

SUPREME COURT
FILED

JUL 10 2019

Jorge Navarrete Clerk

Deputy

S256089

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ANDRES SANTANA, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;

THE PEOPLE, Real Party in Interest.

The petition for writ of mandate is denied.

Kruger, J., was absent and did not participate.

CANTIL-SAKAUYE

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ANDRES SANTANA,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

B294382

(Super. Ct. No. TA063973)
(Los Angeles County)

ORDER

COURT OF APPEAL - SECOND DIST.

FILED

Jan 11, 2019

DANIEL P. POTTER, Clerk

S. Claborn Deputy Clerk

THE COURT:

In reviewing the petition for a writ of mandate filed by Andres Santana on December 13, 2018, the court has taken judicial notice of the superior court file in *People v. Santana*, Los Angeles County Superior Court case number TA063973. (Evid. Code §§ 452, subd. (d), 459.)

On the court's own motion, we order the record augmented with the reporter's transcript of the hearing in the superior court on December 8, 2015, before Judge Michael Schultz in *People v. Santana*, Los Angeles County Superior Court case number TA063973, reported by Chris Fox, in South Central District Dept. SCL. The clerk of the superior court is ordered to have

a reporter's transcript of the hearing prepared within 30 days of this order and deliver the original to this court. Copies of the reporter's transcript shall also be transmitted to the petitioner and the real part in interest at the addresses listed below:

Andrea Santana (#K00977)

Calipatria State Prison

P.O. Box 5002

Calipatria, CA 92233

Office of the District Attorney

210 W. Temple Street 18th Floor

Los Angeles, CA 90012

Office of the Attorney General

Lance Winters, Supervising DAG

300 South Spring St., First Floor

Los Angeles, CA 90013

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re, Andres Santana)

Case No.: TA063973

Petitioner,)

ORDER RE: NOTICE
OF CHANGE OF ADDRESS //
MOTION PURSUANT TO
PENAL CODE SECTION
1054.9

The Court has received correspondence from the Petitioner filed in the Los Angeles Superior Court on August 24, 2015 entitled "Defendant Andres Santana's Notice of Motion and Motion for Reconsideration, or Alternatively, Ex Parte Application for Non-Dispositive Relief in this Action; Memorandum of Points and Authorities." The correspondence asks the court to vacate its August 6, 2015 order and "find that there are post-conviction discovery proceedings currently pending in this court."

The Court formally denies Petitioner's motion for post conviction discovery dated August 12, 2009.

The court makes the following findings:

1. On May 20, 2003, the trial court heard Petitioner Santana's motion for a new trial.

In his motion, Petitioner argued the following:

- There was insufficient evidence of guilt. This claim was made as to the underlying charges as well as the gang enhancements.
- Ineffective assistance of trial counsel.
- Newly discovered evidence.

2. On May 20, 2003, the trial court denied Petitioner's motion for a new trial and sentenced Petitioner. On the same date, Petitioner filed a notice of appeal.

1
2
3 3. In his appeal (B167415), Petitioner argued the following:

- 4
- 5 • Insufficiency of the Evidence.
 - 6 • Ineffective assistance of counsel.
 - 7 • The gang evidence / testimony should have been excluded as overly
8 prejudicial.
 - 9 • Newly discovered evidence compelled a new trial.
 - 10 • The trial court erred when refusing to hear Petitioner's Penal code section
11 995 motion to set aside the information.
 - 12 • The trial court erred by not conducting a hearing when one of the jurors
13 expressed concern for his safety.
 - 14 • The trial court erred when sentencing Petitioner on the Penal Code section
15 186.22 allegations.

16 4. On June 7, 2004, the court of appeal issued its decision rejecting all of Petitioner's
17 contentions.

18 5. On September 15, 2004, the California Supreme Court granted Petitioner's Petition
19 for review solely on the issue of whether the trial court erred when sentencing the
20 Petitioner on the Penal Code section 186.22 allegations.

21 6. On May 14, 2004, while his appeal was pending in the 2nd district court of appeal,
22 the Petitioner filed a Writ of Habeas Corpus in the trial court. In his Writ of Habeas
23 Corpus, Petitioner argued the following:

- 24
- 25 • Ineffective assistance of trial counsel.
 - 26 • The Identification procedures employed by law enforcement were unduly
27 suggestive, specifically that the "six pack showing of February 18, 2001,
28 used suggestive procedures to attain an identification..." Petitioner further

alleged trial counsel was ineffective by not attempting to suppress the six pack identification.

7. On May 19, 2004, while his Writ of Habeas Corpus was pending in the trial court, Petitioner filed a Writ of Habeas Corpus (B175309) in the 2nd District Court of Appeal.
8. On June 24, 2004, the 2nd district Court of Appeal denied Petitioner's Writ of Habeas Corpus.
9. On December 7, 2004, Petitioner's Writ of Habeas Corpus was denied by the trial court.
10. On November 12, 2004, while his Writ of Habeas Corpus was pending in the trial court, Petitioner filed a Writ of Habeas Corpus in the California Supreme Court (S129939).
11. On January 4, 2006, the California Supreme Court denied Petitioner's Writ of Habeas Corpus. (S129939)
12. On October 26, 2012, Petitioner filed another Writ of Habeas Corpus in the California Supreme Court (S206255).
13. On January 30, 2013, the California Supreme Court denied Petitioner's Writ of Habeas Corpus (S206255)
14. The Petitioner filed a "Notice of Motion for Post Conviction Discovery," in 2009. The Motion was not file stamped. The Motion, with attachments, consisted of 190 pages. The motion was denied, without prejudice, by this court on June 25, 2009.
15. Subsequent to denying the motion, on August 12, 2009, the Petitioner filed a second request/motion for post conviction discovery.
16. On August 4, 2015, this court held that the motion filed in April 2009 and the motion filed in August 2009 were one in the same.
17. It would appear, however, that the trial court never formally ruled on the motion dated August 12, 2009.
18. Instead, on August 13, 2009, Judge Hahn appointed attorney Robin Yanes. ¹
19. Mr. Yanes, was appointed for the limited purpose of informally assisting Petitioner in obtaining limited items of discovery from the district attorney's office. He was not, as

There is no minute order or electronic entry reflecting the appointment.

Petitioner alleges in his August 14, 2015 declaration, appointed to represent
Petitioner in formal post discovery hearings.

20. Between 2009 and 2011, Mr. Yanes informally contacted the District Attorney's
office, attempted to assist Petitioner and communicated with Petitioner. Mr. Yanes
involvement and assistance ended in 2011. Contrary to Petitioner's claims, Mr.
Yanes has not been engaged in formal post-conviction discovery with the District
Attorney's office for the last 6 years.

The Clerk is to give notice and send a copy of this memorandum upon the petitioner and upon
the District Attorney's Office as follows:

Andres Santana
CDC# K00977
CAL, B5-123
P.O. Box 5005
Calipatria, California 92233

Los Angeles County District Attorney's Office
Attn: Habeas Corpus Litigation Team
320 West Temple Street, Room 540
Los Angeles, CA 90012.

DATE 12/8/15



MICHAEL J. SHULTZ
JUDGE OF THE SUPERIOR COURT