

**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)

OPINION

Paul Hupp v. Warden

PER CURIAM.

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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