
APPENDIX A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

FILED
San Diego Superior Court

AUG 01 2017

Clerk of the Superior Court
By S. Anderson

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

IN RE THE PETITION OF:

ELROY WILLIAM ROBINSON,
Petitioner.

HSC 11618
SCS 266818

ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS

UPON REVIEW OF THE PETITION FOR WRIT OF HABEAS CORPUS AND THE COURT
FILE IN THE ABOVE-REFERENCED CASE, THE COURT FINDS:

On April 16, 2014, petitioner pled guilty to [REDACTED]
[REDACTED]. On July 2,
2014, the court sentenced petitioner to a total term of 30 years in state prison. Petitioner is
currently incarcerated at Centinela State Prison located in Imperial, California.

On June 28, 2017, petitioner filed in this court the instant petition for writ of habeas
corpus.

Petitioner claims he "was illegally detained beyond the 48 hours limit – from arrest to
arraignment. My due process rights was violated." (Petn., ¶ 6.) This does not constitute grounds
for habeas relief because he waived this issue by failing to bring a motion pursuant to Penal Code
section 995 on that ground. (*In re Sandel* (1966) 64 Cal.2d 412, 413; fn. 1.)

Petitioner also claims "the court was prejudice toward" him. As instances of this
"prejudice," petitioner mentions comments made (1) by the judge who denied his motion to
suppress his confession and (2) by the judge who sentenced him.

1 To the extent petitioner claims this court erred by denying his motion to suppress his
2 confession, he waived that issue when he entered a guilty plea. (*People v. Kaanehe* (1977) 19
3 Cal.3d 1, 9 [“Other than search and seizure issues which are specifically made reviewable by
4 section 1538.5, subdivision (m), all errors arising prior to entry of a guilty plea are waived, except
5 those which question the jurisdiction or legality of the proceedings resulting in the plea.”]; see
6 also, Plea Agreement, ¶ 8 [I give up my right to appeal ... denial of my 1538.5 motion”])

7 To the extent petition claims the sentence was improper, petitioner “g[a]ve up [his] right
8 to appeal ... any sentence stipulated herein.” (Plea Agreement, ¶ 8.) The plea agreement included
9 a “stipulated range of 24 to 30 years to be determined by sentencing court.” (*Id.*, ¶ 2.)

10 Based on the above, the petition is DENIED because it fails to state a prima facie claim
11 for relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.)

12 A copy of this Order shall be served upon petitioner.

13 IT IS SO ORDERED.

14 DATED: 7/31/2017


ANA L. ESPANA
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> NORTH COUNTY DIVISION, JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92081 <input checked="" type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		<small>FOR COURT USE ONLY</small> FILED San Diego Superior Court AUG 01 2017 Clerk of the Superior Court By <u>S. Anderson</u>
PLAINTIFF(S)/PETITIONER(S) in the matter of the application of ELROY W. ROBINSON petition for writ of H. C.	JUDGE: ANA L. ESPANA I DEPT:	
DEFENDANT(S)/RESPONDENT(S)	CASE NUMBER HSC11618	
CLERK'S CERTIFICATE OF SERVICE BY MAIL		

I certify that I am not a party to the above-entitled cause, that I placed a copy of the following document(s): ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

in a sealed envelope addressed to the parties shown with postage prepaid, and deposited it in the United States mail at
 Chula Vista El Cajon San Diego Vista, California.

NAME & ADDRESS

NAME & ADDRESS

Elroy W. Robinson AU0346
Centinela State Prison D-3-2-7L
P O. Box 931
Imperial, CA 92251

Clerk of the Superior Court

Date: August 1, 2017

by S. Anderson, Deputy
S. Anderson, Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
San Diego Superior Court

OCT 24 2017

Clerk of the Superior Court
By S. Anderson

**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

IN THE MATTER OF THE APPLICATION OF:)

ELROY WILLIAM ROBINSON,
Petitioner.

) HSC 11618 – Second Petition
) SCS 266818

) ORDER DENYING PETITION FOR
) WRIT OF HABEAS CORPUS

AFTER REVIEWING THE PETITION FOR WRIT OF HABEAS CORPUS AND THE COURT FILE IN THE ABOVE-REFERENCED MATTER, THE COURT FINDS:

On April 16, 2014, petitioner pled guilty to three counts of forcible lewd act upon a child (Pen. Code, § 288(b)(1)) and three counts of lewd act upon a child (*id.*, § 288(a)). On July 2, 2014, the court sentenced petitioner to a total term of 30 years in state prison.

On June 28, 2017 petitioner filed a petition for writ of habeas corpus with this court. Petitioner complained that he was unlawfully detained beyond 48 hours between arrest and arraignment and that the judge who denied his motion to suppress and the sentencing judge were biased against him. The petition was denied on July 31, 2017.

On September 14, 2017 petitioner filed this second petition for writ of habeas corpus. Petitioner now argues that he received ineffective assistance of counsel from his appointed attorney because she failed to file a motion challenging his unlawful

1 detention prior to arraignment. He also argues his retained counsel was ineffective for
2 failing to file a motion to suppress his confession and coercing him to enter a guilty plea.

3 The petition is denied.

4 Petitioner's claims constitute an improper piecemeal attack on his conviction.
5 Unless a petitioner can justify the filing of numerous habeas corpus petitions, the
6 reviewing court may summarily deny the current petition in its entirety. (*In re Clark*
7 (1993) 5 Cal.4th 750, 767-775.) A petitioner "is not permitted to try out his contentions
8 piecemeal by successive proceedings attacking the validity of the judgment against
9 him." (*Id.*, at p. 768, quoting *In re Connor* (1940) 16 Cal.2d 701, 705.)

10 Here, petitioner filed his first petition a few months before the current petition.
11 The claims he raised in the original petition are connected to the claims currently before
12 the court and should have been raised in the first petition. Petitioner does not set forth
13 any justification for his failure to raise these claims in his prior petition, but rather seems
14 to be responding to the court's order denying his first petition with these additional
15 claims. Because petitioner did not raise these claims in his first petition his current
16 petition may be summarily denied.

17 Even if the court were to review the claims on their merits, petitioner would not be
18 entitled to relief.

19 In reviewing a petition for writ of habeas corpus, the court presumes the
20 regularity of proceedings that resulted in a final judgment. (*Ex parte Bell* (1942) 19
21 Cal.2d 488, 500.) Every petitioner, even one filing in pro per, must set forth a *prima*
22 *facie* statement of facts that would entitle him to habeas corpus relief. (*In re Bower*
23 (1985) 38 Cal.3d 865, 872; *In re Hochberg* (1970) 2 Cal.3d 870, 875 fn 4.) The
24 petitioner then bears the burden of proving the facts upon which he bases his claim for
25 relief. (*In re Riddle* (1962) 57 Cal.2d 848, 852.) Vague or conclusory allegations do not
26 warrant habeas relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) The petition should
27 include copies of "reasonably available documentary evidence in support of claims . . ."

(*Id.*)

28 With regard to claims of ineffective assistance of counsel, petitioner's assertions

1 must be corroborated independently by objective evidence. (*In re Alvernaz* (1992) 2
2 Cal.4th 924, 933.) Petitioner's unsubstantiated, self-serving statements do not provide a
3 sufficient basis upon which to prove his claims. (*Id.* at 945.)

4 Here, petitioner claims appointed counsel failed to file a Penal Code § 995
5 motion challenging his incarceration before arraignment. He also claims retained
6 counsel did not fully inform him of the consequences of his guilty plea and misled him
7 about the ability to challenge the ruling on his motion to suppress after entering a guilty
8 plea.

9 In order for a convicted defendant to establish that counsel's assistance was so
10 defective as to require reversal of a conviction, the defendant must show: (1) that
11 counsel committed error so serious that his attorney was not functioning as the
12 "counsel" guaranteed by the Sixth Amendment, and (2) that the deficient performance
13 prejudiced the defense. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 [80 L.Ed.2d
14 674, 693]; *People v. Ledesma* (1987) 43 Cal.3d 171, 216.)

15 A reviewing court must apply the first of these prongs "deferentially" since there
16 is a strong presumption that counsel's conduct falls within the "wide range of reasonable
17 professional assistance." (*Strickland, supra*, 466 U.S. at p. 689 [80 L.Ed.2d at p. 694];
18 *Ledesma, supra*, 43 Cal.3d at p. 216). The second prong of prejudice must be
19 "affirmatively proved." (*Ledesma, supra*, 43 Cal.3d at p. 217.) To prove prejudice,
20 defendants must establish the "reasonable probability that but for counsel's
21 unprofessional errors, the result of the proceeding would be different. A reasonable
22 probability is a probability sufficient to undermine confidence in the outcome."
(*Strickland, supra*, 466 U.S. at p. 694 [80 L.Ed.2d at p. 698].)

23 Here, petitioner has not set forth sufficient facts to support his claims, nor has he
24 supported his claims with objective evidence or documentation.

25 He has not shown that his pre-arraignment detention was unlawful such that
26 failure to challenge it was prejudicial. Even if it was unlawful, he was not guaranteed
27 relief. (See *People v. Lee* (1970) 3 Cal. App. 3d 514, 533.)

28 Petitioner has also failed to show that his attorney coerced him into pleading

1 guilty and misrepresented the circumstances regarding his motion to suppress the
2 confession. There is no documentation or evidence to show that counsel
3 misrepresented to petitioner the consequences of his guilty plea and this caused
4 petitioner to plead guilty. There is nothing to support his claim that counsel said he
5 would challenge the motion ruling after petitioner entered his plea. As indicated above,
6 petitioner's unsubstantiated, self-serving statements are not sufficient basis prove his
7 claims.

8 Pursuant to the foregoing, the petition is denied¹.

9 A copy of this Order shall be served upon petitioner.

10 IT IS SO ORDERED.

11 DATE: 10/23/2017


ANA ESPANA

JUDGE OF THE SUPERIOR COURT

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¹ The court notes that while this petition was pending review in this court, petitioner submitted a notice of appeal on the underlying case. The notice was untimely and was received, but not filed by the court and is not being processed.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> NORTH COUNTY DIVISION, JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92081 <input checked="" type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		FOR COURT USE ONLY FILED San Diego Superior Court OCT 24 2017 Clerk of the Superior Court By <u>S. Anderson</u>
PLAINTIFF(S)/PETITIONER(S) in the matter of the application of Elroy W. Robinson for Writ of Habeas Corpus	JUDGE: ANA ESPANA DEPT:	
DEFENDANT(S)/RESPONDENT(S)	CASE NUMBER HSC11618(Second Petition SCS266818	
CLERK'S CERTIFICATE OF SERVICE BY MAIL		

I certify that I am not a party to the above-entitled cause, that I placed a copy of the following document(s):
ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS(2nd Petition)

in a sealed envelope addressed to the parties shown with postage prepaid, and deposited it in the United States mail at
 Chula Vista El Cajon San Diego Vista, California.

NAME & ADDRESS

Elroy W. Robinson AU-0346
Centinela State Prison D3-207L
P O Box 931
Imperial, CA 92251

NAME & ADDRESS

Clerk of the Superior Court

Date: October 24, 2017

by S. Anderson, Deputy
S. Anderson, Deputy

APPENDIX B

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal
Fourth Appellate District
FILED ELECTRONICALLY
12/28/17
Kevin J. Lane, Clerk
By: Jonathan Newton

In re ELROY WILLIAM ROBINSON

D073267

on

(San Diego County
Super. Ct. Nos. SCS266818 &
HSC11618)

Habeas Corpus.

THE COURT:

The petition for writ of habeas corpus has been read and considered by Justices Benke, Nares, and Irion.

In 2014, petitioner Elroy William Robinson pleaded guilty to three counts of forcible lewd act upon a child and three counts of lewd act upon a child. The court sentenced petitioner to a total term of 30 years in prison.

In his writ petition, Robinson now claims his counsel was ineffective by failing to fully investigate the circumstances of his confession, resulting in a denial of a motion to suppress that confession. He asserts that his counsel failed to raise the violation of Penal Code section 825, which requires an arraignment to occur within 48 hours of arrest. Finally, he also contends his counsel was ineffective by failing to fully apprise him of the consequences of his guilty plea.

To establish ineffective assistance of counsel, Robinson must demonstrate deficient performance and prejudice under an objective standard of reasonable probability of an adverse effect on the outcome. (*People v. Waidla* (2000) 22 Cal.4th 690, 718.) A petitioner seeking habeas corpus relief bears a heavy burden to plead and prove sufficient grounds for relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) "At the pleading stage, the petition must state a prima facie case for relief. To that end, the petition 'should both (i) state fully and with particularity the facts on which relief is sought [citations], as well as (ii) include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations.'" (*In re Martinez* (2009) 46 Cal.4th 945, 955-956.) Conclusory allegations made without any explanation of their factual bases are insufficient to state a prima facie case or warrant an evidentiary hearing. (*People v. Duvall, supra*, at p. 474.)

In regard to his claim involving the motion to suppress his confession, Robinson provides no documentary evidence to support his claims beyond a copy of the motion to suppress his confession filed by counsel and the district attorney's opposition. Likewise, he provides no explanation of the precise evidence his counsel would have discovered to support his motion to suppress that was not already included in the filed motion. To establish ineffective assistance of counsel for failure to investigate potential evidence, a petitioner "must establish the nature and relevance of the evidence that counsel failed to present or discover." (*People v. Williams* (1988) 44 Cal.3d 883, 937.) Robinson provides no explanation of any evidence his counsel should have found that, if added to the motion to suppress, would more likely than not have resulted in a different outcome.

Regarding his claim regarding Penal Code section 825, Robinson again provides no evidence regarding the timing of his arrest or arraignment. Even assuming his arraignment was delayed and Penal Code section 825 applies, he is entitled to relief only upon a showing of prejudice. (*People v. Valenzuela* (1978) 86 Cal.App.3d 427, 432.) Robinson makes no such showing.

Finally, Robinson provides no documentary evidence regarding the entry of his guilty plea or the advice given by counsel. He does not provide a copy of his change of plea form or the reporter's transcript of the entry of his plea, both of which would provide some detail regarding the advice given by counsel and the court's determination of whether the plea was entered voluntarily and knowingly. A petitioner's assertion that he would not have pleaded guilty if he received effective representation is not sufficient to establish prejudice; there must be some objective showing. (See, e.g., *In re Vargas* (2000) 83 Cal.App.4th 1125, 1140.) Again, Robinson makes no such showing here.

The petition is denied.

BENKE, Acting P. J.

Copies to: All parties

APPENDIX C

SUPREME COURT
FILED

AUG 15 2018

Jorge Navarrete Clerk

S248559

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ELROY WILLIAM ROBINSON on Habeas Corpus.

The petition for writ of habeas corpus is denied.

CANTIL-SAKAUYE
Chief Justice