NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL DAVID GRANT,

Petitioner - Appellant,

v.

JOSIE GASTELO, Warden,

Respondent - Appellee,

No. 19-55929

D.C. No.
2:18-CV-01925-JFW-SS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted December 2, 2025
Pasadena, California

Before: GOULD, BADE, and LEE, Circuit Judges.

Appellant Michael David Grant ("Grant") appeals the Central District of California's dismissal of his § 2254 habeas corpus petition asserting an Equal Protection claim under *Batson v. Kentucky*, 476 U.S. 79 (1986). The parties are familiar with the facts, so we do not recount them here. We have jurisdiction

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

pursuant to 28 U.S.C. §§ 1291 and 2253 and remand to the district court for consideration of Grant's *Batson* claim with his state trial court *voir dire* transcript.

1. We reject the Government's procedural default argument. On appeal, the Government contends that Grant's *Batson* claim was procedurally defaulted because the *Batson* claims Grant filed in state court *after* his federal *habeas corpus* proceedings were already initiated were denied as untimely in 2022. The government's argument misses the mark. It is based on Grant's *Batson* claim augmented by the *voir dire* transcripts in state court. But here, Grant is appealing the district court's 2019 denial of the original version of Grant's *habeas corpus* petition, which contained a *Batson* claim not supported by those transcripts. New versions of a claim being procedurally defaulted do not render the original version of the claim procedurally defaulted. *Guillory v. Allen*, 38 F.4th 849, 856 (9th Cir. 2022). The California Supreme Court ("CSC") 2016 dismissals are the state law decisions relevant to federal *habeas corpus* review of Grant's petition filed on February 26, 2018 because they constitute the "last reasoned state-court decision." *Van Lynn v. Farmon*, 347 F.3d 735, 738 (9th Cir. 2003). The Government does not base its procedural default arguments on these 2016 CSC dismissals. *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[A]rguments not raised by a party in its opening brief are deemed waived.").

2. We therefore consider whether to remand to the district court under *Nasby*

v. McDaniel, 853 F.3d 1049 (9th Cir. 2017) to consider the merits of Grant's *Batson* claim.

Under Rule 5 of the Rules Governing Section 2254 cases, the government is obligated to indicate whether transcripts are available and what proceedings have been recorded but not transcribed. Additionally, under Rule 5(c), the government must attach to its answer any portions of the transcripts it deems relevant. Federal courts themselves, even absent the government fulfilling this obligation, have an "independent obligation" to obtain and review relevant state court records. *Nasby*, 853 F.3d at 1054. *Voir dire* transcripts are highly relevant state court records when a *habeas corpus* petition raises a *Batson* claim. *See Briggs v. Grounds*, 682 F.3d 1165, 1169 (9th Cir. 2012) (explaining that resolution of *Batson* claim requires consideration of the "totality of the relevant facts" [quoting *Kesser v. Cambra*, 465 F.3d 351, 359 (9th Cir. 2006) (*en banc*)]); *Boyd v. Newland*, 467 F.3d 1139, 1151 (9th Cir. 2006) (stating that "without an entire voir dire transcript," the court cannot consider the "totality of the relevant facts"). Even if the state court did not review the *voir dire* transcript, a federal court on *habeas corpus* review may do so because while *Cullen v. Pinholster*, 563 U.S. 170 (2011) generally prohibits federal court consideration of evidence not presented in state court, federal courts are still "allowed . . . to consider information that was available to the state trial court, even if that information was not also presented to the state appellate court." *McDaniels*

v. Kirkland, 813 F.3d 770, 780 (9th Cir. 2015) (*en banc*). Remand is proper where a district court fails to review evidence relevant to a *Batson* claim. *See, e.g.*, *Boyd*, 467 F.3d at 1152 (remanding with instructions for *voir dire* transcript to be provided to petitioner to renew *Batson* claim in district court).

Neither the Government nor the district court fulfilled its obligation to provide or review the *voir dire* transcript in this *Batson* case. Without reviewing the *voir dire* transcript, the district court was incapable of properly considering the "totality of the relevant facts" in adjudicating Grant's *Batson* claim. *Briggs*, 682 F.3d at 1169. The district court must review Grant's *Batson* claim with his state *voir dire* transcript in the first instance. *Boyd*, 467 F.3d at 1152.

REMANDED for further proceedings consistent with this decision.[1]

[1] Because we do not reach the merits of Grant's *Batson* claim, we DENY his Request for Judicial Notice (Dkt. No. 59) as moot.