

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

Office of the State Attorney General
P. O. Box 85266
San Diego, CA 92186-5266

Angel Delara
CDC #: BF8890
Centinela State Prison
P. O. Box 911
Imperial, CA 92251

District Attorney
County of Riverside
3960 Orange Street, #100
Riverside, CA 92501

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2
3 COUNTY OF RIVERSIDE

4 In the Matter of

Habeas Case Number: CVRI2101326

5 Angel Delara

Criminal Case Number: INF1600779

6
7 On Habeas Corpus.

Attachment to Denial Order

8
9 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.

16 Petitioner filed a prior petition assigned case number CVRI2000358 wherein
17 he made essentially the same claims as he is asserting in this petition filed March
18 17, 2021. This prior petition was assigned to Judge Luebs and ruled upon by
19 Judge Luebs by order filed December 29, 2020. "[W]hen a second action or special
20 proceeding 'involves "substantially the same issues" and "matters necessarily
21 relevant and material to the issues" in the original case, the second action or
22 proceeding is considered a continuation of the earlier action or proceeding for
23 purposes of section 170.6." (*Id.* at p. 979; cf. *Birts v. Superior Court* (2018) 22
24 Cal.App.5th 53 [at least in some circumstances, when a criminal case is dismissed
25 on motion of the DA and refiled the refiled case is a continuation of the dismissed
26 case for 170.6 purposes].) The claims raised in CVRI2101326 request essentially
27 the same relief sought in Petitioner's earlier petition; this petition is successive to
28 the prior petition. For that reason, the challenge under Code of Civil Procedure
29 section 170.6 is untimely and is denied.
30

1 This new petition is denied for the same reasons the prior petition was
2 denied and the order filed in CVRI2000358 on December 29, 2020, is incorporated
3 by reference herein. In addition, the petition is denied because it is an improper
4 successive petition raising essentially the same claims that were the subject of a
5 prior petition. If petitioner believes that this court has improperly denied his
6 earlier petition, his remedy, if any, is to file a new petition in the Court of Appeal,
7 not file another petition with this court. (*Jackson v. Superior Court* (2010) 189
8 Cal.App.4th 1065, *In re Crow* (1971) 4 Cal.3d 613, 621.)
9

10
11 The petition is DENIED.

12
13 Dated: 3/18/2021



Judge Roger A. Luebs
Riverside County Superior Court

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