

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAR 15 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JANOS KULCSAR,

Petitioner-Appellant,

v.

DEBBIE ASUNCION,

Respondent-Appellee.

No. 17-55898

D.C. No. 15-cv-01080-DSF-AS

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted March 7, 2019
Pasadena, California

Before: M. SMITH, OWENS, Circuit Judges, and SETTLE, District Judge**

Petitioner-Appellant Janos Kulcsar (“Kulcsar”) appeals the denial of his petition for writ of habeas corpus seeking relief from a jury conviction in state court. Specifically, he argues that his due process rights were violated because

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Benjamin H. Settle, United States District Judge for the Western District of Washington, sitting by designation.

there was (1) an unreasonable delay in filing charges and (2) insufficient evidence to support a conviction for first-degree murder. We review *de novo* a district court's decision on a petition for writ of habeas corpus. *Hall v. Haws*, 861 F.3d 977, 988 (9th Cir. 2017). We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

1. Kulcsar's first claim for relief is that the government's pre-accusation delay of approximately twenty-five years violated his due process rights. The California Court of Appeal ("CCA") denied this claim, concluding that Kulcsar had failed to establish actual prejudice due to the delay. Pre-accusation delay may violate an individual's right to due process of law. *United States v. Lovasco*, 431 U.S. 783, 789–90 (1977). The petitioner, however, must first "prove 'actual, non-speculative prejudice from the delay.'" *United States v. Corona-Verbera*, 509 F.3d 1105, 1112 (9th Cir. 2007) (quoting *United States v. Huntley*, 976 F.2d 1287, 1290 (9th Cir. 1992)). Only then should the reviewing court weigh "the length of the delay . . . against the reasons for the delay." *Id.*

In this case, Kulcsar has failed to establish that the CCA either implemented a standard contrary to clearly established federal law or unreasonably applied that law. 28 U.S.C. § 2254(d)(1). The CCA concluded that Kulcsar's assertions of prejudice due to unavailable evidence and fading memories were either not caused by the delay or were purely speculative. Kulcsar fails to establish that, under

deferential review, this conclusion is objectively unreasonable. *Bell v. Cone*, 535 U.S. 685, 694 (2002) (citing *Williams v. Taylor*, 529 U.S. 362, 409–10 (2000)).

Therefore, we affirm the district court’s denial of this claim.

2. Kulcsar’s second claim for relief is that there was insufficient evidence to support his first-degree murder conviction. The CCA concluded that the evidence, although circumstantial, was more than sufficient to support Kulcsar’s conviction. On habeas review, this Court must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

In this case, Kulcsar fails to establish that the CCA’s conclusion was objectively unreasonable. Kulcsar argues that the evidence of premeditation and deliberation, an essential element of first-degree murder, was thin. Kulcsar, however, fails to show that the jury’s conclusion, supported by substantial circumstantial evidence, fell “below the threshold of bare rationality.” *Coleman v. Johnson*, 566 U.S. 650, 656 (2012) (per curiam) (“[T]he only question under *Jackson* is whether [the jury’s] finding was so insupportable as to fall below the threshold of bare rationality.”). Therefore, we affirm the district court’s denial of this claim.

AFFIRMED.