

No. 19-8441

In the Supreme Court of the United States

RICHARD JOHN VIEIRA,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
CALIFORNIA COURT OF APPEAL

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Whether the California Supreme Court may summarily deny discretionary review of an intermediate appellate court's dismissal of an appeal on timeliness grounds.¹

¹ The petition for certiorari includes the following questions presented:

"1. California's Constitution (Art. VI. §14) clarifies A COMMAND upon the Judicial Branch as follows:

'Decisions of the Supreme Court and courts of appeal that determine cases SHALL be in writing with reasons stated.'

The Oath to obtain Vested Authority of a Judge is founded upon 'oath' to perform ALL duties incumbent upon the Constitution and Laws.

(a) What Statute or Authority does the California Supreme Court Judges HAVE to violate, ignore and disobey the Absolute Commands in the State's and United States Constitutions and Laws? (As was done in this case).

2. California's Constitution (Art. V. §13) clarifies, The Attorney General to be the Chief Law Officer 'in charge' to enforce the laws, to obey and uphold ALL the Laws, and to ensure ALL the Laws are being equally enforced-adequately applied. It IS the Attorney Generals Duty to Prosecute Violators of the Laws.

(a) Is it A Crime-Violation of Law and Constitutional Rights when Judges ignore, disobey and violate the Mandatory Commands in the Constitution and Laws of the State and United States They Swore an Oath to Obey and Uphold?

(b) Does the Attorney General Have Discretion to disobey, ignore Their Duty to Prosecute, and allow criminal violations against the Constitution and Laws to go 'unprosecuted and uncorrected' because the Violators are State Judges? Or is the Attorney General Bound by Law and Duty of Vested Authority to correct and prosecute?"

DIRECTLY RELATED PROCEEDINGS

Superior Court of the State of California, County of Stanislaus:

People v. Richard John Vieira, No. 261617 (Mar. 30, 1992) (judgment of death).

People v. Richard Vieira on Habeas Corpus, No. CRHC-19-003296 (Apr. 8, 2019) (this case below, petition for writ of habeas corpus denied).

In re Richard John Vieira on Habeas Corpus, No. CRHC-15-005643 (petition for writ of habeas corpus pending).

California Court of Appeal, Fifth Appellate District:

People v. Richard John Vieira, No. F079990 (Dec. 6, 2019) (this case below; appeal dismissed).

California Supreme Court:

People v. Richard John Vieira, No. S026040 (Mar. 7, 2005) (on automatic appeal, convictions affirmed, three death sentences affirmed, sentence of life in prison without the possibility of parole affirmed, one death sentence reversed and modified to 25 years to life in prison).

Richard John Vieira on Habeas Corpus, No. S147688 (June 24, 2009) (petition for writ of habeas corpus denied).

Richard John Vieira on Habeas Corpus, No. S227944 (May 22, 2019) (petition for writ of habeas corpus transferred to superior court).

People v. Vieira, No. S260076 (Feb. 19, 2020) (this case below; petition for review denied).

United States District Court for the Eastern District of California:

Richard John Vieira v. Chappell, No. 1:05-CV-01492-AWI-SAB (Feb. 5, 2015) (petition for writ of habeas corpus denied).

United States Court of Appeals for the Ninth Circuit:

Richard J. Vieira v. Davis, No. 15-9903 (appeal pending).

Supreme Court of the United States:

Richard John Vieira v. California, No. 05-6075 (Oct. 31, 2005) (certiorari denied).

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STATEMENT

1. In 1991, a jury found petitioner Richard John Vieira guilty of four counts of first degree murder and one count of conspiracy to commit murder. *People v. Vieira*, 35 Cal. 4th 264, 273 (2005). The jury chose the death penalty for three of the murders. *Id.* For the fourth murder, petitioner was sentenced to life in prison without the possibility of parole; for the conspiracy, he was sentenced to 25 years to life. *Id.*

As a young man, petitioner became involved with a dysfunctional group or cult led by Gerald Cruz. *Vieira*, 35 Cal. 4th at 273-274. Most members lived close to Cruz's house in trailers. *Id.* Petitioner's status in the group hierarchy was low, and he was assigned menial tasks. *Id.* at 274. Occasionally, Cruz would order another member of the group to beat petitioner. *Id.* The group pooled its money, and Cruz used some of it to accumulate guns, knives, and other weapons. *Id.*

A conflict developed between the Cruz group and a drug dealer named Franklin Raper. *Vieira*, 35 Cal. 4th at 274. Raper lived in a nearby trailer, along with several other people who he allowed to stay there. *Id.* at 275. After a number of confrontations, Cruz presided over a meeting with several members of his group, including petitioner. *Id.* Cruz discussed a plan to kill Raper and others living at Raper's residence. *Id.* He "announced that the plan was to go over" to Raper's residence "to do 'em and leave no witnesses." *Id.* Cruz directed Michelle Evans, a group member who was familiar with Raper's residence, to draw a diagram of the residence. *Id.* Cruz gave detailed

instructions to his followers. Evans was to go in first, check all the rooms, count the people, try to get them all in the living room, open the back window, and then leave. *Id.* Then, five other members of the group, including Cruz and petitioner, were to enter all at once from the front and back of the house. *Id.* Cruz handed out knives, bats, masks, and a baton. *Id.*

The group went together to Raper's house around midnight, wearing masks. *Vieira*, 35 Cal. 4th at 275. After Evans had done her part, petitioner and the others burst in with their weapons and killed Raper and three other people. *Id.* The victims were brutally beaten, stabbed, and slashed, and their throats were cut. *Id.*

Petitioner personally killed a woman named Emmie Paris. *Vieira*, 35 Cal. 4th at 275. The next day, he told Evans that "Paris began screaming and Cruz ordered him to shut her up." *Id.* Petitioner "hit her with a baseball bat several times but did not succeed in silencing her. Cruz then handed him his knife and he stabbed her. When this also failed, defendant grabbed Paris's hair and sawed at her throat till 'it felt like her head was going to come off.'" *Id.*

Petitioner admitted to a detective that he had participated in planning the murders and was present at the killings. *Vieira*, 35 Cal. 4th at 276. He admitted that he had hit a victim with a bat. *Id.* And he admitted that he had "condoned" the conspiracy. *Id.*

2. Petitioner has been represented by counsel continuously from the time of trial up to the present day. This uncounseled petition for a writ of certiorari,

however, arises out of a pro se postconviction proceeding that petitioner filed in state trial court. Respondent begins with a summary of the direct appeal and postconviction proceedings in which petitioner has been represented by counsel, before turning to petitioner's pro se litigation.

a. On petitioner's automatic direct appeal to the California Supreme Court, the judgment was affirmed, with one exception. *Vieira*, 35 Cal. 4th at 273, 306. The jury had chosen the death penalty for the conspiracy conviction, as well as for three of the murder convictions. *Id.* at 294. The Court held that conspiracy is not a death-eligible crime, and ordered that petitioner be resentenced to 25 years to life for the conspiracy count. *Id.* at 306. On October 31, 2005, this Court denied certiorari. *Vieira v. California*, No. 05-6075.

b. On October 29, 2006, petitioner filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of California. *Vieira v. Chappell*, No. 1:05-CV-01492. Two days later, Petitioner filed a petition for writ of habeas corpus in the California Supreme Court. *Richard John Vieira on Habeas Corpus*, No. S147688. The federal petition was held in abeyance while the state petition was pending.

On June 24, 2009, the California Supreme Court denied the state habeas petition in a brief order. The Court stated that "[a]ll claims are denied on the merits." *Vieira on Habeas Corpus*, No. S147688.

Petitioner then moved forward with his federal habeas action. On February 5, 2015, in a nearly 200-page written decision, the district court denied the petition in full, rejecting all 46 of the claims raised by petitioner. *Vieira v. Chappell*, No. 1:05-cv-01492, 2015 WL 641433, at *186 (E.D. Cal. Feb. 5, 2015). The district court issued a certificate of appealability for two issues. *Id.*

Petitioner appealed. *Vieira v. Davis*, No. 15-99003, Dkt. 1 (9th Cir. Mar. 9, 2015). In addition to addressing the two issues certified by the district court, petitioner's counseled brief raised numerous additional claims, requesting that the court of appeals expand the certificate of appealability to consider those issues as well. *Vieira v. Davis*, No. 15-99003, Dkt. 56 at 77-134 (Sept. 13, 2017). That appeal remains pending.

After bringing his appeal to the Ninth Circuit, petitioner filed a second petition for a writ of habeas corpus in the California Supreme Court. *Richard John Vieira on Habeas Corpus*, No. S227944 (July 20, 2015). Among other things, petitioner sought to exhaust claims that were not previously raised pertaining to the discovery of alleged exculpatory evidence.² On May 22, 2019, the California Supreme Court transferred the petition to the Superior Court of

² These claims are discussed in petitioner's Ninth Circuit brief. *Vieira v. Davis*, No. 15-99003, Dkt. 56 at 66-76. Petitioner has asked the Ninth Circuit to remand the case to district court and direct that the case be held in abeyance until petitioner's second state habeas petition has been resolved. *Id.* at 66.

Stanislaus County pursuant to California Penal Code Section 1509(g), which allows the Supreme Court to transfer a habeas petition to be addressed by a trial court in the first instance. The transferred petition has been designated case number CRHC-15-005643 in superior court and remains pending.

3. On April 4, 2019, petitioner filed a separate, pro se petition for writ of habeas corpus in the Superior Court of Stanislaus County. The court denied the petition on April 8, 2019. Pet. App. D. According to the court, petitioner raised three claims: (1) that alleged exculpatory evidence was not presented to the defense at the time of trial; (2) that the trial court failed to maintain a certified record of trial; and (3) that trial counsel was ineffective. *Id.* The court denied all three claims, concluding that they were untimely under state law. *Id.*

Rather than appealing that denial, petitioner initially filed a “motion for review” in the superior court, which was denied for failing to present “information that warrants any change in the prior ruling.” Pet. App. D. (July 25, 2019). Petitioner then filed a “motion to augment the record” in the superior court. Shortly afterward, observing that petitioner’s motion was “unclear,” the court stated that it would take no action on the motion because it had already denied relief, meaning the case was no longer “pending” before the court. Pet. App. D (Aug. 23, 2019).

At that point, petitioner filed a notice of appeal in the intermediate court of appeal. Pet. App. D (Sept. 16, 2019). The court issued an order notifying

petitioner that it was “considering dismissing” the appeal for “lack of appellate jurisdiction” because it appeared that the appeal was untimely. Pet. App. C (Oct. 11, 2019). The court explained that, under state law, petitioner had only 30 days to appeal the April 8, 2019 denial of habeas relief. *Id.* It ordered petitioner to file a letter brief providing authority for his appeal. *Id.* On December 6, 2019, the court dismissed the appeal for lack of jurisdiction, concluding that petitioner had failed to demonstrate that his appeal was timely. Pet. App. C. The court also explained that, to the extent petitioner intended to appeal the denial of his motion to “augment the record” before the superior court, that denial was not an appealable order. *Id.*

Petitioner then sought review in the California Supreme Court. Pet. App. A (Dec. 29, 2019). On February 19, 2020, the Court denied discretionary review, noting in a summary order that the “petition for review is denied.” Pet. App. A.

ARGUMENT

This petition arises from a pro se habeas petition that petitioner filed in state trial court after his state direct appeal was resolved and his prior state habeas petition was denied. After this pro se petition was denied, petitioner appealed, but the appeal was dismissed by the intermediate appellate court for lack of appellate jurisdiction. Petitioner now asks this Court to consider whether the California Supreme Court had authority to summarily deny discretionary review of that dismissal. The Court should deny review because

the California Supreme Court had no obligation to exercise discretionary review of a lower court's application of a jurisdictional appeal-filing deadline under state law. While the body of the petition for certiorari also references a number of constitutional challenges to petitioner's convictions and sentence, those claims are not properly presented here. Petitioner raised those claims in a separate federal habeas action that remains pending before the Ninth Circuit—an action where, unlike here, petitioner is represented by counsel.

1. The questions presented by the petition challenge the California Supreme Court's decision to deny discretionary review in a summary order. Pet. App. A (Feb. 19, 2020). But petitioner relies only on state-law authorities (*see* Pet. ii, 21-22); he fails to show that this denial implicates any federal question. *See* 28 U.S.C. § 1257(a). There is no federal right to have a state court of last resort issue a reasoned opinion explaining its decision to deny discretionary review. *See Chandler v. Florida*, 449 U.S. 560, 570 (1981) (“This Court has no supervisory jurisdiction over state courts, and, in reviewing a state-court judgment, we are confined to evaluating it in relation to the Federal Constitution.”).

In any event, the California Supreme Court's denial of review was entirely proper. Review of intermediate appellate decisions is discretionary with the California Supreme Court. Cal. Const., art. VI, § 12(b) (“The Supreme Court *may* review the decision of a court of appeal in any cause”) (emphasis added); *see* Cal. R. of Ct. 8.512. And, like this Court, the California Supreme

Court does not typically issue a reasoned decision explaining its decision to deny discretionary review. Nor does state law require it do so. The provision of the state constitution that petitioner points to—which provides that “[d]ecisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated,” Cal. Const., art. VI, § 14—does not apply to decisions to deny discretionary review, *see In re Rose*, 22 Cal. 4th 430, 451-452 (2000).

2. To the extent petitioner asks this Court to review the intermediate state appellate court’s decision to dismiss his appeal as untimely (*see* Pet. 19-20), this Court lacks jurisdiction because that timeliness decision was based entirely on state law. The state trial court denied petitioner’s pro se habeas petition on April 8, 2019. Pet. App. D. Under state law, petitioner had 30 days to appeal. *See* Cal. Penal Code § 1509.1; *Briggs v. Brown*, 3 Cal. 5th 808, 825 (2017). Because he did not appeal until September 16, 2019—155 days after the trial court’s denial of relief—the appellate court issued an order giving petitioner notice that it was considering dismissing his appeal and directing him to file a brief explaining whether there was any basis to treat the appeal as timely, *see* Pet. App. C (Oct. 11, 2019). When petitioner failed to provide any such basis, the court dismissed the appeal for lack of jurisdiction. *Id.* (Dec. 6, 2019).

That state-law dismissal on jurisdictional grounds also prevents the Court from considering any challenges to the merits of petitioner’s pro se

habeas petition. *See, e.g.*, Pet. 8, 9-11 (appearing to challenge the merits of that denial). While that petition included federal claims, this Court may consider such claims only when “timely and properly raised” in state court. Sup. Ct. R. 14.1(g)(i); *see Adams v. Robertson*, 520 U.S. 83, 86-87 (1997).

A further barrier to review is that the trial court’s denial of petitioner’s pro se habeas petition rested entirely on state-law grounds. As discussed above (at p. 5), petitioner claimed: (1) that evidence was improperly withheld from the defense at the time of trial; (2) that the trial court did not properly certify and prepare a record of his trial; and (3) that his trial counsel was ineffective. In its April 8, 2019 order denying habeas relief, the trial court concluded that all three claims were untimely under state law: claim two “could have been raised on direct appeal,” and petitioner “should have pursued” claims one and three “long ago.” Pet. App. D.

Moreover, two of the three claims—those concerning allegations that evidence was improperly withheld and that trial counsel was ineffective—were brought by petitioner’s current counsel in a federal habeas action and remain

pending before the Ninth Circuit.³ And the third claim—that no adequate record was prepared following petitioner’s trial—plainly lacks merit.⁴

3. Finally, the body of the petition appears to seek this Court’s review of various additional challenges to petitioner’s convictions and sentence. But these claims are not properly presented here. They are not encompassed within the question presented and were not pressed or passed upon below. Each of these claims was, however, considered and rejected by the district court in petitioner’s federal habeas action. And several of the claims remain pending before the Ninth Circuit.

³ In his counseled appellate brief before the Ninth Circuit, petitioner has argued that the government improperly withheld evidence that “one of the witnesses” in petitioner’s trial “was having an affair with one of the detectives working on the case.” Pet. App. D (April 8, 2019). While that claim was not raised before the district court in petitioner’s federal habeas action, he has asked the Ninth Circuit to hold the case in abeyance to allow for exhaustion of that claim in state court. *See supra* p. 4 n.2. As to ineffective assistance, the trial court’s decision denying relief does specify which claims petitioner raised in his pro se state habeas action. But in petitioner’s counseled federal habeas action, the district court rejected all 16 of petitioner’s claims of ineffective assistance at the guilt phase of his trial. *See Vieira v. Chappell*, 2015 WL 641433, at *9-65. Petitioner has renewed those claims on appeal. *See* No. 15-99003, Dkt. 56 at 93-104.

⁴ California law provides a process for certifying the record on appeal in capital cases. Cal. Penal Code §§ 190.7, 190.8. The California Supreme Court’s docket for petitioner’s direct appeal reflects that appellate counsel engaged in this process. *People v. Vieira*, No. S026040 (Nov. 4, 1996). Appellate counsel filed a “request for correction of transcripts, for additional record on appeal, to examine sealed transcripts, and to settle the record.” *Id.* After that, the California Supreme Court accepted and filed the record on appeal on August 6, 1999. *Id.* (Aug. 6, 1999).

First, petitioner contends that pathologist William Ernoehazy falsified his trial testimony. Pet. 8-9. Several claims related to Ernoehazy were presented and rejected in petitioner's federal habeas action. *See Vieira v. Chappell*, 2015 WL 641433, at *30-32, 40-44, 90-91. Petitioner largely abandoned these claims on appeal, but has pursued a claim that trial counsel was ineffective in failing to address the alleged problems with Ernoehazy's testimony. *See Vieira v. Davis*, No. 15-99003, Dkt. 56 at 96, 101-102 (Sept. 13, 2017).⁵

Second, petitioner claims that trial evidence was obtained through an illegal search. Pet. 8. This appears to be a reference to petitioner's argument in federal district court that trial counsel was ineffective for not moving to suppress certain evidence. *Vieira v. Chappell*, 2015 WL 641433, at *50-51. Petitioner has renewed that claim on appeal. *See Vieira v. Davis*, No. 15-99003, Dkt. 56 at 96.

Third, petitioner argues that appellate counsel was ineffective for failing to raise certain issues on direct appeal. Pet. 11. The district court rejected this

⁵ Before the federal district court, petitioner raised 16 claims of ineffective assistance of trial counsel at the guilt phase. No. 15-99003, Dkt. 56 at 93 (Sept. 13, 2017). Petitioner's Ninth Circuit appellate brief challenges the district court's rejection of all 16 claims but does not specifically discuss each claim. Rather, petitioner broadly contends that the district court made the "same errors in dealing with virtually all" of the 16 claims, making it unnecessary to discuss each claim specifically. *Id.* at 96.

argument, *Vieira v. Chappell*, 2015 WL 641433, at *179-180, and petitioner has not renewed it on appeal before the Ninth Circuit.

Fourth, petitioner claims that prosecution witness Evans killed the victim that petitioner was found to have personally murdered. Pet. 8; *see supra* p. 2. Petitioner argued extensively before the federal district court that trial counsel was ineffective for not uncovering evidence that Evans was more involved than she had admitted, and that she may have killed at least one of the victims. *Vieira v. Chappell*, 2015 WL 641433, at *27-36. Petitioner has renewed this claim on appeal. *See Vieira v. Davis*, No. 15-99003, Dkt. 56 at 96.

Finally, petitioner contends that the California Supreme Court's Policies Regarding Cases Arising From Judgments of Death are unconstitutional. Pet. 12-14, 25-26. This claim, too, was presented in federal district court. *Vieira v. Chappell*, 2015 WL 641433, at *182-184. Petitioner has not renewed the argument on appeal.

As the State has explained in petitioner's federal habeas proceeding, each of these claims lacks merit. And in any event, this pro se petition does not provide an appropriate vehicle for resolving them.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: July 2, 2020

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the Brief in Opposition contains 3,055 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 2, 2020
Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAIL

I, Catherine Chatman, Supervising Deputy Attorney General, a member of the Bar of this Court hereby certify that on **July 2, 2020**, a copy of the BRIEF IN OPPOSITION in the above-entitled case were mailed, first class postage prepaid to:

Richard John Vieira
#H-31000
San Quentin Prison
San Quentin, CA 94974
(In pro se)

I further certify that all parties required to be served have been served.

/s/ CATHERINE BAKER CHATMAN

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