

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RONALD EUGENE ALLEN, JR.,
Petitioner,
v.
NETHANJAH BREITENBACH,¹ et al.,
Respondents.

Case No. 3:22-cv-00176-ART-CSD

ORDER

Petitioner Ronald Eugene Allen, Jr., a state prisoner who was found guilty of battery on a protected person causing substantial bodily harm and was sentenced to 8 to 20 years in prison, has filed a second-amended petition for writ of habeas corpus under 28 U.S.C. § 2254. (ECF Nos. 30-8, 22.) This matter is before this court for adjudication of the merits of the second-amended petition, which alleges that the prosecutor engaged in misconduct and his trial counsel failed to object to the introduction of improper prior bad acts and false testimony, impeach a witness, and request a jury instruction. (ECF No. 22.) For the reasons discussed below, this court denies the second-amended petition and a certificate of appealability.

I. BACKGROUND

A. Factual background²

Officer Leopold Karanikolas with the Metropolitan Police Department

¹The state corrections department's inmate locator page states that Allen is incarcerated at Lovelock Correctional Center. Nethanjah Breitenbach is the current warden for that facility. At the end of this order, this court directs the clerk to substitute Nethanjah Breitenbach as a respondent for Respondent Tim Garrett. *See* Fed. R. Civ. P. 25(d).

²This court makes no credibility findings or other factual findings regarding the truth or falsity of this evidence from the state court. This court's summary is merely a backdrop to its consideration of the issues presented in the second-amended petition.

1 testified that on August 9, 2016, he responded to “a harassment call between a
2 male and female” in Las Vegas, Nevada. (ECF No. 29-3 at 51–52.) When Officer
3 Karanikolas arrived at the scene, he saw Allen sitting in a car reading a
4 newspaper. (*Id.* at 53.) Allen told Officer Karanikolas that he was meeting his
5 family and waiting for them to arrive. (*Id.* at 54.) Officer Karanikolas got back in
6 his vehicle, and while he was trying to find Allen in a database, “a black female
7 ran up to [his] car on the driver’s side.” (*Id.*) The woman “was very agitated, . . .
8 upset, very scared, very frantic.” (*Id.* at 56.) While Officer Karanikolas was trying
9 to interact with the woman, Allen “jumped out of [h]is vehicle, very quickly.” (*Id.*)
10 Officer Karanikolas got out of his vehicle too and conducted a pat down search of
11 Allen at the front of the police vehicle. (*Id.* at 57.)

12 After the pat down, Allen ran to the passenger side of Officer Karanikolas’s
13 vehicle to get to the woman whom Officer Karanikolas had been speaking with.
14 (*Id.* at 57.) Officer Karanikolas ran around his vehicle in the opposite direction to
15 confront Allen, and when Officer Karanikolas and Allen were both at the back of
16 the vehicle, Allen “pushed through” Officer Karanikolas to get to the woman. (*Id.*
17 at 58, 60, 98.) Due to the impact, Officer Karanikolas had “to step back in order
18 to catch [his] balance,” and when he did so, he “felt like a pop in the back of [his]
19 body in [his] leg,” causing him to “drop[] to the ground.” (*Id.* at 61.) Allen then
20 continued to run in the direction of the woman. (*Id.* at 64.) Officer Karanikolas
21 tased Allen, causing him to fall to the ground, and Officer Karanikolas “hobbled”
22 over to Allen and took him into custody. (*Id.* at 64–66.) Officer Karanikolas later
23 learned that he had a partial tear in his right Achilles. (*Id.* at 68.)

24 Lisa Gordon, who was with the woman Allen was pursuing, testified that
25 she observed the impact between Allen and Officer Karanikolas. (*Id.* at 29-3 at
26 128, 131.) According to Gordon, Allen “punched” Officer Karanikolas. (*Id.* at 131.)

27 **B. Procedural background**

28 The jury found Allen guilty of battery on a protected person causing

1 substantial bodily harm. (ECF No. 30-4.) Allen was adjudicated under the small
2 habitual criminal statute and sentenced to 8 to 20 years in prison. (ECF No. 30-
3 8.) Allen appealed, and the Nevada Court of Appeals affirmed on April 16, 2019.
4 (ECF No. 30-23.) Remittitur issued on May 13, 2019. (ECF No. 30-24.)

5 On May 27, 2020, Allen filed a state petition for writ of habeas corpus. (ECF
6 No. 30-27.) The state court denied post-conviction relief on August 18, 2021.
7 (ECF No. 31-7.) Allen filed a post-conviction appeal, and the Nevada Court of
8 Appeals affirmed the denial on April 11, 2022. (ECF No. 31-18.) Remittitur issued
9 on May 6, 2022. (ECF No. 31-19.)

10 On or about April 13, 2022, Allen dispatched his *pro se* federal habeas
11 corpus petition. (ECF No. 6 at 6.) On May 12, 2022, this court screened Allen's
12 *pro se* petition and granted Allen's motion for the appointment of counsel, and on
13 June 6, 2022, this court appointed the Federal Public Defender to represent
14 Allen. (ECF Nos. 5, 12.) Allen filed a counseled first-amended petition and
15 counseled second-amended petition on June 10, 2022, and October 21, 2022,
16 respectively. (ECF Nos. 14, 22.)

17 On April 20, 2023, Respondents moved to dismiss Allen's second-amended
18 petition. (ECF No. 37.) This court denied the motion, finding that grounds 3 and
19 4 are technically exhausted and procedurally defaulted. (ECF No. 40.) This court
20 then deferred consideration of whether Allen can demonstrate cause and
21 prejudice under *Martinez v. Ryan*, 566 U.S. 1 (2012) to overcome the procedural
22 default of grounds 3 and 4 until after the filing of an answer and reply in this
23 action. (*Id.*) Respondents answered the second-amended petition on July 21,
24 2023, and Allen replied on October 26, 2023. (ECF Nos. 41, 46.)

25 **II. GOVERNING STANDARD OF REVIEW**

26 28 U.S.C. § 2254(d) sets forth the standard of review generally applicable
27 in habeas corpus cases under the Antiterrorism and Effective Death Penalty Act
28 ("AEDPA"):

1 An application for a writ of habeas corpus on behalf of a person in
2 custody pursuant to the judgment of a State court shall not be
3 granted with respect to any claim that was adjudicated on the merits
in State court proceedings unless the adjudication of the claim –

4 (1) resulted in a decision that was contrary to, or
5 involved an unreasonable application of, clearly
6 established Federal law, as determined by the Supreme
Court of the United States; or

7 (2) resulted in a decision that was based on an
8 unreasonable determination of the facts in light of the
evidence presented in the State court proceeding.

9
10 A state court decision is contrary to clearly established Supreme Court
11 precedent, within the meaning of 28 U.S.C. § 2254, “if the state court applies a
12 rule that contradicts the governing law set forth in [the Supreme Court’s] cases”
13 or “if the state court confronts a set of facts that are materially indistinguishable
14 from a decision of [the Supreme] Court.” *Lockyer v. Andrade*, 538 U.S. 63, 73
15 (2003) (quoting *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000), and citing *Bell*
16 *v. Cone*, 535 U.S. 685, 694 (2002)). A state court decision is an unreasonable
17 application of clearly established Supreme Court precedent within the meaning
18 of 28 U.S.C. § 2254(d) “if the state court identifies the correct governing legal
19 principle from [the Supreme] Court’s decisions but unreasonably applies that
20 principle to the facts of the prisoner’s case.” *Id.* at 75 (quoting *Williams*, 529 U.S.
21 at 413). “The ‘unreasonable application’ clause requires the state court decision
22 to be more than incorrect or erroneous. The state court’s application of clearly
23 established law must be objectively unreasonable.” *Id.* (quoting *Williams*, 529
24 U.S. at 409–10) (internal citation omitted).

25 The Supreme Court has instructed that “[a] state court’s determination that
26 a claim lacks merit precludes federal habeas relief so long as ‘fairminded jurists
27 could disagree’ on the correctness of the state court’s decision.” *Harrington v.*
28 *Richter*, 562 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652,

664 (2004)). The Supreme Court has stated “that even a strong case for relief does not mean the state court’s contrary conclusion was unreasonable.” *Id.* at 102 (citing *Lockyer*, 538 U.S. at 75); *see also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (describing the standard as a “difficult to meet” and “highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt” (internal quotation marks and citations omitted)).

III. DISCUSSION

A. Ground 1—prosecutorial misconduct

In ground 1, Allen alleges that, in violation of his rights under the Fifth, Sixth, and Fourteenth Amendments, during rebuttal argument, the prosecution committed misconduct when it improperly denigrated the defense theory and disparaged defense counsel. (ECF No. 22 at 5.) Allen takes issue with the following comments made during the prosecution’s surrebuttal closing argument: “Folks, defense counsel comes up here and tells you what, when you have an overwhelming amount of evidence in this case and the defendant is absolutely boxed into a corner, this is what happens. Defense counsel does this, blames everybody other than the defendant. Right?” (ECF No. 30-3 at 43.)

1. State court determination

In affirming Allen’s judgment of conviction, the Nevada Court of Appeals held as follows:

Allen argues the State committed prosecutorial misconduct during closing rebuttal argument by disparaging defense counsel and his theory of defense. Specifically, he claims the State erred by arguing, “folks, defense counsel comes up here and tells you what, when you have an overwhelming amount of evidence in this case and the defendant is absolutely boxed into a corner, that is what happens. Defense counsel does this, blames everyone other than the defendant. Right?”

Because Allen did not object to this statement at trial, he is not entitled to relief absent a demonstration of plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Even assuming, without deciding, the prosecutor’s comments were improper, Allen failed to demonstrate any error affected his

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.