

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Pratt v. Robertson, Warden

Pratt · No. 22-cv-04558-BLF · Decided July 23, 2025

SUMMARY

The United States District Court for the Northern District of California grants the respondent’s motion to dismiss Claim 5 of Anthony Pratt’s amended federal habeas petition as untimely under AEDPA. The court concludes that a 173-day gap in state habeas proceedings was unreasonable and that the ineffective-assistance claim did not relate back to the timely original claims because it lacked a common core of operative facts. The court also sets a briefing schedule for the remaining claims.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Beth Labson Freeman
JURISDICTION	United States District Court for the Northern District of California
DECIDED	July 23, 2025
DOCKET	22-cv-04558-BLF
DISPOSITION	other
PROCEDURAL POSTURE	Respondent moved to dismiss Claim 5 of Petitioner's amended 28 U.S.C. § 2254 petition as untimely. The court granted the motion and set a schedule for Respondent to answer the remaining petition.
STANDARD OF REVIEW	The court applied the statutory AEDPA limitations and tolling provisions and independently determined whether the state habeas filings were pending within the meaning of 28 U.S.C. § 2244(d)(2), whether the 173-day gap was reasonable under California law, and whether the amended claim related back under Federal Rule of Civil Procedure 15(c)(1)(B).
PRECEDENTIAL VALUE	unpublished district court order; persuasive authority only
PARTIES	Anthony Pratt v. James Robertson, Warden

TOPICS

- federal habeas corpus
- statute of limitations
- post-conviction relief
- pleadings
- civil procedure

PRACTICE AREAS

federal habeas corpus

post-conviction relief

civil procedure

statute of limitations

QUESTIONS PRESENTED

1. Whether Claim 5 of the amended federal habeas petition was timely under AEDPA's one-year statute of limitations and statutory tolling provision.
2. Whether the 173-day gap between the denial of Petitioner's California Superior Court habeas petition and his filing in the California Court of Appeal was reasonable and therefore entitled to statutory tolling.
3. Whether Claim 5 related back under Federal Rule of Civil Procedure 15(c)(1)(B) to the timely claims in the original federal habeas petition.

HOLDINGS

1. A 173-day gap between the denial of a California lower-court habeas petition and the filing of a higher-court petition was unreasonable where it exceeded California's 120-day safe harbor and the petitioner showed neither good cause nor a justification for the delay.
2. Claim 5 was untimely under AEDPA's one-year limitations period because the 173-day gap was not tolled and the claim was filed more than one year after the limitations period expired.
3. Claim 5 did not relate back to the timely claims in the original petition because it alleged ineffective assistance of trial counsel without sharing a common core of operative facts with the original claims, which alleged specific trial errors.

KEY QUOTATIONS

“So long as the original and amended petitions state claims that are tied to a common core of operative facts, relation back will be in order.” (at 7)

“Mayle requires a comparison of a petitioner's new claims to the properly exhausted claims left pending in federal court, not to any earlier version of the complaint containing claims subsequently dismissed for failure to exhaust.” (at 8)

“First, we determine what claims the amended petition alleges and what core facts underlie those claims. Second, for each claim in the amended petition, we look to the body of the original petition and its exhibits to see whether the original petition ‘set out’ or ‘attempted to ... set out’ a corresponding factual episode.” (at 8)

FACTUAL BACKGROUND

In 2018, a California jury convicted Anthony Pratt of murder and conspiracy to commit murder, and he was sentenced to 25 years to life. The California Court of Appeal affirmed, and the California Supreme Court denied review on May 12, 2021; because Pratt did not seek certiorari, the judgment became final on October 12, 2021. Pratt filed a federal habeas petition on August 8, 2022, but Claim 5 alleging ineffective assistance of trial counsel was dismissed without prejudice while he exhausted it in state court. After the San Francisco Superior Court denied his state petition, Pratt waited 173 days before filing in the California Court of Appeal, leaving Claim 5

untimely under AEDPA; the court also found that Claim 5 did not share a common core of operative facts with Claims 1-4.

PROCEDURAL HISTORY

Pratt was convicted in California state court and pursued direct review through the California Supreme Court. He filed a federal habeas petition on August 8, 2022, asserting four exhausted claims and one unexhausted ineffective-assistance claim. The court dismissed Claim 5 without prejudice under the Kelly stay procedure while Pratt exhausted it in state court. After the stay was lifted and the petition was amended, Respondent moved to dismiss Claim 5 as untimely. The court granted the motion, finding that the claim was untimely under AEDPA and did not relate back to the original petition.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. Respondent was ordered to file an answer conforming to Rule 5 of the Rules Governing Section 2254 Cases within 60 days and to provide relevant portions of the state trial record; Petitioner may file a traverse within 30 days after receiving the answer.

CASES CITED

- People v. Pratt, No. A154907, 2021 WL 672048, at *1 (Cal. Ct. App. Feb. 22, 2021)
- Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003)
- Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999)
- Miranda v. Castro, 292 F.3d 1063, 1065 (9th Cir. 2002)
- Jiminez v. Rice, 276 F.3d 478, 482 (9th Cir. 2001)
- Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003)
- Carey v. Saffold, 536 U.S. 214, 214 (2002)
- Evans v. Chavis, 546 U.S. 189, 197-98 (2006)
- Robinson v. Lewis, 9 Cal. 5th 883, 897, 901, 266 Cal. Rptr. 3d 13, 469 P.3d 414 (2020)
- Walker v. Brazelton, 2021 U.S. Dist. LEXIS 146208, at *3-4 (E.D. Cal. 2021)
- Nedd v. Bird, 2023 U.S. Dist. LEXIS 37946, at *10-14 (E.D. Cal. 2023)
- Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001)
- Mayle v. Felix, 545 U.S. 644, 649, 655, 661, 664 (2005)
- Tiller v. Atlantic Coast Line Railroad, 323 U.S. 574, 580-81 (1945)
- King v. Ryan, 564 F.3d 1133, 1141-43 (9th Cir. 2009)
- Ross v. Williams, 950 F.3d 1160, 1166-72 (9th Cir. 2020)
- In re Robbins, 18 Cal. 4th 770, 780 (1998)

OPINION

Pratt v. Robertson, Warden

PER CURIAM.

1 2

3 UNITED STATES DISTRICT COURT

4 NORTHERN DISTRICT OF CALIFORNIA

5 SAN JOSE DIVISION

6 7 ANTHONY PRATT, Case No. 22-cv-04558-BLF 8 Petitioner, ORDER GRANTING
MOTION TO

DISMISS CLAIM 5 OF THE

9 v. AMENDED PETITION FOR WRIT OF

HABEAS CORPUS AS UNTIMELY;

10 JAMES ROBERTSON, WARDEN, AND SETTING BRIEFING SCHEDULE

FOR THE AMENDED PETITION

11 Respondent. [Re: ECF No. 22] 12 13 Before the Court is Respondent James Robertson's
("Respondent") motion to dismiss Claim 14 5 of the Amended Petition for Writ of Habeas Corpus
on the ground that it is untimely. ECF 22 15 ("Mot."). Petitioner Anthony Pratt ("Petitioner") filed
an opposition. ECF 23 ("Opp."). Respondent 16 filed a Reply. ECF 24 ("Reply"). 17 For the
following reasons, the Court GRANTS Respondent's motion to dismiss Claim 5 of 18 the
Amended Petition. 19

I. BACKGROUND

20 In 2018, Petitioner was convicted by a jury in San Francisco of murder and conspiracy to
21 commit murder. *People v. Pratt*, No. A154907, 2021 WL 672048, at *1 (Cal. Ct. App. Feb. 22,
22 2021). Petitioner was sentenced to 25 years to life in prison. *Id.* On February 22, 2021, the
California 23 Court of Appeal affirmed the judgment. See *People v. Pratt*, No. A154907, 2021 WL
672048, at *1 24 (Cal. Ct. App. Feb. 22, 2021). On May 12, 2021, the California Supreme Court
denied a petition for 25 review. ECF 16 ¶ 11. The record does not show that Petitioner filed a
petition for a writ of certiorari 26 with the United States Supreme Court. Petitioner's judgment
became final on October 12, 2021. 27 On August 8, 2022, Petitioner filed the instant federal
habeas action. ECF 1 ("Petition"). 1 Petitioner alleged five claims for relief: 1) "Petitioner was
denied his federal constitutional right to 2 due process under the Fifth, Sixth, and Fourteenth
Amendments where the evidence adduced at trial 3 was insufficient to establish that Petitioner
conspired to kill [the Victim]," *Petition* ¶¶ 14-17; 2) 4 "Petitioner was denied his federal
constitutional right to due process under the Fifth, Sixth, and 5 Fourteenth Amendments where the
trial court failed to instruct the jury on the lesser included 6 offenses of conspiracy to commit
assault and conspiracy to commit assault with the use of a 7 firearm.," *id.* ¶¶ 18-21; 3) "Petitioner
was denied his federal constitutional right to due process under 8 the Fifth, Sixth, and Fourteenth
Amendments where the trial court failed to instruct the jury on the 9 use of White's statement as a

co-conspirator to incriminate Petitioner,” id. ¶¶ 22-25; 4) “Petitioner 10 was denied his federal constitutional right to due process under the Fifth, Sixth, and Fourteenth 11 Amendments where the trial court erred in excluding evidence regarding the full context of White’s 12 statement,” id. ¶¶ 26-29; and 5) “Petitioner was denied his federal constitutional right to due process 13 under the Fifth, Sixth, and Fourteenth Amendments due to the ineffective assistance of counsel at 14 trial,” id. ¶¶ 30-33. Petitioner alleged that Claims 1-4 were exhausted at the time, and that Claim 5 15 had not yet been exhausted. Petition at 30-31. 16 On the same day, Petitioner filed a motion for a stay pursuant to *Kelly v. Small*, 315 F.3d 17 1063 (9th Cir. 2003), while he exhausted his remedies in state court with respect to Claim 5. ECF 18 2. In the motion, Petitioner requested the Court to dismiss Claim 5 without prejudice pursuant to the 19 Kelly procedure. Id. at 3. On August 29, 2025, the Court granted Petitioner’s motion for a Kelly stay 20 and stayed the case pending Petitioner’s efforts to exhaust his claim in state court. ECF 6. 21 On August 10, 2022, Petitioner filed a habeas petition in the Superior Court of San Francisco 22 County. ECF 22 at Page 17. This was 63 days before AEDPA’s filing deadline. On May 10, 2023, 23 the Superior Court denied the petition. ECF 22 at Page 261. Petitioner delayed 173 days before filing 24 on October 31, 2023, his habeas petition in the California Court of Appeal. ECF 22 at Page 267. On 25 November 13, 2023, the California Court of Appeal denied the petition. Id. On December 28, 2023,

26 Petitioner filed a habeas petition in the California Supreme Court. ECF 22 at Page 596. On June 12, 27 2024, the California Supreme Court denied the petition. Id. 1 petition. ECF 14. In the motion, Petitioner advised the Court that he had exhausted his state court 2 remedies as to Claim 5 and requested the Court reopen the matter, lift the Kelly stay, and direct 3 Petitioner to file an Amended Petition for Writ of Habeas Corpus containing the newly exhausted

4 Claim 5. ECF 14 at 1. On August 1, 2025, the Court granted Petitioner’s motion to lift the stay, 5 reopen case, and amend the petition. ECF 15. On October 31, 2024, Petitioner filed an Amended 6 Petition. ECF 16 (“AP”). In the Amended Petition, Petitioner asserted the same Claims 1-5 as he 7 did in the original Petition. AP ¶¶ 18-37. 8 On April 10, 2025, the Court issued a Show Cause Order. ECF 17. On April 28, 2025, the 9 action was reassigned to the undersigned Judge. ECF 21.

10 II. DISCUSSION

11 Respondent argues that Petitioner’s Claim 5 in the Amended Petition is untimely. Mot. at 3- 12 5. Respondent argues that Petitioner’s Claim 5 is not entitled to gap tolling for the 173 days between 13 the denial of Petitioner’s habeas petition to the Superior Court and Petitioner’s petition to the 14 California Court of Appeal. Mot. at 4. Respondent further argues that Petitioner’s Claim 5 is not 15 saved by the relation back rule. Mot. at 5-7. Respondent contends that Claim 5 and Claims 1-4 arose 16 from “separate categories of facts,” and amounted to separate occurrences for the purpose of the 17 relation back rule. Mot. at 6 (citing *Mayle v. Felix*, 545 U.S. 644, 661 (2005)). 18 In response, Petitioner argues that Claim 5 is timely because “it is ‘tied to a common core of 19 operative facts’” as the other claims. Opp. at 3 (quoting *Mayle v. Felix*, 545 U.S. 644,

655 (2005)). 20 Petitioner argues that Claim 5 relates back to each of the other claims because the claims all allege 21 that he was denied “the fair trial to which he was entitled.” Opp. at 6. 22 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposes a statute 23 of limitations on petitions for a writ of habeas corpus filed by state prisoners. The one- 24 year limitations period generally will run from “the date on which the judgment became final by 25 conclusion of direct review or the expiration of the time for seeking such review.” 28 U.S.C. § 26 2244(d)(1)(A). Time during which a properly filed application for state post-conviction or other 27 collateral review is pending is excluded from the one-year time limit. Id. § 2244(d)(2). 1 of certiorari from the United States Supreme Court, whether or not the petitioner actually files such 2 a petition. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). Accordingly, if a petitioner fails to 3 seek a writ of certiorari from the United States Supreme Court, AEDPA's one- 4 year limitations period begins to run on the date the ninety-day period defined by Supreme Court

5 Rule 13 expires. See *Miranda v. Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002) (where petitioner did

6 not file petition for certiorari, his conviction became final 90 days after the California Supreme 7 Court denied review); *Bowen*, 188 F.3d at 1159 (same). During the COVID pandemic, for petitions 8 that were denied between March 19, 2020, and July 19, 2021, the Supreme Court extended the 9 ninety-day period to 150 days. See Order, No. 589, 2020 U.S. LEXIS 1643 (March 19, 2020); Order 10 List: 594 United States, 2021 U.S. LEXIS 3591 (July 19, 2021). 11 The one-year statute of limitations is tolled under § 2244(d)(2) for the “time during which a 12 properly filed application for State post-conviction or other collateral review with respect to the 13 pertinent judgment or claim is pending.” 28 U.S.C. § 2244(d)(2). A state habeas petition filed 14 before AEDPA's statute of limitations begins to run tolls the limitations period. *Jiminez v. Rice*, 276 15 F.3d 478, 482 (9th Cir. 2001). However, a state habeas petition filed after AEDPA's statute of 16 limitations ended cannot toll the limitations period. See *Ferguson v. Palmateer*, 321 F.3d 820, 823 17 (9th Cir. 2003) (“[S]ection 2244(d) does not permit the reinitiation of the limitations period that has 18 ended before the state petition was filed,” even if the state petition was timely filed) (holding that 19 Oregon's two-year limitations period for the filing of state habeas petitions does not alter the 20 operation of the AEDPA, even though prisoners who take full advantage of the two-year period will 21 forfeit their right to federal habeas review); *Jiminez*, 276 F.3d at 482 (same).

22 Section 2244(d)(2) “covers the time between a lower state court's decision and the filing of 23 a notice of appeal to a higher state court.” *Carey v. Saffold*, 536 U.S. 214, 214 (2002). A California 24 Court's denial of a habeas petition on the merits does not necessarily mean the petition was timely. 25 *Evans v. Chavis*, 546 U.S. 189, 197-98 (2006). When the California Supreme Court has not 26 explicitly ruled on the timelessness of a petition, a federal court “must decide” whether the filing of 27 the petition “was made within what California would consider a reasonable time.” Id. at 198. 1 *Lewis*, 9 Cal. 5th 883, 897, 266 Cal. Rptr. 3d 13, 469 P.3d 414 (Cal.

2020). Under the 2 “reasonableness standard,” California courts have adopted “a time period of 120 days as the safe 3 harbor for gap delay.” *Id.* at 901. “A new petition filed in a higher court within 120 days of the lower 4 court's denial will never be considered untimely due to gap delay.” *Id.* For a delay longer than 120 5 days, California courts apply the analysis set forth in *In re Robbins*, 18 Cal. 4th 770, 780 (1998) to 6 determine “whether, under all of the circumstances, gap delay longer than 120 days constituted 7 substantial delay and, if so, whether the petitioner demonstrated good cause for the delay or an 8 exception applied.” *Robinson*, 9 Cal. 5th at 901. 9 As to Claims 1-4, the California Supreme Court denied Petitioner’s petition for review on 10 May 12, 2021. ECF 16 ¶ 11. Petitioner did not file a petition for a writ of certiorari with the United

11 States Supreme Court. Therefore, Petitioner’s AEDPA's one-year limitations period began to run on

12 October 12, 2021.¹ Petitioner timely filed his federal habeas petition on August 8, 2022, and 13 Petitioner’s Claims 1-4 are timely. See *Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir. 2001). 14 However, the Court granted Petitioner’s motion for a Kelly stay pending the exhaustion of 15 Petitioner’s Claim 5 in state court and dismissed Claim 5 without prejudice. ECF 6. Accordingly,

16 Claim 5 did not remain pending in this Court when the case was stayed. *King v. Ryan*, 564 F.3d 17 1133, 1141 (9th Cir. 2009) (“Because the Kelly procedure requires petitioners to dismiss their 18 unexhausted claims and then attempt to add them back into the federal complaint later, the Kelly 19 procedure, unlike the Rhines procedure, does nothing to protect a petitioner’s unexhausted claims 20 from untimeliness in the interim.”). 21 By the time Petitioner filed his petition in the California Superior Court, he only had 63 days 22 remaining on his 1-year time period. The California Superior Court denied Petitioner’s habeas 23 petition as to Claim 5 on May 10, 2023. ECF 22 at Page 261. 173 days later, on October 30, 2023, 24 Petitioner filed a habeas petition in the California Court of Appeal. ECF 22 at Page 267. Although 25 the period of time the Petition was pending in the California Superior Court is excluded, Petitioner 26 waited 173 days after that ruling to file in the California Court of Appeal. The Court notes that this 27 1 173-day delay is beyond the 120-day delay safe harbor established by California Supreme Court. See 2 *Robinson*, 9 Cal. 5th at 899. The Court also notes that there is no clear ruling from California Court 3 of Appeal or from California Supreme Court on whether Petitioner’s petition with the California 4 Court of Appeal was timely. See ECF 22 at Pages 591, 596. Accordingly, the Court considers 5 whether the 173-day gap was reasonable, and whether Petitioner’s habeas petition to the California 6 Court of Appeal was timely. See *Evans*, 546 U.S. at 198. Petitioner makes no showing of 7 reasonableness. Here, a delay of 173 days is substantial and nothing in the record shows any good 8 cause or justification for the delay. See *Robinson*, 9 Cal. 5th at 901. Accordingly, the Court finds 9 that the 173-day delay between Petitioner’s habeas petition was denied by the Superior Court and 10 Petitioner filed his petition with California Court of Appeal was unreasonable. See, e.g.,

Walker v. 11 Brazelton, 2021 U.S. Dist. LEXIS 146208, at *3-4 (E.D. Cal. 2021) (finding a five-and-one-half- 12 month delay was unreasonable); Nedd v. Bird, 2023 U.S. Dist. LEXIS 37946, at *10-14 (E.D. Cal. 13 2023) (finding a 168-day delay was unreasonable). Thus, the Court agrees with Respondent that by 14 the time the Amended Petition was filed on October 31, 2024, Claim 5 was untimely by more than 15 one year. 16 Separately, a claim can be timely if it relates back to a timely filed claim. See Mayle v. Felix, 17 545 U.S. 644 (2005). Petitioner has focused his argument on this point that his amended Claim 5 18 relates back to his original Petition. Opp. at 3-4 (citing Mayle, 545 U.S. at 655 and Tiller v. Atlantic 19 Coast Line Railroad, 323 U.S. 574, 580-581 (1945)). Rule 15(c)(1)(B) of the Federal Rules of Civil 20 Procedure provides that an amendment relates back when “the amendment asserts a claim or defense 21 that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the 22 original pleading.” In Tiller, a personal injury case in which a railroad worker was struck and killed 23 by a railroad car, the Supreme Court held that an amendment adding a claim under the Federal Boiler 24 Inspection Act related back to the initial allegation of negligence because both complaints “related 25 to the same general conduct, transaction and occurrence which involved the death of the deceased.” 26 Tiller, 323 U.S. at 581. In Mayle, the Supreme Court rejected an approach that would allow relation 27 back to apply at “too high a level of generality.” Mayle, 545 U.S. at 661. The Supreme Court rejected 1 “same ‘trial, conviction, or sentence’” in the habeas context. Id. at 664. Rather, the Supreme Court 2 held that “[s]o long as the original and amended petitions state claims that are tied to a common core 3 of operative facts, relation back will be in order.” Id. In Mayle, the Supreme Court rejected relation 4 back of a claim targeting Felix’s pretrial statements to a timely claim targeting videotaped witness 5 testimony. Id. at 649. 6 The Ninth Circuit in King v. Ryan explained that Mayle “requires new claims to relate back 7 to claims properly contained in the original petition—that is, those claims that were exhausted at the 8 time of filing.” King v. Ryan, 564 F.3d 1133, 1142 (9th Cir. 2009). “Because the Kelly procedure 9 requires petitioners to dismiss their unexhausted claims and then attempt to add them back into the 10 federal complaint later, the Kelly procedure, unlike the Rhines procedure, does nothing to protect a 11 petitioner’s unexhausted claims from untimeliness in the interim.” Id. at 1141. The Ninth Circuit 12 held that “Mayle requires a comparison of a petitioner’s new claims to the properly exhausted claims 13 left pending in federal court, not to any earlier version of the complaint containing claims 14 subsequently dismissed for failure to exhaust.” Id. at 1142. 15 The Ninth Circuit applies a two-step process to determine whether an amended petition 16 relates back to an original petition, including all exhibits attached to that petition. Ross v. Williams, 17 950 F.3d 1160, 1167 (9th Cir. 2020). “First, we determine what claims the amended petition alleges 18 and what core facts underlie those claims. Second, for each claim in the amended petition, we look 19 to the body of the original petition and its exhibits to see whether the original petition ‘set out’ or 20 ‘attempted to ... set out’ a corresponding factual episode.” Id. (citing Fed. R. Civ. P. 15(c)(1)(B)). 21 Here, the Court finds that Petitioner’s amended Claim 5 does not relate back to the original

22 Claims 1-4. Petitioner’s amended Claim 5 alleges that he “was denied his federal constitutional right

23 to due process . . . due to the ineffective assistance of counsel at trial.” AP ¶ 35 (emphasis added). 24 The Court notes that the Petitioner has not alleged the core facts underlying Claim 5 in his Amended 25 Petition. See *id.* ¶¶ 34-37. Looking generally at the Petition, Petitioner’s original Claims 1-4 allege 26 that he was denied his federal constitutional right to due process due to specific and narrowly tailored 27 claims of trial error. See Petition ¶¶ 14-29. Original Claim 1 alleges that “Petitioner was denied his 1 the evidence adduced at trial was insufficient to establish that Petitioner conspired to kill Smith.” 2 Petition ¶ 15. Original Claim 2 alleges that “Petitioner was denied his federal constitutional right to 3 due process under the Fifth, Sixth, and Fourteenth Amendments where the trial court failed to 4 instruct the jury on the lesser included offenses of conspiracy to commit assault and conspiracy to 5 commit assault with the use of a firearm.” *Id.* ¶ 19. Original Claim 3 alleges that “Petitioner was 6 denied his federal constitutional right to due process under the Fifth, Sixth, and Fourteenth 7 Amendments where the trial court failed to instruct the jury on the use of White’s statement as a co- 8 conspirator to incriminate Petitioner.” *Id.* ¶ 23. Original Claim 4 alleges that “Petitioner was denied 9 his federal constitutional right to due process under the Fifth, Sixth, and Fourteenth Amendments 10 where the trial court erred in excluding evidence regarding the full context of White’s statement.” 11 *Id.* ¶ 27. And in his opposition, Petitioner only claims that Claim 5 “relate[s] to the Superior Court’s 12 failure to provide Petitioner with a fair trial.” *Opp.* at 5-6. This is the exact circumstance rejected by 13 the Supreme Court in *Mayle*, 545 U.S. at 664. The Ninth Circuit in *Ross v. Williams*, 950 F.3d 1160, 14 1171 (9th Cir. 2020) reiterated the requirement that relation back cannot rest on too high a level of 15 generality, such as “the entire trial.” Moreover, Petitioner’s briefing fails to identify the specific 16 portions of his earlier pleading that contain the relevant factual material which he is attempting to 17 relate to Claim 5. As the Ninth Circuit recognized in *Ross*, “[i]f the submissions discussing the 18 amended petition fail to do so, district courts have familiar remedies, such as dismissing the new 19 claim as time-barred for failure to show that it relates back.” *Ross*, 950 F.3d at 1172. Thus, the Court 20 finds that the amended Claim 5 does not share a “common core of operative facts” with the original 21 Petition. See *King*, 564 F.3d at 1142-43 (affirming the district court’s decision that petitioner’s nine 22 previously unexhausted claims did not relate back to his original exhausted claim despite the claims 23 all alleged that the petitioner “was denied his due process right to a fair trial”). 24 Petitioner’s reliance on *Ross* is not persuasive. *Opp.* at 5-6 (citing *Ross v. Williams*, 950 F.3d 25 1160, 1166 (9th Cir. 2020)). In *Ross*, the Ninth Circuit held that the petitioner’s amended petition 26 related back because it “reveal[ed] a common core . . . that was present in the original petition and 27 to which the amended petition relate[d] back.” *Ross*, 950 F.3d at 1168. The Ninth Circuit explained 1 counsel failed to object to the State’s failure to provide notice that it intended to present expert 2 testimony regarding “distract theft[s].” *Id.* at 1168. The Ninth Circuit found the amended Claim V 3 related back to *Ross*’s Claim 8 in his original form

petition which asserted that “counsel . . . failed to object to the State’s use of [an] expert witness” because “[t]he attached Nevada Supreme Court postconviction order provided factual details related to this claim.” *Id.* Unlike Ross, here, Petitioner generally asserts in his Amended Petition that Claim 5 that he “was denied his federal constitution right to due process . . . due to the ineffective assistance of counsel at trial.” AP ¶ 35. Absent identification of factual allegations from the original Petition, the Court finds that the Petitioner has not shown a common core of operative facts that Claim 5 in the Amended Petition can relate back to. See *King*, 564 F.3d at 1142-43. For reasons discussed above, Amended Claim 5 is both untimely under AEDPA’s one-year limitations period and does not relate back to timely-filed Claims 1-4.

III. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that: (1) Respondent’s motion to dismiss Petitioner’s Claim 5 in the Amended Petition as untimely is GRANTED. (2) The Court SETS case schedule as follows: a. Respondent SHALL file with the Court and serve on Petitioner, within sixty (60) days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file, with the Answer, and serve on Petitioner, a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the Petition. b. If Petitioner wishes to respond to the Answer, he SHALL file a Traverse with the Court and serving it on Respondent within thirty (30) days of his receipt of the Answer. 1 Dated: July 23, 2025 2

“BETH LABSON FREEMAN

3 United States District Judge 4 5 6 7 8 9 10 11 a 12 © 15 16 Z 18 19 20 21 22 23 24 25 26 27 28