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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILBERT EARL SMITH,

Petitioner - Appellant,

v.

TRENT ALLEN, Acting Warden, Salinas
Valley State Prison, Soledad, California,
and PEOPLE OF THE STATE OF
CALIFORNIA, Real Party in Interest,

Respondents - Appellees.

No. 24-5367

D.C. No.

2:21-cv-02080-TLN-DMC

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted October 20, 2026**
San Francisco, California

Before: S.R. THOMAS, KOH, and TUNG, Circuit Judges.

Appellant Gilbert Earl Smith appeals the district court's denial of his petition for a writ of habeas corpus. Smith challenges the constitutionality of his state

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

custody based on the prosecutor’s use of a peremptory challenge to exclude a black prospective juror at his trial. He asserts that the prospective juror was struck based on her race, in violation of the Equal Protection Clause of the Fourteenth Amendment. *See Batson v. Kentucky*, 476 U.S. 79, 89 (1986). Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

We have jurisdiction pursuant to 28 U.S.C. § 2253(a). We review de novo the district court’s denial of a petition for a writ of habeas corpus. *Rogers v. Dzurenda*, 25 F.4th 1171, 1180 (9th Cir. 2022). We examine “the last reasoned state-court decision,” *Castellanos v. Small*, 766 F.3d 1137, 1145 (9th Cir. 2014), which, here, is the decision of the California Court of Appeal affirming the trial court’s judgment on direct review. In doing so, we apply the deferential standard of review set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). Under AEDPA deference, federal habeas relief may only be granted if the state court decision in question was either “contrary to, or involved an unreasonable application of, clearly established Federal law,” 28 U.S.C. § 2254(d)(1), or was “based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding,” *id.* § 2254(d)(2).

The district court properly denied Smith's habeas petition. Smith has not shown that the Court of Appeal's decision satisfies either condition in § 2254(d).

First, the Court of Appeal's consideration of the empaneling of the other black prospective juror neither was contrary to nor involved an unreasonable application of clearly established federal law. Satisfying either clause contained in § 2254(d)(1) is sufficient to clear the initial threshold of AEDPA deference. With respect to the first, "a decision by a state court is contrary to the clearly established law of the Supreme Court if it applies a rule that contradicts the governing law set forth in Supreme Court cases." *Frantz v. Hazey*, 533 F.3d 724, 734 (9th Cir. 2008) (en banc) (citation modified) (quoting *Price v. Vincent*, 538 U.S. 634, 640 (2003)). With respect to the second, a decision by a state court unreasonably applies clearly established law when it "identifies the correct governing legal principle from [the Supreme] Court's decisions," *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003), but its application of that principle to the facts of the case is "objectively unreasonable," *Deck v. Jenkins*, 814 F.3d 954, 979 (9th Cir. 2016). Further, "clearly established federal law for purposes of AEDPA review includes only the holdings, as opposed to the dicta, of the Supreme Court's decisions." *Id.* at 978 (citation modified) (quoting *White v. Woodall*, 572 U.S. 415, 419 (2014)).

Here, Smith cites no holding of the Supreme Court clearly establishing the law he asserts. The factual circumstances and legal rules in the cases he cites are inapposite, and none held that it is error to consider the empaneling of one black juror among other factors when reviewing the prosecutor's exclusion of another black prospective juror. Further, "[o]ur cases have acknowledged that the composition of the empaneled jury is relevant to the *Batson* inquiry." *Castellanos*, 766 F.3d at 1149. *See, e.g., Jamerson v. Runnels*, 713 F.3d 1218, 1236 (9th Cir. 2013) ("[T]he prosecutor never attempted to strike Juror # 6824, a black member of the venire who was seated on the panel throughout voir dire. If her motives were discriminatory, she had plenty of opportunities to remove this juror."). To the extent Smith intimates that the Court of Appeal held that the prosecutor's challenge was proper solely because there was no challenge to the other black prospective juror, that is not a fair reading of the Court of Appeal's decision. Rather, we conclude that the Court of Appeal appropriately examined the totality of the relevant facts and circumstances surrounding the prosecutor's peremptory strike. *See Currie v. McDowell*, 825 F.3d 603, 610 (9th Cir. 2016); *Paulino v. Harrison*, 542 F.3d 692, 702 (9th Cir. 2008).

Second, the Court of Appeal’s comparative juror analysis did not involve an unreasonable application of clearly established federal law and was not based on an unreasonable determination of the facts.

With respect to the alleged error under § 2254(d)(1), Smith does not assert what holding of the Supreme Court the Court of Appeal unreasonably applied in its comparative juror analysis. The only case Smith cites in the sections of his opening brief addressing the comparative analysis is *Miller-El v. Dretke*, 545 U.S. 231 (2005). But he does not appear to hold out *Miller-El* as the source of the holding that was unreasonably applied. Even if that were his intention, it is unclear what comparison he draws between the circumstances of his case and the Supreme Court’s analysis in *Miller-El*. For example, unlike in *Miller-El*, the prosecutor at Smith’s trial “ask[ed] further questions” during his colloquy with M.F., the black prospective juror who was struck, “before getting to the point of exercising a strike.” *Id.* at 244.

With respect to the alleged error under § 2254(d)(2), “[a] state court’s factual determination . . . is not unreasonable simply because we would have reached a different conclusion.” *Ybarra v. Gittere*, 69 F.4th 1077, 1089 (9th Cir. 2023). Rather, “[a] petitioner challenging the substance of the state court’s findings must show that an appellate panel, applying the normal standards of

appellate review, could not reasonably conclude that the finding is supported by the record.” *Id.* (citation modified).

Here, an appellate panel could reasonably conclude that the Court of Appeal’s findings are supported by the record. In reviewing Smith’s comparative analysis between M.F. and the white prospective juror the prosecutor did not strike, C.P., the Court of Appeal determined that “M.F. and C.P. are not similar” because “unlike M.F., C.P. expressed no confusion or hesitancy in answering the prosecutor’s questions.” This was a reasonable determination of the facts based on the evidence. The Court of Appeal was not unreasonable in finding that substantial evidence supported the trial court’s determination that the prosecutor challenged M.F. for race-neutral reasons.

Because Smith has satisfied neither prong of § 2254(d), the district court properly denied his federal habeas petition.

AFFIRMED.