

Declaration of JAMIE LATTERI

I, JAMIE LATTERI hereby declare the following:

1. I am the mother of Nathan Medina
2. I am the same person that Dirk Manoukian and Kathryn Cooperrider his secretary refer to in the defendant's response to petition of Writ of Mandate Case # 111357-0
3. The complete file from Contra Costa Superior Court docket # 5-080656-2 has never been turned over to me from the office of Dirk Manoukian. Only parts of it has.
4. Dirk Manoukian has also refused to turn the "Medina file" as he refers to it in his letter dated July 12, 2011 to myself and/or attorneys Nolan Armstrong and Albert Turnbaugh even though Nathan had requested him to do so in writing.
5. On or about July 8, 2011 Kathryn Cooperrider secretary to Mr. Manoukian informed me that Mr. Manoukian hadn't decided what he was going to do with the file and that he would get back to us.
6. On or about July 12 Kathryn Cooperrider informed me Mr. Manoukian wasn't turning it over without a court order.
7. On August 31, 2011 a petition for writ of mandate was filed on Nathan Medina's behalf.
8. Dirk Manoukian's office was served on September 2, 2011 but due to a miss communication on my part the proof of service was not filed with the court until September 23, 2011.
9. On November 21, 2011 Dirk Manoukian's office responded to the petition of Writ of Mandate that they had previously turned over the file to Nathan and myself.
10. On the same day November 21, 2011 Judge Diana Becton filed an Order Denying Petition For Writ of Mandate stating that the respondent, Dirk Manoukian had responded that they had turned the file over so the petition has no merit.

11. Nathan delivered an appeal to prison officials on January 22, 2012 but the Contra Costa County's Clerks office declined to file the notice of appeal because it was two days late.
12. I along with Nathan filed a State Bar complaint regarding Dirk Manoukian's office refusing to turn over Nathan's complete file. Dirk Manoukian's office then claimed they sent the balance of the file to me on August 16, 2010 in a one pound federal express box. Along with the box was a letter stating what they sent which in no way included the complete file and defiantly did not include any audio or video tapes, CDs, or recording of any kind.
13. In July of 2011 Dirk's office wasn't sure what they were going to do about turning over the file but in 2012 they tell the State Bar that the complete file was turned over to me in a one pound Federal Express box on August 16, 2010.
14. I have made numerous attempts to get copies of the Interview tapes/CDs and 911 calls made on March 20, 2008 from the Walnut Creek Police Department, the Contra Costa District Attorney's office and Dirk Manoukian's office. I also tried to pay for these items through the DA's office and was told they couldn't sell them to me. I met with an attorney that works at the DA's office in April of 2012 and was told again that these items could not be sold to us. That I would have to get a court order and or an attorney to get them.
15. Jody at The Walnut Creek Police Department on or about July 26, 2012 confirmed to me they had all that I asked for except the 911 tapes. However she checked with the city attorney and reported to me that I would have to get a court order or a subpoena to receive them. They were served a subpoena on October 9, 2012. They returned a reply that they had given all of their original tapes/CDs to the District Attorney's office and the DA's office had not returned them so they did not have them to provide. They also said the District Attorney's office informed them that they had turned over copy's to Dirk Manoukian who at one time was Nathan's defense attorney.
16. On October 9, 2012 the District attorney's office was served a subpoena, they never responded to it. I went to the District Attorney's office to find

out why they had not honored the subpoena. Paul Mulkan an investigator from the DA's office said it was not honored because the case was over. I tried again to purchase copy's but they said they couldn't help me. This is the same answer I had received months before when I had called to find out how to obtain a copy of the tapes, CDs and the 911 calls. I was told to consult an attorney.

17. I checked with the clerk's office the day after the items were to be turned over to them and continued to check with them for about a three week period after the due date. They continued to tell me they had had no response from anyone regarding the subpoena's. They also told me that the subpoenaed party should get back to me or Nathan directly like the Walnut Creek Department had done.
18. Dirk Manoukian's office never responded to the subpoena. Same as they refused to turn over Nathan's complete file to Nathan and or myself or to the other attorneys when requested in writing by Nathan. Then lied and said they had turned over everything when they were questioned by the State Bar.

I declare the forgoing facts to be true and correct subject to penalty of perjury under the laws of the state of California except as to those matters stated on information and belief and as those matters I believe them to be true.

Executed this 11th day of December 2012, in Martinez, California.


JAMIE LATTERI

Nathan Declaration

DECLARATION OF NATHAN MEDINA

I, NATHAN MEDINA DECLARE AS FOLLOWS:

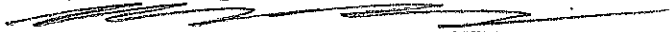
1. I am the petitioner in this action.
2. I am in custody at Ironwood State Prison, in Blythe, California.
3. In Superior Court of California, County of Contra Costa, case no. 5-080656-2, I am the defendant represented by Dirk L. Manoukian (SBN 157540).
4. In the course of Attorney-Client communications between Mr. Manoukian and myself, we had opportunity to discuss the content of peoples exhibits: no. 2 (911 recording), no. 15 (CD), and no 16 (DVD), which are recorded interview statements of peoples witnesses.
6. Mr. Manoukian informed me that the following exchange is recorded in those exhibits between a police detective and Beverly Rhodes:

(DET) Q. Did you see the assailant?
(B.R.) A. I was immediately sprayed in the face. I couldn't see. I really couldn't see. It had to be him because we don't have any other enemies.

I make this declaration on my own personal knowledge except to the facts stated on information and belief. As to such facts, I believe them to be true. If called upon to do so, I could and would competently testify about the matters asserted herein.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed this day of 7-21 2012, at Blythe, California.

Respectfully submitted,


NATHAN MEDINA
PETITIONER IN PRO PER

Review
of
the
work
of
the
committee

Jamie Latteri
Nathan Medina
P.O. Box 813
Martinez, CA 94553
Cell 925-998-3763

RE:11-35448

June 28, 2012

The State Bar of California
Audit and Review Unit
1149 South Hill Street
Los Angeles, CA 90015-2299

Request for audit and review

Regarding the state bar denial letter dated April 2, 2012 based on a claim by the trial council Dirk Manoukian that the contents of the recorded interviews requested by petitioner were included in a Federal Express package sent to the petitioner's Mom Jamie Latteri on August 16, 2010.

Please review "New Evidence" **Exhibit A1** Letter from trial counsel's office giving itemized contents of the Federal Express Package sent to Jamie Latteri dated August 16, 2010. Also included is **Exhibit A2** copy of the Federal Express shipping label showing weight of one pound and date.

Regarding the fact that Mr. Manoukian and his office did attempt to copy interviews on CD's they were unable to do so "because they have burn rights on them which prohibit any copying of the data" he went on to say they were still attempting to reproduce the audio and video materials. The State Bar letter dated April 2, 2012 states "clearly the fact that they were "burn protected" was discovered thereafter." Mr. Manoukian worked for the DA's office for a number of years and knew their procedure. With the first discovery package he sent to us it explained how to get copies of such items. See **Exhibit A3**.

Please see **Exhibit A4** Appellate Courts Case Information On January 14, 2011 where The court clerk Beverly Masinas has searched the minute orders from the jury trial in the Superior Court and does not find any indication that when exhibits 2, 15 and 16 were submitted to the court, council included a written transcript as required by CRC2.1040. She further searched the exhibits that were retained by the court and did not find any written transcripts of exhibits 2, 15 and 16.

Note that People's #2 is the 911 call of Beverly Rhoads. People's #15 is the interview tape of Beverly Rhoads with Detective McColgin at the house and in the ambulance. People's # 16 is Sean Mendell's interview. These items were not transcribed so how did Mr. Manoukian turn the contents over to us?

This rebuts the evidence submitted by Dirk Manoukian to the State Bar to deny petitioners claim. This (new evidence) should clear the high standard of proof that not only has trial counsel violated State Bar rules he has also given false documentation **Exhibit A5** to Judge Becton of the Contra Costa Superior court on November 21, 2010 to traverse petitioners Writ of Mandate filed August 31,2011.

Nathan filled an Appeal from Denial of Petition for Writ of Mandate but unfortunately it was given to prison officials two days to late See **Exhibit A 6**.

Dirk Manoukian made false claims to three attorneys appellant council Mark Greenberg and civil attorneys Albert Turnbaugh and Nolan Armstrong stating that he signed a confidentially agreement with the prosecutor's office to keep recorded interviews from even his client. In fact the email's included with the March 15, 2012 letter to the State Board was the first time petitioner ever heard of any such agreement. (Mr. Manoukian had told both Nathan and myself we would have a chance to hear and see these before trial but that never happened.) According to the prosecutor's office no such agreement exists. If he had signed something or he wasn't to give something out don't you think he would have known about it from the start? And how can he keep this information from his client?

The first post conviction request for the "Medina File" was made on July 24, 2009.

Trial counsel has not addressed any of the other items requested such as:

1. Trial counsel notes /Work product
2. Investigator Mark Harrison's reports, notes and findings (Hired by client through Dirk Manoukian)
3. 911 Tape Call from Sam Rhoads (peoples # 2)
Mr. Manoukian should have had this transcribed to prepare for trial.
4. DVD of Marauel Longfellow (peoples #5) We know there is no audio due to a "glitch" according to the transcript.
We need time to have this lip read something clearly Mr. Manoukian should have done to prepare for trial.
5. CD of Beverly Sam Rhoads audio interview (Peoples #15) that Detective McColgin took at the house and in the ambulance on March 20,2008
Mr. Manoukian should have had this transcribed to prepare for trial
6. DVD of Sean Mendell's interview (peoples # 16)about 30 to 35 minutes after the interview this recording picks up an important conversation in the hallway where Detective McColgin tell Sean Mendell that Beverly Rhoads said it was Nathan Medina.
Mr. Manoukian should have had this transcribed to prepare for trial.
7. 911 Tape Call from Sean Mandell
8. Any additional interviews with Beverly Rhoads

Petitioner has been denied liberty as the trial council failed to use the requested exculpatory evidence during trial to impeach state witness testimony which both trial council and prosecutor have personal knowledge to be untrue. Council's failure prevented this evidence to be used in direct appeal as it was kept out of the trial record and never transcribed.

Mr. Manoukian hired an expert witness, Dr. Deborah Davis who testified regarding "eye witnesses" in general and not specific to this case. She also wasn't given the information on these tapes/recordings.

On May 9, 2012 petition for review was denied by the Supreme Court. Petitioner is desperately fighting for his life while his own paid trial attorney continues to lie and give false documentation to anyone or any authority who attempts to retrieve the evidence needed for post conviction relief.

Petitioner being deprived of this evidence has been deprived of timely meaningful access to the courts.

Mr. Manoukian has worked very hard to keep the "Medina File" out of Nathan Medina's hands the client that hired and paid him. That file belongs to Nathan Medina and Dirk Manoukian's actions clearly violate the state bar rules.

We ask that you order Mr. Manoukian to turn over Nathan Medina's complete file and sanction him to the fullest extent of your authority. Hopefully this will send a clear message to him and any other attorneys who choose to practice law without any accountability to their Clients, The State Bar and the Courts of our Nation.

Thank you for your consideration in this matter,

Jamie Latteri

EXHIBIT "A1"

METROPLEX OFFICE CENTRE
1401 WILLOW PASS ROAD, SUITE 880
CONCORD, CA 94520

(925) 602-3400
FAX (925) 602-0622
WWW.RMMPROLAW.COM

August 16, 2010

Jamie Latteri
[REDACTED]
[REDACTED]

Re: **Nathan Medina; 5-080656-2**
File Request

Dear Jamie,

Per your request the remaining portions of Nathan's file have been copied. Please note a considerable amount of time was spent attempting to copy the interview (CDs) for you. However, they have "burn rights" on them which prohibit any copying of the data. Please find listed below, the enclosed case discovery.

Probation Report

Report of Laboratory Examination dated August 5, 2008 (5 pages)

Ballistics photos (13 pages)

Jail Call Logs

July 29, 2008 – Sept 29, 2008

Sept 20, 2008 – November 20, 2008

November 21, 2008 – January 21, 2009

SDT response dated Aug 7, 2008 by Liz Hernandez regarding Subscriber info for March 17, 2008 – March 20, 2008 (9 pages)

SDT response dated Oct 11, 2008 by Lynnette Grilo regarding billable call records for 925-348-4997 info for March 17, 2008 – March 20, 2008 (20 pages)

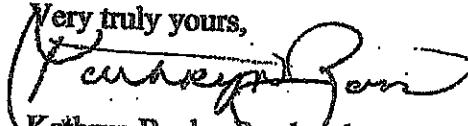
Power point slide show for "Calls to and from 925-348-4997 on March 20, 2008"

Bate stamped discovery regarding cell records and ballistics. Beginning w/ page 511 to 587. Some pages are missing for redaction purposes. (73 pages)

Dr. Deborah Davis' power point slide show used for her expert testimony

This concludes the available discovery for the file. Anything remaining has been previously remitted to you throughout Nathan's case.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Kathryn Banks', written over a horizontal line.

Kathryn Banks, Paralegal to
DIRK L. MANOUKIAN, Esq.

DLM/kb

EXHIBIT "A2"

fedEx

From: Origin ID: CCRA (925) 802-3400
Dirk Manoukian, Esq.
Rueb, Motta & Manoukian
1401 Willow Pass Rd.
Suite 880
Concord, CA 94520

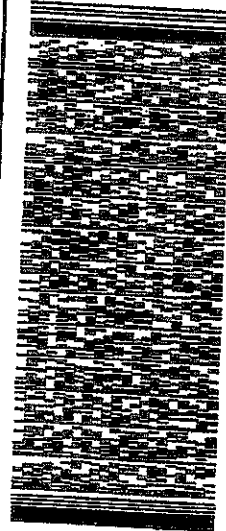


J1101100000000

SHIP TO: (925) 998-3763 BILL SENDER
Jamie Latteri

4541 Pleasant Hill Rd. East

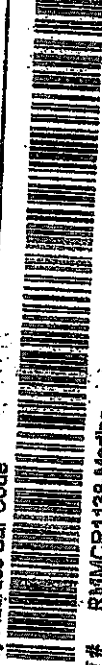
Martinez, CA 94553



Page 1 of 1

Ship Date: 18AUG10
ActWgt: 1.0 LB
CAD: 4816755/NET3060

Delivery Address Bar Code



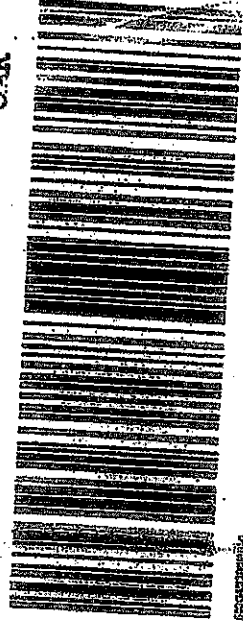
Ref # RMMCR1138-Medina
Invoice #
PO #
Dept #

TRK# 798C 5113 4163
0201

WED - 18 AUG A2
** 2DAY **

94553
CA-08
OAK

CA CCRA



M

This pouch is resealable.

010

EXHIBIT "A3"



CONTRA COSTA COUNTY
Office of the District Attorney
Robert J. Kochly
District Attorney



PEOPLE'S DISCOVERY PACKAGE

People v. Nathan Medina

Case No. 1-136369-6

March 25, 2008

In compliance with Penal Code sections 1054.1 and 1054.5, attached to this cover letter are the investigative reports and other discoverable material generated in the investigation of this case. This discovery package contains all of the investigative reports and other discoverable material received to this date by the District Attorney. If we receive additional investigative reports and/or other discoverable material in this case, we will disclose that additional discovery to you as the materials are received by our office.

If you request copies of discovery items, it will be provided at the following rate: Police Reports (copies made by our office and not provided by the police agency) \$5.00 for first 10 pages, \$0.10 for each page over 10 when made at the same time; Audio Cassettes \$15 per tape; Video Cassettes/CD/DVD - \$25 per tape/CD/DVD with replacement tape of same quality, \$40 per tape/CD/DVD without replacement tape; Photos from Negatives \$25 plus cost of processing. Payment must be made at the time of receipt of the discovery copies.

Attached to this cover letter are:
Walnut Creek PD case #08-6605

In order to ensure that you have all of the discoverable material to which you are entitled by the Criminal Discovery Statute, we encourage you to contact our office so that we can compare the contents of our prosecution file with your discovery materials. If you wish to examine any physical evidence collected in the investigation of this case, you must contact us so that we can make the necessary arrangements for you to examine that evidence.

DA-405 (Revised 3/1/05)

725 Court Street, 4th Floor
Martinez CA 94553-0150

Telephone (925) 957-2200
Fax (925) 957-2240
www.contracostada.org



WALNUT CREEK POLICE DEPARTMENT
Safety ~ Service ~ Honor

October 12, 2012

Nathan Medina
C/O P.O. Box 813
Martinez, CA 94553

RE: Nathan Medina Habeas Corpus
Contra Costa Superior Case No. 5-121283-6

Dear Sir:

The Walnut Creek Police Department recently received a Subpoena Duces Tecum in connection with the above referenced criminal case.

In checking our records, it was determined that the documents in question were turned over to the District Attorney's Office during the original trial and have not been returned. They are all in evidence with the court.

I was also informed by Deputy District Attorney Moawad that the items were all provided to the defendant's attorney at trial.

Since we no longer have the items requested, I cannot comply with the Subpoena Duces Tecum.

If you should have any questions, please do not hesitate to call me at 925-943-5890.

Very truly yours,

A handwritten signature in cursive script that reads "Jodi Piazza".

Jodi Piazza
Police Records Technician

Cc: Contra Costa Superior Court

PEOPLE OF THE STATE OF CALIFORNIA VS. NATHAN MEDINA, C.C.C. CASE NO. 080656-2; (On Habeas Corpus) CASE NO. 5-121283-6 and or Walnut Creek Police Department Case No. 08-6605

PROVIDE THESE DOCUMENTS

- A. March 20, 2008, Walnut Creek Police Department, 911 Recording of Beverly Rhoads.
- B. March 20, 2008, Walnut Creek Police Department, 911 Recording of Mariele Longfellow.
- C. March 20, 2008, DVD of Mariele Longfellow's Interview.
- D. March 20, 2008, CD of the Interview of Beverly Rhoads taken by Detective McColgin.
- E. March 20, 2008, DVD of Sean Mendell's Interview.

*Please see attached excerpts of Contra Costa County Reporter's Trial Transcript Volume I, Case No. 080656-2, dated March 11, 2009 for further information to help locate the above requested documents.

#2 911 Recording (278) 2866 # 2

# 5	DVD	Pre	2866	###	# 14
# 15	CD	(1681)	2866	# 9	9
# 16	DVD	(1693)	2866	# 9	9

HALL TAPE WITH Mendell

SAMS INTERVIEW TAPE Peoples 15

Peoples 15

16 - Mendell interview ~~free~~ DVD.
this is where about 1/2 hour goes by
then there is a conversation in the free
way where ~~Det~~ Det. Brian Mc Colgin
tells Mendell that ~~st~~ Nathan was ID
By Rhoads.

Peoples #15 CD is a copy of the recording
Det. Mc Colgin has from his taped
interview with Sam Rhoads.

#5 DVD of Maranel Songpellow

Peoples # 2 Sam Rhoads 911 call -

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Welcome

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E-mail

Calendar

Help

1st Appellate District

Change court

Attention: 1st District Court of Appeal database and email registration will be offline from 08:00AM Sunday, April 1 to 08:00AM Monday, April 2 for server maintenance. Your patience is appreciated.
Court data last updated: 03/30/2012 04:05 PM

Case Summary Disposition	Parties and Attorneys	Docket	Briefs Trial Court	Scheduled Actions

Docket (Register of Actions)

The People v. Nathan Medina
Division 1

Case Number A125850

Date	Description	Notes
08/24/2009	Notice of appeal lodged/received (criminal).	
10/08/2009	Court reporter extension requested.	by CSR Craig Hodges to 11/6/09.
10/14/2009	Court reporter extension granted.	CSR: Hodges, Craig (3536) Extended Due Date: 11/06/2009
11/20/2009	Court reporter extension requested.	by CSR Craig Hodges to 12/6/09.
12/03/2009	Court reporter extension granted.	CSR: Hodges, Craig (3536) Extended Due Date: 12/07/2009
12/15/2009	Court reporter extension requested.	by CSR Craig Hodges to 1/6/10.
12/21/2009	Counsel appointment order filed.	Mark Greenberg (Ind0
01/06/2010	Court reporter extension granted.	
01/25/2010	Notice of record completion received.	

SEARCH

01/25/2010	Record on appeal filed.	0-3-r-15
01/25/2010	Record in box.	two (2) boxes
01/25/2010	Probation report filed.	(1) and two confidential psychiatric reports (ctx pgs 782-790)
01/25/2010	Marsden transcript filed.	r-1 (proceeding held 7/24/2009 [ctx pgs 2926-2966])
01/25/2010	Marsden transcript sent.	to appointed counsel
03/05/2010	Motion/application to augment record filed.	& EOT.
03/05/2010	Augmentation granted. (See order.)	AOB to 30 days.
04/15/2010	Court reporter extension requested.	by CSR Craig Hodges to 5/7/10. (augment)
04/16/2010	Court reporter extension granted.	CSR: Hodges, Craig (3536) Extended Due Date: 05/07/2010
06/02/2010	Court reporter extension requested.	by CSR Craig Hodges to 6/7/10 to complete the augmented record.
06/04/2010	Court reporter extension granted.	CSR: Hodges, Craig (3536) Extended Due Date: 06/07/2010
06/17/2010	Augmented record filed.	2- RT
07/19/2010	Requested - extension of time.	
07/19/2010	Granted - extension of time.	
08/17/2010	Requested - extension of time.	
08/18/2010	Granted - extension of time.	
09/15/2010	Requested - extension of time.	
09/17/2010	Granted - extension of time.	
10/19/2010	Default sent to court appointed counsel.	Defendant and Appellant: Medina, Nathan Attorney: Mark David Greenberg
11/18/2010	Requested - extension of time.	
11/18/2010	Requested - extension of time.	

11/18/2010	Granted - extension of time.	
12/17/2010	Requested - extension of time.	
12/20/2010	Granted - extension of time.	No further extensions of time contemplated.
01/14/2011	Certificate of county clerk filed.	Beverly Masinas has searched the minute orders from the jury trial in the Superior Court and does not find any indication that when exhibits 2, 15 and 16 were submitted to the court, counsel included a written transcript as required by CRC 2.1040. She further searched the exhibits that were retained by the court and did not find any written transcripts of exhibits 2, 15, or 16.
01/21/2011	Appellant's opening brief.	Defendant and Appellant: Medina, Nathan Attorney: Mark David Greenberg 11/18/2010
02/17/2011	Requested - extension of time.	
02/17/2011	Granted - extension of time.	
03/23/2011	Requested - extension of time.	
03/24/2011	Granted - extension of time.	
04/25/2011	Requested - extension of time.	
04/26/2011	Granted - extension of time.	
05/26/2011	Respondent notified re failure to file respondent's brief.	Plaintiff and Respondent: The People Attorney: Office of the Attorney General
06/27/2011	Requested - extension of time.	
06/27/2011	Granted - extension of time.	
07/01/2011	Respondent's brief.	Plaintiff and Respondent: The People Attorney: Office of the Attorney General
07/19/2011	Requested - extension of time.	
07/19/2011	Granted - extension of time.	
08/22/2011	Telephone conversation with:	Appellant - In priority mail today, request for 14 days-EOT.

08/23/2011	Requested - extension of time.	
08/23/2011	Granted - extension of time.	
09/06/2011	Appellant's reply brief.	Defendant and Appellant: Medina, Nathan Attorney: Mark David Greenberg
09/06/2011	Case fully briefed.	
09/07/2011	Case on conference list.	11-19
09/07/2011	Oral argument waiver notice sent.	
09/07/2011	Record to court for review.	
09/16/2011	Request for oral argument filed by:	Mark D. Greenberg
12/22/2011	Calendar notice sent. Calendar date:	1/12/12 @ 9:00 a.m.
01/12/2012	Cause argued and submitted.	
02/24/2012	Opinion filed.	(Signed Unpublished) Affirmed
03/09/2012	Rehearing petition filed.	Appellant
03/22/2012	Mod. of opinion filed (no change in judgment).	It is ordered that the nonpublished opinion filed herein on February 24, 2012, be modified as follows: On page 5, footnote 4 is hereby modified to read: We have considered all the defense evidence, but we do not need to summarize it. In particular, we do not discuss defendant's remarks in his brief about the alleged deficiencies in the various eyewitness identifications, which are not raised as issues on appeal. There is no change in judgment. Appellant's petition for rehearing is denied.

[Click here to request automatic e-mail notifications about this case.](#)

FILED

NOV 21 2011

CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
Deputy Clerk

Superior Court of California in and for the
County of Contra Costa

Nathan Medina,

Petitioner,

No. 05-111357-0

vs.

Order Denying Petition
For Writ of Mandate.

Dirk Manoukian,

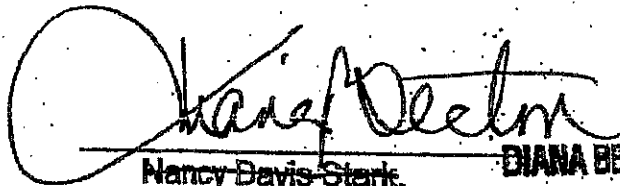
Respondent.

Petitioner has filed a petition for writ of mandate contending that his trial attorney has not turned over his criminal file in docket 05-080656-2. In that file petitioner was sentenced to 90 years to life on or about 7-24-09. A notice of appeal was filed on 7-28-09. The appeal is currently pending.

The court has received a response from Respondent indicating that the file has been turned over to petitioner. Under the circumstances, therefore, the petition has no merit.

Petition denied.

Dated: 11/21/2011



Nancy Davis-Stark,
Judge of the Superior Court.

DIANA BEGTON

Cc: Nathan Medina, CDCR # AA4500
Ironwood State Prison
P.O. Box 2199
Blyth, CA 92226

Dirk Manoukian, Esq.
1401 Willow Pass Road, Suite 880
Concord, CA 94520

EXHIBIT "A6"

FIRST DISTRICT APPELLATE PROJECT

730 Harrison Street, Suite 201 • San Francisco, California 94107 • (415) 495-3119 • Facsimile: (415) 495-0166

January 31, 2012

Mr. Nathan Medina, AA4500
B2-202
Ironwood State Prison
P.O. Box 2199
Blythe, CA 92226

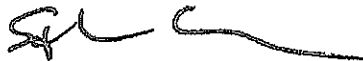
RE: Notice of Appeal from Denial of Petition for Writ of Mandate

Dear Mr. Medina:

The Contra Costa Superior Court clerk's office has declined to file the notice of appeal you filed from the denial of the petition for writ of mandate filed on August 31, 2011. The Order denying the mandate petition was filed on November 21, 2011. Any appeal from that ruling had to be filed within 60 days pursuant to California Rules of Court, rule 8.308(a). That means that your notice of appeal needed to be filed or turned over to prison officials for mailing on or before January 20, 2012. Your notice of appeal was delivered to prison officials on January 22, 2012, making it late by two days. This means that you do not have an appeal from the denial of the petition for writ of mandate because you missed the deadline for an appeal.

At this point there is nothing more to be done in this matter. This office cannot offer you any further assistance. This office notes that your conviction is currently on appeal, with oral arguments having just taken place on January 12, 2012. We urge you to work with your appointed appellate attorney, Mark Greenberg, to attempt to obtain whatever documents he might possess that would help you in filing a petition for writ of habeas corpus once the appeal has concluded. Good luck.

Sincerely,



STEPHANIE CLARKE
Staff Attorney

cc: Mark Greenberg

1 Nathan Medina
CDCR#AA4500
2 Ironwood State Prison.
P.O. Box 2199
3 Elythe, CA 92226
4 Petitioner In Propia Persona

FILED

21 23 31 P 2:29

CLERK OF SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.

By _____
County Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA

11 NATHAN MEDINA,)
12)
12 Petitioner)
13)
13 vs.)
14)
14 DIRK MONOUKIAN,)
15)
15 Respondent.)
16)
17)

Case No.: 111357-0
PETITION FOR WRIT
OF MANDATE

18
19 TO THE HONORABLE SUPERVISING PRESIDING JUDGE OF THE ABOVE-
20 ENTITLED COURT:

21
22 Petitioner, Nathan Medina, petitions this Court for a writ
23 of mandate, and by this verified petition represents that:
24 ¹² Refer to this in new writ.
25 ²
³
25 1. Petitioner is now, and at all times mentioned in this
26 petition, the defendant in Contra Costa County Superior Court
27 case no. 5-080656-2. Petitioner entered a plea of not guilty to
28 murder, Penal Code § 187. A jury found petitioner guilty as

1 charged and was subsequently sentenced to a term of 90 years, in
2 addition to three consecutive life sentences in state prison.
3 Attorney of record, Dirk Manoukian (Bar#157540) represented
4 petitioner. Petitioner is currently incarcerated in the
5 California Department of Corrections and Rehabilitation at
6 Ironwood State Prison.

7
8 2. Respondent, Dirk Manoukian, is now, and at all times
9 mentioned in this petition, an attorney at law, licensed to
10 practice law in the state of California. Respondent's State Bar
11 number is 157540 and the location of his business is 1401
12 Willow Pass Road/ Suite 880/ Concord, California 94520 .

13
14 3. The Superior Court has original jurisdiction in this
15 action for extraordinary relief in the nature of mandamus under
16 Article 6, Section 10 of the California Constitution, and Civil
17 Code of Procedure 1085.

18
19 4. Venue is proper in this count under Civil Code of
20 Procedure, Section 393. The cause of action with which this
21 petition is concerned occurred within the territorial jurisdiction
22 of the Contra Costa County Superior Court.

23
24 5. Petitioner has no plain, speedy, or adequate remedy at
25 law other than the relief sought in this petition, in that there
26 is no other more appropriate remedy available to petitioner to
27 compel respondent to perform his ministerial duty to deliver to
28 petitioner the petitioner's case files.

1 6. Petitioner is a person beneficially interested in this
2 proceeding, and petitioner and respondent are the parties who will
3 be affected by this proceeding.

4
5 7. Petitioner has performed all conditions precedent to the
6 filing of this petition by having first made demands in writing to
7 respondent to deliver to petitioner the ~~petitioner's case files~~
8 pertaining to Contra Costa County Superior Court case number
9 5-080656-2, demands which respondent had ignored and failed to
10 comply with.

11
12 8. Respondent has a clear, present, and ministerial duty to
13 abide by and adhere to the laws governing the subject matter of
14 this petition.

15
16 9. At all times mentioned herein, respondent has been able
17 adhere to and follow the law which governs the subject matter
18 within.

19
20 10. On July 24, 2009, respondent had withdrawn as the
21 attorney of record in Contra Costa County Superior Court case
22 number 5-080656-2

23
24 11. On July 24, 2009, pursuant to the State Bar Rules of
25 Professional Conduct, Rule 3-700(D)(1), petitioner presented a
26 written demand to respondent for the respondent to promptly
27 release any and all correspondence, pleadings, deposition
28 transcripts, exhibits, physical evidence, expert's reports and

1 other items that are the respondent's "work product" in Contra
2 Costa County Superior Court, case number 5-080656-2 To date
3 (May 18, 2011) no response has been received.
4

5 12. Petitioner is particularly aggrieved by the respondent's
6 abject failure to perform his duties as the law specifically
7 enjoins and/or those duties set forth in Rule 3-700(D)(1), to
8 which petitioner is entitled.
9

10 13. Petitioner will be irreparable injured because he will
11 not be able to prepare and present a timely petition for habeas
12 corpus relief on issues outside of the trial record in Contra
13 Costa County Superior Court case number 5-080656-2 unless
14 respondent is compelled to promptly release the above-stated work
15 product to petitioner.
16

17 14. No other petition for writ of mandate has been made by
18 or on behalf of this petitioner relating to this matter.

19 //
20 //
21 //
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24 //
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26 //
27 //
28 //

1 MEMORANDUM OF POINTS AND

2 AUTHORITIES

3
4 Petition for writ of mandate is an appropriate vehicle
5 seeking to compel a person, withdrawn counsel and officer of the
6 court, to perform an act which the law specifically enjoins
7 (Civil Code of Procedure § 1085).

8 In Griffin v. Illinois, (1955) 351 U.S. 12, 100 L.Ed. 891,
9 76 S.Ct. 585, it was held that the due process and equal
10 protection clause of the Fourteenth Amendment was violated by the
11 state's denial of appellate review solely on account of a
12 defendant's inability to pay for a transcript. Thus, Griffin, and
13 its progeny, established that an indigent defendant, as the
14 petitioner here, is entitled, as a matter of right, to free
15 transcripts in all state criminal proceedings.

16 In Bounds v. Smith, (1977) 430 U.S. 817, 52 L.Ed. 2d 72, 97
17 S.Ct. 1491, it is observed that an indigent's transcripts may be
18 requisite to the formulation of proper pleadings in the exercise
19 of both an indigent's right to "access the courts" and to
20 "Petition the Government For Redress of Grievances." (And see
21 Annotation, 52 L.Ed.2d at 779).

22 In California it has been established that, except for the
23 source of compensation, the relation between Public Defender
24 (counsel under appointment) and the accused whom he represents is
25 the same as that between privately employed counsel and his client.
26 People v. Agnew, (1952) 144 Cal.App.2d Supp. 841, 250 P.2d 369.

27 Rule 3-700(D)(1) of the California State Bar Rules of
28 Profession Conduct provides in pertinent part:

1 "A member whose employment has terminated shall:

2 (1) subject to any protective order or non-disclosure
3 agreement, promptly release to the client, at the
4 request of the client, all the client's papers and
5 propert... 'Client papers and property' includes
6 correspondence, pleadings, deposition transcripts,
7 exhibits, physical evidence, expert reports, and
8 other items reasonable necessary to the client's
9 representation, whether the client has paid for
10 them or not..."

11 It is settled that rules relating to the withdrawal of an
12 attorney from appointment "apply with no less force to the
13 discharge of an attorney. His duty to his client is not altered
14 by the circumstances of who terminates relationship. Academy of
15 California Optometrists, INC. v. Superior Court, (1975) 51 Cal.
16 App.3d 999, 1005-1006, 124 Cal Rptr. 668. It is a breach of the
17 duty imposed by Rule 3-700(D)(1) to retain a client's case files
18 after discharge, in that an attorney's work product belongs
19 absolutely to the client whether or not the attorney has been paid
20 for his or her services. Weiss v. Marcus (1975) 51 Cal.App.3d
21 590, 599, Cal.Rptr. 297 or to fail to forward the client's files
22 to a successor attorney. Finch v. State Bar, (1981) 28 Cal.3d 659,
23 665, 170 Cal.Rptr. 629, 621 P.2d 253; Kallen v. Delug (1985) 157
24 Cal.App.3d 940, 950, 203 Cal.Rptr. 879. (And see B.P. §6068.)

25 //

26 //

27 //

28 //

PRAYER FOR RELIEF

WHEREFORE, petitioner prays that:

1. Respondent to be directed to show cause before this court, at a specified time and place, why he should not be compelled to perform his duties in accordance with Rule 3-700(D)(1) of the Rules of the State Bar which specifically require him to release the "client papers" to petitioner. In addition to client papers, audio and video recordings of witnesses, 911 audio recordings, and investigator's (hired by client through respondent) reports, notes and findings.

2. Petitioner be granted such further relief as may be appropriate and just.

Dated: May 18, 2011


Petitioner In Pro Se

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State Bar

Original Complaint

Nov 11

March 15, 2012

e-mails sent

**THE STATE BAR OF CALIFORNIA
CALIFORNIA ATTORNEY COMPLAINT FORM**

Read instructions before filling in this form.

Date November 22, 2011

(1) Your name and address Jamie Latteri

[REDACTED]

(2) Telephone number: Home [REDACTED]

Work [REDACTED]

(3) The name, address and telephone number of the attorney(s) you are complaining about.
(See note below.)

Dirk Lenord Manoukian Bar # 157540 Phone # 925-602-3400

1401 Willow Pass Road Suite 880 Concord CA 94520

(4) Have you or a member of your family complained about this attorney(s) previously?

Yes No If Yes, please state to whom the previous complaint was made, its approximate date and disposition.

(5) Did you employ the attorney? Answer Yes or No and, if "Yes," give the approximate date you employed the attorney(s) and the amount, if any, paid to the attorney(s).

April 4, 2008 Paid about one hundred thousand dollars.

(6) If your answer to #5 above is "No," what is your connection with the attorney(s)? Explain briefly.

(7) Include with this form (on a separate piece of paper) a statement of what the attorney(s) did or did not do which is the basis of your complaint. Please state the facts as you understand them. Do not include opinions or arguments. If you employed the attorney(s), state what you employed the attorney(s) to do. Sign and date each separate piece of paper. Additional information may be requested. (Attach copies of pertinent documents such as a copy of the fee agreement, cancelled checks or receipts and relevant correspondence.)

(8) If your complaint is about a lawsuit, answer the following, if known:

a. Name of court (For example, Superior or Municipal Court, and name of the county)
(Criminal case) Superior Court of the State of California County of Contra Costa

b. Title of the suit (For example, Smith v. Jones).

People of the State of California V Nathan Medina

c. Case number of the suit 080656-2

d. Approximate date the suit was filed March 21, 2008 date of arrest

e. If you are not a party to this suit, what is your connection with it? Explain briefly.

Nathan Medina is my son and I hired the law firm of Rueb Motta and Manoukian to defend him.

I also have Nathan's his power of attorney

(9) Size of law firm complained about:

1 Attorney ___ 2 - 10 Attorneys X 11 + Attorneys ___

Government Attorney ___ Unknown ___

NOTE: If you are complaining about more than one attorney, include the information requested in items #3 through #8. Use separate sheets if necessary.

Signature



Mail to:
Office of the Chief Trial Counsel/Intake
The State Bar of California
1149 South Hill Street
Los Angeles, California 90015-2299

This is a criminal case.

We hired this attorney on April 4, 2008

We were referred to Joe Motta from another attorney

When we went for our appointment with Joe Motta we were told that Dirk Manoukian would be taking our case. This was sometime in early April 2008.

Copy of our written agreement is enclosed.

We need Nathan's complete file. Dirk has given us pieces but not what we have been requesting. First he told us that he tried to copy the tapes, CDs, etc. and was unable to. Now he claims there is another reason why he can't give them to Nathan. These belong to Nathan so if he can't copy them then he needs to give them to us. If he had used them correctly in the first place we may not be here now.

This is about a law firm that has refused to turn over a complete file after his services are no longer needed. There is no reason for him to keep these files. They belong to Nathan and he has made it quite clear he wants them turned over to me. I also have Nathan's power of attorney and Dirk should know that because he drew it up.

Jamie Lattin



Copy of written agreement with attorney – enclosed

Copy of payments- there is no dispute they were paid

Copies of correspondence between attorneys-enclosed

Written explanation of exact nature of my complaint:

The law offices of Rueb, Motta and Manoukian were hired to defend Nathan Medina in a murder case on April 4,2008. Case # 5-080656-2 the trial ended in a guilty verdict on May 5,2009. On July 24,2009 Nathan was sentenced. Since this time Dirk Manoukian and the law firm of Rueb, Motta and Manoukian have refused to turn over Nathan's complete file . Other attorneys have requested this file with Nathan's permission and they have also been refused.

I have enclosed letters from Nathan faxed to Dirks office along with my cover pages and notes. His letters dated 6/28 &29 and my faxes dated 7/7 and 7/11/11.

On August 31,2011 after all requests had been ignored we filed a writ of mandate (copy enclosed) with the court to order Dirk Manoukian to comply with the law and turn over the client papers and property. Mr. Manoukian was also served with a copy of this writ of mandate. As of today I have received no response.

The work product, client papers and property Dirk Manoukian and his law firm continues to refuse to turn over is essential to the preparation of a post conviction petition seeking habeas corpus relief in the above stated case.

Last date in contact and what occurred: with Greg Rueb (see email 8/22/11) Says he has no control. The last date with Dirk Manoukian (see letter dated July 12,2011) says he is not turning over the file.

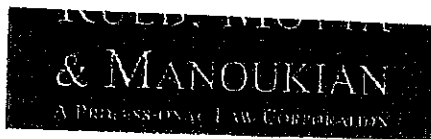
Title of case: People of the State of California v Nathan Medina Case # 080656-2

Name of court: Contra Costa County Superior Court

My Cell phone [REDACTED]

Number of Attorneys in the law firm: Small 3

Jamie Lattin
[REDACTED]



METROPLEX OFFICE CENTRE
1401 WILLOW PASS ROAD, SUITE 880
CONCORD, CA 94520

ATTORNEY - CLIENT FEE AGREEMENT

(925) 602-3400
FAX (925) 602-0622
WWW.RMMPROLAW.COM

Re: People v. Nathan Medina,

Nathan Medina and his mother Jaime Latteri, hereafter "Client," agree to retain RUEB, MOTTA & MANOUKIAN to represent Nathan Medina in the criminal investigation and pending criminal prosecution in Contra Costa County Superior Court, regarding the non special circumstances allegation or notice case number 1-136369-6.

A **NON-REFUNDABLE** fee of \$50,000 will be charged to handle criminal investigation and prosecution up to trial/contest. All fees are earned on receipt and guarantee RUEB MOTTA MANOUKIAN's availability for all pre-trial matters, including consultations, court appearances, pre-trial motions, and other matters which are designed to dispose of the above charges prior to trial/contest. Client agrees to remit an additional \$5,000 for investigative services. An additional trial fee of \$2,500 per day will be charged in the event a jury trial/contest is confirmed. The trial/contest fee will be deposited on or before the trial/contest readiness conference or in no case later than one (1) week prior to trial/contest. The amount of the trial/contest fee deposit shall be based upon RUEB, MOTTA & MANOUKIAN's reasonable estimate of the number of days anticipated for trial/contest. If the matter resolves before the trial/contest begins, then client shall receive a refund of the trial/contest deposit. If the matter resolves after the trial/contest begins, then RUEB, MOTTA & MANOUKIAN shall retain the entire daily fee for each day of trial/contest or part thereof.

In addition, Client is responsible for all costs incurred, including but not limited to filing fees, transcript costs, witness fees, subpoena fees, exhibit costs, expert costs (excluding investigative services), computer-assisted research, and/or any fees or fines imposed by the Court. If Client fails to pay the fees stated, RUEB, MOTTA & MANOUKIAN may withdraw as attorneys without further notice to Client. This agreement does not include any retrial, appeal or any other collateral matters arising out of these charges. Should proceedings be instituted to enforce payment of fees and/or costs, Client shall pay attorney's fees and costs thereby incurred and interest at a rate of 10% per annum on the outstanding balance.

Outside counsel may be assigned to make court appearances, but RUEB, MOTTA & MANOUKIAN will act as supervisory and trial counsel. RUEB, MOTTA & MANOUKIAN cannot and does not promise any specific result, verdict, or sentence and client understands that any such representation is only RUEB, MOTTA & MANOUKIAN's opinion.

The deposit of \$25,000 is hereby acknowledged. Client further agrees to remit the balance of fees and costs of \$30,000 within 60 days of today's date.

Dated: April 4, 2008

JAMIE LATTERI
(Mother of in custody Client)

Jamie Latteri



March 15, 2012

RE: 11-35448

The State Bar of California
1149 South Hill Street
Los Angeles, CA 90015-2299

As per my phone call today I am providing additional information.

Please understand my concern;

My son Nathan Medina (who has also joined me with this complaint) remains in prison while the attorney we paid to defend him not only kept this exculpatory evidence from him, from the jury, and out of the trial record so it could not be used on direct appeal. He has given fraudulent documentation to the superior court, stating he had turned the file over to me. Preventing my son from challenging his handling of the case and denying him meaningful access to the courts by keeping evidence needed for his habeas corpus from him.

I have enclosed copies of emails to and from Dirk Manoukian (July 20,2010) where Dirk tells me he is having these tapes copied and it will take more time.

My email to Mark Greenberg (March 16, 2011 and August 22, 2011) with contents of email from Nolan Armstrong to Roger Allen regarding Dirk had entered into an agreement to keep this information from Nathan.

(Mark Greenberg is Nathan's appellate attorney. Nolan Armstrong and Roger Allen are my civil attorneys)

I have enclosed copies of other related emails showing how I tried to work with Dirk Manoukian. All he did was stall, he had no intentions of giving Nathan his file as it becomes clear through time.

This is not only a case of ineffective assistance of counsel it is a case of intentional and deliberate negligence.

Thank you in advance for any help you can give my son and I in this matter,

Jamie Latteri

From: Jamie Latteri [REDACTED]
To: markdgreen@sbcglobal.net;
Date: Wed, March 16, 2011 12:09:20 PM
Cc:
Subject: Nathan Medina

*Sent
3-15*

Good Morning Mark,

Have you had a chance to look into Nathan's letter and concerns?

Please let me know what your thoughts are about this. My cell # 925-998-3763

I have copied some information from an e-mail from Noland Armstrong to Roger Allen regarding Dirk stating that he couldn't release copies of the tapes and interviews to Nathan. This is the first I have heard of this. We have asked for these over and over again.

Hi Roger,

Thanks for the prompt reply. I will incorporate your proposed revisions into the draft responses, and then send to Jami for review and verification.

According to Nathan's criminal defense attorney, Dirk Manoukian, there was a preliminary hearing in the People v. Medina matter. Dirk indicated that he provided Jamie with copies of the majority of his file, including the preliminary hearing transcript and police reports, on multiple occasions. However, Jamie has indicated that the only documents in her possession are the reporter's transcripts of the criminal trial (copies of which were previously provided to you). I'm following up with Dirk to obtain a copy of his file, as this seems like the easiest and most efficient way to obtain all documents from the criminal action. Upon receipt, I'll forward copies to you. **Please note that we will not be receiving copies of the videotapes of witness interviews by the City of Walnut Creek Police Department, as the District Attorney's Office copied the videotapes using proprietary software which prevents further duplication.** Also, **Dirk indicated that as a condition of receiving copies of the videotapes, he had to sign something indicating that he would not release them to anyone else, including his client.** Thus, even if we get an authorization from Nathan, we won't be able to get the videotapes from Dirk. In order to obtain the videotapes, we will likely need to issue a subpoena to the City of Walnut Creek Police Department.

Let me know if you have any questions regarding the above or otherwise. Thanks.

Nolan

From: Mark Greenberg (markdgreen@sbcglobal.net)
To: jamielatteri [REDACTED]
Date: Mon, August 22, 2011 9:13:06 AM
Cc:
Subject: Re: Nathan Medina

Hi Jaime,

I have been very busy and still am.

I will be asking for a 2-week extension of time today for the reply brief. Once it's composed, I will be mailing a copy, along with the attorney general's brief, to Nathan.

As to the file, I had discussed this with Manoukian, who said he had handed over whatever he has except for those matters he was required by law to keep confidential even from the client. We discussed this as I remember. I myself do not need the file to press the appeal. My suggestion to you is that you lodge a complaint with the State Bar if you feel that Manoukian is withholding things.

As to the Marsden transcript, this concerns me, because I believe I sent it to you. I did not retain a copy. If it is lost, I will have to ask the court for a reproduction. I will check my storage and files to make sure it was sent, and if it was, then I can only assume it is lost. I will then have to make other arrangements.

Regards,

Mark

On Aug 21, 2011, at 7:04 PM, Jamie Latteri wrote:

Dear Mr. Greenberg,

It has been quite sometime since I have heard from you. I have sent you letters from Nathan and a few emails and phone messages from myself.

I hope all is fine with you and you have just been too busy to reply. However a lot of time has now slipped by.

Nathan nor I have not received a copy of the response to the brief you filed but I see on the web site they answered over a month ago and you have requested extensions for your reply.

Nathan and I are still trying to get the rest of his file from Dirk Manoukian so Nathan can move forward with his research to be ready for a new trial and or a habeas. I believe Dirk would have to turn that over to you if you asked for it. Have you requested it? I'm talking about the all of the tapes and videos and his complete file.

Also you said you would send me the transcript regarding the Marsden hearing and to date I have not received that.

Would you please give me an update.

My cell # [REDACTED]

Thank you again for all that you are doing to help my son and me through this most difficult process.

Jamie

*Remember To Always
"Follow that Dream"*
Jamie Latteri

[REDACTED]

dated in July 2008.

You can reach me on my Cell at most anytime [REDACTED]

Thank you,
Jamie

*Remember To Always
"Follow that Dream"*
Jamie Latteri [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Dirk Manoukian <dirk@rmmprolaw.com>
To: Jamie Latteri [REDACTED]; Kathryn Banks <kathryn@rmmprolaw.com>
Sent: Thu, June 24, 2010 9:18:14 AM
Subject: Re: Nathan Medina

Hello Jamie,

It was my understanding that both Nathan and you had a copy of the vast majority of the discovery in Nathan's case. I know we provided a great deal of the discovery during the course of the case, and we additionally provided Nathan's appellate counsel with all the items he requested. If Nathan needs additional discovery it would greatly expedite the process if he or you could specify what additional items he needs.

As we have discussed in the past, it is unlawful for me to provide any "original" documentation, as all reports and material must be redacted to remove any personal identifying information or other prohibited data of any and all individuals listed in the reports. To perform this redaction again, and create a duplicate file, will take a considerable amount of time. Please let me know if you can specify the discovery items Nathan needs.

Thank you,

Dirk

Sent from my Verizon Wireless BlackBerry

From: Jamie Latteri [REDACTED]
Date: Tue, 22 Jun 2010 18:36:12 -0700
To: Kathryn Banks <kathryn@rmmprolaw.com>
Cc: Dirk Manoukian <dirk@rmmprolaw.com>
Subject: Fw: Nathan Medina

Hi Kathryn,
I'm looking for a time frame as to when the requested documents will be ready for me to pick up.
Could you please let me know.
I can be reached on my cell phone [REDACTED].
Thank you,

From: Jamie Latteri
To: dirk@rmmprolaw.com;
Date: Thu, June 24, 2010 10:21:36 PM
Cc: kathryn@rmmprolaw.com;
Subject: Re: Nathan Medina

Cyber

Hi Dirk,

I have provided a list of what I already have and there is no need for you to duplicate that. What I need is everything else including investigation reports from your investigator, all other discovery from the DA including copies of audio and video tapes/discs, pictures, including the video of Longfellow with no voice. I also have nothing from the hearing in Richmond with Judge Brady regarding the search and I don't have a copy of the probation report. I know there must have been a lot of phone records provided, I also have nothing on our professional witness. I'm also asking for all communication from your office and records of hearings appointments and meetings and anything else you have regarding Nathan.

At the trial there were a lot of things brought up and it was the first time we had heard of them as you may remember Kathryn was out ill for sometime and you were also dealing with family illness so a lot of communication slipped through the cracks. If Nathan did have any paper work that he hadn't already passed on to me, the last day of the trial when he returned from court everything in his cell had been stolen and the deputies could not locate any of it so they think it must have went out with the garbage.

I know it would be great if I could give you a list of what I want but I don't know what all you have. If it would be easier for me to go to your office and go through what you have I would be happy to do that. This might be the best way to go.

List of the paper work I have for Nathan (see item 2 and 7 for additional items requested).

1. Preliminary Hearing Volume 1 Reporters Transcript of Proceedings dated May 30,2008
2. Walnut Creek Police General offense dated March 24, 2008 pg 1-119
I am missing pages 3-13 and pages 67-70 Please provide.
3. Pleasant Hill Police report dated March 21,2008 2 pages
4. Search Warrant
5. Affidavit for arrest warrant
6. Forensic Service Lab #08-3317-3 report dated May 27,2008
7. **I need a full copy of the above amended report #08-3317-12 firearms amendment Dated Dec. 2,2008**
8. Walnut Creek PD 11 page report from Rick Baca dated May 19,2008 regarding computer investigation
9. Walnut Creek PD computer forensic analysis Pages 1-34
10. Lab report Finger print exam dated May 14,2008
11. Lab report toxicology analysis dated April 16,2008
12. Dr. Jules Burstein's report dated Sept.11, 2008
13. Dr. Paul Good's report dated Sept. 26, 2008
14. Copy of DMV image record for Nathan Medina and Jennie Hamilton
15. DMV registration automation 10 pages dated July 30,2008
16. Copies of letters from the Rhoads family and friends with regards to sentencing all

Jamie

Remember To Always

"Follow that Dream"

Jamie Latteri [REDACTED]

----- Forwarded Message -----

From: Jamie Latteri [REDACTED]
To: dirk@rmmprolaw.com
Cc: kathryn@rmmprolaw.com
Sent: Fri, June 18, 2010 1:27:48 PM
Subject: Nathan Medina

Dear Dirk,

It has been sometime since we have talked but I find Nathan has need for all of his records so I would like to make arrangements to pick up all of the original files and discovery including tapes disks both audio and visual along with any other work including your investigator Mark Harrison's paper work and any thing else you have pertaining to Nathan's case. I understand this all belongs to Nathan and as his power of attorney I'm requesting it on his behalf. I'm sure it will relieve a large amount of storage for you.

Thank you for your prompt reply,

Jamie

Remember To Always

"Follow that Dream"

Jamie Latteri [REDACTED]

LAW OFFICES OF
DIRK L. MANOUKIAN
A PROFESSIONAL LAW CORPORATION

METROPLEX OFFICE CENTRE
1401 WILLOW PASS ROAD, SUITE 880
CONCORD, CA 94520

(925) 602-3400
FAX (925) 602-0622
WWW.RMMFROLAW.COM

July 12, 2011

Nolan Armstrong, Esq.
McNamara Law Firm
1211 Newell Ave
Walnut Creek, CA 94596

Albert Turnbaugh, Esq.
706 Main Street, Suite A
Martinez, CA 94553

Jamie Latteri


Re: Medina file disclosure

To all parties named above,

Recently our office has received a number of requests for a copy of "our Medina file (file)" from a variety of individuals. The purpose of this letter is to clarify our office's position regarding the distribution of our file. All of the discovery (police reports, interviews, photographs, etc.) which makes up our Medina file was provided to our office by the Contra Costa District Attorney's Office pursuant to Penal Code section 1054, *et al.* Our ability to copy and distribute this discovery is extremely limited.

Said discovery is restricted and controlled material provided to our office for the exclusive purpose of defending our client in a criminal proceeding. The unauthorized disclosure of these materials can subject the distributor to criminal sanctions. Mr. Medina's file is no exception.

It is our office's position that disclosure of the controlled material contained in our file for any purpose unrelated to Mr. Medina's criminal matter would be a violation of law. Therefore, absent an order from a court with competent jurisdiction, our office will not disclose any portion of our file unless a direct connection to the criminal proceedings is established.

Sincerely,


DIRK L. MANOUKIAN, Esq.

Subject: Nathan Medina

(Counsel's law partner at time of representation)

Hi Greg,

According to Dirk's letter he will not give the file to me or to Nathan's (sometimes) attorney Al Turnbaugh or to Nolan Armstrong one of my attorneys.

He did not say he wouldn't give the file to Nathan but he is not honoring any of Nathan's requests. Nathan went to trial being promised that he would be able to hear and see all of this and it never happened. Dirk always had some excuse. Now Nathan has a life sentence and the law firm that defended him will not even give him his property so he can continue to fight for his life.

The complete file belongs to Nathan and he wants it. He needs it for his habeas. I have Nathan's power of attorney I have letters from Nathan instructing your firm to turn the file over to me.

Nathan will sign any kind of release in order to have me receive his file. Will you please help me?

Who has control over the file? It my understanding the complete file belongs to Nathan and your firm is withholding it from him with out cause.

I'm begging you to please take control of the complete file and help me to cut through what ever has to be done so Nathan and I can start working on his habeas.

My cell phone # is [REDACTED].

Thank you,

Jamie

*Remember To Always
"Follow that Dream"*

Jamie Latteri [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

State Bar

decisions

responses



THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
INTAKE

Dane Dauphine, Assistant Chief Trial Counsel

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

February 8, 2012

Jamie Latteri
P.O. Box 813
Martinez, CA 94553

RE: Inquiry Number: 11-35448

Dear Mr. Latteri:

An attorney for the State Bar's Office of the Chief Trial Counsel has reviewed your complaint against Dirk Lenord Manoukian. Please be advised that our policy requires the client, Nathan Medina, to initiate, join or authorize another to file a complaint with the State Bar before it can be processed. This policy is based on the confidential nature of the attorney-client relationship. In addition, an inquiry by the State Bar into your allegation(s) against Dirk Lenord Manoukian could potentially interfere with the attorney-client relationship between Mr. Manoukian and the Mr. Medina.

Even a complaint by a relative or a friend of the client who has paid or may be liable for payment of the attorney's fees does not waive confidentiality between an attorney and client unless that individual is client's legal guardian.

As a result, in order for the State Bar to consider your complaint further, we require one of the three following requirements: (1) the client files his or her own complaint; (2) the client authorizes you, in writing, to pursue the complaint on his/her behalf; or (3) the client joins your complaint by submitting a brief letter requesting that he or she be added as a complaining witness.

If Mr. Medina wishes to join in your complaint or authorize you to act on his or her behalf, please write to the Intake Unit of the State Bar, referencing the inquiry number above, at: 1149 S. Hill Street, Los Angeles, CA 90015-2299.

At this time, unless one of the requirements of client consent is satisfied by February 22, 2012, we are required to close your complaint.

Very truly yours,

A.C. Jamison
Complaint Analyst

2/21/12 called

Rec. Nathans response on 2/14/12 Dirk has til 2/28/12 to respond. He can get an extension. Will hear from them in about 1 month.

3-5-2012 - Dirck notified = Dirck sent D.P. on 2/28/12



THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
INTAKE

Dane Dauphine, Assistant Chief Trial Counsel

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

April 2, 2012

Jamie Latteri
P.O. Box 813
Martinez, CA 94553

RE: Inquiry Number: 11-35448
Respondent: Dirk Manoukian

Dear Ms. Latteri:

An attorney for the State Bar's Office of the Chief Trial Counsel has reviewed your complaint against Dirk Manoukian to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You have alleged that Mr. Manoukian, who represented your son Nathan Medina in his murder trial, failed to provide a complete file to your son despite repeated requests. Your son filed a writ of mandate requesting the court to compel Mr. Manoukian to provide the file, but the writ was dismissed because Mr. Manoukian represented to the court that he had already turned over your son's file to you and your son. You alleged that only parts of the file have been turned over, but not certain things you were requesting, including CD's and tapes.

In response to these allegations, Mr. Manoukian stated that he provided you with a complete file of all discovery in your son's case with the exception of interviews of witnesses on media disks that were provided by the District Attorney's Office. These particular interviews could not be copied, because the D.A.'s Office has "burn rights" on them which prohibit any copying of the media; however, the contents of those interviews was contained in materials that were provided to you by Mr. Manoukian. Accompanying Mr. Manoukian's response to us were supporting documents, including copies of emails between yourself and his paralegal on or about August 16, 2010, indicating that Mr. Medina's file was copied and shipped to you via Fed Ex, to the address you provided to Mr. Manoukian's office.

We received the additional information you mailed to us with your letter dated March 15, 2012, and have reviewed it on connection with this complaint.

In a letter dated August 16, 2010, Mr. Manoukian explained to you that, while his office did attempt to copy interviews on CD's for you, they were unable to do so "because they have 'burn rights' on them which prohibit any copying of the data." We are aware of the July 20, 2010 email Mr. Manoukian sent you, in which he said his office was still *attempting* to reproduce the audio and video materials—clearly, the fact that they were "burn protected" was discovered thereafter, but before Mr. Manoukian's letter to you of August 16, 2010, in which he explained why no copies could be made.

On July 12, 2011, Mr. Manoukian wrote a letter addressed to you, Nolan Armstrong, Esq., and Albert Turnbaugh, Esq., in which he explained: "All of the discovery (police reports, interviews, photographs,

etc.) which makes up our Medina file was provided to our office by the Contra Costa District Attorney's Office pursuant to Penal Code section 1054, et al. Our ability to copy and distribute this discovery is extremely limited. [¶] Said discovery is restricted and controlled material provided to our office for the exclusive purpose of defending our client in a criminal proceeding. The unauthorized disclosure of these materials can subject the distributor to criminal sanctions. Mr. Medina's file is no exception. [¶] It is our office's position that the disclosure of the controlled material contained in our file for any purpose unrelated to Mr. Medina's criminal matter would be a violation of law." (Emphasis in original.)

Mr. Armstrong was representing you in connection with a **civil** wrongful death lawsuit brought against your son and you. Mr. Manoukian's comments in his letter of July 12, 2011 addressed distribution of discovery from the *criminal* case for use in a *civil* matter, as requested by your civil litigation attorneys in a letter they wrote to Mr. Manoukian dated March 21, 2011. See also the email, dated March 16, 2011, which you enclosed with your letter to us of March 15, 2012, in which "Nolan" [Armstrong] wrote, in bold typeface: "Please note that we will not be receiving copies of the videotapes of witness interviews by the City of Walnut Creek Police Department, as the District Attorney's Office copied the videotapes using proprietary software which prevents further duplication. [i.e., the "burn rights" Mr. Manoukian spoke of.] Also Dirk [Manoukian] indicated that as a condition of receiving copies of the videotapes, he had to sign something indicating that he would not release them to anyone else, including his client. Thus, even if we get an authorization from Nathan, we won't be able to get the videotapes from Dirk. In order to obtain the videotapes, we will likely need to issue a subpoena to the City of Walnut Creek Police Department." (Emphasis added.)

It appears from the evidence before us that you did in fact receive the file, and that throughout the course of the case discovery was provided to you and your son as it became available (and which could lawfully be provided to you). Moreover, the court that heard your petition for writ of mandate determined that you received the file. If you still wish to obtain copies of certain interviews that Mr. Manoukian was prohibited from providing to you, you may consider subpoenaing these recordings from the District Attorney's Office.

The State Bar is **limited by law** to disciplining attorneys for willful violations of the Rules of Professional Conduct of the State Bar ("Rules") and the State Bar Act ("Act"). The State Bar must prove attorney misconduct by "clear and convincing" evidence, a much higher standard (closer to "beyond reasonable doubt") than mere "preponderance" of evidence, which is the usual standard of proof in civil matters.

We find no clear and convincing evidence that Mr. Manoukian falsely represented that he released everything he could lawfully release of Mr. Medina's criminal file to you. You insist that he has not done so. Certainly, both statements cannot concurrently be true. However, "he said—she said" is well below the requisite "clear and convincing" evidence we are required to present to prove willful falsehood.

In sum, we find no clear and convincing evidence demonstrating, or corroborating mere allegations of, any willful misconduct on Mr. Manoukian's part in violation of the Rules or the Act that would subject him to investigation and/or disciplinary action by the State Bar.

Jamie Latteri
April 2, 2012
Page 3

Accordingly, the State Bar is closing this matter.

If you have any questions or disagree with the decision to close your complaint or have new information or other allegations not included in your initial complaint, you have two options. For immediate assistance, the first option is to speak directly with a Complaint Analyst. You may leave a voice message with Complaint Analyst Kyla Johnson at 213-765-1376. Be sure to clearly identify the lawyer complained of, the case number assigned, and your telephone number including the area code in your voice message. The Complaint Analyst will return your call within 2 business days.

The second option is to request the State Bar's Audit & Review Unit to review your complaint. An attorney may re-open your complaint if he or she determines that you presented new, significant evidence about your complaint or that the State Bar closed your complaint without any basis. You must submit your request for review with the new evidence or a showing that closing your complaint was made without any basis. To request review, you must submit your request in writing, together with any new evidence, post-marked within **90 days of the date of this letter**, to:

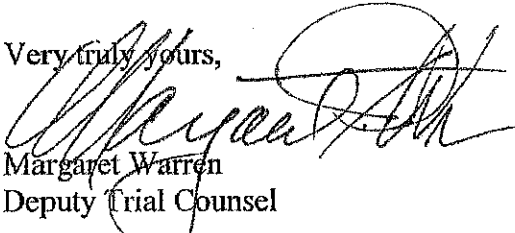
State Bar of California,
Audit & Review Unit,
1149 South Hill Street
Los Angeles, CA 90015-2299.

Please note that telephonic requests for review will not be accepted.

The State Bar cannot give you legal advice. If you wish to consult an attorney about any other remedies available to you, the Contra Costa County Bar Association can provide the names of attorneys who may be able to assist you. The county bar association's contact information is: Contra Costa Bar Association, 1001 Galaxy Way, Suite 102, Concord, CA 94520-5736 (925) 825-5700.

Thank you for bringing your concerns to the attention of the State Bar.

Very truly yours,


Margaret Warren
Deputy Trial Counsel



THE STATE BAR
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL
AUDIT & REVIEW

1149 SOUTH HILL STREET, LOS ANGELES, CALIFORNIA 90015-2299

TELEPHONE: (213) 765-1612
TDD: (213) 765-1566
FAX: (213) 765-1442
<http://www.calbar.ca.gov>

July 24, 2012

Jamie Latteri
P. O. Box 813
Martinez, CA 94553

RE: Case No.: 11-35448
Respondent: Dirk Lenord Manoukian

Dear Ms. Latteri:

Audit and Review has received your correspondence, dated June 28, 2012, requesting reconsideration of the decision of a State Bar attorney to close your complaint. Due to our current volume of cases, the material in the file, and the need to review each one carefully, we cannot estimate the date your matter will be assigned. We appreciate your patience.

We can assure you that once an attorney has reviewed your file, you will receive a letter advising you of our decision. If it is our determination that the matter should be re-opened, you will be advised and the matter will be re-assigned for further appropriate action. If it is our decision that the matter should remain closed, you will be advised of your right to petition the Supreme Court of California. **If you do not hear from us, it is because the matter has not yet been assigned or reviewed.**

If you would like us to consider new information other than what you have previously provided to us, please advise us, **in writing**. This is a more effective means for us to receive and fully evaluate your concerns. Include copies (only) of any documentation that you have not previously provided which you think it is important for us to review. **Do not re-send information or documentation that you have already provided.** You should send your written comments or information to: Audit and Review, Office of the Chief Trial Counsel, State Bar of California, 1149 South Hill Street, Los Angeles, California 90015.

The State Bar is not your attorney. The State Bar's function is to determine whether a particular complaint warrants disciplinary action. If you believe that you have a civil, criminal or administrative claim related to your complaint, you should consult an attorney regarding any available remedies. You should contact your local or county bar association for referral information.

OFFICE OF THE CHIEF TRIAL COUNSEL/AUDIT AND REVIEW

L15

1 Nathan Medina
CDCR#AA4500
2 Ironwood State Prison
E.O. Box 2199
3 Blythe, CA 92226
4 Petitioner In Propria Persona

FILED

2013 SEP 2 29

K. P. ... COURT
... CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA

11 NATHAN MEDINA,)
12)
12 Petitioner)
13 vs.)
14 DIRK MONOUKIAN,)
15 Respondent.)
16)
17)

Case No.: 111357-0
PETITION FOR WRIT
OF MANDATE

19 TO THE HONORABLE SUPERVISING PRESIDING JUDGE OF THE ABOVE-
20 ENTITLED COURT:

22 Petitioner, Nathan Medina, petitions this Court for a writ
23 of mandate, and by this verified petition represents that:

25 1. Petitioner is now, and at all times mentioned in this
26 petition, the defendant in Contra Costa County Superior Court
27 case no. 5-080656-2. Petitioner entered a plea of not guilty to
28 murder, Penal Code § 187. A jury found petitioner guilty as

1 charged and was subsequently sentenced to a term of 90 years, in
2 addition to three consecutive life sentences in state prison.
3 Attorney of record, Dirk Manoukian (Bar#157540) represented
4 petitioner. Petitioner is currently incarcerated in the
5 California Department of Corrections and Rehabilitation at
6 Ironwood State Prison.

7
8 2. Respondent, Dirk Manoukian, is now, and at all times
9 mentioned in this petition, an attorney at law, licensed to
10 practice law in the state of California. Respondent's State Bar
11 number is 157540 and the location of his business is 1401
12 Willow Pass Road/ Suite 880/ Concord, California 94520 .

13
14 3. The Superior Court has original jurisdiction in this
15 action for extraordinary relief in the nature of mandamus under
16 Article 6, Section 10 of the California Constitution, and Civil
17 Code of Procedure 1085.

18
19 4. Venue is proper in this count under Civil Code of
20 Procedure, Section 393. The cause of action with which this
21 petition is concerned occurred within the territorial jurisdiction
22 of the Contra Costa County Superior Court.

23
24 5. Petitioner has no plain, speedy, or adequate remedy at
25 law other than the relief sought in this petition, in that there
26 is no other more appropriate remedy available to petitioner to
27 compel respondent to perform his ministerial duty to deliver to
28 petitioner the petitioner's case files.

1 6. Petitioner is a person beneficially interested in this
2 proceeding, and petitioner and respondent are the parties who will
3 be affected by this proceeding.

4
5 7. Petitioner has performed all conditions precedent to the
6 filing of this petition by having first made demands in writing to
7 respondent to deliver to petitioner the petitioner's case files
8 pertaining to Contra Costa County Superior Court case number
9 5-080656-2, demands which respondent had ignored and failed to
10 comply with.

11
12 8. Respondent has a clear, present, and ministerial duty to
13 abide by and adhere to the laws governing the subject matter of
14 this petition.

15
16 9. At all times mentioned herein, respondent has been able
17 adhere to and follow the law which governs the subject matter
18 within.

19
20 10. On July 24, 2009, respondent had withdrawn as the
21 attorney of record in Contra Costa County Superior Court case
22 number 5-080656-2

23
24 11. On July 24, 2009, pursuant to the State Bar Rules of
25 Professional Conduct, Rule 3-700(D)(1), petitioner presented a
26 written demand to respondent for the respondent to promptly
27 release any and all correspondence, pleadings, deposition
28 transcripts, exhibits, physical evidence, expert's reports and

1 other items that are the respondent's "work product" in Contra
2 Costa County Superior Court, case number 5-080656-2 To date
3 (May 18, 2011) no response has been received.
4

5 12. Petitioner is particularly aggrieved by the respondent's
6 abject failure to perform his duties as the law specifically
7 enjoins and/or those duties set forth in Rule 3-700(D)(1), to
8 which petitioner is entitled.
9

10 13. Petitioner will be irreparable injured because he will
11 not be able to prepare and present a timely petition for habeas
12 corpus relief on issues outside of the trial record in Contra
13 Costa County Superior Court case number 5-080656-2 unless
14 respondent is compelled to promptly release the above-stated work
15 product to petitioner.
16

17 14. No other petition for writ of mandate has been made by
18 or on behalf of this petitioner relating to this matter.

19 //

20 //

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28 //

1 "A member whose employment has terminated shall:

2 (1) subject to any protective order or non-disclosure
3 agreement, promptly release to the client, at the
4 request of the client, all the client's papers and
5 propert... 'Client papers and property' includes
6 correspondence, pleadings, deposition transcripts,
7 exhibits, physical evidence, expert reports, and
8 other items reasonable necessary to the client's
9 representation, whether the client has paid for
10 them or not..."

11 It is settled that rules relating to the withdrawal of an
12 attorney from appointment "apply with no less force to the
13 discharge of an attorney. His duty to his client is not altered
14 by the circumstances of who terminates relationship. Academy of
15 California Optometrists, INC. v. Superior Court, (1975) 51 Cal.
16 App.3d 999, 1005-1006, 124 Cal Rptr. 668 . It is a breach of the
17 duty imposed by Rule 3-700(D)(1) to retain a client's case files
18 after discharge, in that an attorney's work product belongs
19 absolutely to the client whether or not the attorney has been paid
20 for his or her services. Weiss v. marcus (1975) 51 Cal.App.3d
21 590, 599, Cal.Rptr. 297 or to fail to forward the client's files
22 to a successor attorney. Finch v. State Bar, (1981) 28 Cal.3d 659,
23 665, 170 Cal.Rptr. 629, 621 P.2d 253; Kallen v. Delug (1985) 157
24 Cal.App.3d 940, 950, 203 Cal.Rptr. 879. (And see B.P.§6068.)

25 //

26 //

27 //

28 //

PRAYER FOR RELIEF

WHEREFORE, petitioner prays that:

1. Respondent to be directed to show cause before this court, at a specified time and place, why he should not be compelled to perform his duties in accordance with Rule 3-700(D)(1) of the Rules of the State Bar which specifically require him to release the "client papers" to petitioner. In addition to client papers, audio and video recordings of witnesses, 911 audio recordings, and investigator's (hired by client through respondent) reports, notes and findings.

2. Petitioner be granted such further relief as may be appropriate and just.

Dated: May 18, 2011



Petitioner In Pro Se

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VERIFICATION

I am the petitioner in this action. The above document is true of my own knowledge.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Dated this 18th day of May, 2011.



Petitioner In Pro Se

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Nathan Medina Ironwood State Prison P.O. Box 2199 (B2-202) Blythe, CA 92226 TELEPHONE NO.: None FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY RECEIVED AUG 31 2011 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF CONTRA COSTA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa STREET ADDRESS: 725 Court St. MAILING ADDRESS: CITY AND ZIP CODE: Martinez 94553 BRANCH NAME:		
PLAINTIFF/PETITIONER: Nathan Medina DEFENDANT/RESPONDENT: Dirk L. Manoukian		CASE NUMBER: 5-111357-0
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents): **writ of mandate**
3. a. Party served (specify name of party as shown on documents served):
 - b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
5. I served the party (check proper box)
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): _____ (2) at (time): _____
 - b. by substituted service. On (date): _____ at (time): _____ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3): _____
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): _____ from (city): _____ or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT: Dirk L. Manoukian
(AVISO AL DEMANDADO):**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

RECEIVED

AUG 31 2011

COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

**YOU ARE BEING SUED BY PLAINTIFF: Nathan Medina
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: Contra Costa County Superior Court
(El nombre y dirección de la corte es): 649 Main St, Martinez, CA 94553
725 Court

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Nathan Medina
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Ironwood State Prison P O Box 2199 (B2-202)
Blythe, CA 92226

DATE:
(Fecha)

Clerk, by _____
(Secretario)

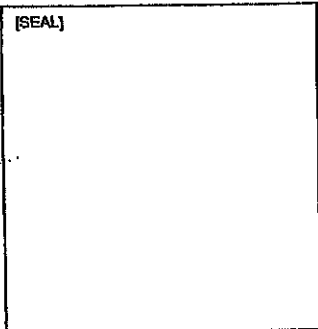
Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):



To: Contra Costa County Superior Court
please issue two summon's to be served
on Dick Manoukian at his place of
business at 1401 Willow Pass Road S.W. 880
Concord Ca 94520.

Contact Info:
Jamie Latteri [REDACTED]
(Mother) She has Power of Attorney for Nathan

RECEIVED
AUG 31 2011

By _____ CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____ Deputy Clerk

Thank you

1 Nathan Medina
2 CDCR No. AA4500
3 Ironwood State Prison
4 P.O. Box 2199
5 Blythe, CA 92226

FILED

2011 AUG 31 P 2:29

6 Petitioner in Propria Persona

CLERK OF SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
BY: _____
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA

11 NATHAN MEDINA,

12 Petitioner,

13 vs.

14 DIRK MONOUKIAN,

15 Respondent

) Case: 11/357-0
)
) NOTICE OF MOTION OF
) MANDATE PROCEEDING
)
)
) Hearing:
) Time:
) Courtroom:
) Judge:
)
)
)

18 TO THE ABOVE-ENTITLED COURT, RESPONDENT AND HIS ATTORNEYS

19 PLEASE TAKE NOTICE that on _____, in Department
20 _____ at _____, or as soon

21 thereafter as the matter may be heard, petitioner Nathan Medina
22 will move the court for an order compelling respondent to
23 release any and all correspondence, pleadings, deposition
24 transcripts, exhibits, physical evidence, expert's reports, and
25 other items that are respondent's "work product" in Contra
26 Costa County Superior Court, case number 5-080655-2

27 This motion will be based on the attached petition for writ
28 of mandate, memorandum of points and authorities, declaration of

1 petitioner, all papers filed and records in this action,
2 evidence taken at the hearing on this motion, and argument at
3 the hearing.

4
5 Date: 5-18-11

6
7
8 Respectfully submitted,

9
10 ~~_____~~
11 Petitioner In Pro Se
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FOR COURT USE ONLY
FILED
2011 SEP 23 A 10:01
SUPERIOR COURT
CONCORD, CALIF.
BY: _____ County Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Nathan Medina CDCR #AA4500
Ironwood State Prison
P.O. Box 2199
Blyth CA 92226
Petitioner In Propria Persons
TELEPHONE NO.:
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): FAX NO. (Optional):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa
STREET ADDRESS: **725 Court St**
MAILING ADDRESS:
CITY AND ZIP CODE: **Martinez, 94553**
BRANCH NAME:

PETITIONER/PLAINTIFF: **Nathan Medina**
RESPONDENT/DEFENDANT: **Dirk L. Manoukian**

PROOF OF PERSONAL SERVICE—CIVIL

CASE NUMBER:
111357-0

(Do not use this Proof of Service to show service of a Summons and Complaint.)

- 1. I am over 18 years of age and not a party to this action.
- 2. I served the following documents (specify): **Petition for Writ of Mandate ,Notice of Motion of Mandate proceedings**

The documents are listed in the *Attachment to Proof of Personal Service—Civil (Documents Served)* (form POS-020(D)).

- 3. I personally served the following persons at the address, date, and time stated:
a. Name: **Dirk Manoukian Law Office**
b. Address: **1401 Willow Pass Road Sulte 880, Concord CA 94520**
c. Date: **9-2-2011**
d. Time:

The persons are listed in the *Attachment to Proof of Personal Service—Civil (Persons Served)* (form POS-020(P)).

- 4. I am
a. not a registered California process server.
b. a registered California process server.
c. an employee or independent contractor of a registered California process server.
d. exempt from registration under Business & Professions Code section 22350(b).

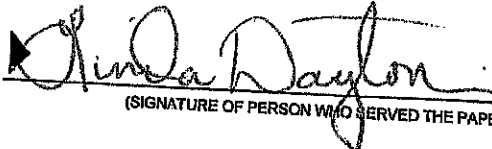
5. My name, address, telephone number, and, if applicable, county of registration and number are (specify):
Linda Dayton
1954 Contra Costa Blvd
Pleasant Hill CA 94523
925-381-0689

- 6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- 7. I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: **9-2-2011**

Linda Dayton

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)



(SIGNATURE OF PERSON WHO SERVED THE PAPERS)

FILED

SEP 20 2012

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

K. TORRES, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____
Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA,

No.5-121283-6

Plaintiff.

Order on Petitioner
Motion for Post-
Conviction
Discovery

vs.

Nathan Medina

Defendant.

I. Background

The court on its own motion takes judicial notice of petitioner's underlying docket No. 5-080656-2. Petitioner was convicted following a jury trial of first degree murder (Pen. Code § 187); two attempted murders (Pen. Code § 187/664); and first degree burglary (Pen. Code 459, 460(a) plus the jury found petitioner personally used and discharged a firearm causing great bodily injury. (Pen. Code § 12022.53.) Petitioner was sentenced to 25 years to life on the murder conviction, with consecutive enhancement of 25 years to life for personal use of a firearm; life in prison with a consecutive 20 years for the firearm enhancement on each attempted murder conviction; and a concurrent term of four years for the burglary.

Petitioner's conviction and sentence were affirmed on February 24, 2012 by the Court of Appeal, First Appellate District, in an unpublished opinion. (A125850.)

II. Discussion

Petitioner has filed a motion for discovery and production of items in the possession of the District Attorney's Office and the Walnut Creek Police Department. The items sought are detailed in his motion herein. As well the court incorporates by reference petitioner's exhibits filed in support of his writ of

habeas corpus which also detail the items. On ~~9-14-12~~ the court denied the writ without prejudice.

Petitioner is requesting the court order production of copies of the following items which he claims are material to the merits of his writ: (1) audio tape of Beverly Rhodes 911 call; (2) CD of interview with Beverly Rhodes; (3) audio tape of Sean Mendell's 911 call; and (4) interviews of Marielle Longfellow and Sean Mendell.


The court having reviewed petitioner's motion denies it for the following reasons:

In the present case discovery is not available because an order to show cause has not issued. Generally discovery is available in a habeas corpus proceeding once an order to show cause has issued. (In re Scott (2003) 29 Cal. 4th 783, 814; In re Avena (1996) 12 Cal. 4th 694, 730; Board of Prison Terms v. Superior Court (2005) 130 Cal. App. 4th 1212, 1241.) Thus, no discovery is permitted prior to the issuance of the order to show cause, because a habeas corpus petition that does not state a prima facie claim for relief "creates no cause or proceeding which would confer discovery jurisdiction." (People v. Gonzalez (1990) 51 Cal. 3d 1179, 1258.)

The court further finds there is no evidence before it that the District Attorney's Office has refused to provide petitioner the above noted items upon payment of the requisite fee. Petitioner had been notified he could obtain a copy of the named exhibits from the District Attorney's Office at set fees for production of police reports, audio cassettes, video cassettes/CD/DVD and photos. [Exhibit H, People's Discovery Package, March 25, 2008.] There is no claim by petitioner that he can not pay the copying fees. Furthermore, the records sought could be obtained via the issuance of a subpoena duces tecum to the Walnut Creek Police Department. [People v. Superior Court (Barrett) (2000) 80 Cal. App. 4th 1305, 1316.]

The motion is denied without prejudice.

Dated: September 14, 2012


Judge Nancy Davis Stark
Judge of the Superior Court

Cc: Petitioner
No. 5-080656-2

1 NATHAN MEDINA
2 IRONWOOD STATE PRISON
3 P.O. BOX 2199
4 BLYTHE, CA 92226
5

6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF CONTRA COSTA
8

9 NATHAN MEDINA
10 PETITIONER
11 V.
12 MATTHEW GATE, CDCR
13 SECRETARY,
14 RESPONDENT.

CASE NO. _____
MOTION FOR POST-CONVICTION
DISCOVERY COMPLIANCE ORDER IN
HABEAS CORPUS PROCEEDING
(INCORPORATED WITH PETITION FOR
WRIT OF HABEAS CORPUS)

15
16
17
18 Petitioner comes now to move the court for an order directing
19 discovery; petitioner, having previously made an informal request
20 under the California Public Records Act, by and through petitioner's
21 agent, Jaime Latteri, to the Walnut Creek Police Department
22 custodian of records, for specified pieces of discovery
23 for inspection and copying, petitioner moves this court for an
24 order directing the specified items to be provided to
25 petitioner's agent, for purchase and further transcription, to be
26 used in this habeas proceeding. Those items are listed in the
27 attached declaration of petitioner and are further identified in
28 Exhibit-(H), incorporated with the exhibits to the petition for

1 writ of habeas corpus.

2

3 Initially, on June 22, 2012, petitioner's agent Jaime Latteri
4 contacted the Walnut Creek Police Department, via telephone, to
5 inquire about purchasing copies of the specified items. She was
6 informed that the items were exempt from the Public Records Act,
7 and that subpoena would be required.

8

9 Because petitioner is not an attorney or officer of the court
10 able to issue subpoenas, and cannot currently afford counsel,
11 this request for an order directing the Walnut Creek Police
12 Department's Chief of Police, Joel Bryden, to provide the requested
13 discovery articles is reasonable.

14

15 In the event this court deems it proper to make an order to
16 the Contra Costa County District Attorney compelling the production
17 of the specified items instead, petitioner has reason to believe
18 that the District Attorney does already have copies of the items.
19 However, the Walnut Creek Police Department is the agency in
20 possession of the original items.

21

22 Following the contact via telephone, petitioner also submitted
23 a written request to the Walnut Creek Police Department by and
24 through his agent Jamie Latteri, dated June 28, 2012. To the date
25 of the signing of this request, the Walnut Creek Police Department
26 has not complied with Government Code § 6256 requiring them to
27 provide a determination and notice to petitioner, giving reason
28 why disclosure is being denied. For that reason petitioner cannot

1 effectively challenge the denial of access to records in a writ of
2 mandate, where the agency refuses to document its denial.

3
4 In addition to petitioner's attempt to obtain these discovery
5 items through the Public Records Act, petitioner has also
6 exhaustively attempted to obtain the copies in the possession of
7 his trial counsel, all to no avail. (see Exhibits-(C) and (D)) ,
8 (incorporated with exhibits to petition for writ of habeas corpus).

9 "The general rule is that discovery is available in a habeas
10 proceeding once an order to show cause has issued. (In re Scott
11 (2003) 29 Cal.4th 783, 814, 129 Cal.Rptr.2d 605; In re Avena (1996)
12 12 Cal.App.4th 1212, 1241, 31 Cal.Rptr.3d 70, 91. (BPT)

13 "Our Supreme Court has also observed that 'the nature and
14 scope of discovery in habeas proceedings has generally been
15 resolved on a case-by-case basis.' (In re Scott, supra, 29 Cal.4th
16 at p. 812, 129 Cal.Rptr.2d 605.) We have found no authority
17 that expressly provides the Superior Court with the power to
18 order discover in a habeas proceeding in the absence of a discovery
19 request by a party." (BPT), supra, 130 Cal.App.4th at p. 1242, 31
20 Cal.Rptr.3d at p.92

21
22 Here, if it pleases the court, petitioner incorporates this
23 request with his petition for writ of habeas corpus, in
24 anticipation of an order to show cause being issued. The prima
25 facie showing in the petition, which includes petitioner's
26 declarations regarding the specific discover evidence here
27 requested, should satisfy the prima facie showing requirement; and
28 if so, in this case, would warrant the discovery order to obtain

1 the actual evidence as declared by petitioner to exist. (see,
2 Exhibits-(E) and (K))
3

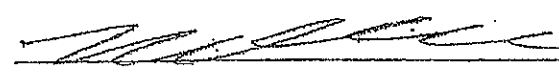
4 The Superior Court, when it believes the discovery is
5 necessary to ensure a fair hearing and a determination of the
6 case, has the discretion to compel the necessary discovery. In
7 making this court's decision on whether to compel discovery, this
8 court must keep in mind its duty to "discover the truth and do
9 justice in a timely fashion." PEOPLE v. DUVALL (1995) 9 Cal.4th
10 464, 482, 37 Cal.Rptr.2d 259.

11
12 Based on the foregoing, petitioner moves this court for an
13 order directing the Walnut Creek Police Chief, Joel Bryden, for
14 inspection and copying, the articles identified in Exhibit-(H),
15 which is incorporated in the exhibits to the petition for writ
16 of habeas corpus, and also identified in petitioner's declaration
17 that follows this request (see page (5)), marked: (re: Discovery
18 Articles Requested).

19
20 This request is based on this motion, the petition for writ
21 of habeas corpus, the record and files in the underlying
22 conviction in case no. 5-080656-2 (PEOPLE v. MEDINA), and the
23 attached declaration of Nathan Medina, petitioner in pro per. (p.5-7)

24
25 Respectfully submitted,
26

27 Dated: 7-21-2012


28 Nathan Medina
Petitioner in pro per

FILED

2012 OCT 26 P 12:59

CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CALIF.
DIA
Clerk

1 NATHAN MEDINA AA4500
2 IRONWOOD STATE PRISON
3 P.O. BOX 2199
4 BLYTHE, CALIFORNIA 92226

6 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 IN AND FOR THE COUNTY OF CONTRA COSTA

8
9 NATHAN MEDINA,) CASE NO. 5-121283-6
10 PETITIONER,) REQUEST FOR RECONSIDERATION
11 V.) OF ORDER TO SHOW CAUSE ISSUED
12 MATTHEW CATE, SECRETARY, CDCR) ON SEPTEMBER 14, 2012, BY JUDGE
13 RESPONDENT) NANCY DAVIS STARK
14 (Underlying Case No 5-080656-2)

15 TO THE HONORABLE NANCY DAVIS STARK JUDGE OF THE ABOVE ENTITLED COURT:
16 Petitioner requests the Court to reconsider it's Order To Show Cause, filed September 28, 2012, in light
17 Of the facts contained in this request, regarding the primary miscommunication between petitioner and
18 the Court, in the original petition: that there is in fact no reasonable access to the articles of electronic
19 Media or transcripts thereof. .

20 Based on the Court's "without prejudice" denial of the writ and the Court's multiple references to the
21 corrections the Court implied are necessary, as well as new facts the Court was not able to consider pre-
22 viously, petitioner now urges the Court to reconsider.

23 Incorporated with this request, petitioner gives the Court reference to Exhibit-A, attached hereto,
24 (Order to attend Court or provide Documents), the three Subpoenaed parties have responded as follows:

25
26 DIRK MANOUKIAN, ATTORNEY AT LAW, served 10/09/2012 – No response from this party.

1 NATHAN MEDINA AA4500
2 IRONWOOD STATE PRISON
3 P.O. BOX 2199
4 BLYTHE, CALIFORNIA 92226

5
6 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 IN AND FOR THE COUNTY OF CONTRA COSTA
8

9 NATHAN MEDINA,) CASE NO. 5-121283-6
10 PETITIONER,) REQUEST FOR RECONSIDERATION
11 V.) OF ORDER TO SHOW CAUSE ISSUED
12 MATTHEW CATE, SECRETARY, CDCR) ON SEPTEMBER 14, 2012, BY JUDGE
13 RESPONDENT) NANCY DAVIS STARK
14 (Underlying Case No 5-080656-2)

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18 the Court, in the original petition:: that there is in fact no reasonable access to the articles of electronic
19 Media or transcripts thereof. .

20 Based on the Court's "without prejudice" denial of the writ and the Court's multiple references to the
21 corrections the Court implied are necessary, as well as new facts the Court was not able to consider pre-
22 viously, petitioner now urges the Court to reconsider.

23 Incorporated with this request, petitioner gives the Court reference to Exhibit-A, attached hereto,
24 (Order to attend Court or provide Documents), the three Subpoenaed parties have responded as follows:

25
26 DIRK MANOUKIAN, ATTORNEY AT LAW, served 10/09/2012 -- No response from this party.

1
2 CUSTODIAN OF RECORDS WALNUT CREEK POLICE DEPARTMENT, served on 10/09/2012

3 – This party claims: “...the documents in question were turned over to the District Attorney’s Office
4 during the original trial and have not been returned. They are all in evidence with the court” (see Ex-
5 hibit-B, LETTER FROM Walnut Creek Police Department, dated October 12, 2012..).

6
7 CUSTODIAN OF RECORDS CONTRA COSTA COUNTY DISTRICT ATTORNEY’S OFFICE,
8 served on 10/09/2012 – No response from this party:

9
10 Based on the non-compliance with these properly served Subpoena’s, petitioner incorporates with this
11 request his second request for the Court’s intervention in enforcing the Subpoena’s, particularly that to the
12 Custodian of Records Contra Costa County District Attorney’s Office.

13
14 BACKGROUND

15 Petitioner was convicted following a jury trial of first degree murder (Pen. Code sec. 187); two at
16 tempted murders (Pen Code sec. 187/664); and first degree burglary (Pen. Code sec. 459, 460(a) plus the
17 jury found petitioner personally used and discharged a firearm causing great bodily injury, (Pen. Code
18 sec. 12022.53.) Petitioner was sentenced to 25 years to life on the murder conviction, with consecutive
19 enhancement of 25 years to life for personal use of a firearm; with a consecutive 20 years for the fire-
20 arm enhancement on each attempted murder conviction; a concurrent term of four years for the burglary
21 conviction.

22 Petitioner’s conviction and sentence were affirmed on February 24, 2012 by the Court of Appeal, First
23 Appellate District, in an unpublished opinion (A125850.)

24
25 DISCUSSION

26 Petitioner filed a writ of habeas corpus claiming ineffective assistance of trial counsel on several

1
2 GROUND THREE

3 The Court has found here that the record submitted by petitioner is insufficient. In an effort to correct
4 this insufficiency, petitioner now submits a full and complete copy of the trial transcript for the following
5 witnesses :

6 Sean Mendell (see Exhibit-C)

7 Marielle Longfellow (see Exhibit-D)

8 Detective Jower (see Exhibit-E)

9 Detective McColgin (see Exhibit F)

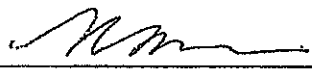
10 Petitioner further claims to have been denied the articles of evidence containing these witnesses pre-
11 trial recorded statements; also in the possession of the District Attorney.

12
13 CONCLUSION

14 Based on the foregoing, petitioner requests the Court to reconsider it's Order To Show Cause and to
15 consider the petition's incorporated "REQUEST FOR DISCOVERY."

16
17 Dated 10-23-2012

Respectfully submitted

18
19 

20 Nathan Medina, Petitioner in pro per
21
22
23
24
25
26

FILED

OCT 23 P 1:00

PROOF OF SERVICE

COURT CLERK
SUPERIOR COURT
CONTRA COSTA COUNTY

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In re Nathan MEDINA on Habeas Corpus

Case No. 5-1212836

Underlying Case No. 5-080656-2

I, Anthony Latteri, by personal service, did deliver the following document:

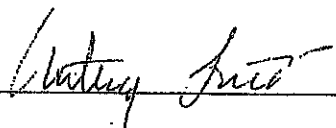
Request for Reconsideration

To the Contra Costa County Superior Court

I, declare under penalty of perjury under the laws of the State of California that I am at least 18 years of Age, is not a party to this action and that the information provided above is true and correct.

Executed this 26 day of October 2012, at Manteca, California.

Anthony Latteri _____



Signature of Server

//
//
//
//

THIS HAND WRITTEN 9 PAGES
WAS ATTACHED TO SAME
EXHIBITS USED WITH OTHER
FILINGS.

THIS - 3/27/2013 - FILED COPY
WITH IT.

FILED
MAR 27 2013

K. TORRE, CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ

By _____, Deputy Clerk

Superior Court of California in and for the
County of Contra Costa

People of the State of California;
Plaintiff,

vs.

Nathan Medina,
Defendant.

No. 05-130185-2

Decision on Pro Per
Petition for Writ of
Mandate.

[Underlying docket,
No. 05-080656-2.]

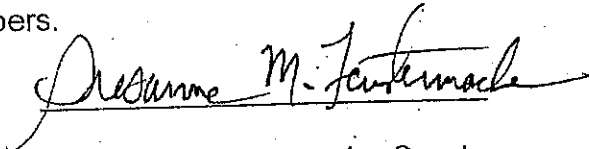
The court, on its own motion, takes judicial notice of the file in the underlying cases referenced above. (EC 452(d).) In that docket defendant was sentenced to 90 years to life following conviction of violation, inter alia, of Penal Code section 187, murder. Defendant's conviction and sentence were affirmed in February, 2012.

Defendant subsequently brought a petition for writ of habeas corpus and a petition for writ of mandate. Both petitions were denied. Defendant now brings a second petition for writ of mandate.

The court will summarily deny the present petition. Defendant requests production of a transcript of certain audio/visual materials from his criminal case that contain interviews of witnesses. A writ of mandate properly reviews judicial acts. It is not an appropriate vehicle to order parties-litigant to produce post trial discovery.

Petition denied. So ordered in chambers.

Dated: 3/27/13


Judge of the Superior Court

Cc: Defendant, 05-080656-2

jj/order15z.doc

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

1
2 IN RE: { CASE NO:
3 NATHAN MEDINA {
4 ON { PETITION FOR POSTCONVICTION
5 HABEAS CORPUS { DISCOVERY; PENAL CODE § 1054.9
6
7

8
9 STATEMENT OF FACTS

10 47 YEAR OLD NATHAN MEDINA (HERE AFTER PETITIONER)
11 SUFFERED A CONVICTION ON MAY 5TH 2009 OF FIRST
12 DEGREE MURDER, WITH PREMEDITATION AND BURGLARY.
13 HE WAS SENTENCED TO 50 YEARS TO LIFE FOR THE MURDER
14 WITH THE ENHANCEMENT, AND CONSECUTIVE LIFE TERMS,
15 BOTH ENHANCED BY 20 YEARS FOR TWO COUNTS OF ATTEMPTED
16 MURDER FOR A TOTAL SENTENCE OF 90 YEARS TO LIFE.

17 THE VERDICT IN THIS CASE RELIES PRIMARILY ON THE
18 EYE WITNESS IDENTIFICATION OF THREE WITNESSES,
19 BEVERLY RHOADS, SEAN MENDELL AND MARIEL LONGFELLOW.

20 PETITIONER HAS MAINTAINED HIS INNOCENCE AND IS
21 SEEKING EXCULPATORY EVIDENCE IN THE POSSESSION OF
22 THE STATE UNDER THE AUTHORITY OF PENAL CODE § 1054.9
23 AND IN RE: STEEL 32 CAL 4TH 682; 85 P. 3d 444.

24 THE DISCOVERY PETITIONER SEEKS IS EXCULPATORY AND FOR
25 THE PURPOSE OF PREPARING AN ACTUAL INNOCENCE CLAIM
26 ON WRIT OF HABEAS CORPUS. THIS EVIDENCE WAS NOT USED
27 AT TRIAL AND GOES TO THE HEART OF THE CREDIBILITY OF
28 THE EYE WITNESSES IDENTIFICATION OF PETITIONER.

1 PETITIONER WILL SHOW THAT HE FITS ALL THE CRITERION OF PENAL
2 CODE §1054.9 AS WELL AS IN RE: STEEL (SUPRA), AND IS
3 ENTITLED TO THE DISCOVERY SOUGHT.

4 PENAL CODE §1054.9

5 IS FOR "THE PROSECUTION OF POSTCONVICTION WRIT OF HABEAS
6 CORPUS OR MOTION TO VACATE JUDGEMENT INVOLVING SENTENCES
7 OF DEATH OR LIFE IMPRISONMENT"; REASONABLE ACCESS TO
8 DISCOVERY MATERIALS TO WHICH DEFENDANT WOULD HAVE BEEN
9 ENTITLED AT TIME OF TRIAL; CONDITIONS (cc) UPON THE
10 PROSECUTION OF A POSTCONVICTION WRIT OF HABEAS CORPUS
11 OR A MOTION TO VACATE A JUDGMENT IN A CASE IN WHICH
12 A SENTENCE OF DEATH OR OF LIFE WITHOUT THE POSSIBILITY
13 OF PAROLE HAS BEEN IMPOSED, AND ON A GOOD FAITH
14 SHOWING THAT EFFORTS WERE MADE TO OBTAIN
15 DISCOVERY MATERIALS FROM TRIAL COUNSEL AND WERE
16 UNSUCCESSFUL, THE COURT SHALL, EXCEPT AS PROVIDED
17 IN SUBDIVISION (c), ORDER THAT THE DEFENDANT BE
18 PROVIDED REASONABLE ACCESS TO ANY MATERIALS DESCRIBED
19 IN SUBDIVISION (b).

20 PETITIONER WILL ADDRESS SUBDIVISION (a) IN THREE
21 PARTS. FIRST IN ORDER IS "UPON THE PROSECUTION OF A
22 POSTCONVICTION WRIT OF HABEAS CORPUS OR A MOTION TO
23 VACATE A JUDGMENT".

24 PETITIONER IS ENTITLED TO THE DISCOVERY MATERIALS
25 SOUGHT FOR THE PURPOSE OF FILE RECONSTRUCTION AS
26 WELL AS PREPARING A WRIT OF HABEAS CORPUS". IN
27 IN RE: STEEL 32 CAL. 4TH 682; THE ATTORNEY GENERAL
28 ARGUED THAT P.C. § 1054.9 IS A "FILE RECONSTRUCTION"

1 STATUTE. THE CALIFORNIA SUPREME COURT DISAGREED
2 THAT IT WAS ITS ONLY PURPOSE, HOWEVER WENT ON
3 TO SAY IT WAS DEFINITELY ONE OF ITS PURPOSES.
4 THAT IS TO REPLACE MATERIALS THAT THE DEFENSE
5 ONCE POSSESSED BUT HAS SINCE LOST. THEY ALSO
6 GO ON TO SAY THAT A DEFENDANT HAS A RIGHT TO
7 POSTCONVICTION DISCOVERY MATERIALS IN ORDER
8 TO PREPARE A WRIT OF HABEAS CORPUS.

9 IN THE INSTANT CASE THE MATERIAL PETITIONER
10 SEEKS IS FOR THE PURPOSE OF RECONSTRUCTING HIS
11 FILE AND TO PREPARE HIS ACTUAL INNOCENCE CLAIM.
12 AT TRIAL THE STATE COMPLIED WITH THE BRADY REQUI-
13 REMENTS, THE DISCOVERY MATERIAL WAS PROVIDED TO
14 TRIAL COUNSEL, BUT HAS SINCE BECOME LOST TO
15 PETITIONER.

16 NEXT PETITIONER WISHES TO ADDRESS THE WORDING IN
17 SUBDIVISION (a) "IN WHICH A SENTENCE OF DEATH OR LIFE
18 IN PRISON WITHOUT THE POSSIBILITY OF PAROLE" ON
19 THE SURFACE THIS WORDING SEEMS TO RESTRICT RELIEF
20 TO THE DEATH PENALTY AND LWOP SENTENCING.
21 HOWEVER THIS COURT MUST NOT LET SIMPLE SEMANTICS
22 OVERRIDE COMMON SENSE, REASON AND MOST OF ALL
23 JUSTICE.

24 UNDER CALIFORNIA LAW, PRISONERS SERVING AN
25 INDETERMINATE SENTENCE MAY SERVE UP TO LIFE IN
26 PRISON, BUT BECOME ELIGIBLE FOR PAROLE CONSIDERA-
27 TION AFTER SERVING MINIMUM TERMS OF CONFIN-
28 MENT. (P.C. § 3041)

1 IN THIS CASE, PETITIONER IS 47 YEARS OLD, HIS
2 MINIMUM TERMS OF CONFINEMENT IS 90 YEARS, I
3 THINK THIS COURT WILL AGREE THAT FOR A PERSON 47
4 YEARS OLD, 90 YEARS FAR EXCEEDS PETITIONERS
5 NATURAL LIFE EXPECTANCY. GIVEN THAT FACT,
6 PETITIONERS SENTENCE FOR ALL INTENT AND PURPOSE
7 IS LIFE WITHOUT PAROLE. IN FACT, THE SENTENCING
8 COURT FOLLOWED GUIDELINES ESTABLISHED TO INSURE
9 THAT PETITIONER IS NEVER RELEASED FROM PRISON.

10 WHEN A COURT REVIEWS A WRIT OF HABEAS CORPUS,
11 THAT COURT MUST DO SO WITH REASON AND IT MUST
12 ADJUDICATE BY THE ENDS OF JUSTICE. (SCHUP V. DELO
13 115 S. CT. 851). THE 14TH AMENDMENT GUARANTIES
14 NOT ONLY EQUAL PROTECTION UNDER THE LAW IT ALSO
15 GUARANTIES REASONABLE APPLICATION OF THE LAW.
16 P.C. §1054.9 WAS ESTABLISHED TO PROVIDE RELIEF TO
17 A PERSON IN A PHYSICAL SITUATION OF SUFFERING
18 THE DEATH SENTENCE OR A LIFE SENTENCE WITH NO
19 CHANCE OF BEING RELEASED. PETITIONER FITS THE
20 LATER PART OF THIS STATEMENT. P.C. §1054.9 WAS NOT
21 INTENDED TO BE REDUCED TO SIMPLE WORD STUDY.

22 TO DENY RELIEF WOULD BE AN ABUSE OF THIS COURTS
23 DISCRETION AND A VIOLATION OF PETITIONERS RIGHTS
24 ON A CONSTITUTIONAL LEVEL.

25 FURTHER, PETITIONER HAS A 6TH AMENDMENT RIGHT
26 TO THE RELIEF REQUESTED, FOR WITHOUT THE DISCOVERY
27 SOUGHT, PETITIONER CANNOT PREPARE HIS ACTUAL
28 INNOCENCE CLAIM AND THIS WOULD EFFECTIVELY

1 DENY HIM ACCESS TO THE COURTS.

2 DISCOVERY MATERIAL REQUESTED.

3 PETITIONER SEEKS COPIES OF ANY AND ALL AUDIO
4 RECORDINGS OF POLICE INTERVIEWS DONE WITH
5 BEVERLY RHOADS, SEAN MENDELL AND MARIEL
6 LONGFELLOW. ALSO ANY AND ALL VIDEO RECORDINGS
7 OF POLICE INTERVIEWS DONE WITH BEVERLY RHOADS,
8 SEAN MENDELL AND MARIEL LONGFELLOW. ANY AND
9 ALL NOTES OR WRITTEN STATEMENTS GENERATED BY
10 POLICE CONCERNING STATEMENTS MADE BY BEVERLY
11 RHOADS, SEAN MENDELL OR MARIEL LONGFELLOW.

12 PETITIONER ALSO SEEKS COPIES OF THE RECORDED 911
13 PHONE CALLS MADE BY BEVERLY RHOADS, SEAN MENDELL
14 AND MARIEL LONGFELLOW.

15 PETITIONER CANNOT PREPARE HIS "ACTUAL INNOCENCE"
16 WRIT WITHOUT THIS MATERIAL. PETITIONER MUST SEND
17 ALL AUDIO AND VIDEO RECORDINGS TO BE TRANSCRIBED
18 AND TO BE VIEWED BY EXPERTS. ESPECIALLY THE VIDEO
19 OF MARIEL LONGFELLOW'S POLICE INTERVIEW. THE
20 AUDIO DID NOT RECORD ON THIS VIDEO AND THUS
21 PETITIONER WAS UNABLE TO CONFRONT THIS WITNESS
22 EFFECTIVELY ON CROSS EXAMINATION. PETITIONER
23 NEEDS TO SEND THIS VIDEO TO AN EXPERT IN
24 LIP READING TO TRANSCRIBE THE WITNESSES
25 STATEMENTS TO POLICE.

26 ALL THE DISCOVERY MATERIAL REQUESTED IS BOTH
27 MATERIAL AND EXCULPATORY. FURTHER MORE
28 PETITIONER WAS ENTITLED TO THIS DISCOVERY AT TIME

1 OF TRIAL.

2 PETITIONERS "GOOD FAITH" EFFORTS TO
3 OBTAIN DISCOVERY FROM TRIAL COUNSEL
4 SINCE HIS CONVICTION PETITIONER HAS MADE
5 RELENTLESS EFFORT TO OBTAIN THE REQUESTED DISCOVERY
6 FROM TRIAL COUNSEL. TO DATE PETITIONER HAS BEEN
7 UNSUCCESSFUL.

8 PETITIONER HAS MADE NUMEROUS REQUEST TO TRIAL
9 COUNSEL FOR THE MATERIAL SOUGHT AS DID PETITIONERS
10 APPELATE COUNSEL. HOW EVER TRIAL COUNSEL HAS
11 NEVER COMPLIED WITH ANY OF THE REQUEST.
12 (SEE EXHIBITS).

13 PETITIONER HAS FILED COMPLAINTS WITH THE STATE
14 BAR IN AN EFFORT TO FORCE TRIAL COUNSEL TO
15 COMPLY WITH HIS REQUEST. THIS WAS UNSUCCESSFUL.

16 PETITIONER HAS TRIED WRITS OF MANDATES AND
17 HABEAS CORPUS TO GET THE REQUESTED MATERIAL.
18 AT ONE POINT TRIAL COUNSEL EVEN CLAIMED TO HAVE
19 MAILED THE MATERIALS TO PETITIONERS FAMILY. IT
20 NEVER ARRIVED.

21 PETITIONER EVEN TRIED TO GET THE REQUESTED
22 MATERIAL FROM BOTH THE WALNUT CREEK POLICE
23 AND CONTRA COSTA DISTRICT ATTORNEY. ALL ATTEMPTS
24 HAVE BEEN UNSUCCESSFUL.

25 PETITIONER HAS MORE THEN SATISFIED THE REQUIREMENT
26 IN P.C. § 1054.9 TO MAKE A "GOOD FAITH EFFORT"
27 TO OBTAIN THE DISCOVERY MATERIALS FROM HIS
28 TRIAL COUNSEL.

SUBDIVISION (c) OF P.C. §1054.9

1 PETITIONER WILL ADDRESS SUBDIVISION (c) ONLY IN AS
2 FAR AS IT APPLIES TO THIS MOTION. (DNA IS NOT AN ISSUE)
3 (c). IN RESPONSE TO A WRIT OR MOTION SATISFYING
4 THE CONDITIONS IN SUBDIVISION (a), THE COURT MAY
5 ORDER THAT THE DEFENDANT BE PROVIDED ACCESS TO
6 PHYSICAL EVIDENCE FOR THE PURPOSE OF EXAMINATION,
7 INCLUDING BUT NOT LIMITED TO, ANY PHYSICAL EVIDENCE
8 RELATING TO THE INVESTIGATION, ARREST, AND PROSECUTION
9 OF THE DEFENDANT ONLY UPON SHOWING THAT THERE IS
10 GOOD CAUSE TO BELIEVE THAT ACCESS TO PHYSICAL
11 EVIDENCE IS REASONABLY NECESSARY TO THE DEFENDANT'S
12 EFFORT TO OBTAIN RELIEF.

13 THE MATERIAL SOUGHT IS CRUCIAL TO PREPARING
14 PETITIONER'S ACTUAL INNOCENCE CLAIM. IT IS
15 "NEW EVIDENCE" THAT THE JURY DID NOT HEAR AND
16 IT UNDERMINES THE CREDIBILITY OF THE EYE
17 WITNESS IDENTIFICATION OF BEVERLY RHOADS,
18 SEAN MENDELL AND MARIAL LONGFELLOW, THEIR
19 TESTIMONY WAS KEY TO THE GUILTY FINDING.

20 IN ORDER FOR PETITIONER TO HAVE HIS PROCEDURALLY
21 BARRED DEFAULT HEARD ON IT'S MERITS.
22 PETITIONER MUST FIRST PASS THROUGH THE
23 SCHUP "ACTUAL INNOCENCE GATE WAY" THAT IS
24 HE MUST PRESENT "NEW EVIDENCE" THAT SUPPORTS
25 HIS CLAIM OF INNOCENCE AND UNDERMINES THE
26 CONFIDENCE IN THE VERDICT. WITHOUT THIS NEW
27 EVIDENCE A REVIEWING COURT WILL NOT ISSUE
28 ORDER TO SHOW CAUSE NOR WILL IT GRANT AN

1 EVIDENTIARY HEARING. WITH BOTH HIS NEW EVIDENCE
2 AND HIS BARRED DEFAULT CLAIM PETITIONER MUST
3 CONVENCE THE COURT THAT THERE WAS A FUNDAMENTAL
4 MISCARRIAGE OF JUSTICE THAT RESULTED IN THE
5 CONVICTION OF ONE WHO IS PROBABLY INNOCENT.

6 THIS EVIDENCE WAS NOT USED AT TRIAL TO
7 IMPEACH THESE WITNESSES. THIS EVIDENCE SUPPORTS
8 PETITIONERS CLAIM OF INNOCENCE. HAD THE
9 JURY HEARD THIS EVIDENCE A RESULT MORE
10 FAVORABLE TO THE PETITIONER WOULD HAVE OCCURED
11 AT TRIAL. TRIAL COUNSEL WAS INEFFECTIVE FOR
12 FAILING TO USE THIS EVIDENCE.

13 HOWEVER A REVIEWING COURT WILL NOT
14 ENTERTAIN PETITIONERS WRIT UNTILL HE CAN
15 DEMONSTRATE THE EFFECTS THIS EVIDENCE COULD
16 HAVE HAD AT TRIAL.

17 SUBDIVISION (d) P.C. § 1054.9

18 (d). THE ACTUAL COST OF EXAMINATION OR COPYING
19 PURSUANT TO THIS SECTION SHALL BE BORNE OR
20 REIMBURSED BY THE DEFENDANT.

21 PETITIONER IS AN INDIGENT INMATE, HOWEVER
22 PETITIONERS FAMILY IS WILLING TO PAY ANY AND ALL
23 COST CONCERNING THE "EXAMINATION OR COPYING"
24 INCLUDING TRANSCRIPTION AND EXPERT VIEWING
25 OF DISCOVERY MATERIALS REQUESTED. HOWEVER
26 PETITIONERS FAMILY CAN NOT AFFORD TO HIRE A
27 LAWYER TO REPRESENT HIM IN THIS MATTER.

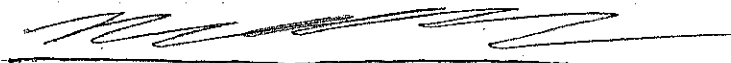
28 AS AN INDIGENT INMATE WITH NO MEANS

1 OF INCOME, PETITIONER REQUEST THE COURT WAIVE
2 ALL COURT COST AND FILING FEES CONNECTED TO THIS
3 WRIT. FURTHER PETITIONER REQUEST UPON ISSUE
4 OF ORDER TO SHOW CAUSE BY THIS COURT, THE
5 COURT APPOINT COUNSEL TO REPRESENT HIM IN
6 THIS MATTER AS PETITIONER IS NOT QUALIFIED IN
7 THE PRACTICE OF LAW AND THE ISSUES INVOLVED
8 IN THIS WRIT IS SUFFICIENTLY ABOVE HIS
9 KNOWLEDGE. AS TO IMPARE HIS ABILITY TO
10 REPRESENT HIMSELF EFFECTIVELY.

11 PRAYER FOR RELIEF

12 FOR ALL THE REASONS STATED ABOVE AND IN
13 THE INTEREST OF JUSTICE AND THE PROTECTION
14 OF PETITIONERS CONSTITUTIONAL RIGHTS,
15 PETITIONER PRAYS THIS COURT WILL GRANT THE
16 RELIEF REQUESTED IN THIS WRIT IN IT'S
17 ENTIRETY.

18 RESPECTFULLY SUBMITTED

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22 PETITIONER

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Steele is equally distinguishable as the defendant in that case had been sentenced to death.

In point of fact, this court has no jurisdiction to order post conviction discovery in defendant's case. In People v Gonzales (1990) 51 Cal.3d 1179, superseded by statute as stated in In re Steele (2004) 32 Cal.4th 682, the trial court issued a discovery order after conviction and sentence in a capital case. The defense was obviously contemplating a habeas petition. The Supreme Court issued a peremptory writ to quash the discovery order on the ground that the trial court lacked jurisdiction "when no criminal proceeding was then pending before it." (51 Cal.3d at 1256.) After discussing discovery in criminal law, the court then noted that there is no discovery when only a habeas petition has been filed but not acted upon by the court:

The related petitions for habeas corpus in this court also provide an inappropriate discovery vehicle. Whatever role court-ordered discovery might properly play in a habeas corpus proceeding, the bare filing of a claim for post-conviction relief cannot trigger a right to unlimited discovery.

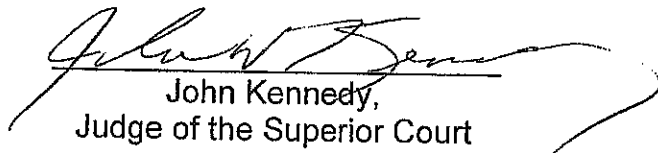
(51 Cal.3d at 1258.)

In defendant's case there is no pending habeas petition where an Order to Show Cause has issued. There is no pending appeal or other criminal matter at the trial level. Thus, the court has no jurisdiction to order discovery in the habeas matter or in the underlying criminal docket, where the appellate process is complete.

For all these reasons the motion for post conviction discovery has no merit.

Motion denied. So ordered in chambers.

Dated: 7/9/13


John Kennedy,
Judge of the Superior Court

Cc: Defendant
05-080656-2

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

People of the State of California,
Plaintiff

Vs

Nathan Medina

No 05-121283-6

[Underlying Docket No. 05-080656-2]


CERTIFICATE OF MAILING

I, the undersigned, certify under penalty of perjury that I am a citizen of the United States, over 18 years of age, employed in Contra Costa County, and not a party to the within action; that I served the attached **Decision on Pro Per Motion for Post Conviction Discovery** by causing to be placed, a true copy thereof in an envelope addressed to the parties or attorneys for the parties, as shown below, which envelope was then sealed and postage fully prepaid thereon, and thereafter was deposited in the United States Mail at Martinez, California, on date shown below; that there is delivery service by the United States Mail between the place of mailing and the place so addressed on July 9, 2013.

Ironwood State Prison
Nathan Medina CDCR #AA4500
P.O. Box 2199
Blythe, Ca 92226

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Martinez, California on July 9, 2013.

BY: _____


V. Medina, (Court Clerk)

FILED
FEB 25 2014

STEPHEN H. NASH CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____, Deputy Clerk

Superior Court of California in and for the
County of Contra Costa

People of the State of California,
Plaintiff,

vs.

Nathan Medina,
Defendant.

No. 05-132669-3

Decision on Pro Per
Writ for Post Convic-
tion Discovery.

[Underlying docket,
No. 05-080656-2.]

The court, on its own motion, takes judicial notice of the file in the underlying cases referenced above pursuant to Evidence Code section 452(d). In that docket defendant was sentenced to 90 years to life following conviction of violation, inter alia, of Penal Code section 187, murder, two counts of attempted murder (PC 187/664) and first degree burglary (PC 459/460(a)). Defendant was also found to have personally used a firearm. Defendant's conviction and sentence were affirmed in February, 2012.

Defendant subsequently brought a petition for writ of habeas corpus and two petitions for writ of mandate. All prior petitions have been denied.

This court is treating his current pleading as a habeas corpus petition accompanied by a request for discovery. He claims that "evidence" was concealed from him by his defense counsel at his trial. He indicates that he believes the concealed evidence would allow him to show he is innocent. Other than to say that the "concealed" evidence consists of 911 calls and witness interviews, he makes no specific allegation as to the nature of the character of the evidence, that is, exactly how the evidence would exonerate him or at least raise a reasonable doubt about his guilt. As part of his motion he requests that this court order discovery to be provided by the District Attorney.

The court notes that petitioner previously filed two motions for post conviction discovery. The motions were denied on or about September 26, 2012 and October 26,

2012. The court further notes that if defense counsel did, in fact, conceal important evidence from the petitioner and that evidence might have materially affected the outcome of the trial, that act of concealment might be a basis for a finding of ineffective assistance of counsel.

The problem with this current petition is two-fold. First, it is a successive petition, that is, it follows an earlier habeas corpus petition and two writ petitions that have been denied. Second, it fails to state sufficiently specific facts to support the claim that the defense counsel withheld evidence.

A claim is "successive" or an "abuse of the writ" if the defendant has already had a full opportunity to present the claim as part of a prior petition and failed to do so. See *In Re Clark*, (1993) 5 Cal. 4th 750, 769-70. The current petition does not state any facts that would reflect that the current claim was unknown to the petitioner at the time he filed his previous post-conviction claims. To have his claim be considered, the petitioner is required by current legal authority to explain why his present claim could not have been presented to the court previously. He has not done so.

Furthermore the substantive claim made in the petition, ineffective assistance of counsel, is not supported by clear and specific factual assertions which if true would support the granting of relief. Here, the petitioner asserts the concealment by defense counsel of "evidence" but does not state what the evidence is and how it could have affected to outcome of his trial. That is, there are no specific facts asserted that, if true, would indicate prejudice that arose from counsel's ineffective assistance. The case *In Re Miranda*, (2008) 43 Cal. 4th 541, 575, holds that before issuing an OSC, this court must find that the petitioner has alleged specific facts that would entitle the petitioner to relief. Petitioner Medina has made only very conclusory allegations. For example he ~~has failed to identify what particular witness' information was concealed and how it was~~ material to his innocence. He also provides no explanation of why any one or more of the possible 911 phone calls would have helped him defend the charges. Therefore, his conclusory allegation that his attorney was ineffective for concealing witness statements and/or 911 calls is simply an unsupported conclusion.

For the reasons stated above, the petition, treated as a habeas petition, is meritless and is hereby denied.

Assuming that the document filed by the petitioner is treated as a stand-alone request for discovery in anticipation of the filing of a habeas corpus petition, that request is also meritless.

Petitioner contends that he is entitled to discovery under the authority of Penal Code section 1181. He is in error. Penal Code section 1181 applies to a motion for new trial before the entry of judgment.

This court has no jurisdiction to order post conviction discovery in defendant's

case. In *People v Gonzales*, (1990) 51 Cal.3d 1179, superseded by statute as stated in *In re Steele*, (2004) 32 Cal.4th 682, the trial court issued a discovery order after conviction and sentence in a capital case. The defense was obviously contemplating a habeas petition. The Supreme Court issued a peremptory writ to quash the discovery order on the ground that the trial court lacked jurisdiction "when no criminal proceeding was then pending before it." See *People v. Gonzales, supra* at 1256. After discussing discovery in criminal law, the court then noted that there is no discovery when only a habeas petition has been filed but not acted upon favorably by the court:


The related petitions for habeas corpus in this court also provide an inappropriate discovery vehicle. Whatever role court-ordered discovery might properly play in a habeas corpus proceeding, the bare filing of a claim for post-conviction relief cannot trigger a right to ... discovery.

51 Cal.3d at 1258.

Because this court has found the underlying habeas corpus petition is meritless because it provides no basis for issuing an OSC or even a more informal request for a reply by the District Attorney, the accompanying request for post conviction discovery also has no merit. Therefore, it is also denied.

Dated: _____

2/25/14



Charles "Ben" Burch,
Judge of the Superior Court

Cc: Defendant
05-080656-2

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SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

CASE NAME: IN RE Nathan Medina
CASE NUMBER: 05-132669-3
RE: DECISION DENYING WRIT OF POST CONVICTION DISCOVERY

CERTIFICATE OF MAILING

I, the undersigned, certify under penalty of perjury that I am a citizen of the United States, over 18 years of age, employed in Contra Costa County, and am not a party to the within action; that my business address is Court House, Martinez, California, that I served the attached Notice, Order, or Paper by causing to be placed a true copy thereof in an envelope addressed to the parties or attorneys for the parties, as shown below, which envelope was then sealed and postage fully prepaid thereon, and thereafter was deposited in the United States Mail at Martinez, California, on date shown below; that there is delivery service by the United States Mail between the place of mailing and the place addressed.

Robin Lipetsky, Public Defender
CONTRA COSTA COUNTY
800 Ferry Street
Martinez, CA 94553

Mark Peterson, District Attorney
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

Susan Hatcher, Supervising Defender
ALTERNATE DEFENDER OFFICE
CONTRA COSTA COUNTY
627 Ferry Street
Martinez, CA 94553

✓ Nathan Medina AA4500
Ironwood State Prison
PO Box 2199 (B2-205)
Blythe, CA 92226

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Martinez, California, on February 25, 2014.

S. NASH, CLERK OF THE COURT

BY: KRISTEN CASILLAS DEPUTY
K. Casillas, Courtroom Clerk