No._____

In the
Supreme Court of the United States

GEORGE A. PILOLA, Petitioner

v.

CRAIG KOENIG, Warden, Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit
20-55756

VOLUME OF APPENDICES IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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APPENDIX A	Ninth Circuit MEMORANDUM OPINION Affirming the District Court Judgment
APPENDIX B	Ninth Circuit Order Denying the Petition for Rehearing
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APPENDIX A
MEMORANDUM OPINION DENYING PETITION

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE A. PILOLA, Petitioner-Appellant, v. CRAIG KOENIG, Acting Warden, Respondent-Appellee.	No. 20-55756 D.C. No. 2:11-cv-06029-DOC-SHK MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
J. Ross Carter, Magistrate Judge, Presiding

Argued and Submitted January 13, 2022
Pasadena, California

Before: CLIFTON and M. SMITH, Circuit Judges, and S. MURPHY, III,** District Judge.

George Pilola appeals the district court's order denying his petition for habeas corpus. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we review the district court's order de novo, *Hurles v. Ryan*, 752 F.3d 768, 777 (9th Cir. 2014). Applying

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Stephen Joseph Murphy, III, United States District Judge for the Eastern District of Michigan, sitting by designation.

this standard, we affirm. Because the parties are familiar with the facts, we do not recount them here, except as necessary to provide context to our ruling.

Pilola argues that the district court erred by applying deference pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) to the California Supreme Court's decision because the California Supreme Court did not address his claims "on the merits." *See* 28 U.S.C. § 2254(d). We disagree. The California Supreme Court did not provide any reasons for its decision, so we must "look through" that decision to the California Court of Appeal's decision absent some evidence that the California Supreme Court relied on a different ground than the California Court of Appeal. *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018); *see also Avila v. Galaza*, 297 F.3d 911, 918 & n.6 (9th Cir. 2002). This is true notwithstanding the fact that the California Supreme Court has held as a matter of state law that its denial of a petition for review does not signal its agreement with the Court of Appeal's decision. *See Wilson*, 138 S. Ct. at 1196; *People v. Davis*, 147 Cal. 346, 350 (1905).[1] Pilola has not provided any evidence to rebut the look-through presumption, so we must look to the California Court of Appeal's decision to determine the California Supreme Court's reasoning. *See Wilson*, 138 S. Ct. at 1195.

The California Court of Appeal held that Pilola "fail[ed] to state sufficient

[1] In light of *Davis*, which addresses the import of the California Supreme Court's denial of a petition for review under state law, we deny Pilola's motion for judicial notice (Dkt. 15).

facts demonstrating entitlement to the relief requested," and cited *People v. Duvall*, 9 Cal.4th 464, 474–75 (1995). This explanation leaves open the possibility that the court denied the petition on procedural grounds (*i.e.*, Pilola's allegations were too vague or conclusory) or on the merits (*i.e.*, Pilola's allegations were satisfactory, but they failed to make out the elements of a claim pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), or *Napue v. Illinois*, 360 U.S. 264 (1959)). We must construe ambiguous state court decisions as decisions on the merits "if such a construction is plausible." *Chambers v. McDaniel*, 549 F.3d 1191, 1197 (9th Cir. 2008); *see also Crittenden v. Ayers*, 624 F.3d 943, 959–60 (9th Cir. 2010). Here, the construction is plausible. Therefore, we must construe the California Supreme Court's decision to be on the merits and must apply AEDPA deference.

Because AEDPA deference applies, we cannot grant Pilola's petition unless the California Supreme Court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). This requirement means we may not grant federal habeas relief if a fairminded jurist could agree with the California Supreme Court's decision. *See Harrington v. Richter*, 562 U.S. 86, 101 (2011). When a state court does not provide reasons for its decision, we "must determine what arguments or theories . . . could have supported[] the state court's decision; and then . . . ask whether it is possible fairminded jurists could disagree

that those arguments or theories are inconsistent with the holding in a prior decision of [the United States Supreme] Court." *Id.* at 102.

This standard is not satisfied here because a fairminded jurist could conclude that there was no reasonable likelihood that the unmatched fingerprint, the testimony about the lack of prints from Detective Inskeep, and the prosecutor's comments in closing argument could have affected the jury's verdict. *See United States v. Bagley*, 473 U.S. 667, 679 n.9 (1985) (setting forth the materiality standard for a *Napue* claim).[2]

The probative value of the unmatched print is limited. First, the victim—Pilola's then wife—testified that the intruder was wearing gloves, so one would not expect the intruder's fingerprints to have been on the beer bottle. Second, Pilola does not allege that the fingerprint was of sufficiently high quality to match *anyone*. It is possible it came back as "NO MAKE" because it was of such low quality that it could not produce a match, not because it affirmatively did not match Pilola. Third, even if the print conclusively did not match Pilola, it could have been the victim's or a store clerk's, which would not cast doubt on Pilola's involvement.

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[2] Because a fairminded jurist could conclude that the unmatched print does not satisfy *Napue*'s materiality standard, a fairminded jurist could also conclude that it does not satisfy *Brady*'s more demanding materiality standard. *See Bagley*, 473 U.S. at 682 (setting out *Brady* materiality standard); *Jackson v. Brown*, 513 F.3d 1057, 1076 (9th Cir. 2008) (observing that the materiality standard for a *Brady* claim is more stringent than for a *Napue* claim).

On the other hand, the evidence of Pilola's guilt was strong. The victim testified that she had "no doubts whatsoever" the intruder was her husband because she saw his face in the bathroom, she recognized the way he was talking to her, he had broken down her bedroom door the same way many times before, and when her and Pilola's 18-month-old son came into the hallway crying, the intruder picked him up and was able to quickly comfort him and put him back to sleep the same way Pilola typically did. Further, minutes after enduring a horrific attack, the victim called her oldest son, told him that Pilola had attacked her, and asked him to protect her other children. While it is possible the victim quickly composed herself after the attack and formulated a plot to frame Pilola as she ran to her neighbor's house, it is exceedingly unlikely.

Therefore, considering the record as a whole, a fairminded jurist could conclude that there was no reasonable probability that the unmatched fingerprint, the testimony about the lack of prints from Detective Inskeep, and the prosecutor's comments in closing argument could have affected the jury's verdict. As a result, we must deny Pilola's petition.[3] 28 U.S.C. § 2254(d)(1).

AFFIRMED.

[3] We deny without prejudice Pilola's motion for an order allowing his expert to examine the beer bottle (Dkt. 25).

APPENDIX B

DENIAL OF PETITION FOR REHEARING

FILED

APR 11 2022

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE A. PILOLA,

Petitioner-Appellant,

v.

CRAIG KOENIG, Acting Warden,

Respondent-Appellee.

No. 20-55756

D.C. No.
2:11-cv-06029-DOC-SHK
Central District of California,
Los Angeles

ORDER

Before: CLIFTON and M. SMITH, Circuit Judges, and S. MURPHY, III* District Judge.

Pilola's motion for reconsideration (Dkt. 69) is DENIED. The panel unanimously voted to deny the petition for panel rehearing. Judge M. Smith voted to deny the petition for rehearing en banc, and Judges Clifton and Murphy so recommended. The full court was advised of the petition for rehearing en banc, and no judge requested a vote. Fed. R. App. P. 35. The petitions for rehearing and rehearing en banc are DENIED.

* The Honorable Stephen Joseph Murphy, III, United States District Judge for the Eastern District of Michigan, sitting by designation.

APPENDIX C

DENIAL OF PETITION BY DISTRICT COURT JUDGE AND GRANT OF CERTIFICATE OF APPEALABILITY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GEORGE A. PILOLA,

Petitioner,

v.

CONNIE GIPSON, Warden,

Respondent.

Case No. 2:11-cv-06029-DOC (SHK)

JUDGMENT

Pursuant to the Order Accepting Findings and Recommendation of United States Magistrate Judge,

IT IS HEREBY ADJUDGED that this action is DISMISSED with prejudice.

Dated: July 9, 2020

HONORABLE DAVID O. CARTER
United States District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GEORGE A. PILOLA,

Petitioner,

v.

CONNIE GIPSON, Warden,

Respondent.

Case No. 2:11-cv-06029-DOC (SHK)

ORDER GRANTING CERTIFICATE OF APPEALABILITY

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts reads as follows:

(a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals

under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that this standard means a showing that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (citation and internal quotation marks omitted).

Here, after duly considering Petitioner's contentions in support of the claims alleged in the Petition, the Court finds and concludes that Petitioner has made the requisite showing with respect to both the Brady and Napue claims asserted in the Petition. Accordingly, a Certificate of Appealability is GRANTED in this case.

Dated: July 9, 2020

HONORABLE DAVID O. CARTER
United States District Judge

Presented by:

SHASHI H. KEWALRAMANI
United States Magistrate Judge

APPENDIX D

REPORT AND RECOMMENDATION OF MAGISTRATE WITH STATE COURT OPINION ATTACHED

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GEORGE A. PILOLA, Petitioner, v. CONNIE GIPSON, Warden, Respondent.	Case No. CV 11-06029-DOC (SHK) REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is submitted to United States District Judge David O. Carter, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I. SUMMARY OF RECOMMENDATION

On July 21, 2011, Petitioner George A. Pilola ("Petitioner"), proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 ("Petition" or "Pet."), challenging his 2001 conviction of sexual penetration with a foreign object and aggravated mayhem. Electronic Case Filing No. ("ECF No.") 1, Pet. In his counseled First Amended Petition ("FAP"), he claims that the prosecution's failure to turn over a fingerprint analysis to Petitioner's attorney,

pre-trial, resulted in a violation of Brady v. Maryland, 373 U.S. 83 (1963), and that both the detective and the prosecutor were not truthful in their testimony that no fingerprint was recovered, in violation of Napue v. Illinois, 360 U.S. 264 (1959). ECF No. 30, FAP. Because the state court's rejection of the claims was not contrary to and did not involve an unreasonable application of clearly established Supreme Court law, the Court recommends that the FAP be DENIED and that it be DISMISSED WITH PREJUDICE.

II. PROCEDURAL HISTORY

In 2001, following a jury trial in the Los Angeles County Superior Court, Petitioner was convicted of one count of sexual penetration by a foreign object and one count of aggravated mayhem. ECF No. 52-1, Clerk's Transcript on Appeal ("CT") at 126-27.[1] The jury also found true that Petitioner used a dangerous weapon and binding during the sexual penetration by a foreign object, within the meaning of California Penal Code section 667.61(e). Id. at 127. The trial court sentenced Petitioner to state prison for a term of 25 years-to-life. Id. at 165-66; ECF No. 52-4, 3 Reporter's Transcript on Appeal ("RT") at 1511.

Petitioner appealed his judgment of conviction. ECF No. 36-2.[2] Pursuant to Petitioner's request, on November 5, 2002, the Court of Appeal dismissed the appeal as abandoned. Id. A remittitur was issued on January 13, 2003. Id.

On September 20, 2009, Petitioner filed a Petition for Writ of Habeas Corpus in the Los Angeles County Superior Court.[3] ECF No. 36-5 at 15. The superior court denied the petition on October 8, 2009. Id. On January 4, 2010,

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[1] The referenced page number for the Clerk's Transcript (one volume), the Reporter's Transcript (three volumes), the state court filings Respondent has lodged, and the FAP will be the number assigned in those documents and not the page number associated with the document through the ECF system. Any pro per filings by Petitioner, whether filed in this Court or in state court, will be referred to by the page numbers assigned by the ECF system.

[2] Respondent has lodged only the docket in this matter and not the opening brief on appeal.

[3] Respondent has not lodged this habeas corpus petition. Petitioner included the denial from the superior court in his filing to the California Supreme Court.

Petitioner filed a Petition for Writ of Habeas Corpus in the California Court of Appeal, raising a number of claims, including two generally corresponding to the claims raised in the pending FAP. ECF No. 36-3. The Court of Appeal denied the petition with citations to People v. Duvall, 9 Cal. 4th 464, 474-75 (Cal. 1995), In re Lindley, 29 Cal. 2d 709, 723 (Cal. 1947), In re Dixon, 41 Cal. 2d 756, 759 (Cal. 1953). ECF No. 36-4. On September 30, 2010, Petitioner filed a habeas corpus petition in the California Supreme Court raising claims unrelated to the claims alleged in the pending FAP. ECF No. 36-5. That court denied the petition with a citation to In re Robbins, 18 Cal. 4th 770, 780 (Cal. 1998), on May 18, 2011. ECF No. 36-6.

On June 16, 2015, the California Court of Appeal issued an opinion in Petitioner's direct appeal, rejecting Petitioner's sole claim and upholding the trial court's denial of Petitioner's motion for a new trial. ECF No. 36-7. Thereafter, on June 17, 2015, Petitioner, through counsel, filed a habeas corpus petition in the California Court of Appeal raising a claim generally corresponding to Ground One of the FAP and arguably corresponding to Ground Two of the FAP. ECF No. 36-8. The California Court of Appeal denied the petition in an Order issued on September 24, 2015, on the grounds that the petition failed to state sufficient facts demonstrating entitlement to relief. ECF No. 36-9. Petitioner subsequently filed a Petition for Review of the habeas petition he had filed in the California Court of Appeal. ECF No. 36-10. At the request of the California Supreme Court, the State filed an Answer to the habeas petition. ECF Nos. 36-11, 36-12. Following the filing of Petitioner's Response, ECF No. 36-13, the California Supreme Court summarily denied the Petition for Review without comment or citation of authority, on November 24, 2015, ECF No. 36-14.

On July 21, 2011, Petitioner, proceeding pro se, filed the Petition for Writ of Habeas Corpus in this Court. ECF No. 1. A lengthy procedural history in this Court followed, including the granting of a certificate of appealability by the Ninth

Circuit following the dismissal of the Petition as untimely, a subsequent remand by the circuit, and the appointment of counsel for Petitioner. Petitioner filed a First Amended Petition and supporting Memorandum of Points and Authorities ("FAP Mem."), through counsel, on February 23, 2017. ECF No. 30. Respondent filed a Motion to Dismiss ("Motion") on the basis that Ground Two (the Napue claim) was unexhausted. ECF No. 35. The Court denied the Motion in an Order issued on July 24, 2017. ECF No. 42. The case was transferred to this Court's calendar on August 11, 2017. ECF No. 43. Following three extensions of time, Respondent filed an Answer to FAP ("Answer"), along with a Memorandum of Points and Authorities, on December 13, 2017. ECF No. 51. Following two extensions of time, Petitioner, through counsel, filed a Traverse on February 22, 2018, and a corrected Traverse on February 27, 2018. ECF Nos. 55, 58 (respectively). Thus, this matter stands submitted and ready for decision.

III. PETITIONER'S CLAIMS FOR RELIEF

Petitioner presents the following claims in the FAP:

(1) The failure to turn over the fingerprint analysis to Petitioner's attorney, pre-trial, was a violation of Brady v. Maryland.

(2) Both the detective and the prosecutor were not truthful in their testimony (about the recovery of a fingerprint), violating due process as set forth in Napue v. Illinois.

See ECF No. 30, FAP at 5-6, FAP Mem. at 14-26. Respondent maintains, as was argued in the Motion to Dismiss, that Ground Two is unexhausted, but asserts that, in any event, both claims were reasonably rejected by the state court.[4] ECF No. 51, Answer at 9-22.

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[4] As previously set forth in the Order issued on July 24, 2017, ECF No. 42, the Court found that the Napue claim was fairly presented to the California Supreme Court. Respondent has presented no argument to warrant reversal of the Court's original finding on this issue.

IV. SUMMARY OF FACTS

Because Petitioner has not rebutted the correctness of the findings of fact made by the California Court of Appeal in Petitioner's appeal by clear and convincing evidence, the Court adopts the factual summary set forth in the California Court of Appeal opinion affirming Petitioner's conviction on direct appeal. Tilcock v. Budge, 538 F.3d 1138, 1141 (9th Cir. 2008); 28 U.S.C. § 2254(e)(1). To the extent that an evaluation of Petitioner's individual claims depends on an examination of the trial record, the Court has made an independent evaluation of the record specific to those claims. The California Court of Appeal's Opinion is attached as Exhibit A to this R&R and the factual summary at pages 3 through 12 are incorporated and adopted in this R&R. Exhibit A, California Court of Appeal Opinion in The People v. George A. Pilola (B158266) ("Ca. CoA Op.").

V. AEDPA STANDARD OF REVIEW

The standards in the Anti-Terrorism and Effective Death Penalty Act of 1996 and 28 U.S.C. § 2254 govern this Court's review of Petitioner's grounds for relief. As a result, and because the California Supreme Court summarily denied all of Petitioner's claims on habeas review, this Court reviews the reasoning in the California Court of Appeal's decision on habeas review as to these claims. ECF Nos. 36-9, 36-14; Wilson v. Sellers, 138 S. Ct. 1188, 1192 (2018) ("We hold that the federal court should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning.").

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VI. DISCUSSION

A. Preliminary Issue: (a) Whether The State Supreme Court Reasonably Found That Petitioner Had Not Stated A Prima Facie Case For Relief, Or (b) Whether The State Supreme Court Reasonably Rejected The Claims On The Merits.

The California Court of Appeal denied Petitioner's habeas petition on the ground that he failed to state sufficient facts demonstrating entitlement to relief. ECF No. 36-9. The California Supreme Court then summarily denied the Petition for Review of the court of appeal's decision. ECF No. 36-14.

The parties disagree about *what*, precisely, this Court is reviewing under the AEDPA standard. Petitioner's position is that the California Supreme Court's summary denial of the Petition for Review amounted to a decision *only* that Petitioner had not pled a prima facie case, and *not* a determination that Petitioner had failed to prove his Brady and Napue claims. ECF No. 58, Corrected Traverse at 5-6. This is so, Petitioner maintains, because the practice in California, under Duvall, 9 Cal. 4th at 474-75, is that where a prima facie case for relief has been pled, the state court issues an Order to Show Case requiring briefing from both sides, and it orders an evidentiary hearing if there are factual disputes. ECF No. 58, Corrected Traverse at 5. Where a prima facie case has *not* been pled, Petitioner argues, the California Supreme Court summarily denies the petition. Id.

Petitioner maintains that, "where a California state court summarily denies relief in the face of a prima facie case, its decision constitutes both an unreasonable application of federal law within section 2254(d)(1), and an unreasonable determination of the facts within section 2254(d)(2)." Id. at 6 (citing Ninth Circuit law). Because, Petitioner claims, no one can argue "with a straight face" that his state habeas petitions (ECF Nos. 36-8, 36-10) failed to state a prima facie case for relief, no deference under AEDPA is required and the standard of review is de novo. Id.

Respondent continues to assert that Ground Two is unexhausted. ECF No. 51, Answer at 9. Respondent maintains, however, that to the extent the Court concludes it was exhausted, it, like Ground One, was denied on the merits by the state court. Id. at 8-9. Respondent concedes that the California Court of Appeal denied the claims for failure to state sufficient facts demonstrating entitlement to the relief requested, citing Duvall, and that the California Supreme Court denied discretionary review. Id. at 8. Respondent asserts, though, that the state court's decision is a merits ruling on the claims themselves (under California law itself) and that that merits decision is entitled to deference under the AEDPA. Id. (citing Ninth Circuit law). Respondent maintains, though, that the denial was "unexplained" and that therefore, we must determine "whether there is any reasonable argument" supporting the state court's denial of relief. ECF No. 51, Answer at 9 (citing Harrington v. Richter, 562 U.S. 86, 105 (2011)).

Both parties have cited Ninth Circuit authority which purports to support their respective positions. Respondent relies on Phelps v. Alameida, 569 F.3d 1120, 1126 n.8 (9th Cir. 2009), for the proposition that the California Supreme Court, on habeas review, will ordinarily issue a summary denial if the court believes that the petition does not state a prima facie case for relief, which, under California law, is a denial on the merits. ECF No. 51, Answer at 8.

In opposition, Petitioner relies on the following cases for their respective propositions:

- Nunes v. Mueller, 350 F.3d 1045, 1053-54 (9th Cir. 2003) - Holding that the state court, on direct appeal, unreasonably applied the law to the facts and improperly denied petitioner an evidentiary hearing because petitioner had clearly made out a prima facie showing of ineffective assistance of counsel, but noting that the findings belied the state court's claim that it had taken the allegations at face value.

- Earp v. Ornoski, 431 F.3d 1158, 1169-70 (9th Cir. 2005) - Finding that petitioner was entitled to evidentiary hearing in federal court after state court unreasonably denied him the chance to develop his colorable prosecutorial misconduct claim.
- Taylor v. Maddox, 366 F.3d 992, 1000 (9th Cir. 2004) - Explaining intrinsic review of state court fact-finding process and the application of § 2254(d)(2).

ECF No. 58, Corrected Traverse at 6.

None of Petitioner's or Respondent's cases is precisely on point because this Court is faced with reviewing a state court decision that arose from the filing of a Petition for Review of a state habeas petition, not the filing of an original habeas petition in the California Supreme Court or a direct appeal. Further, there is no basis for finding that the state courts failed to assume as true Petitioner's allegations in finding that those allegations did not warrant an evidentiary hearing in state court, as was the case in Nunes v. Mueller, or that he was denied an evidentiary hearing where the facts as alleged and assumed as true established a colorable claim for relief as in Earp v. Ornoksi. In any event, for the reasons explained below, the Court makes the following findings: (1) The California Supreme Court's denial of the Petition for Review of Petitioner's habeas petition, on the basis that no prima facie showing had been made, amounted to a merits decision that is subject to deferential standards under AEDPA, (2) the question on federal habeas review is whether the state courts reasonably applied clearly established Supreme Court authority in denying Petitioner's claims on the merits, and (3) the California Court of Appeal's denial of the claim was not unexplained as Respondent argues, but rather, was a reasoned opinion.

As to the first issue, to conclude that the state court's denial amounted to a merits decision is consistent with state law and Supreme Court law. First, the Court presumes that in denying the Petition for Review, the California Supreme

Court adopted the same reasoning as that of the California Court of Appeal—i.e., that the petition failed to state sufficient facts demonstrating entitlement to relief. Wilson, 138 S. Ct. at 1192. The next question is whether a denial on that basis is a merits denial. The Court finds that it is.

Under California law, in deciding whether a prima facie showing has been made, the state court will "generally assume[] the allegations in the petition to be true, but not does accept wholly conclusory allegations." Cullen, 563 U.S. at 188 n.12 (citing Duvall, 9 Cal. 4th at 474); Reis-Campos v. Biter, 832 F.3d 968, 973 (9th Cir. 2016). The California courts evaluate whether, "assuming the petition's factual allegations are true, the petitioner would be entitled to relief." Duvall, 9 Cal. 4th at 474. That Petitioner was denied the opportunity to *prove* his allegations in state court reflects that the state courts found that his allegations, *even if proven to be true*, would not entitle him to relief. Thus, the claims were, implicitly, found to be *without merit*. See In re Clark, 5 Cal.4th 750, 770 (Cal. 1993) ("When a habeas corpus petition is denied on the merits, the court has determined that the claims made in that petition do not state a prima face case entitling the petitioner to relief."); see also Cullen, 563 U.S. at 188, n.12 (finding that California state courts will generally assume the allegations in the petition to be true and will "review the record of the trial . .. to assess the *merits* of the petitioner's claims.") (emphasis added) (citing Clark, 5 Cal. 4th at 770).[5] Finally, in Richter, 562 U.S. at 99, the United States Supreme Court held that, "[w]hen a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any

[5] The Court is cognizant of the fact that it was a Petition for Review before the California Supreme Court and not a habeas petition. However, that Petition for Review followed the denial of a habeas petition in the California Court of Appeal. Further, the California Supreme Court specifically directed the state to brief the issue of whether Petitioner had made a prima facie case for relief in its Answer. ECF No. 36-11. Thus, the Court finds no reason to find that the California Supreme Court's denial of the Petition for Review was anything other than a denial on the merits on the ground that no prima facie showing was made.

indication or state-law procedural principles to the contrary." See also Johnson v. Williams, 568 U.S. 289, 298 (2013) (same)(quoting Richter, 562 U.S. at 99). Here, there is no indication that the state courts adjudicated the claims on any other basis than a merits analysis.

As to the second matter, the Court finds that it is reviewing the reasonableness of the merits decision by the state court under the AEDPA. While Petitioner argues that this Court should only be reviewing the question of whether the state courts unreasonably determined that he had failed to plead a prima facie case, ECF No. 58, Corrected Traverse at 6, this is a distinction without a difference in light of the reality, under California law, that a finding that no prima facie case was shown *is* a finding that the claims do not have merit. Because the Court finds that the state courts' decision amounted to a denial on the merits, the deferential standard under AEDPA applies. 28 U.S.C. § 2254(d) ("An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless ..."). This Court, then, will determine whether the state courts' denial was contrary to or involved an unreasonable application of Brady and Napue.

Finally, where the state court gives specific reasons for its denial, "a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." Wilson, 138 S. Ct. at 1192. Here, the California Court of Appeal specifically found that relief was not warranted because Petitioner had failed to allege sufficient facts to show his entitlement to relief. The Court will look through the supreme court's summary disposition to the appellate court's decision, Ylst v. Nunnemaker, 501 U.S. 797, 803-04 (1991), and will uphold it "so long as fairminded jurists could disagree on the correctness of the state court's decision." Richter, 562 U.S. at 101 (internal quotations omitted).

B. Analysis

1. Petitioner's Brady Claim

Petitioner contends that the failure to turn over the fingerprint analysis to his trial counsel, pre-trial, violated Brady v. Maryland. ECF No. 30, FAP at 5. He contends that his attorney was never informed that a fingerprint taken off a beer bottle used to penetrate the victim was a "no match" for him. Id. He further claims that the prosecutor sent an "untrue" message to his trial lawyer that "Fingerprint results from beer bottle and packing tape used to tie up the victim was not yet available." Id.

a. Applicable Federal Law

In Brady v. Maryland, 373 U.S. 83, 87 (1963), the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." To constitute a Brady violation, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Strickler v. Greene, 527 U.S. 263, 281-82 (1999).

Evidence is material "only if there is a reasonable probability that, had the evidence been disclosed the result at trial would have been different." United States v. Bagley, 473 U.S. 667, 682 (1985). There is a "reasonable probability" of prejudice when the suppression of evidence "undermines confidence in the outcome of the trial." Kyles v. Whitley, 514 U.S. 419, 434 (1995) (citing Bagley, 473 U.S. at 678); see also Killian v. Poole, 282 F.3d 1204, 1210 (9th Cir. 2002) ("If exculpatory or impeachment evidence is not disclosed by the prosecution and prejudice ensues, a defendant is deprived of due process. Prejudice is determined by looking at the cumulative effect of the withheld evidence and asking whether the

favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." (internal quotation marks and citations omitted)).

b. Analysis

Petitioner claims that some 12 years after he signed his notice of appeal, his attorney discovered that "there was a fingerprint taken off the beer bottle in this case." ECF No. 30, FAP Mem. at 14. Petitioner asserts that the print analysis came back as "No Make" and claims that this means it was not a match for Petitioner, but he provided neither the state court nor this Court with any explanation of the technical term "no make" from a person in a position to know its meaning. Id. at 17. Petitioner, in fact, has not even established that the print that was taken by police was off of a beer bottle used in the assault. Even if this Court were to assume that: (1) the print was taken off a beer bottle used in this assault, (2) the results of the fingerprint analysis were in the possession of the prosecution prior to or during trial and the prosecution failed to turn over those results to the defense; and (3) that "NO MAKE" meant that the print was not a match for Petitioner[6], Petitioner has still failed to show that that result was material and exculpatory.

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[6] In support of the argument that the state court did not unreasonably deny this claim, Respondent has submitted a declaration from Peter Kergil, a Supervising Forensic Identification Specialist with the Los Angeles County Sheriff's Department, an expert in fingerprint identification analysis. ECF No. 52-6. In his declaration, Kergil explains that it appears that in Petitioner's case, a latent fingerprint obtained from a beer bottle at the scene of the crime was compared to Petitioner's prints in August 2001, and that the Identification Deputy concluded it was "No Make." Id. at 1. Kergil states that a finding of "NO MAKE" meant that "an affirmative identification could not be made, not that a particular suspect did not create the particular latent print." Id. at 2. In other words, "a finding of 'NO MAKE' did not exclude the suspect as a contributor of the latent print, and may have also meant that the latent print was unsuitable for any sort of comparison." Id. In his expert opinion, Kergil opined that the latent print in this case was of poor quality and was unsuitable for comparison purposes. Id.

The law is clear that review to determine whether a habeas petitioner has satisfied § 2254(d)(1) is generally limited to the record that was before the state which adjudicated the claim on the merits. Cullen, 563 U.S. at 181. Further, once a claim is decided on the merits in state court, "evidence later introduced in federal court is irrelevant to § 2254(d)(1) review." Cannedy v. Adams, 706 F.3d 1148, 1156 (9th Cir. 2013) (citing Cullen, 563 U.S. at 184). In Cullen, the Supreme Court held that, "[p]rovisions like §§ 2254(d)(1) and (e)(2) ensure that '[f]ederal courts sitting in habeas are not an alternative forum for trying facts and issues

Petitioner has failed to make out the elements of a Brady violation for the reasons set forth below. First, the victim testified that the attacker used gloves during the attack. ECF No. 52-3, 2 RT at 319. Thus, there would be no expectation that a fingerprint from the crime scene would match Petitioner's, and therefore, the "fact" that a fingerprint test came back as "NO MAKE" for Petitioner would not have proven exculpatory – again, even assuming "NO MAKE" meant that Petitioner was *excluded* as a contributor to the print. Next, evidence that a fingerprint taken from a beer bottle used during the crime did not match Petitioner's would not have put the case in such a different light that it would have undermined confidence in the verdict.

This is because, the victim identified Petitioner – whom she had been married to for 14 years – as the assailant. Id. at 312-313. She recognized him because of his hands, the way he was moving, his breath, and "the way he was saying stuff" to her. Id. At one point, the assailant went into the bathroom to wash his face and she saw him – and it was Petitioner. Id. at 318-319. Further, she heard the assailant talk to their child who woke up during the attack, Favian, in the same way she had heard him calm the child many times before, saying "okay, yeah, baby, yeah," and the baby went right to sleep. Id. at 313, 355-56. On this evidence, the Court has no basis for concluding that the evidence was exculpatory and material, even if it was withheld from Petitioner. The state courts' rejection of this claim

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which a prisoner made insufficient effort to pursue in state proceedings.'" 563 U.S. at 186 (citing Williams v. Taylor, 529 U.S. 420, 437 (2000)). While these provisions are intended to encourage the Petitioner to fully litigate his claims in state court, Respondent has provided no authority suggesting that this federal habeas court can consider this declaration, which Respondent certainly had the ability to secure and present to the California state courts, but which it did not. Because this federal habeas court must focus on what the "state court knew and did" when it denied the claim on the merits, Cullen, 563 U.S. at 182, the Court declines to consider this declaration. Nonetheless, the Court cites it to underscore that without any attempt to explain to the state court what the term "NO MAKE" meant, Petitioner's unfounded claim that it meant that Petitioner was not a match and was excluded as the contributor to the print was simply a conclusory allegation that did not warrant an assumption of truth. That the print comparison form provided no explanation for the meaning of the words "NO MAKE" *was* argued by the state in its Answer to the state habeas petition in the California Supreme Court. ECF No. 36-12 at 14.

was neither contrary to nor involved an unreasonable application of Brady. Habeas relief is not warranted on this claim.

2. Petitioner's Napue Claim

Petitioner claims that both the detective and the prosecutor were not truthful in their testimony, violating due process as set forth in Napue v. Illinois. ECF No. 30, FAP at 5. In support of this claim, Petitioner claims that false testimony by the detective, to the effect that no such print existed was utilized to great success by the prosecutor in summation and rebuttal. Id. He also claims that the prosecutor "called out" defense counsel by name in eviscerating the defense of third party culpability due to the lack of any proof that the intruder was not the petitioner. Id. at 6.

a. Applicable Federal Law

In order to prevail on a prosecutorial misconduct claim premised on the alleged presentation of false evidence, the petitioner must establish that his conviction was obtained by the use of perjured testimony that the prosecutor knew at the time to be false or later discovered to be false and allowed to go uncorrected. See Napue v. Illinois, 360 U.S. 264, 269 (1959). Due process protects against the admission of false evidence, "whether it be by document, testimony, or any other form of admissible evidence." Hayes v. Brown, 399 F.3d 972, 981 (9th Cir. 2005) (en banc). Where false evidence is presented to the jury, the conviction will be reversed where: (1) "[T]he prosecution knowingly presented false evidence or testimony at trial;" and (2) "it was material, that is, there is a reasonable likelihood that the false evidence or testimony could have affected the judgment of the jury." See Morris v. Ylst, 447 F.3d 735, 743 (9th Cir. 2006); Jackson v. Brown, 513 F.3d 1057, 1071-72 (9th Cir. 2008). Mere inconsistencies in testimony are insufficient to establish that the testimony was perjured, see United States v. Croft, 124 F.3d 1109, 1119 (9th Cir. 1997); United States v. Zuno-Arce, 44 F.3d 1420, 1423 (9th Cir. 1995) (as amended), or that the prosecutor knowingly used perjured testimony,

see, e.g., United States v. Sherlock, 962 F.2d 1349, 1364 (9th Cir. 1992); United States v. Lochmondy, 890 F.2d 817, 822 (6th Cir. 1989).

b. Analysis

The Court finds that the state courts' rejection of this claim was neither contrary to nor involved an unreasonable application of Napue. First, Petitioner has failed to establish that the testimony was actually false. Petitioner argues that the detective falsely testified that there were no fingerprints taken from any objects, ECF No. 30, FAP Mem. at 8 (citing ECF No. 52-3, 2 RT at 425), and that the prosecutor "called out" defense counsel by name in eviscerating the defense of third party culpability due to the lack of any proof that the intruder was not Petitioner, id. at 17 (citing ECF No. 52-3, 3 RT at 768).

Whether the detective misstated the evidence is, again, a function of the technical meaning of "NO MAKE." If "NO MAKE" actually means that there *was* a fingerprint that was of a quality that it could be compared to a person's fingerprints, and Petitioner was excluded as a contributor of the print, then the detective's statement would be false. However, the detective was asked on cross-examination, "what steps were taken to confirm that that bottle that was taken into custody by Deputy Flotree was used in a penetration of the rectum?" ECF No. 52-3, 2 RT at 428. Detective Inskeep responded, "No tests were ran on it for a penetration of the rectum. It was ran for prints only." Id. As set forth in the Court's analysis of the Brady claim, above, Petitioner claims, but has not established that "NO MAKE" means that the print was compared to his and he was eliminated as a contributor of the print. However, in the absence of a declaration from an expert that "NO MAKE" means that Petitioner was excluded as the contributor of a useable print, the detective's testimony can just as easily be interpreted to mean that law enforcement took a beer bottle from the scene, tested it for prints, and that no prints (or, no useable prints) were found. Petitioner has

simply failed to establish that this testimony was false.[7] In the absence of a showing that the evidence was false, Petitioner, necessarily, cannot show that the prosecutor was aware that the evidence was false or that the prosecutor let false evidence go uncorrected.

Regarding the prosecutor's "calling out" of defense counsel by name to eviscerate the defense of third party culpability, the prosecutor's statement was as follows: "Mr. Silvas, the defense theory is, it wasn't the defendant. Okay, if it wasn't the defendant, then show us something. Give us something concrete to prove it wasn't." ECF No. 52-4, 3 RT at 768. Petitioner claims that the prosecutor knew that there was a print on the bottle that was not Petitioner's. ECF No. 30, FAP Mem. at 17. Petitioner argues that the prosecutor went even further, in arguing: "You haven't heard one shred of evidence that indicates that somebody did this crime other than the defendant. And if [the victim]'s lying, why is that? There were no prints. The person was wearing gloves. [The victim, who Petitioner claims was trying to frame the Petitioner,] just keeps lucking out. Sometimes the truth just stairs [sic] us in the face, in spite of someone wanting us not to believe it." ECF No. 52-4, 3 RT at 774. The Court observes that Napue precludes the knowing presentation of false evidence or testimony, be it oral or documentary, and that closing arguments are not "evidence." ECF No. 52-1, CT at 85 ("Statements made by attorneys during the trial are not evidence.").

Still, the Ninth Circuit has found a prosecutor's willful, deliberate, and unequivocally false representation to a jury in closing statement to be a Napue

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[7] Petitioner did not need to be granted an evidentiary hearing in state court to prove the meaning of "NO MAKE." Rather, he could have (and should have) submitted the statement of a fingerprint analysist/expert in support of his prima facie showing when he submitted the habeas petition in the first instance. See Duvall, 9 Cal. 4th at 474 ("To satisfy the initial burden of pleading adequate grounds for relief, an application for habeas corpus must be made by the petition . . . [Citation]. The petition should . . . include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations. [Citation.] .... Conclusory allegations made without any explanation of the basis for the allegations do not warrant relief, let alone an evidentiary hearing.")

violation. Phillips v. Ornoski, 673 F.3d 1168, 1186 (9th Cir. 2012) (as amended). Here, again, Petitioner's failure to establish that "NO MAKE" meant that there was a useable print that was not a match for Petitioner precludes the Court from finding the prosecutor's statements to be false. Further, the prosecutor's call to defense counsel to give the jury something concrete to show that the crime was not committed by Petitioner was not "false," and in fact, it was not even inconsistent with the evidence *even if* "NO MAKE" meant that the print was NOT a match for a Petitioner. In other words, even if the "NO MAKE" finding meant that Petitioner was excluded as a contributor of the print, it did not mean that he did not commit the crime. As stated, the attacker wore gloves and the victim identified Petitioner, her husband of 14 years, as the attacker.

Petitioner's failure to establish that the prosecutor presented false evidence or allowed false evidence to go uncorrected obviates the need for the Court to consider materiality under Napue. Cf. United States v. Shayota, 2017 U.S. Dist. LEXIS 71079, at *85 (N.D. Cal. May 9, 2017) ("The Court finds that the evidence of the plea agreement regarding [the witness] was not material within the meaning of Napue. Therefore, the Court need not consider whether the testimony was actually false or whether the Government knew it was false."). The materiality standard for Napue states that reversal is warranted where "there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." United States v. Agurs, 427 U.S. 97, 103 (1976); ECF No. 30, FAP Mem. at 19. Here, there was no false testimony. Habeas relief is not warranted on this claim.

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VI. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court issue an Order: (1) accepting this Report and Recommendation; (2) denying the First Amended Petition for Writ of Habeas Corpus; and (3) dismissing this action with prejudice.

Dated: April 28, 2020

HONORABLE SHASHI KEWALRAMANI
United States Magistrate Judge

Filed 6/16/15

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. GEORGE A. PILOLA, Defendant and Appellant.	B158266 (Los Angeles County Super. Ct. No. VA066706)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Affirmed.

Charles R. Khoury, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

EXHIBIT A

INTRODUCTION

Appellant and defendant George A. Pilola appeals from a judgment of conviction for sexual penetration by a foreign object and aggravated mayhem. He contends that the trial court erred in denying his motion for a new trial based on a post-trial declaration from the victim recanting her trial testimony that identified appellant as her attacker.

The victim (who had been married to appellant for 14 years but who was separated from him at the time she was assaulted) was the sole witness to identify appellant as her attacker (among other things, the attacker broke into her house, tried to anally rape her with a bottle, and carved gang initials on her back). At trial, she was certain appellant was the attacker: although the attacker's face was covered, she recognized him because of his voice, the way he moved, his breathing, and the manner in which he soothed their baby back to sleep when he woke up during the commission of the attack. She also saw appellant's face when he was in the bathroom washing.

In a declaration in support of a motion for new trial, the victim recanted her trial testimony identifying appellant as her attacker, and said she had falsely identified him because she was angry that he had publicly introduced his girlfriend as his fiancée. The trial court found her recantation not credible, and denied the motion for new trial. We find no abuse of discretion in the trial court's ruling, and affirm the judgment.

PROCEDURAL AND FACTUAL BACKGROUND

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Appellant was charged by an information with three felony counts: (1) sexual penetration by foreign object (Pen. Code, § 289, subd. (a)(1));[1] (2) aggravated mayhem (§ 205); and (3) first-degree residential burglary (§ 459). The information also alleged that because appellant used a knife and binding, and committed the offense during the commission of a residential burglary, he was subject to alternate sentencing under the One Strike law (§ 667.61, subds. (a), (b), (d), (e)). The information further alleged sentence enhancements were applicable due to appellant's use of a knife during the commission of the mayhem and the burglary (§§ 1192.7, subd. (c)(23), 12022, subd. (b)(1), 12022.3, subd. (b)).

Appellant pled not guilty to all charges and a jury trial was held.

Evidence at Trial

The victim and appellant were married for 14 years, but were separated at the time of the incident. They had five children together, from 16-year-old Armando to 18-month-old Favian. At the time the crimes occurred, the four younger children lived with their mother, but Armando was living with appellant. Appellant's girlfriend, Laura Rodriguez, also lived with appellant.

A. *The Victim's Testimony*

On the night in question, the victim went to bed at approximately 9:30 p.m. Her baby Favian was sleeping next to her in bed. She locked the bedroom door before getting into bed. Later that night, she woke up when someone kicked the

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[1] All further statutory references are to the Penal Code.

bedroom door down. Although the intruder's face was covered by a beanie, she immediately knew it was her husband, because he had kicked the door down many times before. He grabbed her by her hair and began beating her head with a hard object, and kicked her in the side.

He started taking things out of the closet and making a mess. He said, "Okay, bitch. Do you have any money? Do you have any jewelry?" He grabbed the rings off her fingers. He also grabbed her necklace and bracelet.[2]

He tied up her wrists behind her back, taped her mouth, and then bound her legs. He took an unopened beer bottle and inserted it in her rectum, which was very painful and caused her to scream, at which point he took it out. He grabbed her by the hair and dragged her down the hallway to the living room. When they were in the living room, they saw red lights from a police car that pulled up outside. The assailant whispered to her that if she made a noise, he would kill her.

He dragged her back to the hallway and forced her to lie face down on the floor. The assailant ran from room to room, peeking out the windows and whispering to himself. He was shaking and sweating profusely. He seemed nervous, scared, and angry.

While she was lying bound, face down on the floor, Favian woke up. He came out of the bedroom crying and calling for his mother. She could not answer because her mouth was taped. The assailant picked up the baby and comforted him, saying "Okay, yeah, baby, yeah," to Favian, in the same way the victim had heard her husband speak to Favian many times in the past. The assailant took Favian back to bed and closed the door, and Favian went back to sleep. Favian reacted to the assailant as he typically reacted to his father.

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[2] The bracelet and necklace were later found on top of the counter in the kitchen.

While she was lying in the hallway, the assailant started to reinsert the bottle again, this time without the cap, but she was crying and begging him to stop. Then he told her, "You didn't let yourself put the bottle inside so I'm going to do this to you." Using a small knife, he carved some letters on her back and her breast that caused permanent scarring. While carving the letters, he was whispering to her, asking her "Where's your husband?" "What's your husband's name?" "Where are your kids?"

The assailant, who was still very sweaty, went to the bathroom to wash his face. He turned on the light in the bathroom. From where she was lying in the hallway she could see into the bathroom. When he opened the mirrored door above the sink and grabbed a towel to dry off his face, she saw appellant's face in the mirror.

Approximately 15 minutes after the police lights stopped flashing outside, appellant left. He took her purse, which contained her phone, a pager, some money, a wallet, checkbook and credit cards. She heard a car start, and thought it sounded like a van similar to hers.

After waiting a few minutes to make sure appellant was gone, she untied herself. Approximately 10 minutes after he left her home, she ran to the neighbor's house and used the phone to call her oldest son, Armando, at appellant's apartment. She called to tell him to get the kids out of appellant's house, because she was worried that appellant was going to hurt them next. She told Armando that appellant had attacked her and to get out of the house. Then she called 911.[3]

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[3] It was stipulated that the victim called 911 at 2:34 a.m.

At the hospital, she learned that the blows had broken her jaw. She did not allow the doctor to perform a rectal examination because he said it was going to hurt a lot.

Asked by defense counsel whether she had any doubts that the assailant was her husband, she responded that she had no doubts. Even before she saw his face in the mirror, she knew it was him because of "his hands, the way he was moving, his breath," and "the way he was saying stuff to me."

B. *Armando's Testimony*

Armando testified that on the night the crime occurred, he, his brother, George Jr. and his two sisters were at appellant's two-bedroom apartment. At around 10:45 pm, all the children went to sleep in the living room on a blow-up mattress.

At approximately 2:28 a.m., Armando heard the cordless phone ring. He took the phone into his bedroom and answered it. His mother was on the line, crying, telling him that appellant was at her house and had tried to kill her. She told him to take his siblings and leave the apartment. Armando hung up the phone and went into the other bedroom, where Rodriguez was asleep, to tell her what had happened. Appellant, who normally slept in the bed with Rodriguez, was not there. Armando did not see appellant in the apartment but he did not look for him.

Armando then took the keys to the family's Ford Arrowstar van and quickly left the apartment to go to his mother's home. The van was parked right next to the family's other car, a Thunderbird. He sped off in the car, squealing the tires as he pulled out of the parking spot, and about six minutes into the drive, turned on his cellphone to call 911, a call that 911 records show was made at 2:34 a.m. After a four-minute call, he then turned his phone off. He turned it on again to make

another call, and saw a missed call from appellant's apartment. He received another call from appellant, who asked him where he was, and Armando told him, "I came to look for you. My mom said you were at the house." Appellant replied, "No, I've been at the apartment." He told Armando that he had chased him out of the apartment and that he had heard the tires spin out. He told Armando, "I don't know what's happening but just come back." On direct examination, Armando testified with the aid of cell phone records that he received this phone call at 2:39 a.m. On cross-examination, Armando testified that the first time he spoke with appellant was at 2:46 a.m.

At 3:03 a.m., when Armando had already arrived at his mother's home, appellant called his cell phone again, and talked to an officer at the scene on that line.

C. *Rodriguez's Testimony*

The night of the crime, Rodriguez went to bed by 10:00 p.m. At the time she went to sleep, appellant was in the living room with his four children. He never came to bed with her.

She heard the phone ring in the middle of the night, and noticed that the clock said it was 2:30 a.m. A minute or so later, Armando came into the room and said, "My mom called and said my dad [is] hurting her." Shortly thereafter she heard the front door closing. A minute and a half to two minutes later, she heard the front door closing again. She came out to the living room and saw appellant. He asked her, "Where did Armando go?" She told him what Armando had told her. Appellant told her he had been home at the apartment, and he did not understand why Armando had left. He tried to call Armando's cell phone. Appellant also tried to call the victim's house, and he tried Armando again and

reached him. He told Armando to stop the car and not to keep going to his mother's house, and tried to convince Armando that he was calling from his apartment. Appellant spoke to Armando twice, with the police coming on the line the second time.

Rodriguez further testified that the keys to the Thunderbird, the family's other car, were in her purse, next to her bed, on the night of the crime. She also testified that there was only one set of keys to the van.

D. *George Jr.'s Testimony*

11-year-old George Jr. testified that the night his mother was attacked, he was sleeping in appellant's living room, and he thought his father was sleeping in his bedroom. He did not remember his father lying down with him and his siblings in the living room. He heard the phone ring in the night and heard Armando answer it. He overheard a comment that his mother had been hurt, and saw his brother take the car keys and leave. He tried to call out that he wanted to go with his brother but he did not think his brother heard him. After Armando left, George Jr. went to the bathroom and stayed there for around three minutes. He heard the front door open and when he came out of the bathroom, he saw appellant standing next to the front door, looking out the door. He was asking where Armando went. When asked if appellant told him he had just come back from working out, George Jr. said he did not say that. However, when asked if he might have told the investigating detective that, George Jr. responded, "Probably." George Jr. estimated that approximately 13 minutes passed from the time the phone woke him up to the time he saw appellant in the living room.

E. *Deputy Jeffrey Flotree's Testimony*

Deputy Flotree testified that at 1:28 a.m. on the night of the attack, he responded to a report that a neighbor had heard screams and moans coming from the residence next door. He parked on the street, leaving his vehicle's amber lights on. He woke up the residents who lived to the east of the neighbor who had reported the disturbance, and knocked on the victim's door several times, but there was no response. Unable to locate the source of the disturbance, he went back to his car, turned off the flashing lights and drove around the area for approximately 15 minutes before leaving at approximately 2:14 a.m.

He responded to the scene again after the victim called 911. He found her standing on the parkway adjacent to the street, with clear masking tape that had been torn and stretched around her neck and around her wrists and ankles. She was hysterical. He talked to her briefly at the scene and she told him she had been attacked by her ex-husband George. Because she appeared to need immediate medical attention, she was transported to the hospital and he interviewed her later at the hospital. He stated that it was difficult to communicate with her at the hospital because she was very traumatized.

The victim told him that initially she was not able to see her attacker's face in the bedroom and that he was wearing a cap pulled down low. She told him that she knew it was her ex-husband because of his voice, his physical dimensions, and because of an incident when the baby woke up. Later, when the assailant went into the bathroom, she saw him pull off the ski mask and splash water around his face.

Deputy Flotree authenticated photographs of the victim's injuries from that night. He testified that the letters VNWK, which signified the Barrio Norwalk gang, had been carved on the victim's back and breast. Deputy Flotree concluded

that the attacker wanted to create the appearance that members of the Barrio Norwalk gang had committed the crime.

The deputy also testified that he found the beer bottle and roll of tape used in the attack. He recovered and admitted into evidence a steak knife that was lying in the entrance way, as well as another steak knife. However, besides the unusual locations in which the knives were found, there was no indication that either was the knife used to cut the victim. The victim did not tell the deputy that any property had been taken.

F. *Deputy Wayne Inskeep's Testimony*

Deputy Inskeep, the investigating officer, testified that no fingerprints were recovered, which was not unexpected since the victim stated the attacker was wearing gloves. No blood was found on the two knives recovered at the scene. As part of his investigation, he saw that the mirror in the bathroom was moveable.

Deputy Inskeep described his interview with George Jr. about the night the victim was attacked. George Jr. told him that when he walked out of the bathroom after being awakened in the middle of the night, he saw his father walking into the apartment. George Jr. stated that appellant seemed sweaty, like he had been exercising. According to George Jr., appellant said he had been "working out."

G. *Appellant's Testimony*

Appellant testified that he went to sleep with his boys on the air mattress the night of the crime, after watching television until approximately 11:30 p.m. He denied that he ever left the apartment that night.

In the middle of the night, he was awakened by the sound of a door slamming. Appellant got up, put his shoes on and walked out the door. Then he

heard his van start and heard the wheels spin and the van pull out of the driveway. He ran down the stairs and up the street about 200 or 250 feet until he saw the van disappear around a corner. He ran back up to the apartment. On direct examination, he testified that he went directly into the master bedroom to ask Rodriguez what had happened. She told him Armando had gone looking for him because he had received a call from his mother that appellant was at her house trying to kill her.

On cross-examination and then on redirect, appellant stated that when he came back from chasing the van he was planning to call 911 because he believed the van had been stolen. The phone was not in the kitchen so he went into the master bedroom to get the phone there, and he found Rodriguez awake. At that point she asked where he had been and what was going on, and she told him Armando had gone looking for him. He told her he had been downstairs trying to find out who took the van.

Appellant then called Armando's cell phone, but there was no answer. He called again, and Armando answered, and appellant asked where he was going and told him to come back. Armando said he would come back. Appellant waited a little longer and then tried calling his wife at her house. Then he called Armando again and spoke to him again. Armando said he was right around the corner from his mother's house. Appellant spoke to Armando a final time after Armando arrived at his mother's house, and he spoke to a deputy as well. While he was talking to Armando, he saw his son, George Jr., standing in the hallway looking at him. He told George Jr. that everything was okay and he should go back to sleep, which the boy did.

Appellant testified that driving at a normal speed, it took 20 or 25 minutes to drive from his apartment to his wife's house, and the fastest possible trip would take 15 to 20 minutes.

Verdict

The jury found appellant guilty of sexual penetration by a foreign object as well as aggravated mayhem, but not guilty of residential burglary. The jury also found true the allegations with respect to use of binding and use of a deadly weapon in the commission of the offense of sexual penetration with a foreign object (§ 667.61, subd. (e)).

Motion for New Trial

Appellant filed a motion for a new trial, one of the grounds being the discovery of new evidence. In a declaration in support of appellant's motion for a new trial, the victim recanted, claiming that she lied when she identified appellant as her attacker. She stated she was angry with him because at his sister's wedding he had introduced his girlfriend as his fiancée, and the victim believed their separation was only temporary. She stated that she felt appellant betrayed her and needed to be punished. At the time she named appellant as her attacker, she believed that her husband would spend some time in jail but she did not realize that what she was doing was "so serious."

The trial court denied the motion for a new trial. In denying the motion, the trial court found the recantation not credible. Acknowledging the defense theory that an unidentified gang member committed the crime, the court stated: "What's the explanation for this gang member randomly breaking into this woman's house and terrorizing her . . . and then leaving and not taking the TV, or the radio, or

anything, just taking her purse, her personal property. . . . [W]ith all due respect, I have been a defense attorney, I have been a commissioner, and I've been a trial judge, and I've never seen this bizarre a crime in all those years by a random criminal." When appellant stated that he did not understand why the motion for a new trial was denied, the court replied, "I ruled that the evidence was more than satisfactory, more than believable to convict you of this crime, and I don't accept your wife's recantation. I don't find it credible."

Sentencing and Appeal

The trial court imposed a sentence of 25 years to life on the offense of sexual penetration with a foreign object, based on the application of the One Strike law (§ 667.61). As to the offense of aggravated mayhem, the court sentenced him to life in prison with a possibility of parole, which sentence was to run consecutively to the sentence on the other count.

Appellant timely appealed, but his first appeal was dismissed in 2002 pursuant to appellant's request and the remittitur was issued. However, on April 4, 2014, appellant moved to recall the remittitur, on the ground that he had received ineffective assistance from his previous retained counsel, who had urged appellant to abandon his appeal based on the mistaken belief that abandonment was necessary to have DNA testing conducted in his case. We granted the motion to recall the remittitur and reinstated appellant's appeal.

DISCUSSION

An appellant may move for a new trial based on newly discovered evidence. (§ 1181, subd. (8); *People v. McCurdy* (2014) 59 Cal.4th 1063, 1108.) """"We review a trial court's ruling on a motion for a new trial under a deferential abuse-

of-discretion standard.' [Citations.] '"A trial court's ruling on a motion for new trial is so completely within that court's discretion that a reviewing court will not disturb the ruling absent a manifest and unmistakable abuse of that discretion."'" [Citation.]' [Citation.]" (*People v. McCurdy, supra,* 59 Cal.4th at p. 1108.)

"It has long been recognized that 'the offer of a witness, after trial, to retract his sworn testimony is to be viewed with suspicion.' (*In re Weber* (1974) 11 Cal.3d 703, 722; see also *People v. Minnick* (1989) 214 Cal.App.3d 1478, 1481 (*Minnick*); *People v. McGaughran* (1961) 197 Cal.App.2d 6, 17 ['It has been repeatedly held that where a witness who has testified at a trial makes an affidavit that such testimony is false, little credence ordinarily can be placed in the affidavit . . . .']." (*In re Roberts* (2003) 29 Cal.4th 726, 742; see *People v. Redmond* (1966) 246 Cal.App.2d 852, 864-865.) "The role of the trial court in deciding a motion for new trial based upon a witness's recantation is to determine whether the new evidence is credible, i.e., worthy of belief by the jury. That determination is made after a consideration of all the facts pertinent to the particular issue." (*Minnick, supra,* 214 Cal.App.3d at p. 1482.)

Here, the trial court did not abuse its discretion in finding the victim's recantation not credible, that is, not worthy of belief by the jury. Her testimony at trial as to why she recognized appellant was compelling: she recognized his voice, the way he moved, and his breathing. She heard him speak words to their baby that he had spoken in the past to calm the baby, and saw that he was able to soothe the baby back to sleep. She also saw his face when he was in the bathroom cleaning up. Her post-trial claim that she falsely implicated him in this horrific attack because she was jealous that he called his girlfriend his fiancée at his sister's wedding pales in credibility to her factually specific testimony at trial explaining her certainty that he was her attacker. Further, as the trial court noted, it was

highly unlikely that this attack, obviously intended to injure and personally humiliate her, was committed by a random stranger. In short, the trial court did not abuse its discretion in finding the recantation not credible.

To the extent appellant contends that the trial court erred by not expressly discussing the five factors listed in *People v. Delgado* (1993) 5 Cal.4th 312, 328, for evaluating newly discovered evidence,[4] the contention begs the question. Only if the trial court determines that the recantation is credible must it consider the other requirements for granting a new trial on the grounds of newly discovered evidence. (See *Minnick, supra,* 214 Cal.App.3d at p. 1482 ["Once the trial court has found the recantation to be believable, it must then decide whether consideration of the recantation would render a different result on retrial reasonably probable"].) Given that the court found that the recantation was not credible (that is, not worthy of belief by a reasonable jury), the court necessarily concluded that the recantation would not render a different result probable on retrial. That determination was sufficient to deny the new trial motion.

We reject appellant's argument, made for the first time in his reply brief, that the trial court erred in failing to take testimony from the victim regarding her recantation. Relying on non-California authorities, appellant contends the trial court should have conducted a hearing with live testimony to evaluate the credibility of the recanting victim. California Supreme Court precedent rejects this argument.

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[4] "In ruling on a motion for new trial based on newly discovered evidence, the trial court considers the following factors: '"1. That the evidence, and not merely its materiality, be newly discovered; 2. That the evidence be not cumulative merely; 3. That it be such as to render a different result probable on a retrial of the cause; 4. That the party could not with reasonable diligence have discovered and produced it at the trial; and 5. That these facts be shown by the best evidence of which the case admits."'" (*Delgado, supra,* 5 Cal.4th at p. 328.)

In *People v. Howard* (2010) 51 Cal.4th 15 (*Howard*), the defendant moved for a new trial based on new exculpatory evidence in the form of declarations from witnesses, but the trial court found the declarations unworthy of belief and denied the motion. The appellant argued on appeal that the trial court erred by failing to obtain live testimony from the declarants before determining that their declarations were not credible. The Supreme Court found no error, where at the hearing on the motion for a new trial, "defense counsel made no attempt to produce those witnesses, and submitted his motion on the declarations alone." (*Id.* at p. 44; see also *People. v. Langlois* (1963) 220 Cal.App.2d 831, 835 [rejecting contention that trial court should have called witness to testify regarding post-trial recantation where defendant made no request that witness be called to the stand].) The court distinguished the case before it from *People v. Hairgrove* (1971) 18 Cal.App.3d 606, 609-611, in which "the affiant was present in court at the hearing on the new trial motion, and the court not only refused to hear from him but advised him against testifying." (*Howard, supra,* 51 Cal.4th at p. 44.)

As in *Howard*, defense counsel in this case explicitly submitted his motion for a new trial on the pleadings. There is no indication from the record that the victim was present at the hearing on the motion for a new trial, and defense counsel did not offer to have her testify. Accordingly, we reject appellant's contention that the trial court should have heard testimony from the victim before determining that her recantation was unworthy of belief.

In sum, the trial court did not abuse its discretion in denying the motion for new trial based on newly discovered evidence.

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DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P.J.

We concur:

MANELLA, J.

COLLINS, J.

APPENDIX E

DOCKET FOR DISTRICT COURT AND NINTH CIRCUIT

194,CLOSED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:11-cv-06029-DOC-SHK

George A Pilola v. Connie Gipson
Assigned to: Judge David O. Carter
Referred to: Magistrate Judge Shashi H. Kewalramani
Case in other court: 9th CCA, 12-55573
Ninth Circuit, 20-55756
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 07/21/2011
Date Terminated: 07/09/2020
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Petitioner

George A Pilola

represented by **Charles R Khoury , Jr**
Charles R Khoury Jr Law Offices
P O Box 791
Del Mar, CA 92014
603-345-4969
Fax: 858-461-1429
Email: charliekhouryjr@yahoo.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Respondent

Connie Gipson
Warden
TERMINATED: 02/23/2017

Respondent

Shawn Hatton
Warden

represented by **Wyatt Evan Bloomfield**
CAAG - Office of Attorney General
California Department of Justice
300 South Spring Street Suite 1702
Los Angeles, CA 90013
213-269-6145
Fax: 213-897-6496
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Seth Patrick McCutcheon
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California Department of Justice
300 South Spring Street Suite 1702
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213-269-6133
Fax: 213-897-6496
Email: seth.mccutcheon@doj.ca.gov
TERMINATED: 12/13/2017
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/21/2011	1	PETITION for Writ of Habeas Corpus by a Person In State Custody (28:2254) Case assigned to Judge David O. Carter and referred to Magistrate Judge Suzanne H. Segal. (Filing fee $ 5: PAID on 8/10/2011, Receipt No. 029429.), filed by petitioner George A Pilola.(ghap) Modified on 8/26/2013 (jp). (Additional attachment(s) added on 8/26/2013: # 1 Filing Fee Paid) (jp). (Entered: 07/25/2011)
07/21/2011	2	NOTICE OF REFERENCE TO A U.S. MAGISTRATE JUDGE. Pursuant to the provisions of the Local Rules, the within action has been assigned to the calendar of Judge David O. Carter and referred to Magistrate Judge Suzanne H. Segal to consider preliminary matters and conduct all further matters as appropriate. The Court must be notified within 15 days of any change of address. (ghap) (Entered: 07/25/2011)
07/26/2011	3	MINUTE ORDER IN CHAMBERS by Magistrate Judge Suzanne H. Segal: ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD NOT BE DISMISSED AS UNTIMELY - Petitioner is therefore ORDERED TO SHOW CAUSE, by August 9, 2011, why this action should not be dismissed pursuant to the AEDPA one-year period of limitation. Instead of filing a response to the instant Order, Petitioner may request a voluntary dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a). See minute order for further details. (Attachments: # 1 Notice of Dismissal) (jy) (Entered: 07/26/2011)
08/09/2011	4	MOTION for Enlargement of Time to File Reply to Order to Show Cause filed by petitioner George A Pilola. (jy) (Entered: 08/09/2011)
08/23/2011	5	ORDER by Magistrate Judge Suzanne H. Segal: granting 4 Motion for Enlargement of Time to File; Response to OSC due September 7, 2011. See order for details. (jy) (Entered: 08/23/2011)
08/30/2011	6	PETITIONER'S RESPONSE filed by Petitioner George A Pilola (jy) (Entered: 08/30/2011)
01/26/2012	7	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Suzanne H. Segal. Objections to R&R due by 2/9/2012 (jy) (Entered: 01/26/2012)
01/26/2012	8	REPORT AND RECOMMENDATION issued by Magistrate Judge Suzanne H. Segal. Re Petition for Writ of Habeas Corpus (2254) 1 (jy) (Entered: 01/26/2012)
02/10/2012	9	MOTION for Extension of Time to File Objection filed by petitioner George A Pilola. (jy) (Entered: 02/10/2012)
02/10/2012	10	ORDER by Magistrate Judge Suzanne H. Segal: granting 9 Motion for Extension of Time to File Objection; Objections now due February 24, 2012. No further extensions. (jy) (Entered: 02/10/2012)
02/28/2012	11	OBJECTION to Report and Recommendation (Issued) 8 filed by petitioner George A Pilola.(jy) (Entered: 02/28/2012)

03/06/2012	12	ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE by Judge David O. Carter for Report and Recommendation (Issued) 8 ; IT IS ORDERED that the Petition is denied and Judgment shall be entered dismissing this action with prejudice. LET JUDGMENT BE ENTERED ACCORDINGLY. See order for details. (jy) (Entered: 03/07/2012)
03/06/2012	13	JUDGMENT by Judge David O. Carter, Pursuant to the Courts Order Accepting Findings, Conclusions and Recommendations of United States Magistrate Judge, IT IS HEREBY ADJUDGED that the above-captioned action is dismissed with prejudice (MD JS-6, Case Terminated). (jy) (Entered: 03/07/2012)
03/06/2012	14	ORDER DENYING Certificate of Appealability by Judge David O. Carter. The Court has independently reviewed its decision and finds that reasonable jurists would not find debatable the propriety of the Petition's dismissal. Accordingly, the Court declines to issue a COA. (jp) (Entered: 03/09/2012)
03/26/2012	15	NOTICE OF APPEAL to the 9th CCA filed by Petitioner George A Pilola. Appeal of Judgment, 13 Filed On: 3/6/12; Entered On: 3/7/12; Certificate of Appealability has been ruled on see document 14. (car) (Entered: 03/28/2012)
03/29/2012	16	NOTIFICATION by Circuit Court of Appellate Docket Number 12-55573 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals 15 as to Petitioner George A Pilola. (dmap) (Entered: 03/30/2012)
07/05/2013	17	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 15 filed by George A Pilola CCA # 12-55573. Appellant's motion to proceed in forma pauperis is granted. See the order for all of the details. Order received in this district on 7/5/2013. (dmap) (Entered: 07/05/2013)
07/22/2013	18	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 15 filed by George A Pilola CCA # 12-55573. Appellant's motion for appointment of counsel in this appeal from the denial of a 28 U.S.C. § 2254 petition for writ of habeas corpus is granted. Counsel will be appointed by separate order. See the order for the rest of the details. Order received in this district on 7/22/2013. (dmap) (Entered: 07/22/2013)
03/17/2014	19	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 15 filed by George A Pilola CCA # 12-55573. The appellant's opposed motion to stay appellate proceedings is granted. This appeal is stayed until April 3, 2014. At or prior to the expiration of the stay, the appellant shall file the opening brief or a motion for appropriate relief. If the opening brief is filed, the answering brief shall be due May 5, 2014. The optional reply brief is due 14 days after service of the answering brief. The filing of the opening brief or the failure to file a further motion will terminate the stay. See the order for the rest of the details. Order received in this district on 3/17/2014. (dmap) (Entered: 03/20/2014)
04/16/2014	20	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 15 filed by George A Pilola, CCA # 12-55573. Appellant's motion to further stay appellate proceedings is granted. This appeal is stayed until August 15, 2014. The filing of the opening brief or the failure to file a further motion will terminate the stay. Order received in this district on 4/16/14. [See document for details] (mat) (Entered: 04/18/2014)

10/27/2014	21	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 15 filed by George A Pilola, CCA # 12-55573. Appellant's motion for an extended stay of briefing is denied. On May 27, 2014, the California Court of Appeals recalled the remittitur and reinstated appellant's direct criminal appeal. Accordingly, appellee's motion for remand, contained in the opposition to the motion for an extended stay of briefing, is granted. The district court's judgment is vacated and this appeal is remanded to the district court with instructions to consider whether to stay or dismiss without prejudice appellant's 28 U.S.C. § 2254 petition. Order received in this district on 10/27/14. (mat) (Entered: 10/31/2014)
11/13/2014	22	MINUTES (IN CHAMBERS) Order Dismissing Matter Without Prejudice by Judge David O. Carter. Accordingly, On October 27, 2014, the Ninth Circuit vacated this Court's judgment, and directed this Court to consider whether to stay or dismiss without prejudice appellant's 28 U.S.C. § 2254 petition. Upon consideration, the Court hereby stays this matter, pending the outcome of the state court proceedings. The Clerk shall serve this minute order on the parties. (see document for details). (dro) (Entered: 11/13/2014)
11/18/2014	23	AMENDED MINUTE ORDER (IN CHAMBERS) by Judge David O. Carter: Staying Proceedings. This Amended Order corrects and supersedes its previous order (Dkt. 22). The prior order should be disregarded. 22 . (See document for further details) (mba) (Entered: 11/19/2014)
11/19/2014	24	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 15 , CCA # 12-55573. The district courts judgment is vacated and this appeal is remanded to the district court with instructions to consider whether to stay or dismiss without prejudice appellants 28 U.S.C. § 2254 petition. Mandate received in this district on 11/19/14. [See document for details] (mat) (Entered: 11/21/2014)
01/05/2017	25	NOTICE OF MOTION AND MOTION to Lift Stay *and file FAP* filed by Petitioner George A Pilola. (Attachments: # 1 FAP w exhibits) (Khoury, Charles) (Entered: 01/05/2017)
01/05/2017	26	NOTICE OF ERRATA filed by Petitioner George A Pilola. correcting NOTICE OF MOTION AND MOTION to Lift Stay *and file FAP* 25 (Attachments: # 1 FAP w exhibits)(Khoury, Charles) (Entered: 01/05/2017)
01/28/2017	27	REQUEST to Proceed In Forma Pauperis, Declaration in Support , REQUEST for Leave to Proceed In Forma Pauperis filed by Petitioner George A Pilola. (Khoury, Charles) (Entered: 01/28/2017)
02/09/2017	28	MINUTES (IN CHAMBERS) RE: IFP REQUEST by Magistrate Judge Suzanne H. Segal: Petitioner's Declaration in Support of Request to Proceed In Forma Pauperis is hereby granted. (mr) (Entered: 02/09/2017)
02/23/2017	29	MINUTES (IN CHAMBERS) ORDER GRANTING MOTION TO LIFT STAY AND FILE FIRST AMENDED PETITION (DKT. NO. 25) by Magistrate Judge Suzanne H. Segal: It is ORDERED that Petitioners Motion is GRANTED. The stay previously entered in this action is lifted, and the First Amended Petition shall be filed as the operative pleading in this action. The Court shall issue separate orders requiring Respondent to appear and respond to the First Amended Petition. (MD JS-5 Case Reopened) (mr) (Entered: 02/23/2017)

02/23/2017	30	FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS against Respondent Shawn Hatton; Party Connie Gipson (Warden) terminated. amending Petition for Writ of Habeas Corpus (2254), 1 , filed by petitioner George A Pilola.(mr) (Entered: 02/23/2017)
02/23/2017	31	ORDER REQUIRING RESPONSE TO FIRST AMENDED PETITION (28 U.S.C. § 2254) by Magistrate Judge Suzanne H. Segal: IT IS ORDERED that: Within 14 days, Respondent shall file and serve a Notice of Appearance. (See document for further details). Notice: The court has issued a ruling on preliminary review. Pursuant to the Agreement on Acceptance of Service between the Clerk of Court and the California Attorney Generals Office, this Notice constitutes service under Fed. R. Civ. P. 4. (Attachments: # 1 First Amended Petition, # 2 Consent Form) (mr) (Entered: 02/23/2017)
02/23/2017	37	ELECTION REGARDING CONSENT to Proceed before a United States Magistrate Judge Declined, in accordance with Title 28 Section 636c filed by Petitioner George A Pilola. The Petitioner does not consent. (mz) (Entered: 04/12/2017)
03/02/2017	32	First NOTICE of Appearance filed by attorney Seth Patrick McCutcheon on behalf of Respondent Shawn Hatton (Attorney Seth Patrick McCutcheon added to party Shawn Hatton(pty:res))(McCutcheon, Seth) (Entered: 03/02/2017)
03/20/2017	33	First APPLICATION for Extension of Time to File Motion to Dismiss or Answer to Petition for Writ of Habeas Corpus filed by respondent Shawn Hatton. (Attachments: # 1 Proposed Order) (McCutcheon, Seth) (Entered: 03/20/2017)
03/24/2017	34	ORDER by Magistrate Judge Suzanne H. Segal: granting 33 APPLICATION for Extension of Time to File. IT IS HEREBY ORDERED that Respondent is GRANTED to and including April 25, 2017, to file a Motion to Dismiss, and to and including May 9, 2017, to file an Answer to the Petition for Writ of Habeas Corpus. (mz) (Entered: 03/24/2017)
04/12/2017	35	NOTICE OF MOTION AND MOTION to Dismiss First Amended Petition for Writ of Habeas Corpus; Memorandum of Points and Authorities filed by respondent Shawn Hatton. (McCutcheon, Seth) (Entered: 04/12/2017)
04/12/2017	36	NOTICE OF LODGING filed *Notice of Lodgment in 28 U.S.C. Section 2254 Habeas Corpus Case* re NOTICE OF MOTION AND MOTION to Dismiss First Amended Petition for Writ of Habeas Corpus; Memorandum of Points and Authorities 35 (Attachments: # 1 Lodged Doc.#1, # 2 Lodged Doc.#2, # 3 Lodged Doc.#3, # 4 Lodged Doc.#4, # 5 Lodged Doc.#5, # 6 Lodged Doc.#6, # 7 Lodged Doc.#7, # 8 Lodged Doc.#8, # 9 Lodged Doc.#9, # 10 Lodged Doc.#10, # 11 Lodged Doc.#11, # 12 Lodged Doc.#12, # 13 Lodged Doc.#13, # 14 Lodged Doc.#14)(McCutcheon, Seth) (Entered: 04/12/2017)
05/15/2017	38	NOTICE OF MOTION AND MOTION for Extension of Time to File Opposition to Motion to Dismiss filed by Petitioner George A Pilola. (Attachments: # 1 Proposed Order) (Khoury, Charles) (Entered: 05/15/2017)
05/17/2017	39	ORDER by Magistrate Judge Suzanne H. Segal: Granting 38 MOTION for Extension of Time to File. Petitioner's Opposition to the Motion to Dismiss will be due on or before June 12, 2017. (mr) (Entered: 05/18/2017)

06/09/2017	40	Opposition Opposition re: NOTICE OF MOTION AND MOTION to Dismiss First Amended Petition for Writ of Habeas Corpus; Memorandum of Points and Authorities 35 filed by Petitioner George A Pilola. (Khoury, Charles) (Entered: 06/09/2017)
06/11/2017	41	NOTICE OF ERRATA filed by Petitioner George A Pilola. correcting Objection/Opposition (Motion related) 40 (Khoury, Charles) (Entered: 06/11/2017)
07/24/2017	42	MINUTE DENYING MOTION TO DISMISS WITHOUT PREJUDICE, 35 by Magistrate Judge Suzanne H. Segal. Respondents Motion to Dismiss (Dkt. No. 35) is DENIED WITHOUT PREJUDICE. Respondent shall file an Answer within thirty (30) days of the date of this Order. Respondent can revisit the exhaustion issue in his Answer if he so chooses; however, the Answer shall also address the merits of Petitioners claims for habeas corpus relief. Petitioner may thereafter file a Reply in accordance with the Courts Order Requiring Response to First Amended Petition (Dkt. No. 31). IT IS SO ORDERED. (mz) (Entered: 07/24/2017)
08/11/2017	43	ORDER OF THE CHIEF MAGISTRATE JUDGE - OCMJ# 17-112 by Magistrate Judge Patrick J. Walsh. Pursuant to the recommended procedure adopted by the Court for the CREATION OF THE CALENDAR of Magistrate Judge Shashi H. Kewalramani, this case is transferred from the calendar of Magistrate Judge Suzanne H. Segal to the calendar of Magistrate Judge Shashi H. Kewalramani for all further proceedings authorized by statute, local rules and general orders. All documents subsequently filed shall bear this new case designation 2:11-cv-06029 DOC (SHK) absent further order of the Court. (esa) (Entered: 08/14/2017)
08/16/2017	44	First APPLICATION for Extension of Time to File an Answer to Petition for Writ of Habeas Corpus filed by respondent Shawn Hatton. (Attachments: # 1 Proposed Order to File an Answer to Petition for Writ of Habeas Corpus) (McCutcheon, Seth) (Entered: 08/16/2017)
08/17/2017	45	ORDER by Magistrate Judge Shashi H. Kewalramani: RE 44 APPLICATION for Extension of Time to File. IT IS HEREBY ORDERED that Respondent is GRANTED to and including October 22, 2017, to file an Answer to the Petition for Writ of Habeas Corpus. (dc) (Entered: 08/17/2017)
10/17/2017	46	Second APPLICATION for Extension of Time to File an Answer to Petition for Writ of Habeas Corpus filed by respondent Shawn Hatton. (Attachments: # 1 Proposed Order to File an Answer to Petition for Writ of Habeas Corpus) (McCutcheon, Seth) (Entered: 10/17/2017)
10/17/2017	47	ORDER by Magistrate Judge Shashi H. Kewalramani: RE 46 APPLICATION for Extension of Time to File. Good cause appearing, IT IS HEREBY ORDERED that Respondent is GRANTED to and including November 21,2017, to file an Answer to the Petition for Writ of Habeas Corpus. (dc) (Entered: 10/17/2017)
11/15/2017	48	Third APPLICATION for Extension of Time to File respondent filed by respondent Shawn Hatton. (Attachments: # 1 Proposed Order to File an Answer to Petition for Writ of Habeas Corpus) (McCutcheon, Seth) (Entered: 11/15/2017)
11/15/2017	49	ORDER by Magistrate Judge Shashi H. Kewalramani: 48 APPLICATION for Extension of Time to File (dc) (Entered: 11/15/2017)
12/13/2017	50	NOTICE OF REASSIGNMENT of California Attorney General Office Wyatt E. Bloomfield on behalf of respondent Shawn Hatton. California Attorney General Seth Patrick McCutcheon terminated. (Attorney Wyatt Evan Bloomfield added to party

		Shawn Hatton(pty:res))(Bloomfield, Wyatt) (Entered: 12/13/2017)
12/13/2017	51	Answer to Amended Petition for Writ of Habeas Corpus 30 *First; Memorandum of Points and Authorities* filed by Respondent Shawn Hatton.(Bloomfield, Wyatt) (Entered: 12/13/2017)
12/13/2017	52	NOTICE OF LODGING filed *Supplemental* re Return to Habeas Petition (2254) 51 (Attachments: # 1 LD14, # 2 LD15_1of3, # 3 LD15_2of3, # 4 LD15_3of3, # 5 LD16, # 6 LD17)(Bloomfield, Wyatt) (Entered: 12/13/2017)
01/12/2018	53	APPLICATION for Extension of Time to File Traverse with Memorandum filed by PETITIONER George A Pilola. (Attachments: # 1 Proposed Order) (Khoury, Charles) (Entered: 01/12/2018)
01/16/2018	54	ORDER by Magistrate Judge Shashi H. Kewalramani: 53 APPLICATION for Extension of Time to File. IT IS HEREBY ORDERED that the application is GRANTED and petitioner may file a TRAVERSE TO THE ANSWER or before February 12, 2018. (dc) (Entered: 01/16/2018)
02/22/2018	55	TRAVERSE filed by Petitioner George A Pilola. (Attachments: # 1 Exhibit, # 2 Exhibit) (Khoury, Charles) (Entered: 02/22/2018)
02/22/2018	56	NOTICE OF MOTION AND MOTION for Extension of Time to File Traverse with Memorandum filed by PETITIONER George A Pilola. (Attachments: # 1 Proposed Order) (Khoury, Charles) (Entered: 02/22/2018)
02/26/2018	57	ORDER by Magistrate Judge Shashi H. Kewalramani: granting 56 APPLICATION for Extension of Time to File. IT IS HEREBY ORDERED that the application is GRANTED and that the Late Traverse be filed. (dc) (Entered: 02/26/2018)
02/27/2018	58	TRAVERSE *CORRECTED* filed by petitoner George A Pilola. (Attachments: # 1 Exhibit, # 2 Exhibit)(Khoury, Charles) (Entered: 02/27/2018)
04/06/2018	59	NOTICE OF MOTION AND MOTION for Appointment of Counsel filed by Petitioner George A Pilola. (Attachments: # 1 Letter, # 2 Exhibit) (Khoury, Charles) (Entered: 04/06/2018)
04/09/2018	60	ORDER FOR APPOINTMENT OF COUNSEL by Magistrate Judge Shashi H. Kewalramani Re 59 MOTION for Appointment of Counsel: The Court finds that the interests of justice require the appointment of counsel for petitioner in this matter. In the interests of conservation of resources, the Court hereby appoints Charles R. Khoury Jr. SB 42625 an attorney who is familiar with the facts and law in this matter, who has handled the case since his appointment by the Ninth Circuit after the case was previously dismissed with prejudice in this Court. (ad) (Entered: 04/10/2018)
04/28/2020	61	REPORT AND RECOMMENDATION issued by Magistrate Judge Shashi H. Kewalramani. Re Petition for Writ of Habeas Corpus (2254), 1 (dc) (Entered: 04/28/2020)
04/28/2020	62	NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Shashi H. Kewalramani and Lodging of Proposed Judgment and Order. Objections to R&R due by 5/12/2020 (dc) (Entered: 04/28/2020)
05/07/2020	63	NOTICE OF MOTION AND MOTION for Extension of Time to File Objection to Report and Recommendation (Issued) 61 filed by petitioner George A Pilola. (Khoury, Charles) (Entered: 05/07/2020)

05/07/2020	64	ORDER EXTENDING TIME TO FILE OBJECTIONS TO REPORT AND RECOMMENDATION by Magistrate Judge Shashi H. Kewalramani: granting 63 MOTION for Extension of Time to File Objection to (dc) (Entered: 05/07/2020)
07/09/2020	65	ORDER ACCEPTING REPORT AND RECOMMENDATIONS by Judge David O. Carter for Report and Recommendation (Issued) 61 . IT IS THEREFORE ORDERED that the First Amended Petition is DENIED and that Judgment be entered dismissing this action with prejudice. (see document for further details) (hr) (Entered: 07/10/2020)
07/09/2020	66	JUDGMENT by Judge David O. Carter, Related to: R&R - Accepting Report and Recommendations 65 . IT IS HEREBY ADJUDGED that this action is DISMISSED with prejudice. (MD JS-6, Case Terminated). (hr) (Entered: 07/10/2020)
07/09/2020	67	Order by Judge David O. Carter GRANTING Certificate of Appealability. (mat) (Entered: 07/10/2020)
07/24/2020	68	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by petitioner George A Pilola. Appeal of Judgment 66 . (Appeal Fee - In Forma Pauperis Request.) (Attachments: # 1 Exhibit Grant of COA)(Khoury, Charles) (Entered: 07/24/2020)
07/27/2020	69	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 20-55756 assigned to Notice of Appeal to 9th Circuit Court of Appeals 68 as to Petitioner George A Pilola. (hr) (Entered: 07/28/2020)
06/07/2021	70	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 68 filed by George A Pilola. CCA # 20-55756. Appellant's motion to withdraw his application for authorization and payment for investigative servicesis granted. Appellant's motion for an order requiring the Los Angeles County Sheriff's Department to produce evidence is referred to the panel that will consider the merits of this case for whatever consideration the panel deems appropriate. Appellee's unopposed motion for an extension of time to file the answering brief is granted. The answering brief is now due on July 12, 2021, and the optional reply brief is due within 21 days after service of the answering brief. (see document for further details) (hr) (Entered: 06/09/2021)
08/13/2021	71	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 68 filed by George A Pilola. CCA # 20-55756. The court is in receipt of appellant's second motion (Docket Entry No. 33) for an order requiring the Los Angeles County Sheriffs Department to produce evidence. Appellant is informed that, at Docket Entry No. 27, this request for relief was referred to the panel that will consider the merits of this case for whatever consideration the panel deems appropriate. Appellant's motion to stay appellate proceedings (Docket Entry No. 36) isdenied. (car) (Entered: 08/13/2021)
01/26/2022	72	MEMORANDUM from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 68 filed by George A Pilola. CCA # 20-55756. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we review the district court's order de novo, Hurles v. Ryan, 752 F.3d 768, 777 (9th Cir. 2014). Applying this standard, we affirm. (see document for further details) (hr) (Entered: 01/26/2022)
02/10/2022	73	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 68 filed by George A Pilola. [See document for details.](mat) (Entered: 02/11/2022)

03/14/2022	74	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals 68 filed by George A Pilola. CCA # 20-55756. George Pilola's motion to stay appellate proceedings is DENIED. (hr) (Entered: 03/16/2022)
04/19/2022	75	MANDATE of Ninth Circuit Court of Appeals filed re: USCA Memorandum/Opinion /Order, 72 , Notice of Appeal to 9th Circuit Court of Appeals 68 , CCA # 20-55756. The judgment of this Court, entered January 26, 2022, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. (car) (Entered: 04/19/2022)

PACER Service Center

Transaction Receipt

06/20/2022 19:24:46

PACER Login:	charliekhouryjr	**Client Code:**	pilola
Description:	Docket Report	**Search Criteria:**	2:11-cv-06029-DOC-SHK End date: 6/21/2022
Billable Pages:	8	**Cost:**	0.80
Exempt flag:	Exempt	**Exempt reason:**	Exempt CJA

PACER fee: Exempt CJA Change

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 20-55756
Nature of Suit: 3530 Habeas Corpus
George Pilola v. Craig Koenig, et al
Appeal From: U.S. District Court for Central California, Los Angeles
Fee Status: IFP

Docketed: 07/27/2020
Termed: 01/26/2022

Case Type Information:
1) prisoner
2) state
3) 2254 habeas corpus

Originating Court Information:
District: 0973-2 : 2:11-cv-06029-DOC-SHK
Trial Judge: J. Ross Carter, Magistrate Judge
Date Filed: 07/21/2011

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
07/09/2020	07/10/2020	07/24/2020	07/24/2020

Prior Cases:
12-55573 **Date Filed:** 03/29/2012 **Date Disposed:** 10/27/2014 **Disposition:** Vacated, Remanded - Judge Order

Current Cases:
None

GEORGE A. PILOLA (State Prisoner: T-52418) Petitioner - Appellant,	Charles Roger Khoury, Jr., Esquire, Attorney Direct: 858-764-0644 Email: charliekhouryjr@yahoo.com [COR LD NTC CJA Appointment] P.O. Box 791 Del Mar, CA 92014
v.	
CONNIE GIPSON, Warden **Terminated:** 06/10/2021 Respondent,	
SHAWN HATTON, Warden **Terminated:** 06/10/2021 Respondent - Appellee,	
CRAIG KOENIG, Acting Warden Respondent - Appellee,	Blythe J. Leszkay Direct: 213-269-6191 Email: DocketingLAAWT@doj.ca.gov Fax: 213-897-2806 [COR NTC Dep State Aty Gen] AGCA-Office of the California Attorney General 300 S Spring Street Suite 1702 Los Angeles, CA 90013

GEORGE A. PILOLA,

Petitioner - Appellant,

v.

CRAIG KOENIG, Acting Warden,

Respondent - Appellee.

07/27/2020	1 (80 pg, 1.24 MB)	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: No. The schedule is set as follows: Appellant George A. Pilola opening brief due 09/22/2020. Appellee Shawn Hatton, Warden answering brief due 10/22/2020. Appellant's optional reply brief is due 21 days after service of the answering brief. [11767685] (JMR) [Entered: 07/27/2020 02:56 PM]
08/03/2020	2	Criminal Justice Act electronic voucher created. (Counsel: Mr. Charles Roger Khoury, Jr., Esquire for George A. Pilola) [11775086] (DR) [Entered: 08/03/2020 01:13 PM]
08/03/2020	3	Filed (ECF) notice of appearance of E. Carlos Dominguez (Attorney General of California, 300 S. Spring Street, Suite 1702, Los Angeles, CA 90013) for Appellee Shawn Hatton. Substitution for Attorney Mr. Wyatt Evan Bloomfield for Appellee Shawn Hatton. Date of service: 08/03/2020. (Party was previously proceeding with counsel.) [11775475] [20-55756] (Dominguez, E.) [Entered: 08/03/2020 03:14 PM]
08/03/2020	4	Attorney Wyatt Evan Bloomfield substituted by Attorney E. Carlos Dominguez. [11775690] (RL) [Entered: 08/03/2020 04:20 PM]
09/20/2020	5	Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant George A. Pilola. New requested due date is 10/22/2020. [11830090] [20-55756] (Khoury, Charles) [Entered: 09/20/2020 10:41 PM]
09/21/2020	6	**Streamlined request [5] by Appellant George A. Pilola to extend time to file the brief is approved. Amended briefing schedule: Appellant George A. Pilola opening brief due 10/22/2020. Appellee Shawn Hatton, Warden answering brief due 11/23/2020. The optional reply brief is due 21 days from the date of service of the answering brief.** [11830774] (JN) [Entered: 09/21/2020 12:06 PM]
10/20/2020	7 (4 pg, 59.59 KB)	Filed (ECF) Appellant George A. Pilola Motion to extend time to file Opening brief until 11/23/2020. Date of service: 10/20/2020. [11866263] [20-55756] (Khoury, Charles) [Entered: 10/20/2020 05:10 PM]
10/21/2020	8 (1 pg, 92.13 KB)	Filed clerk order (Deputy Clerk: th): Granting Unopposed Motion [7] (ECF Filing) filed by Appellant to extend time to file opening brief. Appellant George A. Pilola opening brief due 11/23/2020. Appellee Shawn Hatton, Warden answering brief due 12/23/2020. The optional reply brief is due 21 days after service of the answering brief. [11866755] (TH) [Entered: 10/21/2020 10:49 AM]
11/23/2020	9 (4 pg, 61.1 KB)	Filed (ECF) Appellant George A. Pilola Motion to extend time to file Opening brief until 01/07/2021. Date of service: 11/23/2020. [11904344] [20-55756] (Khoury, Charles) [Entered: 11/23/2020 06:33 PM]
11/24/2020	10 (2 pg, 95.11 KB)	Filed clerk order (Deputy Clerk: th): Granting Appellant's Unopposed Late Motion (ECF Filing) for a third extension of time to file opening brief. Appellant's opening brief due 01/07/2021. Appellee's answering brief due 02/08/2021. The optional reply brief is due 21 days after service of the answering brief. The appellant is reminded that a motion for an extension of time to file a brief should be filed at least seven days before the expiration of the time prescribed for filing the brief. 9th Cir. R. 31-2.2(b). [11904880] (TH) [Entered: 11/24/2020 10:43 AM]
01/07/2021	11 (4 pg, 47.15 KB)	Filed (ECF) Appellant George A. Pilola Motion to extend time to file Opening brief until 02/23/2021. Date of service: 01/07/2021. [11956454] [20-55756] (Khoury, Charles) [Entered: 01/07/2021 11:02 PM]
01/19/2021	12 (2 pg, 124.51 KB)	Filed clerk order (Deputy Clerk: TAH): The appellant's late motion (Docket Entry No. [11]) for a fourth extension of time to file the opening brief is granted. The opening brief is due February 23, 2021. Any further request for an extension of time to file this brief is disfavored. The answering brief is due March 25, 2021. The optional reply brief is due within 21 days after service of the answering brief. The appellant is again reminded that a motion for an extension of time to file a brief should be filed at least seven days before the expiration of the time prescribed for filing the brief. See 9th Cir. R. 31-2.2(b). [11968670] (AF) [Entered: 01/19/2021 04:42 PM]
02/28/2021	13 (3 pg, 94.98 KB)	Filed (ECF) Appellant George A. Pilola Motion to extend time to file Opening brief until 03/08/2021. Date of service: 02/28/2021. [12019013] [20-55756] --[COURT UPDATE: Updated docket text to reflect correct ECF filing type. 3/1/2021 by TYL] (Khoury, Charles) [Entered: 02/28/2021 11:01 AM]
03/03/2021	14 (1 pg, 100.56 KB)	Filed clerk order (Deputy Clerk: TAH): The appellant's unopposed motion (Docket Entry No. [13]) for a fifth extension of time to file the opening brief is granted. The opening brief is due March 8, 2021. The answering brief is due April 7, 2021. The optional reply brief is due within 21 days after service of the answering brief. [12022708] (OC) [Entered: 03/03/2021 10:50 AM]
03/06/2021	15 (16 pg, 2.06 MB)	Filed (ECF) Appellant George A. Pilola Motion to take judicial notice of statements of California Supreme Court as to meaning of denial of petition for review. Date of service: 03/06/2021. [12026807] [20-55756] (Khoury, Charles) [Entered: 03/06/2021 08:45 PM]
03/10/2021	16 (3 pg, 45.81 KB)	Filed (ECF) Appellant George A. Pilola Motion to file a late brief. Date of service: 03/10/2021. [12031594] [20-55756] (Khoury, Charles) [Entered: 03/10/2021 09:53 PM]
03/10/2021	17 (62 pg, 241.07 KB)	Submitted (ECF) Opening Brief for review. Submitted by Appellant George A. Pilola. Date of service: 03/10/2021. [12031597] [20-55756]--[COURT UPDATE: attached corrected PDF of opening brief. 03/15/2021 by KT] (Khoury, Charles) [Entered: 03/10/2021 09:57 PM]

03/10/2021	☐ 18 642 pg, 24.92 MB	Submitted (ECF) excerpts of record. Submitted by Appellant George A. Pilola. Date of service: 03/10/2021. [12031599] [20-55756]--[COURT UPDATE: attached corrected PDFs of excerpts of record. 03/15/2021 by KT] (Khoury, Charles) [Entered: 03/10/2021 10:02 PM]
03/22/2021	☐ 19 32 pg, 1.41 MB	Filed (ECF) Appellant George A. Pilola Motion for miscellaneous relief [Motion for Investigative Services]. Date of service: 03/22/2021. [12049999] [20-55756] (Khoury, Charles) [Entered: 03/22/2021 10:22 PM]
04/13/2021	☐ 20 2 pg, 102.44 KB	Filed clerk order (Deputy Clerk: SSR): Appellant's motion (Docket Entry No. [16]) to file the opening brief late is granted. The Clerk will file the opening brief submitted at docket Entry No. [17]. The answering brief is now due May 12, 2021. The optional reply brief is due within 21 days after service of the answering brief. Appellant's motion (Docket Entry No. [15]) for judicial notice, the proposed exhibits included in Docket Entry No. [15], and any responses are referred to the panel that will consider the merits of the appeal. Any discussion of the proposed exhibits in the parties' briefs may be stricken or disregarded if the merits panel denies appellant's motion for judicial notice. [12072072] (OC) [Entered: 04/13/2021 09:12 AM]
04/13/2021	☐ 21 2 pg, 94.93 KB	Filed clerk order: The opening brief [17] submitted by George A. Pilola is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The excerpts of record [18] submitted by George A. Pilola are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12072910] (KT) [Entered: 04/13/2021 02:54 PM]
04/27/2021	☐ 22	Received 3 paper copies of excerpts of record [18] in 5 volume(s) and index volume filed by Appellant George A. Pilola. [12088416] (KWG) [Entered: 04/27/2021 12:06 PM]
04/27/2021	☐ 23	Received 6 paper copies of Opening Brief [17] filed by George A. Pilola. [12088749] (SD) [Entered: 04/27/2021 02:19 PM]
05/03/2021	☐ 24 3 pg, 59.46 KB	Filed (ECF) Appellant George A. Pilola Motion for miscellaneous relief [Motion to Withdraw DKT #19]. Date of service: 05/03/2021. [12100028] [20-55756] (Khoury, Charles) [Entered: 05/03/2021 01:44 PM]
05/03/2021	☐ 25 34 pg, 1.53 MB	Filed (ECF) Appellant George A. Pilola Motion for miscellaneous relief [Motion for an Order to Examine Evidence with volume of exhibits in support and PROPOSED ORDER]. Date of service: 05/03/2021. [12100406] [20-55756] (Khoury, Charles) [Entered: 05/03/2021 03:49 PM]
05/04/2021	☐ 26 5 pg, 14.07 KB	Filed (ECF) Appellee Shawn Hatton Unopposed Motion to extend time to file Answering brief until 07/12/2021. Date of service: 05/04/2021. [12101506] [20-55756] (Dominguez, E.) [Entered: 05/04/2021 12:21 PM]
06/07/2021	☐ 27 2 pg, 124.71 KB	Filed order (Interim Appellate Commissioner): Appellant's motion (Docket Entry No. [24]) to withdraw his application for authorization and payment for investigative services, filed at Docket Entry No. [19], is granted. Appellant's motion (Docket Entry No. [25]) for an order requiring the Los Angeles County Sheriff's Department to produce evidence is referred to the panel that will consider the merits of this case for whatever consideration the panel deems appropriate. Appellee's unopposed motion (Docket Entry No. [26]) for an extension of time to file the answering brief is granted. The answering brief is now due on July 12, 2021, and the optional reply brief is due within 21 days after service of the answering brief. If Connie Gipson and Shawn Hatton are no longer the appropriate appellees in this case, counsel for appellees must notify this court by letter of the appropriate substitute party within 21 days of the filing date of this order. See Fed. R. App. P. 43(c). (Appellate Commissioner) [12135967] (JMR) [Entered: 06/07/2021 01:41 PM]
06/10/2021	☐ 28 2 pg, 99.81 KB	Filed (ECF) Appellee Shawn Hatton response to Court order dated 06/10/2021. Date of service: 06/10/2021. [12140229] [20-55756] (Dominguez, E.) [Entered: 06/10/2021 10:35 AM]
06/10/2021	☐ 29	Appellee Shawn Hatton substituted by Appellee Craig Koenig. [12140281] (RL) [Entered: 06/10/2021 10:51 AM]
06/10/2021	☐ 30	Terminated - Connie Gipson in 20-55756 [12140861] (SLM) [Entered: 06/10/2021 03:01 PM]
07/02/2021	☐ 31 5 pg, 14.34 KB	Filed (ECF) Appellee Craig Koenig Unopposed Motion to extend time to file Answering brief until 08/11/2021. Date of service: 07/02/2021. [12161257] [20-55756] (Dominguez, E.) [Entered: 07/02/2021 09:30 AM]
07/02/2021	☐ 32 1 pg, 92.25 KB	Filed clerk order (Deputy Clerk: LKK): (ECF Filing) filed by Appellee Craig Koenig; Granting Motion [31] (ECF Filing) motion to extend time to file brief filed by Appellee Craig Koenig. Appellee Craig Koenig, Acting Warden answering brief due 08/11/2021. The optional reply brief is due 21 days after service of the answering brief. [12162071] (LKK) [Entered: 07/02/2021 03:09 PM]
07/31/2021	☐ 33 4 pg, 59.43 KB	Filed (ECF) Appellant George A. Pilola Motion for miscellaneous relief [Motion to the Panel for issuance of proposed Order allowing expert to examine evidence in the L.A. County Sheriff's Custody]. Date of service: 07/31/2021. [12188600] [20-55756] (Khoury, Charles) [Entered: 07/31/2021 10:55 PM]

08/04/2021	☐ 34 52 pg, 270.55 KB	Submitted (ECF) Answering Brief for review. Submitted by Appellee Craig Koenig. Date of service: 08/04/2021. [12191635] [20-55756] (Dominguez, E.) [Entered: 08/04/2021 10:23 AM]
08/05/2021	☐ 35 2 pg, 94.47 KB	Filed clerk order: The answering brief [34] submitted by Craig Koenig is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be submitted to the principal office of the Clerk. [12192745] (KT) [Entered: 08/05/2021 09:37 AM]
08/10/2021	☐ 36 4 pg, 59.99 KB	Filed (ECF) Appellant George A. Pilola Motion to stay appellate proceedings. Date of service: 08/10/2021. [12197859] [20-55756] (Khoury, Charles) [Entered: 08/10/2021 10:25 PM]
08/13/2021	☐ 37	Received 6 paper copies of Answering Brief [34] filed by Craig Koenig. [12200671] (SD) [Entered: 08/13/2021 10:14 AM]
08/13/2021	☐ 38 1 pg, 99.08 KB	Filed order (Appellate Commissioner): The court is in receipt of appellant's second motion (Docket Entry No. [33]) for an order requiring the Los Angeles County Sheriff's Department to produce evidence. Appellant is informed that, at Docket Entry No. 27, this request for relief was referred to the panel that will consider the merits of this case for whatever consideration the panel deems appropriate. Appellant's motion to stay appellate proceedings (Docket Entry No. 36) is denied. Principal briefing is complete. The optional reply brief is due August 25, 2021. (Staff Attorney Office) [12201087] (OC) [Entered: 08/13/2021 01:39 PM]
08/25/2021	☐ 39	Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant George A. Pilola. New requested due date is 09/24/2021. [12211891] [20-55756] (Khoury, Charles) [Entered: 08/25/2021 10:03 PM]
08/26/2021	☐ 40	**Streamlined request [39] by Appellant George A. Pilola to extend time to file the brief is approved. Amended briefing schedule: the optional reply brief is due 09/24/2021. [12211952] (JN) [Entered: 08/26/2021 07:41 AM]**
09/21/2021	☐ 41	This case is being considered for an upcoming oral argument calendar in Pasadena Please review the Pasadena sitting dates for January 2022 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file Form 32 **within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions carefully. When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date. If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document**: Correspondence to Court; **Subject**: request for mediation).[12234748]. [20-55756] (KS) [Entered: 09/21/2021 01:31 PM]
09/23/2021	☐ 42	Filed (ECF) notice of appearance of Blythe J. Leszkay (State of California, Department of Justice - Office of the Attorney General, 300 S. Spring St., Ste. 1702, Los Angeles, CA 90013) for Appellee Craig Koenig. Substitution for Attorney Mr. E. Carlos Dominguez, Esquire for Appellee Craig Koenig. Date of service: 09/23/2021. (Party was previously proceeding with counsel.) [12236622] [20-55756] (Leszkay, Blythe) [Entered: 09/23/2021 08:16 AM]
09/23/2021	☐ 43	Attorney E. Carlos Dominguez substituted by Attorney Blythe J. Leszkay. [12236687] (RL) [Entered: 09/23/2021 08:56 AM]
09/23/2021	☐ 44 1 pg, 47.72 KB	Filed (ECF) Attorney Mr. Charles Roger Khoury, Jr., Esquire for Appellant George A. Pilola response to notice for case being considered for oral argument. Date of service: 09/23/2021. [12237353] [20-55756] (Khoury, Charles) [Entered: 09/23/2021 02:31 PM]
09/23/2021	☐ 45 1 pg, 49.26 KB	Filed (ECF) Attorney Mr. Charles Roger Khoury, Jr., Esquire for Appellant George A. Pilola response to notice for case being considered for oral argument. Date of service: 09/23/2021. [12237770] [20-55756] (Khoury, Charles) [Entered: 09/23/2021 05:47 PM]
09/23/2021	☐ 46 14 pg, 87.13 KB	Submitted (ECF) Reply Brief for review. Submitted by Appellant George A. Pilola. Date of service: 09/23/2021. [12237809] [20-55756] (Khoury, Charles) [Entered: 09/23/2021 11:27 PM]
09/24/2021	☐ 47 2 pg, 94.45 KB	Filed clerk order: The reply brief [46] submitted by George A. Pilola is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [12237840] (KT) [Entered: 09/24/2021 08:17 AM]

10/01/2021	48	Received 6 paper copies of Reply Brief [48] filed by George A. Pilola. [12244868] (SD) [Entered: 10/01/2021 11:15 AM]
10/31/2021	49	Notice of Oral Argument on Thursday, January 13, 2022 - 09:00 A.M. - Courtroom 3 - Scheduled Location: Pasadena CA. The hearing time is the local time zone at the scheduled hearing location. View the Oral Argument Calendar for your case here. NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you may have the option to appear in person at the Courthouse or remotely by video. Check here for updates on the status of reopening as the hearing date approaches. At this time, even when in person hearings resume, an election to appear remotely by video will not require a motion, **and any attorney wishing to appear in person must provide proof of vaccination.** The court expects and supports the fact that some attorneys and some judges will continue to appear remotely. If the panel determines that it will hold oral argument in your case, the Clerk's Office will contact you directly at least two weeks before the set argument date to review any requirements for in person appearance or to make any necessary arrangements for remote appearance. Please note however that if you do elect to appear remotely, the court **strongly prefers** video over telephone appearance. Therefore, if you wish to appear remotely by telephone you will need to file a motion requesting permission to do so. Be sure to review the GUIDELINES for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible). If you are the specific attorney or self-represented party who will be arguing, use the **ACKNOWLEDGMENT OF HEARING NOTICE** filing type in CM/ECF no later than 28 days before Thursday, January 13, 2022. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[12273631]. [20-55756] (KS) [Entered: 10/31/2021 06:39 AM]
11/01/2021	50	Filed (ECF) Acknowledgment of hearing notice by Attorney Blythe J. Leszkay for Appellee Craig Koenig. Hearing in Pasadena on 01/13/2022 at 09:00 A.M. (Courtroom: Courtroom 3). Filer sharing argument time: No. (Argument minutes: 10) Appearance in person or by video: I wish to appear by video. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 11/01/2021. [12273705] [20-55756] (Leszkay, Blythe) [Entered: 11/01/2021 07:34 AM]
11/01/2021	51	Filed (ECF) Acknowledgment of hearing notice by Attorney Mr. Charles Roger Khoury, Jr., Esquire for Appellant George A. Pilola. Hearing in Pasadena on 01/13/2022 at 09:00 A.M. (Courtroom: Three). Filer sharing argument time: No. (Argument minutes: 10) Appearance in person or by video: I wish to appear by video. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 11/01/2021. [12274279] [20-55756] (Khoury, Charles) [Entered: 11/01/2021 12:19 PM]
11/01/2021	52 3 pg, 202.45 KB	Authorization for CJA attorney Mr. Charles Roger Khoury, Jr., Esquire for George A. Pilola to travel to Pasadena to attend oral argument on 01/13/2022. See attached letter for details. [12274426] (DR) [Entered: 11/01/2021 01:43 PM]
12/15/2021	53 2 pg, 105.88 KB	Filed clerk order (Deputy Clerk: WL): This court's local rules require an appellant to compile Excerpts of Record that contain "all parts of the record . . . that are relevant and useful to the Court in deciding the appeal." 9th Cir. R. 30-1.1. The appellee must "submit Supplemental Excerpts of Record when submitting the answering brief . . . if the brief refers to documents or portions of documents not included in the initial Excerpts." 9th Cir. R. 30-1.2(b). The parties have not complied with these rules. The Excerpts of Record do not contain numerous documents that are relevant to deciding this appeal, including but not limited to: (1) the California Supreme Court's order on Mr. Pilola's state habeas petition, (2) the California Court of Appeals' order on Mr. Pilola's state habeas petition, (3) Mr. Pilola's state habeas petition(s), and (4) Warden Koenig's answer to the first amended federal habeas petition and any relevant exhibits. Warden Koenig did not supplement the Excerpts of Record despite citing to missing documents. In addition, the current Excerpts of Record appear to contain errors. For instance, Volume 1 of the Excerpts of Record purports to include Mr. Pilola's First Amended Petition for Habeas Corpus, but the document included does not appear to be the operative First Amended Petition filed at docket number 30 in the district court. The parties are ordered to (1) review Ninth Circuit Rule 30-1 in its entirety and (2) meet and confer and submit Supplemental Excerpts of Record that contain all relevant and useful missing documents by no later than 10:00 a.m. on Monday, December 20, 2021. The documents above are some of the most obvious omissions, but should not be interpreted as a comprehensive list of every missing document that may be relevant or useful to the court. It is the parties' responsibility to identify such documents and provide them to the court in Supplemental Excerpts of Record. [12316842] (WL) [Entered: 12/15/2021 01:59 PM]

12/20/2021	☐ 54 4 pg, 147.46 KB	Filed (ECF) Appellee Craig Koenig Unopposed Motion for miscellaneous relief [UNOPPOSED MOTION TO ACCEPT LATE FILING OF JOINT SUPPLEMENTAL EXCERPTS OF RECORD; DECLARATION OF COUNSEL]. Date of service: 12/20/2021. [12321111] [20-55756] (Leszkay, Blythe) [Entered: 12/20/2021 04:11 PM]
12/20/2021	☐ 55 850 pg, 21.39 MB	Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Craig Koenig. Date of service: 12/20/2021. [12321145] [20-55756] (Leszkay, Blythe) [Entered: 12/20/2021 04:22 PM]
12/21/2021	☐ 56	Filed text clerk order (Deputy Clerk: WL): Appellee's unopposed motion to accept the late-filed supplemental excerpts of record (Docket Entry # [54]) is granted. [12322008] (WL) [Entered: 12/21/2021 01:55 PM]
12/22/2021	☐ 57 1 pg, 92.32 KB	Filed clerk order: The supplemental excerpts of record [55] submitted by Craig Koenig are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12322687] (KT) [Entered: 12/22/2021 09:50 AM]
12/23/2021	☐ 58	Received 3 paper copies of joint supplemental excerpts of record [55] in 4 volume(s) and index volume filed by Appellee Craig Koenig. (sent to panel) [12325326] (LA) [Entered: 12/27/2021 03:10 PM]
01/03/2022	☐ 59	Notice of Oral Argument on Thursday, January 13, 2022 - 10:00 A.M. - Courtroom 3 - Scheduled Location: Pasadena CA. The hearing time is the local time zone at the scheduled hearing location. View the Oral Argument Calendar for your case here. NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you may have the option to appear in person at the Courthouse or remotely by video. Check here for updates on the status of reopening as the hearing date approaches. At this time, even when in person hearings resume, an election to appear remotely by video will not require a motion, **and any attorney wishing to appear in person must provide proof of vaccination**. The court expects and supports the fact that some attorneys and some judges will continue to appear remotely. If the panel determines that it will hold oral argument in your case, the Clerk's Office will contact you directly at least two weeks before the set argument date to review any requirements for in person appearance or to make any necessary arrangements for remote appearance. Please note however that if you do elect to appear remotely, the court **strongly prefers** video over telephone appearance. Therefore, if you wish to appear remotely by telephone you will need to file a motion requesting permission to do so. Be sure to review the GUIDELINES for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible). If you are the specific attorney or self-represented party who will be arguing, use the **ACKNOWLEDGMENT OF HEARING NOTICE** filing type in CM/ECF no later than 28 days before Thursday, January 13, 2022. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[12329237]. [20-55756] (KS) [Entered: 01/03/2022 01:38 PM]
01/13/2022	☐ 60	ARGUED AND SUBMITTED TO RICHARD R. CLIFTON, MILAN D. SMITH, JR. and STEPHEN JOSEPH MURPHY, III. [12340022] (DLM) [Entered: 01/13/2022 11:52 AM]
01/14/2022	☐ 61 1 pg, 16.41 MB	Filed Audio recording of oral argument. **Note:** Video recordings of public argument calendars are available on the Court's website, at http://www.ca9.uscourts.gov/media/ [12342064] (DLM) [Entered: 01/14/2022 05:32 PM]
01/26/2022	☐ 62 9 pg, 548.58 KB	FILED MEMORANDUM DISPOSITION (RICHARD R. CLIFTON, MILAN D. SMITH, JR. and STEPHEN JOSEPH MURPHY, III) In light of Davis, which addresses the import of the California Supreme Court's denial of a petition for review under state law, we deny Pilola's motion for judicial notice (Dkt. [15]). We deny without prejudice Pilola's motion for an order allowing his expert to examine the beer bottle (Dkt. [25]). AFFIRMED. FILED AND ENTERED JUDGMENT. [12351445] (JN) [Entered: 01/26/2022 08:24 AM]
01/28/2022	☐ 63 11 pg, 130.08 KB	Filed (ECF) Appellant George A. Pilola Motion for miscellaneous relief [Order LA Sheriff's Lab to Allow Exam of Fingerprints]. Date of service: 01/28/2022. [12354156] [20-55756] (Khoury, Charles) [Entered: 01/28/2022 09:59 AM]
02/09/2022	☐ 64 4 pg, 57 KB	Filed (ECF) Appellant George A. Pilola Motion to extend time to file petition for rehearing until 02/09/2022. Date of service: 02/09/2022. [12365774] [20-55756] (Khoury, Charles) [Entered: 02/09/2022 05:01 PM]

02/10/2022	☐ 65 2 pg, 133.03 KB	Filed order (RICHARD R. CLIFTON, MILAN D. SMITH, JR. and STEPHEN JOSEPH MURPHY, III) George Pilola moves for an order commanding the Los Angeles County Sheriff's Department to produce the beer bottle at issue in this case so that Pilola's expert can examine the fingerprint (Dkt. [63]). The motion is DENIED without prejudice. We cannot consider evidence that was not presented to the state courts, so any additional evidence regarding the beer bottle is not relevant to this appeal. See Cullen v. Pinholster, 563 U.S. 170, 181 (2011) ("[R]eview under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits."). We deny the motion without prejudice so that Pilola can renew his request before an appropriate court. Pilola's unopposed motion for an extension of time to file a petition for rehearing and/or a petition for rehearing en banc (Dkt. [64]) is GRANTED. If Pilola wishes to file a petition for rehearing or petition for rehearing en banc, he must do so no later than March 14, 2022. [12366984] (WL) [Entered: 02/10/2022 04:04 PM]
03/01/2022	☐ 66 8 pg, 190.92 KB	Filed (ECF) Appellant George A. Pilola Motion to stay appellate proceedings. Date of service: 03/01/2022. [12383761] [20-55756] (Khoury, Charles) [Entered: 03/01/2022 09:00 PM]
03/14/2022	☐ 67 1 pg, 95.91 KB	Filed order (RICHARD R. CLIFTON, MILAN D. SMITH, JR. and STEPHEN JOSEPH MURPHY, III) George Pilola's motion to stay appellate proceedings (Dkt. [66]) is DENIED. [12393916] (WL) [Entered: 03/14/2022 01:18 PM]
03/14/2022	☐ 68 17 pg, 798.28 KB	Filed (ECF) Appellant George A. Pilola petition for panel rehearing and petition for rehearing en banc (from 01/26/2022 memorandum). Date of service: 03/14/2022. [12394610] [20-55756] (Khoury, Charles) [Entered: 03/14/2022 10:40 PM]
03/14/2022	☐ 69 7 pg, 128.34 KB	Filed (ECF) Appellant George A. Pilola motion for reconsideration of dispositive Judge Order of 03/14/2022. Date of service: 03/14/2022. [12394613] [20-55756] (Khoury, Charles) [Entered: 03/14/2022 11:23 PM]
04/11/2022	☐ 70 1 pg, 98.93 KB	Filed order (RICHARD R. CLIFTON, MILAN D. SMITH, JR. and STEPHEN JOSEPH MURPHY, III) Pilola's motion for reconsideration (Dkt. [69]) is DENIED. The panel unanimously voted to deny the petition for panel rehearing. Judge M. Smith voted to deny the petition for rehearing en banc, and Judges Clifton and Murphy so recommended. The full court was advised of the petition for rehearing en banc, and no judge requested a vote. Fed. R. App. P. 35. The petitions for rehearing and rehearing en banc are DENIED. [12416879] (WL) [Entered: 04/11/2022 09:29 AM]
04/19/2022	☐ 71 1 pg, 91.89 KB	MANDATE ISSUED.(RRC, MDS and SJM) [12424985] (RL) [Entered: 04/19/2022 08:51 AM]

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