

SUPREME COURT
FILED

NOV 10 2021

Jorge Navarrete Clerk

S270323

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ANGEL DELARA on Habeas Corpus.

The petition for writ of habeas corpus is denied.

CANTIL-SAKAUYE

Chief Justice

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

In re ANGEL DELARA

E076873

on Habeas Corpus.

(Super.Ct.No. INF1600779)

The County of Riverside

THE COURT

The petition for writ of habeas corpus is DENIED.

MILLER

Acting P. J.

Panel: Miller
Menetrez
McKinster

cc:

Superior Court Clerk
Riverside County
P.O. Box 431 – Appeals
Riverside, CA 92502

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Angel Delara
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Centinela State Prison
P. O. Box 911
Imperial, CA 92251

District Attorney
County of Riverside
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Riverside, CA 92501

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

In the Matter of

Habeas Case Number: CVRJ2101326

Angel Delara

Criminal Case Number: INF1600779

On Habeas Corpus.

Attachment to Denial Order

The petition filed March 17, 2021 includes language indicating that

10 Petitioner is asking the court to disqualify Judge Roger A. Luebs from acting upon
11 the petition. Although the petition does not meet all the requirements of a
12 peremptory challenge pursuant to Code of Civil Procedure §170.6, given the self-
13 represented status of petitioner, the court will assume for the purposes of
14 argument that it is a properly presented peremptory challenge to Judge Luebs
15 pursuant to §170.6.

Petitioner filed a prior petition assigned case number CVRI2000358 wherein he made essentially the same claims as he is asserting in this petition filed March 17, 2021. This prior petition was assigned to Judge Luebs and ruled upon by Judge Luebs by order filed December 29, 2020. “[W]hen a second action or special proceeding ‘involves “substantially the same issues” and “matters necessarily relevant and material to the issues” in the original case, the second action or proceeding is considered a continuation of the earlier action or proceeding for purposes of section 170.6.” (*Id.* at p. 979; cf. *Birts v. Superior Court* (2018) 22 Cal.App.5th 53 [at least in some circumstances, when a criminal case is dismissed on motion of the DA and refiled the refiled case is a continuation of the dismissed case for 170.6 purposes].) The claims raised in CVRI2101326 request essentially the same relief sought in Petitioner’s earlier petition; this petition is successive to the prior petition. For that reason, the challenge under Code of Civil Procedure section 170.6 is untimely and is denied.

This new petition is denied for the same reasons the prior petition was denied and the order filed in CVRI2000358 on December 29, 2020 is incorporated by reference herein. In addition, the petition is denied because it is an improper successive petition raising essentially the same claims that were the subject of a prior petition. If petitioner believes that this court has improperly denied his earlier petition, his remedy, if any, is to file a new petition in the Court of Appeal, not file another petition with this court. (*Jackson v. Superior Court* (2010) 189 Cal.App.4th 1065, *In re Crow* (1971) 4 Cal.3d 613, 621.)

The petition is DENIED.

Dated: 3/18/2021

Judge Roger A. Luebs
Riverside County Superior Court

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