No. _____

_____

In the

SUPREME COURT of the UNITED STATES

_____

In re

Robert STEVENSON,

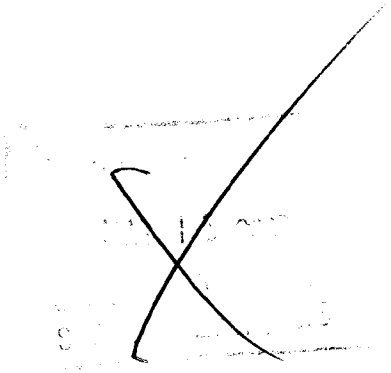
Petitioner.

ON PETITION FOR A WRIT OF HABEAS CORPUS

The United States District Court

Eastern District of California—Sacramento

PETITION FOR WRIT OF HABEAS CORPUS



Robert Setevenson
Folsom State Prison
P.O. Box 710571
Represa, CA. 95671-0071
CDC ID#: P-12312
Pro se

QUESTIONS PRESENTED

I.

WAS THE DISTRICT COURT'S DENIAL OF PETITIONER'S "REQUEST FOR CERTIFICATE OF APPEALABILITY" A VIOLATION OF FUNDAMENTAL FAIRNESS ON THE EXHAUSTED ISSUES PRESENTED BELOW UNDER ARTICLE I, § 9, CLAUSE 2, FIRST AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION?

II.

WAS THE AGGRAVATED STATE SENTENCE OF ELEVEN YEARS BASED UPON THE SAME FACTS AS THE SENTENCING ENHANCEMENT OF FOUR YEARS WITHOUT JURISDICTION AS A VIOLATION OF THE DOUBLE JEOPARDY CLAUSE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION?

III.

WAS TRIAL COURT'S INSTRUCTION TO PETITIONER'S JURY ON MURDER CHARGES A VIOLATION OF FUNDAMENTAL FAIRNESS, AND THE RIGHT TO A FAIR AND IMPARTIAL JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION?

IV.

WAS PETITIONER DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL ON THE DEFENSE OF "IMPERFECT SELF-DEFENSE" AT TRIAL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS, UNITED STATES CONSTITUTION?

REASONS FOR NOT MAKING THE APPLICATION TO THE DISTRICT IN WHICH THE APPLICANT IS HELD (28 U.S.C. § 2242/SUPREME COURT RULES, RULE 20.4 (a))

On January 18, 2002, Petitioner did make an application to the district court, such application having been decided by that Court on August 5, 2002. (See Appendix A.)

Upon Petitioner's timely request, no certificate of appealability was issued under 28 U.S.C. § 2253, and the courts below have divested jurisdiction to consider Petitioner's questions therefore. (See id.) Petitioner cannot obtain adequate relief on his questions presented in any other form or from any other court, except by habeas corpus to this Court.

The issues presented on judgment of the State Court below are exhausted with the State Courts, to satisfy the requirements of 28 U.S.C. § 2254 (b) (see Appendix J), have been finally decided by the federal courts, and no relief is available from any other court in this land.

The requirements of Rule 20.4 (a) are satisfied as to this Court's jurisdictional requirements of comity.

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FILED

AUG 5 2 01 PM '02

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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CLOSED

DATE: 8.5.02

ROBERT STEVENSON,
Petitioner,

v.

CLAIDE FINN, Warden,
Defendant

CIV-F-02-5137 HGB HC

ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The parties hereto having voluntarily consented to this action being assigned to a Magistrate Judge for all purposes pursuant to 28 U.S.C. § 636(c), on May 15, 2002, this action was assigned to the undersigned.

BACKGROUND

In the Superior Court of California, County of Stanislaus, petitioner was charged by information with the first-degree murder of William Graham. At a trial by jury, petitioner was convicted of the lesser included offense of voluntary manslaughter with a finding of personal use of a firearm. Petitioner was sentenced to state prison for the upper term of eleven years plus a term of four years for the use of a firearm enhancement for an aggregate term of 15 years.

The conviction and sentence was affirmed by the California Court of Appeal, Fifth Appellate District (hereinafter "5th DCA), in an unpublished opinion filed on December 14, 1999. The California Supreme Court denied review without comment or citation of

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FILED
MAR 18 2003
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT STEVENSON,

Petitioner - Appellant,

v.

CLAUDE FINN, Warden,

Respondent - Appellee.

No. 02-16797

D.C. No. CV-02-05137-HGB HC
Eastern California
(Sacramento)

FILED
MAR 24 2003
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

ORDER

Before: BEEZER and McKEOWN, Circuit Judges.

The request for a certificate of appealability is denied. *See* 28 U.S.C. § 2253(c)(2). All pending motions are denied.

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