# APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 10 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOHNELL LEE CARTER,

Petitioner-Appellant,

v.

HUNTER ANGLEA, Warden,

Respondent-Appellee.

No. 20-17074

D.C. No. 5:19-cv-00429-EJD
Northern District of California,
San Jose

ORDER

Before: S.R. THOMAS and R. NELSON, Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Docket Entry No. 5).

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

FILED

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FOR THE NINTH CIRCUIT

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| JOHNELL LEE CARTER,<br><br>Petitioner-Appellant,<br><br>v.<br><br>HUNTER ANGLEA, Warden,<br><br>Respondent-Appellee. | No. 20-17074<br><br>D.C. No. 5:19-cv-00429-EJD<br>Northern District of California,<br>San Jose<br><br>ORDER |

Before: PAEZ and HURWITZ, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

**DENIED.**

# APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHNELL LEE CARTER,

Petitioner,

v.

HUNTER ANGLEA,

Respondent.

Case No. 19-cv-00429-EJD

**ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS; DENYING CERTIFICATE OF APPEALABILITY; DIRECTIONS TO CLERK**

Petitioner filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state conviction. The Court found the petition, Dkt. No. 1, "Petition," stated cognizable claims which merited an answer from Respondent. Dkt. No. 7. Respondent filed an answer on the merits. Dkt. No. 13, "Answer." Petitioner filed a traverse. Dkt. No. 15. For the reasons set forth below, the Petition for a Writ of Habeas Corpus is **DENIED**.

## I. BACKGROUND

Petitioner was found guilty by a jury in Santa Clara County Superior Court ("trial court") of five counts of oral copulation with a child 10 years of age or younger. See People v. Carter, No. H042977, 2018 WL 2316524, at *1 (Cal. Ct. App. May 22, 2018). In a bifurcated trial, the trial court found true an allegation of a prior violent or serious felony conviction. Id. Petitioner was sentenced to five consecutive terms of 30 years to

life to be served consecutively to a 25-year term. Id.

On May 22, 2018, the California Court of Appeal affirmed the judgment in a reasoned opinion. Id. The California Supreme Court summarily denied a petition for review on August 8, 2018. See Ans., Exs. 7-8.

Petitioner filed the instant habeas petition on January 25, 2019.

## II. DISCUSSION[1]

### A. Legal Standard

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975). The writ may not be granted with respect to any claim that was adjudicated on the merits in state court unless the state court's adjudication of the claim: "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

"Under the 'contrary to' clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the] Court has on a set of materially indistinguishable facts." Williams v. Taylor, 529 U.S. 362, 412-13 (2000). The only definitive source of clearly established federal law under 28 U.S.C. § 2254(d) is in the holdings (as opposed to the dicta) of the Supreme Court as of the time of the state court decision. Williams, 529 U.S. at 412; Brewer v. Hall, 378 F.3d 952, 955 (9th Cir. 2004).

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[1] The underlying facts of the crimes are not relevant to the claims in this case.

Richter, 131 S. Ct. 770, 783-85 (2011); Felkner v. Jackson, 131 S. Ct. 1305 (2011) (per curiam). As the Court explained: "[o]n federal habeas review, AEDPA 'imposes a highly deferential standard for evaluating state-court rulings' and 'demands that state-court decisions be given the benefit of the doubt.'" Id. at 1307 (citation omitted). With these principles in mind regarding the standard and limited scope of review in which this Court may engage in federal habeas proceedings, the Court addresses Petitioner's claims.

**B. Claims and Analysis**

Petitioner raises the following grounds for federal habeas relief: (1) the trial court erred by denying his motion to represent himself; (2) the trial court erred by denying his motion to change counsel; and (3) under state law he should have been charged with one count of continuous sexual abuse rather than multiple counts of oral copulation with a child. Petition at 5, 15, 26.

**Self-Representation**

Petitioner first contends that the trial court violated his rights by denying his motion to represent himself pursuant to Faretta v. California, 422 U.S. 806 (1975). Petition at 14.

The state appellate court rejected Petitioner's argument:

> At the end of a Marsden hearing on May 28, 2015, the court clerk indicated that the matter was scheduled to be put on the "M.T.C." (Master Trial Calendar) on June 29, 2015, which remained as set.
>
> The defense's motions in limine were filed on July 13, 2015. The People's witness list and motions in limine were also filed on July 13, 2015. On that date, the court and counsel met informally in chambers to discuss the motions in limine.
>
> Later that same day, the trial court stated on the record that the matter had been sent to its department for trial, that counsel for the parties had indicated they were ready for trial, and that both sides had provided the court with their written in limine motions. The court heard and denied another Marsden motion. Defendant then indicated that he wanted to bring a Faretta motion. The court warned that "Faretta motions that are made sort of on the eve of trial are generally not well received by the court." It explained that "at this stage, it's important for the administration of justice to continue in a timely manner, especially when you have a [section] 1048 demand on an alleged child victim." The

been made "weeks before trial," 422 U.S. at 835, is part of the holding of the Court, and thus is "clearly established Federal law, as determined by the Supreme Court of the United States," for purposes of relief under the current version of 28 U.S.C § 2254(d). Moore v. Calderon, 108 F.3d 261, 265 (9th Cir. 1997), overruled on other grounds in Williams v. Taylor, 529 U.S. 362 (2000). After Moore, we know that Faretta clearly established some timing element, but we do not know the precise contours of that element beyond the fact that requests made "weeks before trial" are timely. Marshall v. Taylor, 395 F.3d 1058, 1061 (9th Cir. 2005).[2] Because the Supreme Court has not clearly established when a Faretta request is untimely, other courts, including state courts, are free to do so, as long as they comport with the Supreme Court's holding that a request made "weeks before trial" is timely. Id. (holding that California court was not "contrary to" clearly established Supreme Court law under 28 U.S.C. § 2254(d) when it found that petitioner's Faretta request on the first day of trial before jury selection untimely).

A request to represent oneself "need not be granted if it is intended merely as a tactic for delay." United States v. Flewitt, 874 F.2d 669, 674 (9th Cir. 1989). A court may consider (1) the effect of any resulting delay on the proceedings, and (2) events preceding the motion, to determine whether they were consistent with a good faith assertion of the Faretta right and whether the defendant could reasonably be expected to have made the motion at an earlier time. Avila v. Roe, 298 F.3d 750, 753-54 (9th Cir. 2002) (remanding for evidentiary hearing, where district court failed to consider first factor and failed to give any weight to state appellate court's findings regarding second factor); see also Hirschfield v. Payne, 420 F.3d 922, 927 (9th Cir. 2005) (holding that it was not unreasonable for the

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[2] In Moore, the Ninth Circuit discussed a bright-line rule for the timeliness of Faretta requests: a request is timely if made before the jury is empaneled, unless it is shown to be a tactic to secure delay. 108 F.3d at 264-65. However, the Ninth Circuit has not applied Moore's bright-line rule as "clearly established" Supreme Court law for the purposes of 28 U.S.C. § 2254(d). See Marshall, 395 F.3d at 1059, 1062 (state court's determination that petitioner's Faretta request made on the day of trial, but before jury selection, was untimely, was not "contrary to" clearly established federal law under 28 U.S.C. § 2254(d)).

light of the exacting standard described above. See generally Randle v. California, 142 F. App'x 977 (9th Cir. 2005) (state court did not err in denying as untimely a Farretta motion made two weeks prior to the beginning of trial, and employing the balancing of factors identified in state court case was not an unreasonable application of established federal law).

The denial of the first Faretta motion occurred the day before jury selection and immediately after the attorneys had filed motions in limine and the prosecution had filed its witness list. Petitioner renewed the request a few days later, after the jury selection process had already begun. These requests could not be considered "weeks before trial." Moreover, in denying the claim, the California Court of Appeal also considered the other evidence surrounding the request, which is permissible. Avila, 298 F.3d at 753-54 (a court may consider (1) the effect of any resulting delay on the proceedings, and (2) events preceding the motion, to determine whether they were consistent with a good faith assertion of the Faretta right and whether the defendant could reasonably be expected to have made the motion at an earlier time). The state court noted that Petitioner had previously stated that he could not represent himself and that the trial court had observed when denying the first request that Petitioner was not prepared to try the case at that time.

The denial of the Faretta motion was not objectively unreasonable based on the requests being made the day before jury selection was set to begin and after the jury selection process had begun. These requests made on the "eve of trial" were properly denied, and Petitioner is not entitled to relief. See Andrews v. Montgomery, 736 F. App'x 697, 698 (9th Cir. 2018) (state court reasonably found that Faretta motion made on "eve of trial" was untimely).

**Substitution of Counsel**

Petitioner next argues that the trial court erred by denying his multiple requests for substitution of counsel pursuant to People v. Marsden, 2 Cal. 3d 118 (1970). Petition at 15.

a city other than San Jose. He also wanted Dawson to investigate a San Jose police officer and to get some information as to "the changing of the ownership of [defendant's] vehicle." Dawson indicated that he had written down everything that defendant had told him during their meeting and that he was going to look into each item if relevant to the case. Dawson indicated that defendant was a difficult client in that he argued instead of answering questions.

At the end of the hearing on December 19, 2014, the trial court concluded that Dawson was providing effective assistance of counsel and that the attorney-client relationship had not broken down to the extent that defendant and Dawson were unable to communicate. The court denied the motion.

The minutes for February 20, 2015, the date then set for the preliminary examination, reflected that Dawson was the attorney of record. Dawson represented defendant at the February 20, 2015 preliminary hearing. After the preliminary hearing, with only defendant and his counsel present, defendant complained that he had previously requested a Marsden hearing. The court asked whether defendant would like to proceed with a Marsden hearing. Defendant indicated he was not prepared to proceed at that time. A Marsden hearing was set for March 18, 2015 in accordance with defendant's wishes.

The information was filed on February 28, 2015.

The minutes for March 2, 2015, indicate that DPD Diederichs appeared for Dawson on behalf of defendant and that defendant waived arraignment and entered a plea of not guilty. On March 18, 2015, the Marsden hearing was ordered off calendar because defendant had escaped from custody.

On May 28, 2015, after defendant's return to custody, the trial court held a closed Marsden hearing to consider defendant's reasons for wishing to discharge Dawson as his appointed counsel. Defendant told the court that Dawson had "personally insulted" him and "taunted [him] disrespectfully." He complained that Dawson and he had discussed his case one time and that Dawson had not provided him with requested information about his case.

Defendant was also unhappy that Dawson had not subpoenaed two witnesses for the preliminary hearing because defendant had prepared "a list of questions to ask the victim and a witness" and asked Dawson to subpoena them. Dawson had said, "[L]et's wait and see if they show up to court." Defendant also complained that although Dawson had asked one of his proposed questions at the preliminary hearing, Dawson's follow-up question "elicit[ed] a secondary answer" that "sabotage[d] [defendant's] question altogether." Defendant stated that Dawson had not helped him, was being disrespectful and was offending him on "a personal level," and did not have his best

because defendant was accusing him of not understanding the case. Defendant had not agreed to Dawson's request that he submit to a psychological evaluation. Dawson told the court that regardless of defendant's custody status, defendant had access to a phone and could call him and that he had received no letters from defendant. Dawson told the court that he had started providing case updates by letter, which he thought might be more productive because their conversations "devolved into" personal attacks by defendant and accusations that Dawson did not know anything about the case.

Dawson believed that he could vigorously defend defendant and continue to work hard on the case. He already had nine witnesses to testify on defendant's behalf. Dawson explained that he had not called defendant a jerk, but rather had advised defendant to testify at trial and cautioned that defendant could not "come off like a jerk" to the jury. Defendant had responded by accusing Dawson of calling him a jerk and walking out of their meeting. Dawson indicated that defendant could be more helpful in his own defense. Dawson still thought defendant should testify, and Dawson wanted to "practice certain things" with defendant but defendant had not allowed that to happen so far. Dawson told the court that he had explained to defendant that defendant's evidentiary concerns would be addressed at trial, but defendant did not accept his explanation. Dawson had prepared motions in limine to address some of defendant's concerns.

At the end of the hearing, the trial court explained that defendant's distrust of and lack of confidence in Dawson were not dispositive. The court indicated that counsel's diligence was pertinent, and the court had seen the motions in limine. The court denied the Marsden motion.

Defendant filed a written Marsden motion on July 14, 2015. In a form declaration, defendant claimed that counsel "failed and/or refused" to confer with him concerning preparation of the defense, to communicate with him, to subpoena favorable witnesses, to perform critical investigation, to present or prepare an affirmative defense at the preliminary hearing, to secure and present expert witnesses critical to the defense, to prepare and file critical motions, to impeach prosecution witnesses, to present critical evidence, and "to declare prejudice and/or conflict" against him, and that counsel and he had "become embroiled in irreconcilable conflict."

At the closed Marsden hearing held on July 14, 2015, defendant reiterated some of his grievances with Dawson, he asserted that Dawson and he had "become embroiled in [an] irreconcilable conflict," and he asked the court to reconsider its previous Marsden ruling. He also complained that Dawson had not considered filing a change of venue motion. Defendant told the court that he was ignorant of the law and there was "no possible way [he] could represent [himself]."

the alleged victim was lying to get defendant out of her home because defendant physically disciplined her. Defendant asserted that he was not an "over[ly] disciplinary-type person," that the alleged victim was never scared of him, and that such defense would put him in the position of having to commit perjury. Dawson described the defense theory and made plain that he never suggested that defendant perjure himself.

Defendant also complained that Dawson had failed to put his two marriage counselors on the defense witness list. Dawson indicated that he was thinking that the male counselor could provide helpful testimony, but that the female counselor had not been interviewed so the helpfulness of her testimony was speculative.

Defendant said that he had tried to bring it to Dawson's attention that his theft conviction was over 10 years old. Dawson indicated that defendant was confusing prison priors and strike convictions with criminal convictions that the prosecution could use to impeach defendant.

Defendant complained that he did not have a transcript of the preliminary hearing. Dawson said that defendant had escaped after the preliminary hearing, that he did not know that defendant did not have the transcript, and that he would provide a copy to defendant that day.

Defendant indicated that he wanted a motion for change of venue to be brought. The court told defendant that such motion would be futile and frivilous because the jury had been selected and none of them knew about the charges or his escape.

Defendant claimed that Dawson had "failed to investigate potentially exculpatory evidence that [could] be used to impeach key prosecution witnesses." When asked for details, defendant again referred to his marriage counselors. With respect to the female counselor, the court told defendant that "it would be foolish to put somebody on the witness stand" if the person "won't even talk to you" and had not been interviewed.

At the end of the Marsden hearing on July 21, 2015, the trial court denied the motion. Later the same day, counsel made their opening statements in the case.

On July 22, 2015, defendant made another Marsden motion and the court held a closed hearing. Defendant complained that Dawson refused to assert Evidence Code section 352 against the admission of "every piece" of adverse evidence and that such objections should have been raised in a motion in limine. The court explained the application of that code section. The court also explained that it was up to defense counsel, who was in charge of the case, to decide whether to object to evidence. Without providing any further specific examples, defendant claimed that his relationship with Dawson was "eroded long

In response, Dawson indicated that he had spent four hours with defendant talking about the case the previous Friday, that he had lined up certain witnesses, whom he named, and that he was continuing to prepare the case. The trial court concluded that defendant essentially disagreed with some of defense counsel's strategy and tactics. The court denied the Marsden motion.

By written order filed on July 30, 2015, the trial court struck the statement of disqualification filed against the judge because on its face, the statement disclosed no legal grounds for disqualification. (See Code Civ. Proc., §§ 170.1, 170.3, 170.4, subd. (b) ). The order stated that defendant's claim of judicial bias was "based solely upon the court's denial of defendant's Marsden motions."

On August 3, 2015, the jury returned its guilty verdicts.

On August 5, 2015, Dawson filed a Romero motion (see People v. Superior Court (Romero) (1996) 13 Cal. 4th 497 (Romero)) on behalf of defendant.

On August 28, 2015, the court heard another Marsden motion. The hearing was continued to August 31, 2015.

On August 31, 2015, defendant indicated that he was upset for several reasons, including that Dawson had previously indicated to the court that he would not be filing a Romero motion, that Dawson had instructed the probation department not to interview him for its sentencing report, and that Dawson had failed to challenge the trial court's order striking the motion to disqualify the judge.

In response, Dawson explained that he had decided, after consulting a research attorney in the Public Defender's Office, that a writ challenging the order striking the statement of disqualification would have been meritless and frivolous. Dawson acknowledged that he had directed the probation officer not to speak with defendant because it was his experience that a defendant's denial of responsibility in a sexual offense case is later used against the defendant in a parole hearing. He explained that the downside of making such statement was "huge" while the upside was "possibly imaginary" given the mandatory sentencing in the case. After the court indicated that defendant had a right to be heard at sentencing, Dawson agreed that defendant should have the opportunity to speak to probation if he wished, but Dawson made it clear that defendant would be doing so against his advice. The court denied defendant's Marsden motion.

The trial court subsequently, in a closed hearing, further explained to defendant that Dawson had filed a Romero motion as requested by defendant and that Dawson's decision not to file a writ petition challenging the order striking the statement of disqualification was not based on Dawson's animus toward

428 F.3d 1181, 1197-98 (9th Cir. 2005) (noting that test for determining whether court should have granted substitution motion is same as test for determining whether an irreconcilable conflict existed); see, e.g., United States v. Velazquez, 855 F.3d 1021, 1035-37 (9th Cir. 2017) (district court abused its discretion by denying defendant's request to substitute counsel without conducting any meaningful inquiry after defendant did everything in her power to alert court to significant breakdown); United States v. Moore, 159 F.3d 1154, 1160 (9th Cir. 1998) (where irreconcilable conflict existed between defendant and counsel, trial court's failure to appoint substitute counsel was reversible error); Crandell v. Bunnell, 144 F.3d 1213, 1215-18 (9th Cir. 1998) (denial of substitute counsel violated 6th Amendment where appointed counsel failed for months to investigate case and to develop relationship with defendant), overruled on other grounds by Schell v. Witek, 218 F.3d 1017 (9th Cir. 2000) (en banc).

The denial of a motion to substitute counsel implicates a defendant's Sixth Amendment right to counsel and is properly considered in federal habeas. Bland v. Cal. Dep't of Corr., 20 F.3d 1469, 1475 (9th Cir. 1994), overruled on other grounds by Schell v. Witek, 218 F.3d 1017 (9th Cir. 2000) (en banc). The Ninth Circuit has held that when a defendant voices a seemingly substantial complaint about counsel, the trial judge should make a thorough inquiry into the reasons for the defendant's dissatisfaction. Id. at 1475-76. The inquiry need only be as comprehensive as the circumstances reasonably would permit, however. King v. Rowland, 977 F.2d 1354, 1357 (9th Cir. 1992) (record may demonstrate that extensive inquiry was not necessary).

Under Ninth Circuit precedent, to compel a criminal defendant to undergo a trial with the assistance of an attorney with whom he has become embroiled in irreconcilable conflict is to deprive the defendant of any counsel whatsoever. Daniels, 428 F.3d at 1197; see, e.g., id. at 1197-1201 (finding constructive denial of counsel where defendant's distrust of counsel was "understandable" and resulted in complete breakdown in the communication between defendant and counsel; complete breakdown in communication

communication were open and counsel was competent); United States v. Prime, 431 F.3d 1147, 1155 (9th Cir. 2005) (inquiry was adequate where defendant "was given the opportunity to express whatever concerns he had, and the court inquired as to [defense attorney's] commitment to the case and his perspective on the degree of communication").

The majority of Petitioner's Marsden motions involved disagreements concerning trial tactics, which are the responsibility of trial counsel. Even the trial court in several of the Marsden hearings informed Petitioner that certain tactics he had proposed to his trial counsel were frivolous and that his trial counsel was correct in not pursuing them. Eventually, Petitioner also sought to have the trial judge removed for bias.

Even though there was conflict between Petitioner and trial counsel, a thorough review of the record does not demonstrate a breakdown in communications between them. This was shown by the fact that defense counsel was able to mount a competent and complete defense. Trial counsel filed all the relevant and applicable motions and called numerous witnesses at trial including character witnesses and impeachment witnesses. Most importantly, Petitioner himself testified.

Petitioner was not satisfied with his first attorney and was appointed a different public defender. Petitioner continued to voice his discontent with the new trial counsel but has failed to cite to examples of an irreconcilable conflict. In the individual hearings, when Petitioner cited specific examples of conflict, the trial counsel explained the specific reasons for his trial tactics and decisions. Trial counsel's explanations were all reasonable. Nor does Petitioner cite to additional actions that trial counsel should have taken at trial. Under the circumstances of this case and after a review of the extensive background and numerous Marsden hearings, the trial court was not unreasonable in concluding that Petitioner's trial counsel was providing competent representation. The ruling of the California Court of Appeal to the same effect was not an unreasonable application of Supreme Court authority or an unreasonable determination of the facts. This claim is denied.

parsing" to find that the evidence was insufficient to support petitioner's conviction). A federal court reviewing collaterally a state court conviction does not determine whether it is satisfied that the evidence established guilt beyond a reasonable doubt. Payne v. Borg, 982 F.2d 335, 338 (9th Cir. 1992); see, e.g., Coleman, 566 U.S. at 656 ("the only question under Jackson is whether [the jury's finding of guilt] was so insupportable as to fall below the threshold of bare rationality"). The federal court "determines only whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" Payne, 982 F.2d at 338 (quoting Jackson, 443 U.S. at 319). Only if no rational trier of fact could have found proof of guilt beyond a reasonable doubt has there been a due process violation. Jackson, 443 U.S. at 324; Payne, 982 F.2d at 338.

The Jackson standard must be applied with reference to the substantive elements of the criminal offense as defined by state law. Jackson, 443 U.S. at 324 n.16; see, e.g., Boyer v. Belleque, 659 F.3d 957, 968 (9th Cir. 2011) (concluding it was not unreasonable, in light of Oregon case law, for Oregon court to conclude that a rational jury could find beyond a reasonable doubt that petitioner intended to kill his victim based on proof that he anally penetrated several victims with knowledge that he could infect them with AIDS). The state court's ruling on the state law issue is binding on this Court. The "minimum amount of evidence that the Due Process Clause requires to prove the offense is purely a matter of federal law." Coleman, 566 U.S. at 655.

The Court has reviewed the records and the evidence in this case. The victim testified about extensive sexual abuse by Petitioner. Reporter's Transcript at 817-81. While there was not overwhelming evidence, viewing the evidence in the light most favorable to the prosecution, the jury could have found the essential elements of the crime beyond a reasonable doubt. That the jury chose to credit the victim's testimony and not Petitioner's testimony does not entitle him to federal habeas relief. This claim is denied.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOHNELL LEE CARTER,

Petitioner,

v.

HUNTER ANGLEA,

Respondent.

Case No. 19-cv-00429-EJD

**JUDGMENT**

The instant petition for writ of habeas corpus has been denied on the merits. Judgment is entered in favor of Respondent. Petitioner shall take nothing by way of his petition. The Clerk shall close the file.

**IT IS SO ORDERED.**

Dated: 9/11/2020

EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California