

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Levy v. Morales

No. 1:25-cv-0072 JLT EPG (E.D. Cal. May 1, 2025) · No. 1:25-cv-0072 JLT EPG · Decided May 1, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted the magistrate judge’s findings and recommendations concerning Michael Anthony Levy’s unexhausted state habeas claims. The court dismissed the § 2254 petition, terminated the petitioner’s request for review as moot, directed the clerk to close the case, and declined to issue a certificate of appealability. Although the order’s heading refers to dismissal without prejudice, the operative order states that the petition is dismissed with prejudice.

OPINION

(HC) Levy v. Morales

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 MICHAEL ANTHONY LEVY,) Case No.: 1:25-cv-0072 JLT EPG) 12 Petitioner,)

ORDER ADOPTING IN FULL THE FINDINGS

) AND RECOMMENDATIONS, DISMISSING THE

13 v.) PETITION FOR WRIT OF HABEAS CORPUS

) WITHOUT PREJUDICE, TERMINATING

14 RAUL MORALES,) PETITIONER’S REQUEST FOR REVIEW AS

) MOOT, AND DIRECTING THE CLERK OF

15 Respondent.) COURT TO CLOSE THE CASE) 16) (Docs. 7, 8)) 17 18 Michael Anthony Levy is a state prisoner proceeding pro se and in forma pauperis with a 19 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The magistrate judge performed a 20 preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, and 21 found Petitioner did not exhaust his state court remedies. (Doc. 7 at 1, 2.) Therefore, the magistrate 22 judge found “the Court cannot proceed to the merits” of the claims raised in the petition and 23 recommended dismissal without prejudice. (Id. at 2-3.) 24 The Court served the Findings and Recommendations on Petitioner and notified him that any 25 objections were due within 30 days. (Doc. 7.) The Court advised Petitioner that the “failure to file 26 objections within the specified time may waive the right to appeal the District Court’s order.” (Id. at 3, 27 citing

Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014).) Petitioner did not file objections. 28 However, Petitioner requested the Court “review all filed legal work/ paper[s] again.” (Doc. 8 at 1.) 1 According to 28 U.S.C. § 636(b)(1), this Court performed a de novo review of this case. 2 || Having carefully reviewed the matter, the Court concludes the Findings and Recommendations are 3 || supported by the record and proper analysis. Petitioner does not dispute that his claims were 4 || unexhausted before the state court. 5 In addition, the Court declines to issue a certificate of appealability. A state prisoner seeking 6 || writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition, and 7 || an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336 8 || (2003). If the Court denies a petition, it may only issue a certificate of appealability when a petition 9 || makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make 10 || substantial showing, Petitioner must establish that “reasonable jurists could debate whether (or, for 11 || that matter, agree that) the petition should have been resolved in a different manner or that the issues 12 || presented were ‘adequate to deserve encouragement to proceed further.’” Slack v. McDaniel, 529 U.S. 13 || 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). In the present case, the Court 14 || finds Petitioner did not make the required substantial showing of the denial of a constitutional right to 15 || justify the issuance of a certificate of appealability. Reasonable jurists would not find the 16 || determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or 17 || deserving of encouragement to proceed further. Thus, the Court ORDERS: 18 1. The Findings and Recommendations issued on March 13, 2025 (Doc. 7) are 19 ADOPTED in full. 20 2. Petitioner’s request for review (Doc. 8) is terminated as MOOT. 21 3. The petition for writ of habeas corpus is DISMISSED with prejudice. 22 4. The Clerk of Court is directed to enter judgment and close the case. 23 5. The Court declines to issue a certificate of appealability. 24 25 IT IS SO ORDERED. 26 || Dated: _ May 1, 2025 (LAW pA LU. wan

27 TED STATES DISTRICT JUDGE

28 ||! Given the Court’s obligations under 28 U.S.C. § 636(b)(1), Petitioner’s request for review was unnecessary.