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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JAMES MATLEAN,

Case No. 3:16-cv-00233-HDM-VPC

Petitioner,

ORDER

v.

BRIAN WILLIAMS, et al.,

Respondents.

This habeas matter comes before the court on respondents' motion to dismiss petitioner James Matlean's counseled, second-amended petition (ECF No. 22). Matlean opposed (ECF No. 25), and respondents replied (ECF No. 26).

**I. Procedural History and Background**

On December 20, 2011, Matlean pleaded guilty, pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to first-degree murder and conspiracy to commit murder (exhibit 25).<sup>1</sup> The guilty plea agreement provided that the parties would recommend a term of life with the possibility of parole after twenty years, with a consecutive term of 4 to 10 years. *Id.* On March 16, 2012, the state district court stated that the recommended sentence was too lenient and sentenced Matlean to life without the possibility of parole for murder and to 4 to 10 years for the conspiracy, to run concurrently, and the judgment of conviction was entered. Exhs. 30, 31.

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<sup>1</sup> Exhibits referenced in this order are exhibits to respondents' motion to dismiss, ECF No. 22, and are found at ECF No. 23.

1 The Nevada Supreme Court affirmed Matlean's conviction on April 10, 2013. Exh.  
2 40. Matlean filed a state postconviction habeas corpus petition. The Nevada Supreme  
3 Court affirmed the denial of the petition on December 16, 2015, and remittitur issued on  
4 January 14, 2016. Exhs 72, 73.

5  
6 Matlean dispatched his federal habeas petition for filing on or about April 26, 2016  
7 (ECF No. 1-1). This court issued an order stating that the purported habeas petition did  
8 not set forth any grounds for relief and directing Matlean to file an amended petition  
9 (ECF No. 5). Matlean filed an amended petition on December 21, 2016 (ECF No. 8).  
10 This court directed that the amended petition be served on respondents and also  
11 dismissed grounds 5, 7, and 11 as not cognizable in federal habeas corpus (ECF No.  
12 9). Subsequently, Matlean filed a motion for counsel, which this court granted (ECF No.  
13 10, 12). Matlean filed a counseled, second-amended petition on November 6, 2017  
14 (ECF No. 19). Respondents argue that some claims in the second-amended petition do  
15 not relate back to the first-amended petition and that some grounds are unexhausted  
16 (ECF No. 22).

## 18 **II. Legal Standards & Analysis**

### 19 **a. Relation Back**

20  
21 Respondents argue that none of the six grounds in the second-amended petition  
22 relate back to the first-amended petition, and therefore, the second-amended petition  
23 should be dismissed as untimely (ECF No. 19). The Antiterrorism and Effective Death  
24 Penalty Act (AEDPA) imposes a one-year statute of limitations on the filing of federal  
25 habeas corpus petitions. 28 U.S.C. § 2244(d). The one-year time limitation can run  
26 from the date on which a petitioner's judgment became final by conclusion of direct  
27 review, or the expiration of the time for seeking direct review. 28 U.S.C. §  
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1 2244(d)(1)(A). A new claim in an amended petition that is filed after the expiration of  
2 the Antiterrorism and Effective Death Penalty Act (“AEDPA”) one-year limitation period  
3 will be timely only if the new claim relates back to a claim in a timely-filed pleading under  
4 Rule 15(c) of the Federal Rules of Civil Procedure, on the basis that the claim arises out  
5 of “the same conduct, transaction or occurrence” as a claim in the timely pleading.  
6

7 *Mayle v. Felix*, 545 U.S. 644 (2005). In *Mayle*, the United States Supreme Court held  
8 that habeas claims in an amended petition do not arise out of “the same conduct,  
9 transaction or occurrence” as claims in the original petition merely because the claims  
10 all challenge the same trial, conviction or sentence. 545 U.S. at 655–64. Rather, under  
11 the construction of the rule approved in *Mayle*, Rule 15(c) permits relation back of  
12 habeas claims asserted in an amended petition “only when the claims added by  
13 amendment arise from the same core facts as the timely filed claims, and not when the  
14 new claims depend upon events separate in ‘both time and type’ from the originally  
15 raised episodes.” 545 U.S. at 657. In this regard, the reviewing court looks to “the  
16 existence of a common ‘core of operative facts’ uniting the original and newly asserted  
17 claims.” A claim that merely adds “a new legal theory tied to the same operative facts  
18 as those initially alleged” will relate back and be timely. 545 U.S. at 659 and n.5; see  
19 also *Ha Van Nguyen v. Curry*, 736 F.3d 1287, 1297 (9<sup>th</sup> Cir. 2013).  
20  
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22 The parties do not dispute that the first-amended petition was timely filed and  
23 that the second-amended petition was filed after the expiration of the AEDPA one-year  
24 time limitation. Matlean argues that the claims in his second-amended petition need  
25 only relate back to either his original *pro se* filing or his *pro se* first-amended petition.  
26 This is incorrect; Matlean’s first filing, as this court stated in its order dated November 2,  
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1 2016, failed to set forth any grounds for federal habeas relief. This court specifically  
2 explained:

3           Petitioner's filing is insufficient. He must set forth each ground for  
4 federal habeas relief in the space provided on this court's form and  
5 otherwise complete the form. The court shall not sort through the more  
6 than 100 pages in an attempt to discern what claims petitioner wishes to  
7 raise. Moreover, petitioner has not indicated what grounds he asserted in  
8 his still-pending second state postconviction. Accordingly, petitioner shall,  
9 within forty-five days of the date of this order, file an amended petition, on  
10 the court's form, that sets forth each ground for which he seeks federal  
11 relief

12 (ECF No. 5, pp. 1-2). In response to that order, Matlean timely filed his first-  
13 amended petition (ECF No. 8). The claims in the second-amended petition must,  
14 therefore, relate back to the first-amended petition in order to be timely.

15           The second-amended petition sets forth six grounds for relief:

16           ground 1: Matlean's guilty plea was not knowing, voluntary, and intelligent in  
17 violation of his Fifth, Sixth, and Fourteenth Amendment rights because (A) his attorney  
18 coerced him into taking the deal by promising him \$20,000 in exchange for pleading  
19 guilty; (B) his medications rendered him unable to enter a voluntary plea; and (C) he  
20 was unaware of a possible voluntary intoxication defense;

21           ground 2: the prosecutor breached the plea agreement by failing to abide by the  
22 spirit of the agreement at sentencing, in violation of Matlean's Fifth, Sixth, and  
23 Fourteenth Amendment rights;

24           ground 3: Matlean's counsel was ineffective during plea negotiations, in violation  
25 of his Sixth and Fourteenth Amendment rights when counsel (A) coerced Matlean into  
26 pleading guilty; (B) permitted him to plead guilty when he knew that Matlean's  
27 medications rendered him unable to voluntarily enter into the plea agreement; and (C)  
28 failed to advise Matlean about a voluntary intoxication defense;

1 ground 4: Matlean's counsel was ineffective for failing to file a motion to withdraw  
2 guilty plea after Matlean requested that he do so, in violation of his Fifth, Sixth, and  
3 Fourteenth Amendment rights;

4 ground 5: the court heard improper victim impact testimony at sentencing, in  
5 violation of Matlean's Fifth, Eighth, and Fourteenth Amendment rights;

6 ground 6: at sentencing, counsel was ineffective when he (A) failed to object that  
7 the prosecutor's statements breached the plea agreement and (B) failed to object to  
8 victims' improper sentencing recommendations, in violation of Matlean's Sixth and  
9 Fourteenth Amendment rights (ECF No. 19, pp. 13-30).

10 Respondents argue that only ground 3(B) of the second-amended petition relates  
11 back to the first-amended petition. However, having reviewed the petitions, the court  
12 concludes that in several claims in the second-amended petition Matlean merely adds a  
13 new legal theory tied to the same operative facts that he already set forth. *Mayle*, 545  
14 U.S. at 659 and n.5; *Ha Van Nguyen*, 736 F.3d at 1297.

15 Ground 2 (the prosecutor breached the plea agreement by failing to abide by the  
16 spirit of the agreement at sentencing) and ground 6(A) (counsel was ineffective when he  
17 failed to object that the prosecutor's statements breached the plea agreement) relate  
18 back to ground 2 of the first-amended petition (see ECF No. 8, pp. 6-7).

19 Ground 1(B) (Matlean's medications rendered him unable to enter a voluntary  
20 plea) and ground 3(B) (counsel was ineffective when he permitted Matlean to plead  
21 guilty when he knew that Matlean's medications rendered him unable to voluntarily  
22 enter into the plea agreement) relate back to ground 3 of the first-amended petition (see  
23 ECF No. 8, p. 9).

1 Ground 4 (Matlean’s counsel was ineffective for failing to file a motion to  
2 withdraw guilty plea after Matlean requested that he do so) relates back to ground 4 of  
3 the first-amended petition (see ECF No. 8, p. 11).

4 Accordingly, grounds 1(B), 2, 3(B), 4, and 6(A) relate back and are timely.  
5 Grounds 1(A), 1(C), 3(A), 3(C), 5, and 6(B) do not relate back and are, therefore,  
6 dismissed as untimely.  
7

8 **b. Grounds 3(B) and 6 (A) and Exhaustion and Procedural Default**

9 A federal court will not grant a state prisoner’s petition for habeas relief until the  
10 prisoner has exhausted his available state remedies for all claims raised. *Rose v.*  
11 *Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state  
12 courts a fair opportunity to act on each of his claims before he presents those claims in  
13 a federal habeas petition. *O’Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); see also  
14 *Duncan v. Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the  
15 petitioner has given the highest available state court the opportunity to consider the  
16 claim through direct appeal or state collateral review proceedings. See *Casey v. Moore*,  
17 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthy*, 653 F.2d 374, 376 (9th Cir.  
18 1981).  
19

20 Respondents argue that ground 3(B) – the claim that counsel was ineffective when  
21 counsel permitted Matlean to plead guilty when counsel knew that Matlean’s  
22 medications rendered him unable to voluntarily enter into the plea agreement -- is  
23 unexhausted (ECF No. 22, p. 10). This court has reviewed the state-court record, and  
24 Matlean did not present this ineffective assistance of counsel claim to the state’s highest  
25 court. See exh. 69. Accordingly, 3(B) is unexhausted. With respect to ground 6(A),  
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1 Matlean acknowledges on the face of his petition that this claim is unexhausted (ECF  
2 No. 19, p. 30).

3 Matlean next argues that this court should deem the claims technically exhausted  
4 but procedurally defaulted. “Procedural default” refers to the situation where a petitioner  
5 in fact presented a claim to the state courts but the state courts disposed of the claim on  
6 procedural grounds, instead of on the merits. A federal court will not review a claim for  
7 habeas corpus relief if the decision of the state court regarding that claim rested on a  
8 state law ground that is independent of the federal question and adequate to support  
9 the judgment. *Coleman v. Thompson*, 501 U.S. 722, 730-31 (1991).  
10

11 The *Coleman* Court explained the effect of a procedural default:

12  
13 In all cases in which a state prisoner has defaulted his federal claims in  
14 state court pursuant to an independent and adequate state procedural  
15 rule, federal habeas review of the claims is barred unless the prisoner can  
16 demonstrate cause for the default and actual prejudice as a result of the  
17 alleged violation of federal law, or demonstrate that failure to consider the  
18 claims will result in a fundamental miscarriage of justice.

19 *Coleman*, 501 U.S. at 750; see also *Murray v. Carrier*, 477 U.S. 478, 485 (1986).

20 The procedural default doctrine ensures that the state’s interest in correcting its own  
21 mistakes is respected in all federal habeas cases. See *Koerner v. Grigas*, 328 F.3d  
22 1039, 1046 (9th Cir. 2003).

23 To demonstrate cause for a procedural default, the petitioner must be able to “show  
24 that some objective factor external to the defense impeded” his efforts to comply with  
25 the state procedural rule. *Murray*, 477 U.S. at 488 (emphasis added). For cause to  
26 exist, the external impediment must have prevented the petitioner from raising the  
27 claim. See *McCleskey v. Zant*, 499 U.S. 467, 497 (1991).

28 Matlean acknowledges that if he returned to the state courts with these claims,  
they would be defaulted as untimely and successive. See 28 U.S.C. §2254(b)(1)(B).

1 He contends that he can demonstrate cause and prejudice to excuse the default of  
2 these grounds pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), because he received  
3 ineffective assistance of state postconviction counsel (ECF No. 25).

4  
5 The Court in *Coleman* held that ineffective assistance of counsel in  
6 postconviction proceedings does not establish cause for the procedural default of a  
7 claim. *Coleman*, 501 U.S. at 750. In *Martinez*, the Court established a “narrow  
8 exception” to that rule. The Court explained that,

9  
10 Where, under state law, claims of ineffective assistance of trial  
11 counsel must be raised in an initial-review collateral proceeding, a  
12 procedural default will not bar a federal habeas court from hearing a  
substantial claim of ineffective assistance at trial if, in the initial-review  
collateral proceeding, there was no counsel or counsel in that proceeding  
was ineffective.

13 566 U.S. at 17. The Ninth Circuit has provided guidelines for applying *Martinez*,  
14 summarizing the analysis as follows:

15  
16 To demonstrate cause and prejudice sufficient to excuse the  
17 procedural default, therefore, *Martinez* . . . require[s] that Clabourne make  
18 two showings. First, to establish “cause,” he must establish that his  
19 counsel in the state postconviction proceeding was ineffective under the  
20 standards of *Strickland [v. Washington]*, 466 U.S. 668 (1984). *Strickland*,  
21 in turn, requires him to establish that both (a) post-conviction counsel's  
performance was deficient, and (b) there was a reasonable probability  
that, absent the deficient performance, the result of the post-conviction  
proceedings would have been different. Second, to establish “prejudice,”  
he must establish that his “underlying ineffective-assistance-of-trial-  
counsel claim is a substantial one, which is to say that the prisoner must  
demonstrate that the claim has some merit.”

22 *Clabourne v. Ryan*, 745 F.3d 362, 377 (9th Cir. 2014) (citations omitted).

23 Here, the *Martinez* analysis with respect to these claims is intertwined with the  
24 analysis of the underlying merit of the claims. As grounds 1(B), 2 and 4 will be briefed  
25 on the merits, the court will defer a decision on whether Matlean can show cause and  
26 prejudice under *Martinez* to excuse the default of grounds 3(B) and 6(A). Thus, the  
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1 parties shall brief the merits of these claims, as well as the merits of grounds 1(B), 2,  
2 and 4, in the answer and reply.

3 **III. Conclusion**

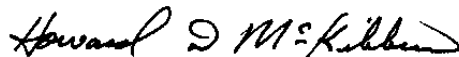
4 **IT IS THEREFORE ORDERED** that respondents' motion to dismiss (ECF No. 22)  
5 is **GRANTED** in part as follows:

6 Grounds 1(A), 1(C), 3(A), 3(C), 5, and 6(B) are **DISMISSED** as untimely.

7 **IT IS FURTHER ORDERED** that respondents shall file an answer within **thirty**  
8 **(30) days** from the date of this order. The answer shall contain all substantive and  
9 procedural arguments as to all surviving grounds of the petition, and shall comply with  
10 Rule 5 of the Rules Governing Proceedings in the United States District Courts under  
11 Rule 5 of the Rules Governing Proceedings in the United States District Courts under  
12 28 U.S.C. §2254.

13 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** following  
14 service of respondents' answer in which to file a reply.

15 DATED: August 17, 2018.

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20 HOWARD D. MCKIBBEN  
21 UNITED STATES DISTRICT JUDGE  
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