

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Relmon H. Davis, III v. W.J. Sullivan

Davis v. Sullivan · No. 1:20-cv-01270-KES-HBK (HC) · Decided September 15, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Relmon H. Davis III's motion to amend his habeas petition to add an ineffective-assistance-of-appellate-counsel claim, finding amendment futile. The court adopted the magistrate judge's findings and recommendations, denied the petition for a writ of habeas corpus, declined to issue a certificate of appealability, and directed the clerk to close the case.

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	September 15, 2025
DOCKET	1:20-cv-01270-KES-HBK (HC)
DISPOSITION	denied
PROCEDURAL POSTURE	State prisoner sought federal habeas relief under 28 U.S.C. § 2254. After a magistrate judge recommended denial of the petition, petitioner objected, attempted an appeal that was dismissed for lack of jurisdiction, and moved to amend the petition to add an ineffective-assistance-of-appellate-counsel claim.
STANDARD OF REVIEW	De novo review of the magistrate judge's findings and recommendations under 28 U.S.C. § 636(b)(1). Leave to amend under Federal Rule of Civil Procedure 15(a)(2) is reviewed under a liberal standard, but denial is permissible when amendment would be futile. A certificate of appealability requires the substantial showing described in 28 U.S.C. § 2253 and applicable Supreme Court precedent.
PRECEDENTIAL VALUE	unknown
PARTIES	Relmon H. Davis, III v. W.J. Sullivan

TOPICS

- federal habeas corpus
- post-conviction relief
- motion to amend
- appellate procedure
- standard of review

PRACTICE AREAS

federal habeas corpus

post-conviction relief

appellate procedure

civil procedure

constitutional law

QUESTIONS PRESENTED

1. Whether petitioner should be granted leave under Federal Rule of Civil Procedure 15(a)(2) to amend the habeas petition to add an ineffective-assistance-of-appellate-counsel claim.
2. Whether the magistrate judge's recommendation to deny the § 2254 petition should be adopted after de novo review.
3. Whether a certificate of appealability should issue.

HOLDINGS

1. Leave to amend was properly denied because the proposed ineffective-assistance-of-appellate-counsel claim was futile and meritless.
2. The petition for a writ of habeas corpus was denied, and the magistrate judge's findings and recommendations were adopted in full.
3. A certificate of appealability was denied because reasonable jurists would not find the denial of the petition debatable or wrong and petitioner had not made the required substantial showing of the denial of a constitutional right.

KEY QUOTATIONS

“However, “denying leave is not an abuse of discretion if it is clear that granting leave to amend would have been futile.”” (at 1)

“A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal, rather an appeal is allowed only in certain circumstances.” (at 2)

FACTUAL BACKGROUND

Petitioner challenged a state conviction and sentencing enhancement in a § 2254 petition. He sought to add an ineffective-assistance-of-appellate-counsel claim based on counsel's failure to challenge the exclusion of evidence that petitioner claimed affected the validity of prior convictions used for sentencing enhancement. The proposed evidence did not establish that those underlying convictions had been overturned or were facially invalid.

PROCEDURAL HISTORY

The magistrate judge issued findings and recommendations on May 19, 2025, recommending denial of the habeas petition and declining to issue a certificate of appealability. Petitioner filed objections and a notice of appeal; the Ninth Circuit dismissed the appeal for lack of jurisdiction on July 21, 2025. Petitioner then moved to amend the petition, and the district court denied amendment as futile, conducted de novo review, adopted the findings and recommendations, denied habeas relief, declined to issue a certificate of appealability, and closed the case.

DISPOSITION

denied

CASES CITED

- Lathus v. City of Huntington Beach, 56 F.4th 1238, 1243 (9th Cir. 2023)
- Moormann v. Ryan, 628 F.3d 1102, 1106 (9th Cir. 2010)
- Miller-El v. Cockrell, 537 U.S. 322, 327, 335-36, 338 (2003)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 RELMON H. DAVIS, III,) Case No.: 1:20-cv-01270-KES-HBK (HC)) 12
Petitioner,) ORDER DENYING PETITIONER’S MOTION) TO AMEND, ADOPTING
FINDINGS AND 13 v.) RECOMMENDATIONS, DENYING PETITION) FOR WRIT OF
HABEAS CORPUS, 14 W.J. SULLIVAN,) DIRECTING CLERK OF COURT TO CLOSE)
CASE, AND DECLINING TO ISSUE 15 Respondent.) CERTIFICATE OF APPEALABILITY)
16) Docs.

1, 33, 40 17 Petitioner Relmon H. Davis, III is a state prisoner proceeding pro se with a petition
for 18 writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. This matter was referred to a
United 19 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20
On May 19, 2025, the assigned magistrate judge issued findings and recommendations 21
recommending that the petition for writ of habeas corpus be denied as without merit, and that the
22 Court decline to issue a certificate of appealability.

Doc. 33. Those findings and 23 recommendations were served upon all parties and contained
notice that any objections were to 24 be filed within fourteen (14) days after service. 25 Petitioner
filed objections on June 5, 2025. Doc. 34. Four days later, petitioner filed a 26 notice of appeal to
the Ninth Circuit. Doc. 35. While his appeal remained pending, petitioner 27 filed a second set of
objections to the findings and recommendations.

Doc. 38. On July 21, 2025, 28 1 the Ninth Circuit dismissed petitioner’s appeal for lack of
jurisdiction. Doc. 39. On August 5, 2 2025, petitioner filed a motion to amend his petition to
include a claim of ineffective assistance of 3 appellate counsel. Doc. 40. Respondent filed an
opposition to the motion to amend. Doc. 41. 4 The Court first addresses petitioner’s motion to
amend his petition.

Petitioner seeks to 5 add a claim of ineffective assistance of appellate counsel based on appellate
counsel’s alleged 6 failure to challenge the trial court’s exclusion of petitioner’s evidence as

unauthenticated. 7 Doc. 40 at 2.

Under Rule 15(a)(2), a court “should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). However, “denying leave is not an abuse of discretion if it is clear that granting leave to amend would have been futile.” *Lathus v. City of Huntington Beach*, 1056 F.4th 1238, 1243 (9th Cir. 2023) (internal quotation marks omitted). 11 Amendment to include the ineffective assistance of appellate counsel claim would be 12 futile.

To succeed on an ineffective assistance of appellate counsel claim, petitioner must show 13 (1) his “counsel acted unreasonably in failing to discover and brief a merit-worthy issue”; and (2) 14 “a reasonable probability that, but for appellate counsel’s failure to raise the issue, petitioner 15 would have prevailed in his appeal.” *Moormann v. Ryan*, 628 F.3d 1102, 1106 (9th Cir.

2010). 16 As the magistrate judge observed in the findings and recommendations, the evidence petitioner 17 sought to admit in no way establishes that the underlying convictions used to support his 18 sentencing enhancement had been overturned or were facially invalid. See Doc. 33 at 14.

Thus, 19 the exclusion of the evidence was not a merit-worthy issue and appellate counsel did not perform 20 deficiently in failing to raise the claim. Because this conclusion renders petitioner’s ineffective 21 assistance claim meritless, amendment would be futile.

Accordingly, leave to amend would be 22 futile. 23 The Court now turns to petitioner’s objections to the findings and recommendations. In 24 his initial objections, petitioner simply lists various authorities without argument as to how they 25 apply to his case or show any error in the findings and recommendations. See Doc. 34.

In his 26 second set of objections, petitioner renews his challenges to the prior convictions used to enhance 27 his sentence rather than to the actual conviction that is the subject of the petition. See Doc. 38. 28 This argument was correctly addressed by the findings and recommendations, and the Court need 1 | not revisit it here. 2 Consistent with 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 are 4 | supported by the record and proper analysis. 5 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal, rather 6 | an appeal is allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 7 | (2003); 28 U.S.C. § 2253.

If a court denies a habeas petition on the merits, the court may issue a 8 | certificate of appealability only “if jurists of reason could disagree with the district court’s 9 | resolution of [the petitioner’s] constitutional claims or that jurists could conclude the issues 10 | presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327; 11 | *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

While the petitioner is not required to prove the 12 | merits of his case, he must demonstrate “something more than the absence of frivolity or the 13 | existence of mere good faith on his... part.” Miller-El, 537 U.S. at 338. 14 The Court finds that reasonable jurists would not find the Court’s determination that the 15 | petition should be denied debatable or wrong, or that the issues presented are deserving of 16 | encouragement to proceed further.

Petitioner has not made the required substantial showing of the 17 | denial of a constitutional right. Therefore, the Court declines to issue a certificate of appealability. 18 Based upon the foregoing, the Court ORDERS: 19 1. Petitioner’s motion to amend, Doc. 40, is DENIED. 20 2.

The findings and recommendations issued on May 19, 2025, Doc. 33, are 21 ADOPTED in full. 22 3, The petition for writ of habeas corpus, Doc. 1, is DENIED. 23 4. The Court declines to issue a certificate of appealability. 24 5.

The Clerk of the Court is directed to close the case. 25 26 IT IS SO ORDERED. _ Dated: _ September 14, 2025 28 UNITED STATES DISTRICT JUDGE