No. 03-6156

IN THE

Supreme Court of the United States

ORIGINAL

Supreme Court, U.S.
FILED
AUG 15 2003
OFFICE OF THE CLERK

RICHARD F. CRUZ,
Petitioner

v.

CHERYL PLILER, Warden,
Respondent

On Petition For A Writ Of Habeas Corpus;

Alternate Request to Recall
The Mandates in No. 03-71494 & No. 0156632

PETITION FOR A WRIT OF HABEAS CORPUS

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PETITIONER IN PRO-SE

QUESTIONS PRESENTED

1. This court has not yet considered the queston of whether a petition filed after a first petition was dismissed as time-barred under the statute of limitations is second or successive.

2. The queston in this case is whether the first petition was decided on the merits such that the abuse-of-the-writ doctrine, as codified by AEDPA applies.

3. Was the 9th Circuit Court of Appeal's denial of Petitioner's motion for a Writ of Habeas Corpus in the District Court an Unconstitutional Suspension of the Writ of Habeas Corpus?

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EXHIBIT A:	28 U.S.C. §2244 FINALITY of DETERMINATION
EXHIBIT A1:	RULE 60 of FEDERAL RULES of CIVIL PROCEDURE
EXHIBIT A2:	U.S. Court of Appeal for the 9th Cir. "ORDER" filed in Case No. 02-73902
EXHIBIT B:	POLYGRAPH EXAMINATION RESULTS REPORT
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EXHIBIT C:	Report and Recommendation filed in U.S. District Court for the First Petition for a Writ of Habeas Corpus
EXHIBIT D:	ORDER Adopting Report and Recommendation of the U.S. Magistrate Dismissing the Petition Without Prejudice
EXHIBIT E:	JUDGMENT Entered by the U.S. District Judge for the First Petition
EXHIBIT F:	Petitioner's Second Petition for Writ of Habeas Corpus filed in U.S. District Court on July 18, 2000
EXHIBIT G:	U.S. District Court ORDER Requiring Response to the Petition for Writ of Habeas Corpus (Second Petition)
EXHIBIT H:	Respondent's Motion to Dismiss Petition
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EXHIBIT K:	Magistrate Judge's Report and Recommendation
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EXHIBIT M:	Magistrate Judge's Supplemental Report and Recommendation
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EXHIBIT O:	District Judge's ORDER Adopting the Report and Recommendation
EXHIBIT P:	Notice of Appeal, Motion for Certificate of Appealability
EXHIBIT Q:	U.S. District Court DENIAL for Motion for Certificate of Appealability
EXHIBIT R:	Letter from Clerk of the Court of Appeal Notifying Petitioner the Record has been Transferred
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EXHIBIT T:	Motion Filed by Petitioner's "Jailhouse Lawyer" Entitled " Petition for ReHearing"

EXHIBIT U: Motion for Authorization to File a Second Petition for a Writ of Habeas Corpus in the U.S. District for the Central District of California

EXHIBIT V: 9th Circuit Court of Appeal DENIAL of Request for Authorization to file a Second or Successive Petition

EXHIBIT W: Declarations

PROCEDURAL BACKGROUND

Petitioner is in Respondent's custody based on his October 18, 1988, sentence of a term of Life in state prison without the possibility of parole following his convictions after a jury trial of one count of conspiracy to commit murder, (Cal. Penal Code § 182, 187), one count of murder during the commission of which Petitioner used a pistol, (Cal. Penal Code § 187, 12022, subd. (b)), and one count of possessing a silencer, (Cal. Penal Code § 12520). The jury further found true the special allegation that the murder was intentionally committed for financial gain; (Cal. Penal Code § 190.2, subd. (a)(1)).

Petitioner appealed his conviction to the California Court of Appeal, Fourth Appellate District, Division Two. In a non-published opinion filed on January 31, 1992, the court affirmed the judgment and the sentence of the trial court.

On March 2, 1992, Petitioner filed a Petition For Review with the California Supreme Court. The petition was denied on April 23, 1992.

On April 7, 1997, Petitioner filed a petition for a Writ of Habeas Corpus in the United States District Court for the Southern District of California. The matter was transferred to the United States District Court for the Central District of California.

On August 4, 1997, Petitioner filed his first amended petition for a writ of habeas corpus setting forth 12 claims for relief in case number EDCV 97-0131-RT(Mc).

Two years later on August 5, 1999, the Honorable James W. McMahon, United States Magistrate Judge, issued his Report and Recommendation finding the petition to be a "mixed petition" containing exhausted and unexhausted claims, recommending the District Court dismiss the first amended petition without prejudice for failure to exhaust state remedies unless Petitioner notified the court that he wished to withdraw claims 7 through 12, and proceed with claims 1 through 6. (see exhibit "C")

Petitioner lodged no objections to the court's recommendation's and did not notify the court that he wished to withdraw claims 7 through 12 and proceed with claims 1 through 6.

On September 8, 1999, the Honorable Nora M. Manella, United States District Judge, adopted the Report and Recommendation of the Magistrate Judge and ordered the petition