

Habeas denial

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		<small>Reserved for Clerk's File Stamp</small> CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles OCT 05 2018 Sherri R. Carter, Executive Officer/Clerk By <u>Kathleen Neal</u> Deputy
COURTHOUSE ADDRESS: 11701 S. La Cienega Blvd. Los Angeles, CA 90045		
PLAINTIFF/PETITIONER: PEOPLE OF THE STATE OF CALIFORNIA		
DEFENDANT/RESPONDENT: Joseph Hunt		
CLERK'S CERTIFICATE OF MAILING		CASE NUMBER: A090435

I, SHERRI R. CARTER, Executive Officer/Clerk of the Superior Court of California, County of Los Angeles, do hereby certify that I am not a party to the cause herein, and that on this date the following:

- Order / Document entitled _____ filed _____
(Document Title) (Date)
- Order on Petition for Writ of Habeas Corpus filed 10/5/18
(Date)
- Other: Minute Order of 10/5/18 re protective order filed _____
(Document Title) (Date)

was served upon each party or counsel named below by depositing in the United States mail at the courthouse in the city of Los Angeles, County of Los Angeles, State of California, one copy of the original document in a separate sealed envelope to each address as shown below with postage thereon fully prepaid, in accordance with standard court practices.

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SHERRI R. CARTER, Executive Officer/Clerk

Dated: 10/10/18

By: Kathleen Neal
 Deputy Clerk

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 10/10/18

CASE NO. A090435

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: JOE HUNT

COUNT 01: 187(A) PC FEL

ON 10/05/18 AT 1000 AM IN WEST DISTRICT DEPT W70

CASE CALLED FOR COURT CONSIDERATION

PARTIES: H. JAY FORD III (JUDGE) KATHLEEN NEAL (CLERK)
 NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

CHAMBERS RULING RE PETITIONER'S MOTION FOR A PROTECTIVE ORDER:

THE COURT, HAVING CONSIDERED THE PETITIONER'S MOTION FOR A
PROTECTIVE ORDER ET. AL FILED SEPTEMBER 17, 2018 DENIES ALL THE
MOTIONS CONTAINED THEREIN WITHOUT A HEARING.

THE CLERK IS TO GIVE NOTICE.

NEXT SCHEDULED EVENT:

PROCEEDINGS TERMINATED

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 05 2018

Sherri R. Carter, Executive Officer/Clerk
By Kathleen Neal Deputy

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA) Case No. A090435
)
Plaintiff and Respondent,) ORDER SUMMARILY DENYING
) HABEAS CORPUS PETITION
v.)
)
JOSEPH HUNT,) (Cal. Rules of Court 4.551(g))
Defendant and Petitioner,)
)

IN CHAMBERS

Petition for Writ of Habeas Corpus by JOSEPH HUNT, *pro se* ("Petitioner"). No appearance by a Respondent. DENIED.

The Court has read and considered the Petition for Writ of Habeas Corpus filed by Petitioner on January 30, 2017, the Respondent's informal response filed August 10, 2018, and Petitioner's reply filed September 17, 2018. Petitioner asserts two grounds. First, Petitioner asserts that because the amendment to Penal Code 1473(b) changed the standard by which the court evaluates new evidence submitted in a post judgment petition for habeas corpus he is now entitled to a new hearing on the same evidence submitted with his prior petition which was denied on July 12, 1996. In addition, Petitioner asserts that false evidence was used at his trial.

The Petition is summarily denied for the following reasons:

1 Assuming the facts alleged in the petition are true, Petitioner fails to allege facts
2 establishing a *prima facie* case for habeas relief. (*In re Figueroa* (2018) 4 Cal.5th 576, 587
3 citing *People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) (“Because a petition for a writ of habeas
4 corpus seeks to collaterally attack a presumptively final criminal judgment, the petitioner bears a
5 heavy burden initially to plead sufficient grounds for relief, and then later to prove them.”
6 [Citations.] To reach this conclusion, the court has independently considered the factual
7 allegations of the petition and, assuming those allegations are true, concludes that the petitioner
8 has failed to present a prima facia case for relief in any respect.
9

10 Preliminarily, to the extent Petitioner’s claim is based on “new evidence” under Penal
11 Code 1473(b)(3)(A), Petitioner has failed to show this evidence is “new.” New evidence is
12 defined as “evidence that has been *discovered after trial* that could not have been discovered
13 before trial by exercise of due diligence...” Penal Code §14739(b)(3)(B) (Emphasis added).
14 For the reasons noted by the People in their informal response, the petition is summarily denied
15 on this procedural ground.
16

17 Regardless, the court has considered the proffered allegations and evidence contained in
18 the petition and finds that the allegations of new evidence, even if true, are *not* of such decisive
19 force and value that it would have more likely than not changed the outcome of the trial. In this
20 regard the court has considered the entire record in this case including the testimony of the so
21 called “sighting witnesses” submitted as exhibits to the Petition together with the lengthy
22 summary of facts recited in the Court of Appeal’s opinion filed on November 3, 1993 (B029402;
23 copy attached as Ex 1 to Peoples informal response), and the factual findings made by the trial
24 court in its Order Denying Writ of Habeas Corpus filed July 12, 1996. (copy attached as ex. A to
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1 the petition.) As acknowledged by Petitioner, he is essentially seeking a rehearing of his petition
2 that was denied in 1996 based on the legislature's adoption of a new standard for reviewing
3 petitions claiming discovery of new evidence. The court notes the extensive evidence of the
4 Petitioner's guilt in the record. The court further notes the extensive factual findings previously
5 made by the court regarding the credibility, and lack thereof, of most of the Petitioner's new
6 evidence. What is important for Petitioner to appreciate is that in summarily denying his
7 petition, this court is accepting as true the factual allegations of his petition, namely that certain
8 witnesses would testify that they believed they saw Ron Levin after he was murdered. But when
9 the court makes a preliminary assessment of whether Petitioner has stated a prima facie claim,
10 this court is entitled to consider the entire record in this case, including the evidence and factual
11 findings previously made by the court in its prior order denying the petition.
12

13 The mere fact that the legal standard for reviewing a portion of Petitioner's petition for
14 habeas corpus has changed does not mandate the issuance of a new order to show cause in this
15 case. In this regard, Petitioner's reliance on *Rodgers v. Richmond* (1961) 365 U.S. 534 is
16 misplaced. The focus in *Rodgers* was the Federal court's role in reviewing the state court's
17 admission of a confession at trial where the state court applied the incorrect standard to the
18 admissibility of that confession. More to the point here, the *Rodgers*' court noted that its opinion
19 does not address "[A] situation in which the record—taking all of the petitioner's evidence, and
20 the inferences reasonably to be drawn from it, in the light most favorable to him, nevertheless fails
21 to make out a claim of coercion" (*id.*, 365 U.S. at n.5, emphasis added.) When the Court of
22 Appeal issued an order to show cause on the petitioner's first petition it did not have the benefit
23 of the record made after an evidentiary hearing regarding the sufficiency of the Petitioner's "new
24 evidence." This court now has such a record and can conduct its own independent review of the
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1 petition based, in part, on that record. The California Supreme Court has endorsed such reliance
2 on the prior record when considering renewed petitions for habeas corpus where the second
3 petition was based on the same facts as a prior petition and the court has already conducted an
4 evidentiary hearing of those facts, assessed the credibility of witnesses, and made factual
5 findings. *See e.g. In re Hardy* (2007) 41 Cal.4th 977, 991. Here, given the unique procedural
6 history and record of this case, and this court's independent review of the new petition, the court
7 finds that the present petition fails to allege a prima facie claim. Indeed, like the court in *Hardy*,
8 the court finds issuing an Order to Show Cause and holding another evidentiary hearing would
9 be futile, notwithstanding the change in the legal standard by which the sufficiency of the
10 petition is measured.


12 Regarding Petitioner's claim of false evidence used at trial, the court finds the Petition is
13 untimely, and Petitioner fails to explain and justify the significant delay in seeking habeas corpus
14 relief. (*In re Burdan* (2008) 169 Cal.App.4th 18, 30-31; *In re Clark* (1993) 5 Cal.4th 750, 765;
15 *In re Swan* (1949) 34 Cal.2d 300, 302.) "Substantial delay is measured from the time the
16 petitioner or his or her counsel knew, or reasonably should have known, of the information
17 offered in support of the claim and the legal basis for the claim." (*In re Robbins* (1998) 18
18 Cal.4th 770, 780.) Further, the petition appears to raise issues which were raised and rejected on
19 appeal and Petitioner has failed to allege facts establishing an exception to the rule barring
20 habeas consideration of claims that were or could have been raised on appeal. (*In re Harris*
21 (1993) 5 Cal.4th 813, 825; *In re Waltreus* (1965) 62 Cal.2d 218, 225.)

23 For all of the foregoing reasons, the Petition for Writ of Habeas Corpus is DENIED.

25 The Clerk is ordered to serve a copy of this memorandum upon Petitioner, and upon the
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1 District Attorney's Habeas Corpus Litigation Team, 320 West Temple Street, Room 540, Los
2 Angeles, California 90012.

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4 Dated: 10-5-18



H. Jay Ford III
Judge of the Superior Court

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