

**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

OPINION

Sullivan

PER CURIAM.

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
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