UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MARIO LAFAYETTE BAIN, Petitioner, v. WARDEN ARNOLD, Respondent.	Case No. CV 16-0356-JPR MEMORANDUM DECISION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

PROCEEDINGS

On January 15, 2016, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody. He also consented to having a U.S. Magistrate Judge conduct all further proceedings in his case, including entering final judgment. On March 3, 2016, Respondent filed an Answer and consented to proceed before a Magistrate Judge. Petitioner did not file a reply.

For the reasons discussed below, the Court denies the Petition and dismisses this action with prejudice.

BACKGROUND

On January 27, 2014, a Los Angeles County Superior Court jury found Petitioner guilty of possession of cocaine base for

sale. (Lodged Doc. 1, Clerk's Tr. at 133.) The jury acquitted Petitioner of the charge of sale, transportation, or offer to sell a controlled substance. (Id. at 132.) Petitioner admitted that he had suffered two "strike" convictions under California's Three Strikes law, had served four prison terms, and had suffered five felony convictions. (Id. at 31-32, 136, 163.) On March 25, 2014, the trial court struck one of Petitioner's "strike" convictions and sentenced him to 10 years in state prison. (Id. at 162-64, 166.)

Petitioner appealed, raising only the sole claim in the Petition. (Lodged Doc. 3.) On May 4, 2015, the California Court of Appeal affirmed the judgment. (Lodged Doc. 6.) Petitioner filed a petition for review in the California Supreme Court, which summarily denied review on July 15, 2015. (Lodged Docs. 7, 8.)

PETITIONER'S CLAIM

The trial court abused its discretion and violated Petitioner's 14th Amendment right to due process when it denied his pretrial Pitchess motion.[1] (Pet. Mem. at 4-16.)

SUMMARY OF PERTINENT FACTS

The factual summary in a state appellate-court opinion is entitled to a presumption of correctness under 28 U.S.C. § 2254(e)(1). See Crittenden v. Chappell, 804 F.3d 998, 1010-11 (9th Cir. 2015). But see Murray v. Schriro, 745 F.3d 984, 1001

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[1] Pitchess v. Super. Ct., 11 Cal. 3d 531 (1974) (allowing discovery of internal police files in certain circumstances), superseded by statute, Cal. Penal Code §§ 832.7, 832.8, Cal. Evid. Code §§ 1043-45, as recognized in People v. Mooc, 26 Cal. 4th 1216, 1219-20 (2001).

(9th Cir. 2014) (discussing "state of confusion" in circuit's law concerning interplay of § 2254(d)(2) and (e)(1)). The Court adopts the following statement of facts from the California Court of Appeal's opinion as a fair and accurate summary of the pertinent proceedings at trial. The Court has nonetheless independently reviewed the state-court record.

> Prior to trial, [Petitioner] brought a Pitchess motion seeking information in the personnel records of three police officers, [Alonzo] Williams, [Benjamin] McCauley, and [Jose] Calderon, relating to any alleged conduct amounting to excessive force or dishonesty. Attached to the motion was a copy of the arrest report, signed by Officer Williams and Detective [Vip] Kanchanamongkol, in which Officer Williams reported that on August 27, 2013, at about 8:15 p.m., he was working undercover in plain clothes with the Department's Narcotics Task Force, near the intersection of Sixth Street and San Julian Street in Los Angeles. The team consisted of approximately 15 officers.
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> As Officer Williams walked west on the south sidewalk of Sixth Street he encountered [Petitioner], who walked toward him and said, "Cavi cavi," which is street vernacular for rock cocaine. Officer Williams replied, "I need a dub," which is street vernacular for $20 worth of narcotics. [Petitioner] replied, "Yeah, I have to go to my ass for that amount," as he reached into his rear waistband area and sat down in a nearby wheelchair. [Petitioner] produced a clear plastic bag containing

numerous smaller bindles of off-white solids resembling rock cocaine. He then extracted one of the bindles and gave it to Officer Williams after the officer handed him a prerecorded $20 bill. Shortly after Officer Williams gave the predetermined "buy" signal to other officers who had observed the transaction, [Petitioner] was detained by Officers Lozano and [Huy] Nguyen and then arrested. From the seat of the wheelchair Officer McCauley recovered 111 plastic bindles containing off-white solids resembling rock cocaine. Officer Nguyen found currency totaling $176 on [Petitioner]'s person. The $176 included two $20 bills, three $10 bills, seven $5 bills and 69 one dollar bills, but the prerecorded $20 bill was not found, despite a search of the area by the responding officers. Detectives [Thomas] Mossman, Kanchanamongkol, and [Mariano] Garde monitored Officer Williams's transmission throughout his interaction with [Petitioner] via a one-way transmitter.[2]

Defense counsel supported the motion with her declaration, which included the following paragraph: "[Petitioner] was walking on the corner of Wall St. and 6th, in the city and county of Los Angeles. [Petitioner] denies saying the words 'Cavi, Cavi' to anyone. [Petitioner] never heard anyone, including an undercover

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[2] According to the arrest report, Officer Calderon observed the narcotics transaction between Petitioner and Officer Williams and directed "chase units" to detain Petitioner after the transaction was complete. (Lodged Doc. 1, Clerk's Tr. at 66.)

officer, say to him 'I need a dub.' [Petitioner] denies ever having a conversation with anyone, which consisted of him saying 'yeah, I have to go to my ass for that amount.' [Petitioner] was walking down the street, minding his own business, when the police stopped and searched him. The police did not find any illegal drugs on him during the search. [Petitioner] denies ever sitting in a wheelchair. [Petitioner] denies ever owning or possessing a wheelchair, or having sat in one on the day of his arrest. [Petitioner] did not reach into his waist band area with his right hand, and did not remove a large clear plastic bag containing numerous off white solids resembling rock cocaine. [Petitioner] adamantly denies ever giving anyone one [sic] a small clear plastic bindle containing an off white solid resembling rock cocaine in exchange for $20.00. [Petitioner] did not take or accept a twenty dollar bill from anyone. [Petitioner] did not sit in a wheelchair at any time. [Petitioner] was walking on the street when officers rushed him, searched him, failed to find illegal substances on his person, but arrested him anyway."

Counsel also stated on information and belief that Officers Williams, McCauley, and Calderon all lied about the events, that that [sic] this would be the defense raised at trial.

The trial court denied the Pitchess motion. The court acknowledged the low threshold for showing good cause, but found that [Petitioner]'s showing was merely

a denial.

(Lodged Doc. 6 at 3-4.)

STANDARD OF REVIEW

Under 28 U.S.C. § 2254(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim – (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Under AEDPA, the "clearly established Federal law" that controls federal habeas review consists of holdings of Supreme Court cases "as of the time of the relevant state-court decision." Williams v. Taylor, 529 U.S. 362, 412 (2000). As the Supreme Court has "repeatedly emphasized, . . . circuit precedent does not constitute 'clearly established Federal law, as determined by the Supreme Court.'" Glebe v. Frost, 135 S. Ct. 429, 431 (2014) (per curiam) (quoting § 2254(d)(1)). Further, circuit precedent "cannot 'refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that [the] Court has not announced.'" Lopez v. Smith, 135 S. Ct. 1, 4 (2014) (per curiam) (quoting Marshall v. Rodgers, 133 S. Ct.

1446, 1450 (2013) (per curiam)).

Although a particular state-court decision may be both "contrary to" and "an unreasonable application of" controlling Supreme Court law, the two phrases have distinct meanings. Williams, 529 U.S. at 391, 412-13. A state-court decision is "contrary to" clearly established federal law if it either applies a rule that contradicts governing Supreme Court law or reaches a result that differs from the result the Supreme Court reached on "materially indistinguishable" facts. Early v. Packer, 537 U.S. 3, 8 (2002) (per curiam) (citation omitted). A state court need not cite or even be aware of the controlling Supreme Court cases, "so long as neither the reasoning nor the result of the state-court decision contradicts them." Id.

State-court decisions that are not "contrary to" Supreme Court law may be set aside on federal habeas review only "if they are not merely erroneous, but 'an unreasonable application' of clearly established federal law, or based on 'an unreasonable determination of the facts' (emphasis added)." Id. at 11 (quoting § 2254(d)). A state-court decision that correctly identifies the governing legal rule may be rejected if it unreasonably applies the rule to the facts of a particular case. Williams, 529 U.S. at 407-08. To obtain federal habeas relief for such an "unreasonable application," however, a petitioner must show that the state court's application of Supreme Court law was "objectively unreasonable." Id. at 409-10. In other words, habeas relief is warranted only if the state court's ruling was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any

possibility for fairminded disagreement." Harrington v. Richter, 562 U.S. 86, 103 (2011).

Petitioner raised his claim on direct appeal (Lodged Doc. 3), resting it on federal law as well as state law (see infra note 3), and the court of appeal rejected it in a reasoned decision; it did not, however, specifically address the federal aspect of the claim (see Lodged Doc. 6). The California Supreme Court summarily denied review. (Lodged Docs. 7, 8.) The Court "looks through" a state supreme court's silent denial to the court of appeal's reasoned decision as the basis for the state courts' judgment. See Ylst v. Nunnemaker, 501 U.S. 797, 803-04 (1991). Because the state courts adjudicated the federal claim on the merits, see Johnson v. Williams, 133 S. Ct. 1088, 1095-96 (2013) (Richter presumption applies to federal claim unaddressed in state court's reasoned decision), the Court's review is limited by AEDPA deference. See Richter, 562 U.S. at 100-01.

But because the state court did not expressly address the federal aspect of the claim, the Court conducts an independent review of the record to determine whether the state court was objectively unreasonable in applying controlling federal law. See Haney v. Adams, 641 F.3d 1168, 1171 (9th Cir. 2011) (independent review "is not de novo review of the constitutional issue, but only a means to determine whether the 'state court decision is objectively unreasonable'" (citation omitted)); see also Richter, 562 U.S. at 98, 102 (holding that petitioner still has burden of "showing there was no reasonable basis for the state court to deny relief," and reviewing court "must determine what arguments or theories supported or . . . could have

supported[] the state court's decision" and "whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with" Supreme Court precedent).

DISCUSSION

I. Applicable Law

Although a Pitchess motion is a creature of state law, it implicates the due process right to receive exculpatory and impeachment evidence. See Harrison v. Lockyer, 316 F.3d 1063, 1065-66 (9th Cir. 2003). But a Pitchess claim is cognizable on federal habeas review only if it "resolves to a claim that the trial court's asserted error in connection with Petitioner's Pitchess motion violated Petitioner's rights under the Brady doctrine." Lopez-Martinez v. Dovey, No. CV 06-1987-CJC (MAN), 2009 WL 863576, at *15 (C.D. Cal. Mar. 26, 2009). If a Brady violation is not established, then a petitioner "has no federally cognizable claim, regardless of whether the state court's handling of his Pitchess motion was erroneous under state law." Id.

Due process requires that a prosecutor disclose material evidence favorable to the defense. Brady v. Maryland, 373 U.S. 83, 87 (1963); Strickler v. Greene, 527 U.S. 263, 280 (1999) (noting that evidence is "material" if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different"). Three elements must be proved to establish a Brady violation: (1) the evidence at issue was favorable to the defendant, either as exculpatory evidence or impeachment material; (2) the evidence was suppressed by the state, willfully or inadvertently; and (3)

prejudice resulted from the failure to disclose the evidence. Strickler, 527 U.S. at 281-82; see also United States v. Bagley, 473 U.S. 667, 675-78 (1985). Brady did not, however, create a general constitutional right to discovery. Weatherford v. Bursey, 429 U.S. 545, 559 (1977). "[T]he Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded." Id. (citation omitted).

II. Court of Appeal's Decision

On direct appeal, the court of appeal analyzed solely the state-law aspect of Petitioner's claim. (Lodged Doc. 6 at 4-10.) It explained that under Pitchess, "on a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer accused of misconduct against the defendant." (Id. at 4 (citations and alteration omitted).) "If the defendant establishes good cause, the court must review the requested records in camera to determine what information, if any, should be disclosed." (Id. at 5 (citations omitted).)

The court of appeal analyzed counsel's showing and "agree[d] with the trial court that counsel's declaration amounted to no more than a denial of the facts stated in the police report." (Id. at 6.) Petitioner had not provided an alternative version of the events, and although he contended that the failure to find the "buy money" supported a possible defense based upon fabrication by the police, counsel's declaration "failed to present any factual scenario that might help to explain the scope of the alleged fabrication." (Id. at 9.) Thus, Petitioner did not show good cause, and the trial court did not abuse its

discretion by refusing to examine or order the disclosure of the officers' personnel records. (Id. at 10.)

III. Analysis

To the extent Petitioner contends the trial court abused its discretion and misapplied state law when it denied his Pitchess motion (Pet. Mem. at 14), his claim is not cognizable on federal habeas review. See § 2254(a); Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (habeas relief will not lie to correct errors in interpretation or application of state law); see also Williams v. Borg, 139 F.3d 737, 740 (9th Cir. 1998) (federal habeas relief available "only for constitutional violation, not for abuse of discretion"). Petitioner's sole cognizable federal claim is his Brady claim.[3] (Pet. Mem. at 5.)

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[3] Respondent contends that Petitioner's Brady claim is unexhausted. (Answer at 6-8.) But although Petitioner did not cite Brady in the state court, he argued in his court-of-appeal opening brief and in his petition for review that the trial court's denial of his Pitchess motion violated his 14th Amendment right to due process because Pitchess was "based on the premise that evidence contained in a law enforcement officer's personnel file may be relevant to an accused's criminal defense and that to withhold such relevant evidence from the defendant would violate the accused's due process right to a fair trial." (Lodged Doc. 3 at 16; Lodged Doc. 7 at 13-14.) Petitioner supported his argument with a citation to People v. Mooc, 26 Cal. 4th 1216, 1225 (2001) (Lodged Doc. 3 at 16; Lodged Doc. 7 at 14), in which the California Supreme Court declared that the Pitchess procedure "must be viewed against the larger background of the prosecution's constitutional obligation to disclose to a defendant material exculpatory evidence so as not to infringe the defendant's right to a fair trial," and cited Brady and Bagley. Petitioner, therefore, fairly presented his Brady claim to the state courts, and the claim is exhausted.

In any event, the Court may deny an unexhausted claim on the merits if it finds, on de novo review, that it is not even

(continued...)

The state court's denial of Petitioner's Brady claim was not objectively unreasonable. Petitioner has not shown that the personnel records of Officers Williams, McCauley, and Calderon contained any information material to his defense. (See Lodged Doc. 1, Clerk's Tr. at 49-75; Lodged Doc. 2, Rep.'s Tr. at A2-A3.) Because Petitioner did not make a sufficient preliminary showing of materiality under state law -- a finding this Court is bound by, see Bradshaw v. Richey, 546 U.S. 74, 76 (2005) (per curiam) -- the trial court never proceeded to the second step of the Pitchess procedure, an in camera review of the records. Consequently, the record does not contain any information about whether the officers' personnel files included exculpatory or impeaching information.

Petitioner cannot base his Brady claim on mere speculation that the files contained information giving rise to a reasonable probability of a different result at trial had it been disclosed. (See Pet. Mem. at 6, 15-16); Runningeagle v. Ryan, 686 F.3d 758, 769 (9th Cir. 2012) ("to state a Brady claim, [petitioner] is required to do more than 'merely speculate' about" nature of undisclosed evidence (citation omitted)); United States v. Lopez–Alvarez, 970 F.2d 583, 598 (9th Cir. 1992) (rejecting Brady claim when defendant's assertion that allegedly withheld evidence existed was "purely speculative"). Absence of evidence that the

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[3] (...continued)
colorable, as is the case here. See § 2254(b)(2); Cassett v. Stewart, 406 F.3d 614, 623-24 (9th Cir. 2005).

files contained Brady material is fatal to Petitioner's claim.[4] See Pennsylvania v. Ritchie, 480 U.S. 39, 58 n.15 (1987) (criminal defendant "may not require the trial court to search through" sensitive file "without first establishing a basis for his claim that it contains material evidence"); Harrison, 316 F.3d at 1066 (affirming denial of Brady claim when petitioner "made no showing that [officer]'s file contained complaints material to his defense"; noting that Pitchess "good cause" procedure complies with Brady as modified by Ritchie).

Accordingly, the court of appeal was not objectively unreasonable in denying Petitioner's claim. Alternatively, his Brady claim fails on de novo review.

CONCLUSION

IT IS ORDERED that the Petition is denied and Judgment be entered dismissing this action with prejudice.

DATED: August 30, 2016

JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE

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[4] The California Supreme Court recently held that a defendant is not required to show what information was in the files to demonstrate good cause for in camera review under Pitchess. See People v. Super. Ct. (Johnson), 61 Cal. 4th 696, 721 (2015) ("The required threshold showing [under Pitchess] does not place a defendant 'in the Catch–22 position of having to allege with particularity the very information he is seeking.'" (citation omitted)). Petitioner cannot, however, establish a Brady violation without showing the existence of undisclosed information that would have given rise to a reasonable probability of a different result at trial. See Strickler, 527 U.S. at 281-82; see also Johnson, 61 Cal. 4th at 711-12 (noting that "Brady's constitutional materiality standard is narrower than the Pitchess requirement").