

**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.

OPINION

Sullivan

PER CURIAM.

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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 8 requires." Fed. R. Civ. P. 15(a)(2). However, "denying leave is not an abuse of discretion if it is 9 clear that granting leave to amend would have been futile." *Lathus v. City of Huntington Beach*, 10 56 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