWL-MAR Document 49 Filed 03/13/23 Page 11 of 3 Page ID #:1107 1 'o'

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11

12 PAUL HUPP, EDCV 21-1670-RSWL-MAR

13 Petit; ORDER ACCEPTING FINDINGS

CEPETONSE AND RECOMMENDATIONS OF

14 vy UNITED STATES MAGISTRATE

□ JUDGE [30]; AND DENYING

15 CERTIFICATE OF APPEALABILIT

WARDEN,

16 Respondent. 17

186 19 Pursuant to 28 U.S.C. § 636, the Court has reviewed 50 the Petition for Writ of Habeas Corpus (“Petition”) [1], 54 records on file herein, and the Report and 59 Recommendation of the United States Magistrate Judge 53 [30]. Further, as required by Federal Rule of Civil DA Procedure 72(b) (3), the Court has engaged in de novo 55 review of the portions of the Report and Recommendation 26 to which Petitioner specifically has objected [48]. A. The Petition 27 — 28 Petitioner’s objections lack merit for the reasons Case 5:21-cv-01670-RSWL-MAR Document 49 Filed 03/13/23 Page 2 of 3 Page ID #:1108 1 stated in the Report and Recommendation. Having 2 considered the Petition [1], Respondent’s Answer to the 3 Petition (“Answer”) [22], the papers filed in connection 4 with the Answer [24, 29], and Petitioner’s Objections to 5 the Report and Recommendation [48], the Court finds no 6 defect of law, fact, or logic in the Report and 7 Recommendation. To be clear, Petitioner has no state 8 remedies available to him and his claim is procedurally 9 barred. See Cooper v. Neven, 641 F.3d 322, 327 (9th

10 Cir. 2011). Furthermore, Petitioner cannot overcome the

11 procedural default because his ineffective assistance of 12 counsel claim is meritless. See Carter v. Ryan, No. CV 13 17-04105-PHX-DGC (MHB), 2019 U.S. Dist. LEXIS 143781, at 14 *20 (D. Ariz. Aug. 22, 2019). Therefore, the Petition 15 is DENIED. 16 B. The Certificate of Appealability 17 Under the Antiterrorism and Effective Death Penalty 18 Act of 1996, a state prisoner seeking to appeal a 19 district court’s final order in a habeas corpus 20 proceeding must

obtain a Certificate of Appealability 21 (“COA”) from the district judge or a circuit judge. 28 22
U.S.C. § 2253(c)(1)(A). A COA may issue “only if the 23 applicant has made a substantial
showing of the denial 24 of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A 25 petitioner
satisfies this standard by demonstrating that 26 jurists of reason could disagree with the district 27
court’s resolution of his constitutional claims or that 28 jurists could conclude the issues presented
are adequate 2 Case 5:21-cv-01670-RSWL-MAR Document 49 Filed 03/13/23 Page 3 of 3 Page
ID #:1109 1 to deserve encouragement to proceed further.” Miller-El 2 v. Cockrell, 537 U.S. 322,
327 (2003). 3 Here, reasonable jurists could not debate the 4 Court’s ruling that Petitioner’s claims
are procedurally 5 defaulted. Therefore, the CAO is DENIED. 6 7 Accordingly, IT IS ORDERED
THAT: 8 1. Petitioner’s objections are overruled; and 9 2. The Report and Recommendation of the
Magistrate 10 Judge is accepted; and 11 3. The Certificate of Appealability is denied; and 12 4.
Judgment is entered denying the Petition and 13 dismissing this Action with prejudice. 14 15 IT IS
SO ORDERED. 16 17 DATED: March 13, 2023 /s/Ronald S.W. Lew _____
HONORABLE RONALD S.W. LEW
18 Senior U.S. District Judge 19 20 21 22 23 24 25 26 27 28 3