

22A 638

Supreme Court, U.S.
FILED
DEC 30 2022
OFFICE OF THE CLERK

Anthony Dewayne Lee Turner

Prison ID: BJ9612

10626 Schirra Avenue, Unit-104

Mather, California 95655

SUPREME COURT OF THE UNITED STATES

WASHINGTON, DC 20543-0001

ANTHONY DEWAYNE LEE TURNER

NO. 22-15880

Petitioner-Appellant,

D.C. No, 2:21-cv-01160-KJM-DB

Eastern District of California

Sacramento

V.

MOTION FOR CERTIFICATE OF

UNKNOWN

APPEALABILITY

-----/

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

The Antiterrorism and Effective Death Penalty Act (“AEDPA”) provides that, in order to take an appeal from a final order denying habeas corpus, a Certificate of Appealability must be obtained from a circuit justice or from the district court judge. 28 U.S.C. § 2253, subd. (c)(1). In order to obtain a COA, the petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). However, the petitioner need not show that he should prevail on the merits. *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (en banc) [“... [O]bviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor”]. Rather, the petitioner is merely required to make the “modest” showing (*Lambright*, supra, at 1025) that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). As explained by the Ninth Circuit in *Jennings v. Woodford*, 290 F.3d 1006 (9th Cir. 2002), the substantial showing standard required for a COA is “relatively low.” *Id.*, at 1011, citing *Slack*, supra. Hence, a COA must issue if any of the following apply: (1) the issues are debatable among reasonable

jurists; (2) another court could resolve the issues differently; or (3) the questions raised are adequate enough to encourage the petitioner to proceed further. Finally, "The court must resolve doubts about the propriety of a COA in the petitioner's favor." Jennings, supra, citing Lambright, supra, at 1025."

IV. Section IV should be entitled: "ARGUMENTS SUPPORTING ISSUANCE OF COA."

Phrase your arguments in declarative sentences, e.g., "Reasonable Jurists Could Differ as to Whether Counsel was Ineffective." State each of your habeas claims and provide a succinct summary of the facts and law supporting each claim. Then explain how the Magistrate Judge erred in denying each claim.

Keep in mind that showing how the Magistrate Judge erred is very similar to what you should have already done in your Objections. Hence, if you are satisfied with the Objections you have filed, you can simply ask the judge that the Objections be "incorporated by reference" in your COA motion, and/or you can attach the Objections as an exhibit to your motion.

V. CONCLUSION: Again, remind the judge how the COA motion relates to your Objections. For example:

"For the reasons stated herein, should the District Court overrule Petitioner's Objections to the Report and Recommendation and enter an order denying Petitioner's habeas corpus petition and dismissing this case with prejudice, the Court should issue a COA as to the 'Issues on Which a COA is Sought.'"

EXHIBIT-A is the objections to the Eastern District Court denial of certificate of appealability for which are constitutional violations that should have been required for approval. I am sending the exhibit to be reevaluated by the Supreme Court of the United States in order for the correct decision to be made. I am a pro se petitioner without an attorney. I should be granted appointment of counsel in this criminal matter and therefore, I'm requesting appointment of counsel because of the Sixth Amendment right that should be honored by the circuit justice.

DATED: December 30, 2022

Respectfully submitted,

By: 
Anthony Dewayne Lee Turner

22-15880

Anthony Dewayne Lee Turner, #BJ-9612
MCSP - MULE CREEK STATE PRISON
"D" Yard
P.O. Box 409089
Ione, CA 95640

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUL 28 2022

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

ANTHONY DEWAYNE LEE TURNER,

No. 22-15880

Petitioner-Appellant,

D.C. No. 2:21-cv-01160-KJM-DB
Eastern District of California,
Sacramento

v.

UNKNOWN,

ORDER

Respondent-Appellee.

Appellant's motion for an extension of time to file a request for a certificate of appealability (Docket Entry No. 3) is granted. Any request for a certificate of appealability is due by February 3, 2023.

Appellant is advised that Case Nos. 22-15444 and 22-15880 are closed.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Nitzana Alzalde
Deputy Clerk
Ninth Circuit Rule 27-7

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

JUN 09 2022

FILED _____
DOCKETED _____
DATE _____ INITIAL _____

Anthony Dewayne Lee Turner
Mule Creek State Prison
Bldg. # D-18-cell-A-10Z Low
P. O. Box 409089
Tone, CA 95640

Anthony Dewayne Lee Turner | No. 2:21-cv-01160-KJM-DB-P

Appellant

MOTION FOR AN
EXPANDED CERTIFICATE
OF APPEALABILITY

v.

UNKNOWN

Respondent.

The timely notice of appeal must be filed.
See *Latella v. Jackson*, 817 F. 2d 12, 13
(2d Cir. 1987). This request is accompanied
by a copy of the district Court filed May 24, 2022

2

Anthony Dewayne Lee Turner BJ-9612
MULE CREEK STATE PRISON (409089)
PO BOX 409089
IONE, CA 95640

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

ANTHONY DEWAYNE LEE TURNER,

CASE NO: 2:21-CV-01160-KJM-DB

v.

UNKNOWN,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 5/24/2022

Keith Holland
Clerk of Court

ENTERED: May 24, 2022

by: /s/ A. Coll
Deputy Clerk

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
Anthony Dewayne Lee Turner
BJ-9612
MULE CREEK STATE PRISON (409089)
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US

--Case Participants: Magistrate Judge Deborah Barnes (caed_cmecf_db@caed.uscourts.gov), Chief District Judge Kimberly J. Mueller (caed_cmecf_kjm@caed.uscourts.gov)
--Non Case Participants:
--No Notice Sent:
Message-Id: Subject:Activity in Case 2:21-cv-01160-KJM-DB (HC) Turner v. Unknown Judgment.
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U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 5/24/2022 at 9:31 AM PDT and filed on 5/24/2022

Case Name: (HC) Turner v. Unknown
Case Number: 2:21-cv-01160-KJM-DB
Filer:

WARNING: CASE CLOSED on 05/24/2022

Document Number: 15

Docket Text:

JUDGMENT dated *5/24/2022* pursuant to order signed by Chief District Judge Kimberly J. Mueller on 5/23/2022.(Coll, A)

2:21-cv-01160-KJM-DB Notice has been electronically mailed to:

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY DEWAYNE LEE TURNER,
Petitioner,
v.
UNKNOWN,
Respondent.

No. 2:21-cv-1160 KJM DB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 8, 2021, the magistrate judge filed findings and recommendations, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within twenty days. (ECF No. 11.) Petitioner has filed objections to the findings and recommendations. (ECF No. 12.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed November 8, 2021, are adopted in full;
2. The petition for writ of habeas corpus is dismissed without leave to amend; and
3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.

§ 2253.

DATED: May 23, 2022.



CHIEF UNITED STATES DISTRICT JUDGE

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
Message-Id: Subject:Activity in Case 2:21-cv-01160-KJM-DB (HC) Turner v. Unknown . Content-Type:
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U.S. District Court

Eastern District of California – Live System

Notice of Electronic Filing

The following transaction was entered on 5/24/2022 at 9:29 AM PDT and filed on 5/24/2022

Case Name: (HC) Turner v. Unknown
Case Number: 2:21-cv-01160-KJM-DB

Filer:

WARNING: CASE CLOSED on 05/24/2022

Document Number: 14

Docket Text:

ORDER signed by Chief District Judge Kimberly J. Mueller on 5/23/2022 ADOPTING [11] Findings and Recommendations in full, DISMISSING the petition for writ of habeas corpus without leave to amend; and DECLINING to issue the certificate of appealability referenced in 28 U.S.C. § 2253. CASE CLOSED. (Coll, A)

2:21-cv-01160-KJM-DB Notice has been electronically mailed to:

2:21-cv-01160-KJM-DB Electronically filed documents must be served conventionally by the filer to:

Anthony Dewayne Lee Turner
BJ-9612
MULE CREEK STATE PRISON (409089)
PO BOX 409089
IONE, CA 95640

The following document(s) are associated with this transaction:

In civil asset forfeiture action against seized funds, where claimants contended that Government violated their due process rights by failing to bring case to trial within reasonable amount of time, dismissal was not warranted, because no due process violation occurred since claimants' own litigation tactics were notable source of delay, and Government did not use civil discovery to circumvent or compromise claimants' Fifth Amendment rights; where at least one year of delay occurred as result of claimants' various motions to stay, court did not hold that against Government. *United States v. 307,970.00, in U.S. Currency*, 156 F. Supp. 3d 708, 93 Fed. Serv. 3d (Callaghan) 1334 (E.D.N.C. 2016). In preserving defendant's Sixth Amendment right to speedy trial regardless of time limits set forth in Speedy Trial Act court must consider length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. Garza* 502 F. Supp. 537 (S. D. Tex. 1989)

The issues of the United States District Court for the Eastern District of California denied the petitioner's application for a Certificate of Appealability.

Accordingly, the petitioner conditions challenging his sentence and confinement was not properly submitted to Mrs. Deborah Barnes (Magistrate judge), and Mrs. Kimberly J. Mueller (Chief District judge).

Pursuant to the matter of Anthony Dewayne Lee Turner v. Unknown, for Case Number # 2:21-cv-01160-KJM-DB, of the United States District Court for the Eastern District of California for the Judgement IN A CIVIL Case Entered: May 24, 2022.

Petitioner is making a request for a certificate of appealability (see § 322.12[2]) may also be construed as a notice of appeal when it is timely filed and clearly evidences the petitioner's intent to appeal. See 28 USC § 2255 (d).

Exhibit - "A" explains my prior sentence which I have been wrongfully charged.

On January 5, 1984 the court met at 1:45 P.M. in Department #24 in front of the presiding Judge A. Richard Backus. In the following paragraphs of page 2 to the top paragraph of page 3 it states that my sentence is incorrect.

"It is further ordered for the prior conviction suffered as to information no. #66961. he be committed to the state prison of the State of California for a period of five (5) years and said term shall run consecutive to the term heretofore imposed.

It is further ordered as to information no. #64780 that the defendant be denied reinstatement on probation as stated into the record and for violation of sections 664/211 of the penal code he be committed to the state prison of the State of California for the middle term of two (2) years said term shall run consecutive to the term imposed in information no. 66961 (16) months of said term is stayed pending

appeal to become permanent upon completion of the reserved term.

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after entry of the order. Provided, however, that application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order. See 28 USC § 1292 (b).

EXHIBIT

A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF SACRAMENTO

DATE DECEMBER 2 19 83 COURT MET AT 10:00 A.M. DEPARTMENT 24
 PRESENT FOR A. RICHARD BACKUS JUDGE T. LARRY DEPUTY CLERK
D. AGGIO REPORTER L. BAGATTI BAILIFF

PEOPLE OF THE STATE OF CALIFORNIA

VS NO. 66961

ANTHONY D. TURNER

COUNSEL:

JOHN GOLDTHORPE, DDA

JOHN ISNARD, APD

(UNDERLINE COUNSEL PRESENT)

NATURE OF PROCEEDINGS:

VIOL SEC 459 PC
 PRIOR ADMITTED 11/29/83
 JURY TRIAL - FIFTH DAY

The above entitled cause came on this day for further jury deliberation.

At 10:15 a.m., the court was advised that the jury had reached a verdict and at 10:35 a.m., counsel and defendant were present, jury and alternate were present: Counsel stipulated that all members of the jury were present and the clerk need not call roll: After examination by the court, the clerk read the following verdict into the record and asked the jury if this was their verdict, all replied yes:

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

PEOPLE)	CASE NUMBER 66961
)	DEPT. NUMBER 24
VS)	
ANTHONY DUANE TURNER)	VERDICT

The Jury in the above-entitled cause, find the defendant, ANTHONY DUANE TURNER, Guilty of the crime of Burglary in the First Degree, in violation of Section 459 of the Penal Code of the State of California.

DATED: 12/2/83

/s/ JOANNE F. ELLIS
 FOREWOMAN

Neither counsel requested the jury be polled, and the court directed the clerk to record the verdict, so recorded.

The matter is referred to the Probation Office for a report and the matter is continued to January 5, 1984 at 1:45 p.m., Department 24 for hearing on said report and for judgment and sentence. Defendant waived time for judgment and sentence.

The court thanked and excused the jury from further jury service in this matter.

The defendant is remanded.

DEPT. 24

MINUTES

PAGE 125

JOYCE BUSSELL SMITH, CLERK

12/2/83

PEG W. TURNER

BY

T. LARRY

Deputy

113

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF SACRAMENTO

DATE JANUARY 5 19 84 COURT MET AT 1:45 P.M. DEPARTMENT 24
PRESENT HON. A. RICHARD BACKUS JUDGE T. LARRY DEPUTY CLERK
S. REYNOSO REPORTER L. BAGATTI SAILIFF

PEOPLE OF THE STATE OF CALIFORNIA

VS NO. 66961 & 64780

ANTHONY DWYANE TURNER

COUNSEL:
J. GOLDTHORPE, DBA

J. ISNARD, APD

(UNDERLINE COUNSEL PRESENT)

NATURE OF PROCEEDINGS: VIO SEC 459 PC, 1st DEG.
GUILTY VERDICT 12/2/83
ADMIT PRIOR CONV. 11/29/83
Information 66961-PROB HEAR, J&S

VIO SEC 664/211 PC
PROB 5 YEARS ON 2/23/83
ADMIT V.P. 12/20/83
Information 64780-SUPPL PROB HEAR, J&S

The above entitled causes came on this day with the above named deputy district attorney and the defendant, with counsel, being present.

The probation office's report in no. 66961 and the probation office's supplemental narrative as to both informations having been received, read and considered, were ordered filed and there being no legal cause why judgment and sentence should not be pronounced:

It is the order of the court as to information no. 66961 the defendant is statutorily ineligible for probation and probation is denied. It is further ordered that for the violation of Section 459 of the Penal Code in the First Degree, as charged in information no. 66961, he be committed to the state prison of the State of California for the Middle Term of four(4) years.

It is further ordered for the prior conviction suffered as to information no. 66961, he be committed to the state prison of the State of California for a period of five(5) years and said term shall run consecutive to the term heretofore imposed.

It is further ordered as to information no. 64780 that the defendant be denied reinstatement on probation as stated into the record and for violation of Section 664/211 of the Penal Code he be committed to the

PAGE 24

MINUTES
(continued on page 2)

PAGE 166

JOYCE RUSSELL SMITH, CLERK

cc to

ACTION NO

66961 & 64780

By

T. LARRY

DEPUTY

1/5/84

PEO V. TURNER

151

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DATE: JANUARY 5, 1984, COURT MET AT 1:45 P.M. DEPT. 24

TITLE: PEOPLE V TURNER

NATURE OF PROCEEDINGS: JUDGMENT AND SENTENCE

CONTINUATION PAGE 2 of 2

state prison of the State of California for the Middle Term of two(2) years. Said term shall run consecutive to the term imposed in information no. 66961, sixteen(16) months of said term is stayed pending appeal to become permanent upon completion of the unstayed term.

As to informations no. 66961 and 64780, the defendant shall serve an aggregate term of nine(9) years and eight(8) months state prison. The defendant shall receive credit for time served, to-wit: As to information no. 66961 - one hundred forty-four(144) days plus seventy-two(72) days good/work time for a total of two hundred, sixteen (216) days; as to information no. 64780 - three hundred. The total credit for time served as to both informations is five hundred sixteen (516) days.

The court advised defendant of his appeal rights and parole rights.

The defendant is remanded to the custody of the sheriff to be by him delivered to the custody of the superintendent of the California Medical Facility, Vacaville, California for the execution of this judgment.

The court ordered information no. 66961 amended to reflect defendant's middle name as DWYANE and not Duane.

BOOK 24

MINUTES

PAGE 166

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CC 10

ACTION NO 66961 & 64780

JOYCE RUSSELL SMITH, CLERK

BY [Signature] DEPUTY

1/5/84

PEO V TURNER

T. LARRY

152

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IN THE MUNICIPAL COURT, SACRAMENTO MUNICIPAL COURT DISTRICT
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

66961

FELONY ORDER OF MAGISTRATE

THE PEOPLE OF THE STATE OF CALIFORNIA

Docket Number(s) 67378F Amended

vs.

Today's Date 9/15/83

ANTHONY DUANE TURNER

Magistrate GARY E. RANSOM

Defending Attorney and Victim's <u>GOLDTHORPE 561B20</u>	Defendant Attorney <u>PD S. EVANS</u>	Clerk Report <u>S. LARDIE</u>
---	--	----------------------------------

HOLDING ORDER

It appearing to me that the offense(s) set forth below has/have been committed, and that there is sufficient cause to believe the defendant guilty thereof; I order that the defendant be held to answer to same, to-wit:
SEC. 459 PC

The defendant having waived preliminary hearing to the offense(s) set forth in the complaint, I order that the defendant be held to answer to same, to-wit:

FILED
SEP 20 1983

CERTIFICATION ORDER

The defendant having entered a plea of (guilty) (nolo contendere) to a violation of:

with the specific conditions of:

Defendant waives "Harvey rights" re: (restitution) and (sentence aggravation) on dismissed counts:

It is ordered that the case be referred to the Probation Department for a presentence report and certified to the Superior Court for pronouncement of judgment.

JOYCE R. [Signature]
By: [Signature]

RELEASE STATUS

Defendant is released on his/her own recognizance.

Defendant to remain on Cash/Property Bond/Surety Bond \$ _____ in the sum of \$ _____

Defendant is admitted to bail in the sum of \$ 15,000 dollars, and is committed to the Sheriff of the County of Sacramento until he/she gives such bail.

FURTHER APPEARANCES

Defendant to appear in Superior Court Dept # 1 on 9/29/83 at 9 PM 0 o'clock.

D K. NISSBACH
Clerk of the Municipal Court

[Signature]
Magistrate

15
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1 HERB JACKSON
2 DISTRICT ATTORNEY
3 901 G STREET
4 SACRAMENTO, CALIFORNIA
5 Phone: (916) 440-6561

SPD 82-68610

1

DEC 21 1982
J.A. CLARK
BY *[Signature]*
CLERK

ORIGINAL

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10
11 IN AND FOR THE COUNTY OF SACRAMENTO

13 THE PEOPLE OF THE STATE OF CALIFORNIA,) INFORMATION NO. 64780
14 VS)
15 ANTHONY DWAYNE TURNER) In the Superior Court of
16) the County of Sacramento,
17) the 21st day of December,
18) A.D., Nineteen Hundred and
19) Eighty-two
Defendant.)

20 ANTHONY DWAYNE TURNER is accused by the District Attorney of said
21 County of Sacramento, by this information of the crime of violation
22 of section 654/211 of the Penal Code of the State of California
23 committed as follows: That on the 21st day of November, 1982,
24 at and in the County of Sacramento, State of California, the
25 defendant ANTHONY DWAYNE TURNER then and there before the filing
26 of this information, did willfully, unlawfully, and feloniously
27 attempt to commit the crime of Robbery of MARK SLATER, in violation
28 of Section 211 of the Penal Code of the State of California,
29 contrary to the form, force and effect of the Statute in such
30 case made and provided, and against the peace and dignity of the
31 People of the State of California.
32 Subscribed to this 21st day of December, 1982.

34 HERB JACKSON
35 District Attorney of Sacramento
36 County, in the State of California.
37 By *[Signature]*
38 RONALD E. JOHNSON
39 Supervising Deputy District Attorney

40
41 450A11

(1)

Continued Unchecked by: MURKIN @ 4:51 PM - 10/16/2008 3:42:02Z

THURSDAY, JANUARY 5, 1984

The matter of The People of the State of California vs. Anthony D. Turner, Defendant, Case Number 64780 and Case Number 66961, came on regularly for hearing upon this date before the Honorable A. Richard Backus, Judge of the Superior Court of the State of California, in and for the County of Sacramento, Department Number 24 thereof.

The Defendant was personally present, and he was represented by John R. Isnard, Assistant Public Defender, County of Sacramento, State of California.

The People were represented by John Richard Goldthorpe, Deputy District Attorney, County of Sacramento, State of California.

The following proceedings were then had, to wit:

THE COURT: All right. Remain seated, come to order.

The court is now in session.

This is the matter of The People of the State of California vs. Anthony Dwyane Turner, Numbers 64780 and 66961.

The record will reflect that the defendant is personally present, together with his attorney, John Isnard; the People are present, represented by Deputy District Attorney John Goldthorpe.

Anthony Dwyane Turner, is that your true and correct name, sir?

DEFENDANT TURNER: Yes, your Honor.

THE COURT: How do you spell your middle name?

DEFENDANT TURNER: D-w-y-a-n-e.

THE COURT: D --

1 DEFENDANT TURNER: -- w-y-a-n-e.

2 THE COURT: D-w-y-a-n-e?

3 DEFENDANT TURNER: Yes.

4 THE COURT: The record in Case Number 66961 shall be
5 corrected to show the correct spelling of the Defendant's middle
6 name to be D-w-y-a-n-e.

7 All right. These cases are on the calendar this morning for
8 a hearing on the reports of the Probation Officer and for the
9 imposition of judgment and sentence.

10 The record will reflect that in Case Number 66961 the
11 Defendant was found guilty by verdict of the jury on December 2nd,
12 1983, of first degree burglary, violation of Penal Code Section
13 459, committed on August 15th, 1983, and admitted the prior felony
14 conviction charge, within the meaning of Penal Code Section 667
15 and 1192.7(c).

16 The record will further reflect in Case Number 64780
17 Defendant pled guilty on January 24th, 1983, for attempted
18 robbery in violation of Penal Code Section 664/211, committed on
19 November 21st, 1982, and then on February 23rd, 1983, judgment
20 and sentence was suspended in that case, and Defendant was placed
21 on five years probation.

22 On December 20th, 1983, Defendant admitted his violation
23 of probation.

24 Does Defendant waive further formal arraignment for
25 judgment and sentence?

26 MR. ISNARD: So waived.

27 THE COURT: Any legal cause why judgment and sentence should
28 not now be pronounced?

EXHIBIT
B

On January 5, 1984 petitioner was sentenced and at 10:35 a.m., counsel and defendant were present, jury and alternate were present. After examination by the Court, the clerk read the following verdict into the record and asked the jury if this was their verdict, and all replied yes. Guilty of the crime of Burglary in the First Degree in violation of Section 459 of the Penal Code of the State of California. Dated: December 2, 1983, as charged in information no. 66961. United States v. Thompson, 422 F.3d 1285, 1295 (11th Cir., 2005).

There is a substantial allegation of newly discovered evidence from court reporter's transcripts of "present offense (continued)" from number line 2 to 11 of complainant's brother who did not have the chance to testify in favor of the defense on page ~~five~~ (5). The merits of the factual dispute were not resolved in the state hearing. United States v. Sullivan, 112 F.3d 180, 183 (5th Cir., 1997)

The complainant's brother testimony matched the defendant's alibi Eleven (11) years later in the information of the crime of Burglary in violation of 459 of the Penal Code of the State of California. Dated: 1/29/96 as charged in information no. #94FC4029. United States v. Arroyo, 301 F. Supp. 2d 217, 225, 229 (D. Conn. 2004).

(ineffective assistance demonstrated by Counsel's failure to investigate arguable alibi defense that could have been corroborated with substantial evidence);

People v. Mozingo (1983) 34 Cal. 3d 926, 931-934, 196 Cal. Rptr. 212, 671 P.2d 363 (duty to investigate, evaluate, and make informed report on mental defenses despite possible conflict with defendant's denial of guilt);

People v. Pope (1979) 23 Cal. 3d 412, 424-425, 152 Cal. Rptr. 732, 590 P.2d 859 (defense based on defendant's mental deficiency);

People v. Brown (1986) 177 Cal. App. 3d 537, 549-550, 223 Cal. Rptr. 66 (duty of investigation and research includes duty to investigate and pursue possible dispositions by way of plea); Weeden v. Johnson

(9th Cir. 2017) 854 F.3d 1063 (given the exculpatory potential of the psychological evidence, the failure to investigate prejudice the inmate because there was a reasonable probability that the jury would have reached a different result if adequate representation had been afforded; Counsel could not have reasonably concluded

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that obtaining a psychological examination would conflict with his trial strategy without first knowing what such an examination would reveal), *United States v. Quintanilla*, 193 F.3d 1139, 1147 (10th Cir. 1999). An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim -

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of facts in light of the evidence presented in the State court proceeding.

Sanders v. Ratelle, 21 F.3d 1446, 1451 (9th Cir. 1994). See also section 28 U.S.C. § 2254(d).

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STATE OF CALIFORNIA
CHARGE SHEET/REVOCACTION TRACKING/SCHEDULING REQUEST
CDC 1676 (4/91)

REPORT TO: BOARD OF PRISON TERMS
 NARCOTIC ADDICT EVALUATION AUTHORITY

DISTRIBUTION: DEPARTMENT OF COLLECTIONS
ORIGINAL - BOARD REPORT
1ST COPY - I.H.C.
2ND COPY - I.A.
3RD COPY - PAROLEE
4TH COPY - U.S.

13-9-94

CDC NUMBER C79175	NAME (LAST, FIRST, MI) TURNER, ANTHONY	NAME BOOKED AS SAME	RECEIPT UNIT I/SAC METRO I	CITY - ST <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ARREST DATE 3/1/94	ARRESTING AGENCY SAC PD	APT REFERRAL: <input type="checkbox"/> MANDATORY <input checked="" type="checkbox"/> NON-MANDATORY	BOOKING NUMBER AND/OR LOCATION X-REF. 9113	
ARREST CODE B	* ARREST CODES: A PAROLEE STAFF ALONE AB PAROLEE ASSISTED BY LAW ENFORCEMENT AGENCY		B LAW ENFORCEMENT AGENCY ALONE D LAW ENFORCEMENT AGENCY WITH INFORMATION FROM PAROLEE	
HOLD DATE 3/1/94	DISCOVERY DATE 3-1-94	HOLD REMOVED DATE N/A	AGENT OF RECORD DURAN	CONTROLLING DISCHARGE DATE 3/29/96
CHARGES AND CODES 1. Condition 4: Burglary (515) 2. Condition 4: Possession of Drug Paraphernalia (750)			CHARGES AND CODES 3. 4. 5. 6.	
REASON FOR RETAINING PAROLEE HOLD: PAROLEE DANGER TO: <input checked="" type="checkbox"/> ABSCOND <input checked="" type="checkbox"/> SELF <input checked="" type="checkbox"/> PROPERTY-OTHERS <input checked="" type="checkbox"/> SAFETY-OTHERS			DATE COPY SENT TO PAROLEE 3/11/94	INITIALS OF PERSON SENDING D.P.D.

SUPPORTING EVIDENCE

Charge 1. and 2.: On March 1, 1994, approximately 12 19 hours, Subject was arrested by Sacramento County Sheriff's for Burglary, and Possession of Drug Paraphernalia. According to the Sacramento County Sheriff's report #94-016414, Deputy Arndt, Badge #577, J. Mack, Badge #127, responded to the victim's residence, to investigate the above charges. Mr. Van Buren stated the suspect forcibly entered their residence and aggressively confronted his wife. The victim attempted to physically pull the Subject out of his house, but was unable to. Mr. Van Buren then shot the Subject once in the right leg when the Subject continued to progress towards his wife, Mr. Van Buren shot him a second time in the same area. The Subject finally fell to the ground and remained until medical personnel arrived at the scene. While ambulance personnel were tending to the Subject, and cutting away his pants to attend to his wounds, a baby food jar re-configure into a pipe for the smoking of rock cocaine was found in the crotch of his pants. Mr. Van Buren went on to advise the officers, that he shot the Subject in the leg and did not intend to kill him. Subject was subsequently transported to UCD Med. Center and was booked for the above noted charges.

Attachments: Sacramento County Sheriff's Office report #94-016414.

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 Helga Diaz
 Name
 7-23-96
 Date

PAROLEE'S NAME: TURNER, ANTHONY

CDC NUMBER: C79175

PAGE 1 OF 3

Declaration

I, Anthony Dewayne LEE Turner, declares that on March 1, 1994, WHEREAS the incident OCCURRED on 39th and Mascot AVE., Sacramento, California 95824. I was INNOCENCE, WHEREAS the victur statement was "I attacked the person three minutes ago while the victum had shot me in the leg 2 times". I was actually down from the gun shot wounds around about 15 minutes ago in the garage in view of three ambulance paramedics who drove up to the scene and watched me for 15 minutes when the victum said after the 15 minutes passed of the three from what the three paramedics said "You could not shot him 3 minutes ago because we all three been watching him for the last 15 minutes." Then the police also stated the victums just shot me three minutes ago.

The paramedics asked who moved the defendant from out of the kitchen while he was wounded was against policy and without permission and that the paramedics ~~will~~ will write the report the way thier report would state the above hereto of the incident to the U.C. Davis Hospital luetinant about this incident report, and declaration being the truth of the actual event of the incident.

" 1 "

I WENT to talk to the victims parents and told her she knew that I was invited over to her daughter's house and that she knew about our plans in the 1983 burglary. Her daughter, myself, boyfriend and brother all meet at 6:00 (pm) on that day in 1983 in front of the house and knew that I was coming through the back yard window that same night at 12:00 midnight.

I certify that all the above declaration hereto is a true and correct copy of what happened on the dates of both incidences and would testify to it in court when called upon to do so, Executed this NOVEMBER 7, 2019.

Anthony Dewayne LEE Turner
Anthony Dewayne Lee Turner

26
1/28/83

Court No.: 66961
CII No.: A06744645
FBI No.: D006395W7
Soc. Sec. No.: 568-15-8724
Drivers License No.: ID X3788579
Booking Agency & No.: SO 239074
Probation No.: A97,158

PERSONAL HISTORY

(Mr.)
Name: ~~(Mr.)~~ ANTHONY D. TURNER AKA _____

Age: 21 DOB: 3/8/62 Birthplace: Sacramento, CA

Address: 5811 - 39th Street, Sacramento, CA Phone: 392-0255

Ht.: 5'8" Wt.: 155 Eyes: brown Hair: black Race: Black

Resides with: Parents Parent & Step-Parent Spouse Friend
Self Other

Father: Dennie Turner (telephone: 422-6166) 95831 Address: 7141 Reichmuth Way, Sacto., CA

Mother: Bonnie Nabors Address: (same as defendant)

Wife Husband	NAME	DATE OF MARRIAGE	STATUS	CHILDREN & AGES
n/a				
Previous marriage				
Previous marriage				
Previous marriage				

Total No. of marriages: none Total No. of Children: one

Closest Other Living Relative or Friend: n/a Address: _____

Child support through: Paying Delinquent Amt. per month: _____

Source of Income: Rec. none Amt. per month: _____

Military branch: none Rank: _____ Ser. No.: _____

Date of service: _____ to _____ Discharge: _____ Verified: _____

Level of school: 11th HIGHEST GRADE Advanced schooling: _____ HIGHEST LEVEL AND WHERE

Occupational or Professional skills: labor

EMPLOYER	ADDRESS	OCCUPATION	MONTHLY EARNINGS	DATES
All American Homes	Sacto., CA	Advert	\$325.00	6/83-8/83
Shasta Linen Co.	Sacto., CA	machine opr.	?	10/82-11/82

A/12, A/12 4/11

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Helena D/19
Name

7-23-96
Date

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Name: Helene Diaz
Date: 7-23-96

I. PRESENT OFFENSE:

Case #66961:

1 On August 15, 1983, the defendant, Anthony Dwayne
2 Turner, was arrested by the Sacramento Sheriff's Department
3 and charged with violation of Section 459 of the Penal Code
4 (Burglary). Information regarding this matter has been
5 secured from Sacramento Sheriff's Department report #83-58143
6 and from preliminary transcript dated September 15, 1983,
7 as presented in Department D of the Sacramento County Municipal
8 Court.

9
10 On August 14, 1983 at approximately 12:11 a.m., police re-
11 ceived a call and ^{were} dispatched to a residence within the County
12 regarding a subject, identified as the defendant, Anthony
13 Turner, being held in the residence at gunpoint by complainant's
14 boyfriend.

15 Upon arrival, officers met with the complainant
16 who stated that the defendant, known to her as Anthony Turner,
17 had broken into her residence and that her boyfriend was
18 chasing him on foot. She stated there was no gun involved
19 and as far as she knew, the defendant was nude.

20 Shortly thereafter, officers located the complainant's
21 boyfriend who stated that the suspect was last seen running
22 across a field toward some duplexes.

23 Continuing with the search for the defendant,
24 officers observed a male adult, matching the physical description,
25 walking out of the grassy area west of the Fruitridge Community
26 Center. Officers noted that he was wearing a light blue long-

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PROSECUTOR
SACRAMENTO COUNTY
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Name: Helga Diaz
Date: 7-23-96

1 I. PRESENT OFFENSE (continued):
2 sleeved shirt and that the shirt was unbuttoned. The
3 subject was in the process of buttoning the shirt as he continued
4 to walk southbound and disappeared from sight. Officers were again
5 contacted by the complainant who stated that she observed the
6 defendant return to his mother's house and pointed it out to
7 officers.

8 Officers responded to the house designated as that
9 of the defendant's mother and heard movements within. The
10 defendant's mother answered the door and stated that the
11 defendant was in fact her son and was asleep in his bedroom.
12 Advised that he was a suspect in a burglary, she invited
13 officers into the residence and directed them to his bedroom.
14 Officers observed wet footprints on the hallway carpet leading
15 to the defendant's bedroom. Entering the bedroom, officers
16 recognized the defendant as the same subject as seen earlier.
17 The blue shirt and pants were on the floor next to his bed.
18 The defendant was in bed, pretending to be asleep, covered by
19 a sheet.

20 Pulling the sheet from the defendant, it was noted
21 that he was sweating profusely. The defendant was told to
22 get up and was placed under arrest for burglary. His clothes
23 were recovered as evidence.

24 In talking with the victim's boyfriend, he stated
25 to officers that he and his girlfriend went to bed at about
26 10:00 p.m. He was awakened by the sound of curtains rustling.

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Helen Dia
Name

1-23-96
Date

1 I. PRESENT OFFENSE (continued):

2 Looking up in the direction of the window, he saw someone

3 standing at the end of the bed. The subject was totally naked.

4 As soon as the subject realized that he had been seen, he

5 went down on the floor, on his belly, to hide. He hid on

6 the floor between the bed and the window. He then stated that

7 he got up and turned on a light, at which point the subject

8 got up and jumped or crawled through the open window, still

9 naked. He stated that he went after him, calling out to the

10 complaintant's brother, who was sleeping in another room, for

11 assistance. However, he slept through the entire ordeal. He

12 also yelled for his girlfriend to call the police.

13 He stated that he followed the defendant into a yard

14 at the corner where his clothes were in a stack. He told them

15 that police had been called and he reportedly stated, "Wait,

16 don't turn me in; don't call the police. Let me go, man."

17 He stated they had this exchange of words as he was dressing.

18 The defendant then ran, jumped over the fence and he lost

19 sight of him.

20 The complaintant stated essentially the same when

21 questioned by police. She stated that she was awakened with

22 her boyfriend standing at the foot of the bed pointing to the

23 floor next to her. He was stating, "Get up man; are you

24 crazy or something?" She looked down on the floor and saw

25 the defendant, whom she recognized. She stated that she

26 responded with "What the hell are you doing here?" at which

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PROBATION OFFICER
SACRAMENTO COUNTY
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Name: Helma D'Ag
Date: 1-28-96

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I. PRESENT OFFENSE (continued):

point her boyfriend told her to call the police and she ran into the next room. She stated when she returned to the bedroom, both were gone.

Officers determined that entry was made through a sliding glass window on the north wall of the bedroom. The screen was located on the ground outside.

After the defendant was taken into custody, he was escorted to a patrol car, at which point he was viewed by both victims who positively identified him as the suspect. As they were leaving the area, the defendant reportedly turned to the officer and asked if a pair of shoes had been found in the victim's residence. When asked if he wanted to make a statement upon being advised of his rights, he stated, "What the use, Cynthia won't go through with this anyway." No further statement was obtained from the defendant.

During the preliminary transcript, the victim's boyfriend testified that when he asked the defendant his purpose for being in the house, he made a gesture indicating some type of sexual motive. The victim testified that she had known the defendant since she was approximately 13 or 14 years of age, inasmuch as he was friends with her younger brother. She denied ever having any social contact with him.

District Attorney's Statement:

District Attorney John Goldthorpe had no further information to add when contacted regarding the trial. He stated

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7-23-86
Date

Helena Diaz
Name

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I. PRESENT OFFENSE (continued):

the Jury reached a verdict quickly and evidence presented indicated a sexual motivation for defendant's breaking into the victim's home.

Public Defender's Statement:

Public Defender, John Isnard, was contacted regarding the Jury trial and indicated he had nothing further to add. He did state, however, that the defendant was arraigned on December 20, 1983 for his violation of probation. He entered a plea of guilty and the matter has been continued until January 5, 1983.

Co-Defendants:

None.

Case #64780 (Violation of Probation):

On February 23, 1983, in Department 1 of the Sacramento County Superior Court, Anthony Dewayne Turner was granted five years formal probation following his conviction for violation of Section 664/211 of the Penal Code (Attempted Robbery) as alleged in the Information. Among the special conditions of probation stipulated, the defendant was ordered to serve 300 days in the Sacramento County Jail, participate in a drug abuse program, not use, handle, or have in his possession, marijuana, narcotics or dangerous drugs unless prescribed, and make restitution in the amount of ten dollars.

Thereafter, while probation was in full force and effect, on December 12, 1983, violation of probation was filed alleging that contrary to the conditions of probation, the

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Name: Helene D. G. Date: 7-23-96

1 I. PRESENT OFFENSE (continued):
2 defendant violated his probation inasmuch as on December 2,
3 1983, he was convicted of violation of Section 459 of the Penal
4 Code by Department 24 of the Superior Court.

5 On December 20, 1983, the defendant appeared in
6 Department 24 of the Sacramento County Superior Court and
7 admitted to the violation of probation as alleged. The matter
8 was thereupon referred to the probation officer for a supple-
9 mental report, returnable January 5, 1984 at 1:45 p.m. The
10 defendant was remanded.

11 Summary of the violation, to wit the new offense,
12 is previously covered in the Present Offense section.
13

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17 II. DEFENDANT'S STATEMENT:

18 The defendant was interviewed at the Sacramento
19 County Branch Center on December 15, 1983. At that time he
20 stated that his attorney advised him to not discuss the
21 matter; however, he stated that he was not guilty of the
22 offense. He stated he was arrested for something he did not do
23 and does not know why the victim stated he was there. Later
24 he stated that he actually was there that night, but that he
25 had been invited.
26

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Name: Helena D. [unclear]
Date: 7-28-96

1 II. DEFENDANT'S STATEMENT (continued):

2 The defendant stated that he had just been released
3 from jail in June of this year, having completed a jail
4 sentence on another matter. At the time he had been residing
5 with his mother and working for All American Homes. He states
6 that he expects he will be sentenced to prison as a result
7 of the present matter. In reviewing his arrest and conviction
8 record, the defendant states that most of the arrests are
9 not true and were do to "harrassment". Other than selling
10 marijuana at times when he was short of money for food, he
11 indicates that he has not done anything "really wrong".

12 Officer's Comment:

13 The defendant's statements are in conflict with
14 those of the victim and her boyfriend. In view of the
15 defendant's position, he expressed no remorse or regret,
16 other than to indicate that his bouts with the law have been
17 due to harrassment for the most part. The defendant at this
18 point appears to be taking no responsibility for his own
19 behavior.

23 III. CRIMINAL RECORD:

24 Prior Convictions:

25 Sacramento County Juvenile Probation file #J-68,464
26 reflects the following adjudications:

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Helena D. D. 19
Name

7-23-96
Date

1 III. CRIMINAL RECORD (continued):

2 June 5, 1978, Vehicle Theft/Receiving Stolen

3 Property/Driving Without A License, Sacramento Sheriff's Dept.:

4 Officers observed a vehicle on Sacramento Blvd. at 10:40 p.m.
5 A vehicle check was run and it was determined the car had been
6 reported stolen. The defendant was identified as the driver.
7 Regarding the driving without a licence charges, in January
8 of 1978, a vehicle stop was effected for no tail lights. The
9 minor did not have a driver's license in his possession.
10 During a pat search for weapons, the defendant attempted to
11 jerk away and it was necessary to use force. Disposition:

12 On August 9, 1978, vehicle theft, misdemeanor, sustained;
13 disturbing the peace, misdemeanor, sustained; remaining counts
14 dismissed on motion of the District Attorney. Minor declared
15 a ward home; ten days Juvenile Court Work Project; restitution
16 of \$55.00. Five days of Juvenile Court Work Project later
17 converted to community service.

18 September 11, 1979, Burglary/Receiving Stolen

19 Property, Sacramento Police Dept.: Officers observed a vehicle
20 at 21st and Franklin at approximately 3:30 a.m. They attempted
21 to affect a vehicle stop for a code violation, but the driver
22 failed to yield and sped away. After a short pursuit, the
23 three occupants jumped from the vehicle attempting to escape.
24 The defendant was pursued and taken into custody. A check
25 of the vehicle turned up several stereo speakers, stereo
26 equipment, shoes, cameras, jewelry, binoculars, television set,

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Helena Diaz
Name
7-28-86
Date

1 III. CRIMINAL RECORD (continued):
2 and miscellaneous items which had been taken from a residential
3 burglary that morning. Disposition: On October 11, 1979,
4 the defendant admitted to receiving stolen property, deemed
5 a misdemeanor. The matter was continued for final disposition;
6 minor released from detention to custody of mother under home
7 supervision. On October 25, 1979, minor continued a ward,
8 and committed to the Sacramento County Boys' Ranch for a period
9 not to exceed one year. Terminated from wardship February 29,
10 1980.

11 Adult Record - Prior Convictions:
12 California CII report #A06744645 and Sacramento
13 County Probation file #A93,692 reflects the following arrests
14 with conviction for the defendant.

15 May 14, 1980, 459 P.C., Sacramento County Sheriff's
16 Dept.: Information requested not yet received. Disposition:
17 On May 19, 1980, the defendant pled guilty to misdemeanor
18 burglary, and was ordered to serve 30 days County Jail.

19 June 22, 1980, Disorderly Conduct/Petty Theft,
20 Sacramento County Sheriff's Dept.: Information requested not
21 yet received. Disposition: On June 25, 1980, docket #42072M,
22 defendant pled guilty to violation of Section 10852 V.C.
23 (Tampering With A Vehicle), and was ordered to serve five days
24 jail. Remaining charges were dismissed.

25 March 24, 1981, Vehicle Theft, Sacramento Police Dept.
26 Details requested not yet received. Disposition: On March 26,

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Name: Helms, D. A.
Date: 7-23-86

1 III. CRIMINAL RECORD (continued):

2 1981, docket #52177M, the defendant was convicted of tampering with a
3 vehicle and ordered to serve 20 days County Jail.

4 February 23, 1983, 211 P.C., Sacramento Police Dept.: Per
5 information in California State Police report #82-16174, victim attacked by
6 three subjects, approximately 1:30 a.m., location of 7th and L Streets, Hofbrau
7 Bar. Victim thrown to ground, assaulted while they attempted to get his wallet
8 from his right rear pocket. Victim yelled for help and nearby security guards
9 responded. Subjects ran but one, the defendant, was recognized by one of the
10 security guards who gave chase. The defendant was apprehended shortly there-
11 after by CSP officer who responded to the radio broadcast. Defendant admitted
12 involvement in offense. Disposition: Defendant pled guilty to 664/211 P.C.,
13 and on 2/22/83 was granted five years probation, 300 days County Jail, search
14 and seizure, no drugs, restitution of \$10.00. Violation filed 12/12/83.
15 Defendant admitted 12/20/83, matter continued until 1/5/84, at 1:45 p.m. in
16 Department 24.

17 Subsequent Convictions:

18 None.

19 Prior Arrests:

20 March 24, 1982, 266 P.C., Sacramento Police Dept.: Per Informa-
21 tion report #82-18835, defendant was identified as being responsible for a
22 15-year-old female's involvement in prostitution. The arrest was made at 10th
23 and L Streets. Disposition: On April 16, 1982, docket #60226F, was dismissed.

24 May 9, 1982, 12020 P.C., Sacramento County Sheriff's Dept.: Per
25 Information report #82-27262, two female minors flagged an officer stating
26 that the defendant was bothering them. During the investigation, officers

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Name: Helina Diaz
Date: 7-23-86

1 III. CRIMINAL RECORD (continued):
2 asked the defendant if he had a weapon. A search of his person revealed a
3 knife with a 7-inch blade hidden in the waistband of his trousers. The arrest
4 occurred at 7th and L Streets. Disposition: On June 30, 1982, docket
5 #66143M, was dismissed.
6 July 28, 1982, 211 P.C., Sacramento Police Dept.: Per Information
7 and SPD Offense Report #82-44408, defendant grabbed victim from behind and
8 attempted to steal his wallet. When the victim turned and confronted the
9 defendant, defendant produced a knife and threatened him. This offense
10 occurred in the vicinity of 8th and J Streets. Disposition: On August 23,
11 1982, docket #62042F was dismissed.
12 September 4, 1982, Conspiracy/Possession of Marijuana For Sale,
13 Sacramento Police Dept.: Per Information in report #82-52684, defendant was
14 observed in an alley of 7th and L Streets, pouring what appeared to be mari-
15 juana into another subject's bag. Officers confronted the two, and the
16 second subject indicated he was trying to obtain some marijuana from the
17 defendant. Disposition: Defendant detained and released; no complaint filed
18 October 10, 1982, 11359 and 11355 H&S Code, Sacramento
19 Police Dept.: Per Information #82-59982, the defendant was identified as
20 the subject attempting to sell marijuana to another waiting for a bus at the
21 Greyhound Depot. At the time of his arrest, the defendant has in his posses-
22 sion 12 suspected hand-rolled marijuana cigarettes. Disposition:
23 On November 4, 1982, docket #63063F was dismissed.
24 November 20, 1981, Resisting Arrest, 148 P.C., Sacra-
25 mento Police Dept.: Officers attempted to stop the defendant
26 as he was a possible suspect in a 211 P.C. offense. Defendant

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Name: Helin, Dia
Date: 7-23-86

1 III. CRIMINAL RECORD (continued):
2 attempted to run. A search of the defendant revealed the
3 victim's wallet. Disposition: Charges dismissed as the victim
4 declined prosecution.

5 Subsequent Arrests:
6 None.

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10 IV. THE VICTIM:
11 Attempts to reach the victim have proved unsuccessful.
12 She has not responded to written inquiries. Attempts to reach
13 her by telephone have likewise proved unsuccessful inasmuch as
14 the number is no longer in service. Police records indicate that
15 the victim is unemployed.

16 In reviewing the offense reports, there appears to be
17 no damages or financial loss.

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21 V. SOCIAL HISTORY:
22 Education:
23 The defendant indicates that he last attended the
24 11th grade before dropping out in 1978. He has had no further
25 formal education. While incarcerated at the Sacramento County
26 Boys Ranch in 1980, the defendant was considered a "model

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Name: H. L. ...
Date: 7-28-86

1 V. SOCIAL HISTORY (continued):
2 student" by one of his instructors. At that time he had a
3 math level of 5.3 and was reading at a 6.8 grade level.
4 Employment:
5 The defendant indicates that at the time of his
6 arrest he was employed by All American Homes doing advertisement
7 work. He states that he began this employment in June of 1983
8 and earned a monthly salary of approximately \$225.00.
9 This officer was unable to verify this employment.
10 The defendant had no names or phone numbers, and there was no
11 listing in the local telephone book. Additionally, in reviewing
12 probation records in case #64780, there is no indication that
13 the defendant was in fact employed.
14 Family Situation:
15 The defendant states that at the time of his arrest
16 he was residing with his mother at 5811 - 39th Street,
17 Sacramento. Born and raised in Sacramento, the defendant is
18 the 7th of nine children born to his mother, Bonnie Nabors.
19 The defendant's father, Dennie Turner, also resides in
20 Sacramento.
21 Records indicate that the defendant began coming to
22 the attention of the authorities at age 12. He had difficulty
23 within the school setting; attendance was poor and his general
24 attitude was negative. However, it was noted that within an
25 institutional setting the defendant showed definite progress.
26 There is indication that he responded favorably to male guidance.

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PROBATION OFFICER
SACRAMENTO COUNTY
CALIFORNIA

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Name: Helma Diaz
Date: 7-28-86

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V. SOCIAL HISTORY (continued):

The defendant indicates that he has never married, but does have a one-year-old daughter as a result of a relationship with a Ms. Davis. He is not providing support at this time.

The defendant expressed no particular plans for the future, anticipating a prison commitment.

The defendant's mother was contacted by telephone on December 20, 1983. She verified her son's residence and described the defendant as a "good boy, helpful, kind-hearted, and willing to help others." She indicated that she is confused regarding the offense and does not feel her son did it. Explaining that her son is good friends with the victim's brother, she feels he was probably looking for him at the time, especially as nothing was taken or damaged. She admits his lack of clothing is puzzling.

Agency and/or Collateral Contacts:

Psychological/Psychiatric/Medical:

The defendant states he is in good health and denies any medical problems.

Probation Department:

Juvenile Probation Records indicate that the defendant was formally terminated from wardship on February 29, 1980. Records indicate that he was committed to the Sacramento County Boys' Ranch on October 25, 1979, and completed in excess of four months. While at the ranch, his behavior was determined

ROBERT E. KILGROD
PROBATION OFFICER
SACRAMENTO COUNTY
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Name: Helena Diaz Date: 7-28-96

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V. SOCIAL HISTORY (continued):

above average, he was well liked among other wards, and experienced few difficulties in getting along with the staff. His performance in school was good, and he participated in an ROP Program in construction. He was viewed as a capable worker.

At that time, both staff and the defendant's mother expressed much optimism for his success in the future.

In reviewing Juvenile Probation Records, it is noted that the defendant consistently did well within an institutional setting, but fell short of his verbalized goals once returned to the community.

The defendant most recently has been supervised by Vern Moore, Drug Intensive Unit, as a result of his grant of probation for violation of Section 664/211 P.C. As a condition of probation, he was ordered to serve 300 days in jail, which was completed in June of 1983. He was first seen by the probation officer on July 1, 1983. Thereafter the defendant reported regularly up until just prior to his arrest. Records indicate that although he was heavily marked with injection sites, he would not admit to the use of controlled substances, although he had previously admitted to the use of amphetamines. Records contained within case #A-93,692 indicate that a check of the defendant's arms revealed recent scabs on July 1, 1983, July 5, 1983, and July 12, 1983, reflecting recent drug involvement. Scabbing was again observed when the defendant

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FBI - FILM OFFICER
SACRAMENTO COUNTY
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Date: 7-23-96

1 V. SOCIAL HISTORY (continued):

2 was checked on August 12, 1983.

3 As a result of the present matter, a violation of
4 probation was filed, the defendant has admitted, and the matter
5 continued until January 5, 1984 for sentencing.

8 VI. CONTROLLED SUBSTANCES:

9 The defendant admits to occasional indulgences in
10 alcoholic beverages, adding that he often drinks to excess at
11 those times. The defendant also admits that he smokes
12 marijuana on occasion, and has previously admitted to injecting
13 amphetamines.

17 VII. ANALYSIS:

18 Rule 414: Criteria Affecting Probation

19 (a) (Probation Eligibility) The defendant is
20 ineligible for probation unless the Court deems the matter an
21 unusual case, pursuant to Section 462. P.C.

22 (b) (Danger to Others) The defendant's continuous
23 involvement in criminal matters, indicates he presents
24 a potential threat to others.

25 (c) (1) (Description of Crime) The defendant has
26 been found guilty by jury trial of 1st degree burglary. The

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VII. ANALYSIS (continued):

defendant was discovered naked in the bedroom of the victim's home and thereafter fled when confronted by her boyfriend. He was arrested a short time thereafter at his mother's residence.

(c) (2) (Vulnerability) The victim was vulnerable inasmuch as she was asleep in her home. She incurred no harm or loss as a result of the offense.

(c) (3) (Weapon) Not applicable.

(c) (4) (Injury) Not applicable.

(c) (5) (Participation) The defendant was alone when he committed the offense.

(c) (6) (Unusual Circumstances) Not applicable.

(c) (7) (Sophistication) The defendant's behavior was representative of brashness as well as criminal sophistication. The defendant entered the victim's bedroom by removing the screen and proceeding through an unlocked window. He was confronted by the girlfriend's boyfriend; thereafter, fleeing nude out the same window.

(c) (8) (Position of Trust) Not applicable.

(d) (1) (Record) The defendant's involvement in criminal matters dates back to 1974 when he first came to the attention of juvenile authorities. Thereafter, the defendant was committed to the Sacramento County Boys' Ranch for receiving stolen property. Terminated from wardship at the age of 18, the defendant continued to come to the attention of law

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Date 7-28-96

Name

1 VII. ANALYSIS (continued):
 2 enforcement and was recently granted formal probation following
 3 his conviction for attempted robbery. With the commission of
 4 this offense, the defendant is demonstrating continued and
 5 serious criminal conduct.

6 (d) (2) (Probation/Parole Performance) The defendant's
 7 adjustment under juvenile probation was good as long as he was
 8 within an institutional setting. That rapidly deteriorated
 9 once returned to the community. The defendant's present per-
 10 formance on adult probation has been unsatisfactory.

11 (d) (3) (Compliance to Probation) The defendant
 12 anticipates a prison commitment and did not discuss probation.

13 (d) (4) (Personal Data) The defendant is 21 years
 14 of age, and has not completed his high school education.
 15 He is in good health and continues to reside with
 16 his mother, locally.

17 (d) (5) (Financial and Military) Although the
 18 defendant stated to this officer he was employed, there has
 19 been no verification. In fact, records indicate to the
 20 contrary. The defendant has not served in the military and
 21 is presently devoid of funds.

22 (d) (6) (Substance Abuse) The defendant admits when
 23 he indulges in alcohol he often abuses same. He has admitted
 24 to injecting amphetamines in the past and records indicate
 25 continued signs of usage.
 26

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PROBATION OFFICER
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1 VII. ANALYSIS (continued):

2 (d)(7) (Effect of Imprisonment or Local Incarceration)

3 Inasmuch as the defendant is unemployed and is not supporting

4 his child, a period of incarceration should not adversely

5 affect others.

6 (d)(8) (Effect of Felony) An additional felony could

7 adversely effect defendant's future.

8 (d)(9) (Remorse) The defendant was found guilty by

9 jury trial and continues to maintain his innocence.

10 (d)(10) (Refusal/Restitution) Not applicable.

11

12 Rule 416: Criteria Affecting Probation in Unusual Cases

13 No unusual circumstances were found to apply.

14

15 Rule 421: Circumstances in Aggravation

16 (a)(3) (Vulnerability) The victim is particularly

17 vulnerable inasmuch as she had retired for the evening and was

18 sound asleep when victim entered the residence and thereafter

19 was discovered nude in her bedroom.

20 (a)(4) (Multiple Victims) The offense involved

21 multiple victims; besides the female victim, her boyfriend was

22 also asleep in the room and her brother was asleep in an adjoining

23 bedroom.

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1 VII. ANALYSIS (continued):

2 (b) (2) (Prior Adjudications) The defendant's prior
3 convictions, including juvenile matters, are numerous and of
4 increasing seriousness.

5 (b) (4) (On Probation or Parole) The defendant was
6 on probation when he committed the offense.

7 (b) (5) (Unsatisfactory Probation or Parole Performance)
8 The defendant's performance on probation has been deemed
9 unsatisfactory.

10
11 Rule 423: Circumstances in Mitigation

12 No circumstances in mitigation were found.

13 Rule 425: Criteria Affecting Concurrent or Consecutive

14 Sentencing

15 (a) (1) (Crimes Independent of Each Other) The
16 offenses as represented in case #64780, and #66961, were inde-
17 pendent of each other; two separate acts of violence. In
18 case #64780, victim was knocked to the ground and incurred
19 some bruising.

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23 VIII. PROBATION OFFICER'S CONCLUSIONS:

24 The defendant is ineligible for probation unless the
25 Court deemed the matter an unusual case pursuant to Section 462
26 of the Penal Code. It is recommended that the defendant be

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Name
7-23-96
Date

VIII. PROBATION OFFICER'S CONCLUSIONS (continued):

denied probation and committed to State Prison, as there are no factors that would constitute this to be an unusual case.

The defendant has an increasingly serious criminal record, including a commitment to the Sacramento County Boys Ranch followed by an adult conviction for attempted robbery. The defendant maintains his innocence, and in fact, declares that most of his prior involvements with law enforcement have been "harrassment". The defendant has clearly demonstrated an inability to successfully adjust under probation supervision, and as such constitutes a threat, and for the safety and protection of others should be removed from the community.

In recommending prison, it is recommended that the defendant be committed to the high term of six years. The offense involved multiple victims who were particularly vulnerable inasmuch as they were asleep at the time of the offense. Finally, the defendant was on probation for attempted robbery when he committed the offense, and his adjustment to probation was considered poor.

It is further recommended in case #64780 that the defendant be denied further probation and committed to State Prison. The defendant has clearly indicated by his behavior that he cannot, or will not, adjust within the community level. The defendant re-offended within three months of his having been released from the County Jail after serving a 300 day commitment. Therefore, it is recommended the defendant be

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PROBATION OFFICER
SACRAMENTO COUNTY
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Name Helena Diaz Date 7-28-96

1 VIII. PROBATION OFFICER'S CONCLUSIONS (continued):
 2 committed to the mid-term, and that said term be served
 3 consecutively to case #66961 inasmuch as the matters were
 4 separated by time and place, and involved separate victims.
 5 Therefore, it is recommended that the defendant be
 6 committed to State Prison for a total of six (6) years and
 7 eight (8) months.

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Date: 1-23-86

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IX. RECOMMENDATION:

Case #66961:

Therefore, it is respectfully recommended that the defendant be committed to State Prison for a term of six (6) years.

Case #64780:

Therefore, it is respectfully recommended that the defendant be committed to State Prison for a term of eight (8) months, and that said time be served consecutive to any time given in case #66961.

Respectfully submitted,

ROBERT E. KELDGORD
CHIEF PROBATION OFFICER

Gail Spruce
GAIL SPRUCE
DEPUTY PROBATION OFFICER

APPROVED: *Michael J. Elorduy*
MICHAEL J. ELORDUY, SUPERVISING PROBATION OFFICER

GS:mck
Attachments
12/23/83

ROBERT E. KELDGORD
PROBATION OFFICER
SACRAMENTO COUNTY
CALIFORNIA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE & TIME: JANUARY 7, 2020
JUDGE : ERNEST W. SWTELLE
REPORTER : NONE

DEPT. NO.: 34
CLERK : D. AGUILERA
BAILIFF : NONE

IN RE THE MATTER OF:

ANTHONY TURNER
ON HABEAS CORPUS

CASE NO.: 19HC00672

NATURE OF PROCEEDINGS: PETITION FOR WRIT OF HABEAS CORPUS - ORDER

Petitioner has filed the instant habeas corpus petition with this court, to challenge his convictions in Sacramento County Superior Court Case Nos. 64780 and 66961. He claims incompetency of counsel in failing to investigate and present evidence and failing to raise all legal issues.

Penal Code § 1473 requires an unlawful restraint of liberty resulting from the judgments before habeas corpus relief may be sought. Petitioner, however, appears to no longer be in any type of restraint due to his judgments in Case Nos. 64780 and 66961, as petitioner was sentenced to an aggregate 9 years 8 months in state prison for those two cases on January 5, 1984. More than twenty years have passed since he would have been released from both prison and parole as a result of those cases.

As petitioner is no longer in the custody or constructive custody of the State of California as a result of the judgments in Case Nos. 64780 and 66961, the instant petition must be denied (People v. Villa (2009) 45 Cal.4th 1063).

DATED: JANUARY 7, 2020

ERNEST W. SAWTELLE

JUDGE ERNEST W. SAWTELLE
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

DECLARATION OF MAILING

I hereby certify that I am not a party to the within action, and that I deposited a copy of this document in sealed envelopes with first class postage prepaid addressed to each party or the attorney of record in the U.S. Mail at 700 Ninth Street, Sacramento, California.

ANTHONY TURNER BJ9612
SAN QUENTIN STATE PRISON
SAN QUENTIN, CA 94974

DISTRICT ATTORNEY'S OFFICE SENT VIA INTER-OFFICE MAIL

JTI UNIT

Dated: JANUARY 7, 2020

Superior Court of California
County of Sacramento

By: D. Aguilera
Deputy Clerk

PAGE :
DATE : JANUARY 7, 2020
CASE NO. : 19HC00672
CASE TITLE: IN RE ANTHONY TURNER

SACRAMENTO COURTS

BY D. AGUILERA, Deputy

L

I, Anthony Dewayne Lee Turner declares that all the above is true and correct to the best of my knowledge. Executed this 31st day of May 2022 at Mule Creek State Prison in Yone, California.

DATED:

Respectfully Submitted,

Anthony Dewayne Lee Turner

Anthony Dewayne Lee Turner
In Pro Per