

JUN 21 2019

FOR THE COUNTY OF ORANGE

In re

ARTHUR LOPEZ,

Petitioner/Defendant,

on Habeas Corpus.

CASE NO. M-18067

ORDER

TO THE PEOPLE OF THE STATE OF CALIFORNIA AND TO PETITIONER:

1.

On January 11, 2016 a jury found petitioner guilty of child abuse/neglect (Pen. Code, § 273a, subd. (b)) and injuring a wireless device with intent to prevent crime report (Pen. Code, § 591.5). On January 14, 2016, imposition of sentence was suspended and petitioner was placed on informal probation for four years with terms and conditions including 60 days jail on the child abuse charge and 30 days Cal Trans in lieu of 30 days jail on the wireless device charge. (OCSC case number 15HM12251.) The judgment was affirmed on appeal.

II.

Petitioner seeks habeas corpus relief by way of a petition to which is attached a declaration, raising claims of malicious prosecution, ineffective assistance of counsel, instructional error, and sufficiency of the evidence. (There is more than one declaration by petitioner attached to the petition, but it appears that the one in Exhibit 6 was written for this particular petition, so those are the claims being addressed here.)

III.

The petition is denied on the following grounds:

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"In criminal cases where the petitioner is in custody, 'a copy of the application for the writ must in all cases be served upon the district attorney of the county wherein the person is held in custody or restraint' and 'no application for the writ can be heard without proof of service in cases where the service is required.' (Pen. Code § 1475; see *In re Moffett* [(1936) 13 Cal.App.2d 741, 742].)" (*In re Paul W.* (2007) 151 Cal.App.4th 37, 54.) Petitioner has not provided a proof of service showing that the People were served.

2 A petitioner must explain and justify any significant delay in seeking habeas corpus relief. "The burden is one placed even on indigent petitioners appearing in propria persona, and is not met by an assertion of counsel that he or she did not represent the petitioner earlier." (*In re Clark* (1993) 5 Cal.4th 750, 765.) "Absent justification for the failure to present all known claims in a single, timely petition for writ of habeas corpus, successive and/or untimely petitions will be summarily denied." (*Id.* at p. 797.) "For noncapital cases in California, there is no express time window in which a petitioner must seek habeas corpus relief. Rather, the general rule is that the petition must be filed as promptly as the circumstances allow.... An untimely petition for writ of habeas corpus may still be considered if the delay is justified by the petitioner, who bears the burden of demonstrating either: (i) absence of substantial delay, (ii) good cause for the delay, or (iii) that the claim falls within an exception to the bar of untimeliness." (*In re Douglas* (2011) 200 Cal.App.4th 236, 242-243.) "A prisoner must seek habeas relief without 'substantial delay,' as 'measured from the time the petitioner or counsel knew, or reasonably should have known, of the information offered in support of the claim and the legal basis for the claim.'" (*In re Reno* (2012) 55 Cal.4th 428, 460.) "A petitioner must allege, *with specificity*, facts showing when information offered in support of the claim was obtained, and that the information neither was known, nor reasonably should have been known, at any earlier time. It is not sufficient simply to allege in general terms that the claim recently was discovered, to assert that second or successive postconviction counsel could not reasonably have discovered the information earlier, or to produce a declaration from present and former counsel to that general effect. A petitioner bears the burden of *establishing*, through his or her specific allegations, which may be supported by any relevant exhibits, the absence of substantial delay." (*In re Robbins* (1998) 18 Cal.4th 770, 780.)

The petition is untimely. Petitioner does not explain and justify with specificity the three and a half year delay in seeking post-conviction collateral review of his claims. In the section of the form petition requiring a petitioner to explain the reason for the delayed filing, petitioner directed the court to see Exhibits 6 and 7, attached to his petition. In Exhibit 6, petitioner claims that he attempted to get records from the records clerk at Harbor Justice Center on May 20, 2019, but the court did not accept a previously granted fee waiver, so it took him two days to get the required documents. This does not

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excuse the more than three year delay between conviction and his attempt to obtain the documents. No attachment 7 appears with the petition; the pages jump from attachment 6 to attachment 8.

The claims of error as presented also do not amount to a potential fundamental miscarriage of justice sufficient to overcome the procedural bar against untimely requests for habeas corpus relief. "[F]or purposes of the exception to the procedural bar against successive or untimely petitions, a "fundamental miscarriage of justice" will have occurred in any proceeding in which it can be demonstrated: (1) that error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner; (2) that the petitioner is actually innocent of the crime or crimes of which the petitioner was convicted; (3) that the death penalty was imposed by a sentencing authority which had such a grossly misleading profile of the petitioner before it that absent the trial error or omission no reasonable judge or jury would have imposed a sentence of death; (4) that the petitioner was convicted or sentenced under an invalid statute. These claims will be considered on their merits even though presented for the first time in a successive petition or one in which the delay has not been justified." (*In re Clark, supra*, 5 Cal.4th at pp. 797-798.)

Petitioner claims that officers from the Newport Beach Police Department withheld or concealed evidence in order to manipulate the outcome of his trial. He believes the not guilty verdicts on some of the counts charged supports this claim. This claim is wholly conclusory and unsupported by any evidence. "To satisfy the initial burden of pleading adequate grounds for relief, an application for habeas corpus must be made by petition, and if the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists. The petition should both (i) state fully and with particularity the facts on which relief is sought as well as (ii) include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations. Conclusory allegations made without any explanation of the basis for the allegations do not warrant relief, let alone an evidentiary hearing." (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.)

Petitioner further claims that he was provided ineffective assistance of trial counsel. "To establish a claim of incompetence of counsel, a defendant must establish both that counsel's representation fell below an objective standard of reasonableness and that it is reasonably probable that, but for counsel's error, the result of the proceeding would have been different. An ineffective assistance of counsel claim fails on an insufficient showing of either element." (*People v. Cua* (2011) 191 Cal.App.4th 582, 606.) Petitioner claims that counsel dissuaded petitioner from attempting to disqualify the trial judge, Judge Delaney, due to the judge's previous representation of a school district. He argues that counsel was too accommodating to the bench and that he never effectively challenged the

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protective order. Petitioner also claims that his jury was biased based on the demographics of the jury pool in that courthouse and was not a jury of his peers, and that counsel dismissed petitioner's suggestion to try to transfer the case to a different courthouse. Counsel also dismissed his request for a speedy trial. Petitioner fails to present any evidence supporting his claims how counsel's acts or omissions constituted deficient performance, nor does he demonstrate that he was prejudiced by the alleged errors.

— Petitioner also appears to be arguing that there was insufficient evidence to support his conviction for Penal Code sections 591.5 and 273a(b). Challenges to the sufficiency of the evidence supporting the conviction are not subject to review via habeas corpus. (*In re Reno* (2012) 55 Cal.4th 428, 452.)

— Petitioner also appears to claim that the court committed Instructional error by failing to provide a proper self-defense instruction. The claim may be denied on grounds that the issue raised was considered and denied on direct appeal. "Issues resolved on appeal will not be reconsidered on habeas corpus." (*In re Clark* (1993) 5 Cal.4th 750, 765; *In re Waltreus* (1965) 62 Cal.2d 218, 225.)

IV.

The petition for writ of habeas corpus is DENIED.

DATED: 6/24/19


JUDGE OF THE SUPERIOR COURT

CHERI PHAM

Appendix A

Court of Appeal, Fourth Appellate District, Division Three - No. G057987

S257770

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ARTHUR LOPEZ on Habeas Corpus.

SUPREME COURT
FILED

The petition for review is denied.

NOV 20 2019

Jorge Navarrete Clerk

Deputy

CANTIL-SAKAUYE
Chief Justice

Appendix B

Court of Appeal, Fourth Appellate District, Division Three - No. G057987

S257770

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ARTHUR LOPEZ on Habeas Corpus.

The petition for review is denied.

Chief Justice

Appendix B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

In re ARTHUR LOPEZ
on Habeas Corpus.

G057987

(Super. Ct. No. M-18067)

ORDER

THE COURT:*

On July 9, 2019, appellant filed a notice of appeal from an order denying a petition for writ of habeas corpus. This court advised appellant that it is considering dismissing the appeal on the basis that appellant filed a notice of appeal from an order that is not appealable. Appellant was invited to file points and authorities to explain why the appeal should not be dismissed, and appellant cites to *Flowers v. Mississippi*, *Holland v. Florida*, and states that if the cases are not sufficient to satisfy the court, he is seeking a 30 day extension of time to file additional points and authorities.

Appellant's request for additional time to file points and authorities is DENIED.

On the court's own motion and for good cause, the appeal in case number G057987 is DISMISSED. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.)

O'LEARY, P. J.

* Before O'Leary, P. J., Moore, J., and Ikola, J.

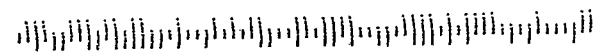
Appendix C

Superior Court of California
Central Justice Center
P.O. Box 1138
Santa Ana, California 92702-1138

Arthur Lopez
P.O. Box 13081
Newport Beach, CA 92658

Exh B

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Appendix Z

~~Exh~~

1 of 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : M-18067 X A

Name : Lopez, Arthur

Date of Action	Seq Nbr	Code	Text
05/22/19	1	FLDOC	Original Writ of Habeas Corpus filed on 05/22/2019 by Petitioner in ProPer.
	2	FLNAM	Name filed: Lopez, Arthur
05/23/19	2	FITXT	Petition for Writ of Habeas Corpus filed.
06/21/19	1	HHELD	Hearing held on 06/21/2019 at 09:00 AM in Department C43 for Chambers Work.
	2	OFJUD	Judicial Officer: Cheri T Pham, Judge
	3	OFJA	Clerk: M. Diaz
	4	APNCR	No Court Reporter present at proceedings.
	5	APNAP	No appearance by parties.
	6	TEXT	HAVING REVIEWED THE ABOVE CAPTIONED PETITION FOR WRIT OF HABEAS CORPUS, THE COURT ISSUES THE FOLLOWING ORDER:
	7	TEXT	The following item is marked for appellate purposes.
	8	STRHRG	Start of Exhibit List: for exhibit management purposes.
	9	TREXI	Petitioner's Exhibit # 1 (Media)- CD: Trial Transcript (Attachment #7) marked for identification.
	10	HCWRD	Petition for Writ of Habeas Corpus filed on 05/23/2019 is denied for the reasons stated in the Order of 06/21/2019.
	11	FIHCO	Order denying Writ of Habeas Corpus filed.
	12	CPGTO	Copy of today's minute order and order forwarded to Orange County District Attorney - Writs and Appeals Unit
	13	CPGTO	Copy of today's minute order and order mailed to Arthur Lopez P.O. Box 13081 Newport Beach, CA 92658
	14	OFMDD	Minutes of 06/21/2019 entered on 06/27/2019.
06/25/19	1	FITXT	Declaration and Document In Support of Petition for Writ of Habeas Corpus filed.
07/09/19	1	FIAPPL	NOTICE OF APPEAL RECEIVED AND FILED.
	2	FITXT	Notice of Filing Notice of Appeal filed.
	3	FITXT	Preliminary Information re Appeal filed.

Not True
See Postmark
on envelope
attached

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SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE

MINUTES

Case : M-18067 X A

Name : Lopez, Arthur

Date of Action	Seq Nbr	Code	Text
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07/11/19 1 FITXT

Order from Court of Appeal re: Appellant filed a notice of appeal from an order denying a petition for writ of habeas corpus. The court is considering dismissing the appeal on the basis that appellant filed a notice of appeal from an order that is not appealable. (In re Clark (1993) 5 Cal.4th 750, 767, fn. 7.) Appellant is invited to file points and authorities no later than August 12, 2019, to explain why the appeal should not be dismissed.

Preparation of the record and appointment of counsel are STAYED pending further order of this court.

The clerk of this court is directed to transmit a copy of this order to Appellate Defenders, Inc. filed.

Appendix Z

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**Additional material
from this filing is
available in the
Clerk's Office.**