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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ISAAC,  
Petitioner,  
v.  
RICK HILL, et al.,  
Respondent.

Case No. [13-cv-03007-JD](#)

**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS AND  
DENYING CERTIFICATE OF  
APPEALABILITY AND  
RECLASSIFYING CASE**

Re: Dkt. No. 20

This is a habeas corpus case filed pro se by a state prisoner pursuant to 28 U.S.C. § 2254. The Court ordered respondent to show cause why the writ should not be granted. Respondent filed an answer and a memorandum of points and authorities in support of it, and lodged exhibits with the Court. The petition is denied.

**BACKGROUND**

On March 17, 2011, pursuant to a negotiated plea agreement, petitioner entered a no contest plea in two Sonoma County cases. *People v. Isaac*, No. A132378, 2012 WL 3055420, at \*1 (Cal. Ct. App. July 27, 2012). Petitioner was sentenced to ten years and eight months in state prison. *Id.* at 2. The California Court of Appeal affirmed the conviction. *Id.* at 4. Petitions to the California Court of Appeal and California Supreme Court were denied. Resp. Exs. 5-9.<sup>1</sup>

**STANDARD OF REVIEW**

A district court may not grant a petition challenging a state conviction or sentence on the basis of a claim that was reviewed on the merits in state court unless the state court's adjudication of the claim: “(1) resulted in a decision that was contrary to, or involved an unreasonable

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<sup>1</sup> The facts of the underlying crimes are not relevant to the claims in this petition, but can be found in the California Court of Appeal opinion.

1 application of, clearly established Federal law, as determined by the Supreme Court of the United  
2 States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in  
3 light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). The first  
4 prong applies both to questions of law and to mixed questions of law and fact, *Williams v. Taylor*,  
5 529 U.S. 362, 407-09 (2000), while the second prong applies to decisions based on factual  
6 determinations, *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003).

7 A state court decision is “contrary to” Supreme Court authority, that is, falls under the first  
8 clause of § 2254(d)(1), only if “the state court arrives at a conclusion opposite to that reached by  
9 [the Supreme] Court on a question of law or if the state court decides a case differently than [the  
10 Supreme] Court has on a set of materially indistinguishable facts.” *Williams*, 529 U.S. at 412-13.  
11 A state court decision is an “unreasonable application of” Supreme Court authority, falling under  
12 the second clause of § 2254(d)(1), if it correctly identifies the governing legal principle from the  
13 Supreme Court's decisions but “unreasonably applies that principle to the facts of the prisoner's  
14 case.” *Id.* at 413. The federal court on habeas review may not issue the writ “simply because that  
15 court concludes in its independent judgment that the relevant state-court decision applied clearly  
16 established federal law erroneously or incorrectly.” *Id.* at 411. Rather, the application must be  
17 “objectively unreasonable” to support granting the writ. *Id.* at 409.

18 Under 28 U.S.C. § 2254(d)(2), a state court decision “based on a factual determination will  
19 not be overturned on factual grounds unless objectively unreasonable in light of the evidence  
20 presented in the state-court proceeding.” *See Miller-El*, 537 U.S. at 340; *see also Torres v.*  
21 *Prunty*, 223 F.3d 1103, 1107 (9th Cir. 2000). Moreover, in conducting its analysis, the federal  
22 court must presume the correctness of the state court's factual findings, and the petitioner bears the  
23 burden of rebutting that presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

24 The state court decision to which § 2254(d) applies is the “last reasoned decision” of the  
25 state court. *See Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991); *Barker v. Fleming*, 423 F.3d  
26 1085, 1091-92 (9th Cir. 2005). When there is no reasoned opinion from the highest state court to  
27 consider the petitioner's claims, the Court looks to the last reasoned opinion. *See Nunnemaker* at  
28 801-06; *Shackleford v. Hubbard*, 234 F.3d 1072, 1079 n.2 (9th Cir. 2000). The standard of review

1 under AEDPA is somewhat different where the state court gives no reasoned explanation of its  
2 decision on a petitioner's federal claim and there is no reasoned lower court decision on the claim.  
3 In such a case, a review of the record is the only means of deciding whether the state court's  
4 decision was objectively reasonable. *Himes v. Thompson*, 336 F.3d 848, 853 (9th Cir. 2003);  
5 *Delgado v. Lewis*, 223 F.3d 976, 981-82 (9th Cir. 2000). When confronted with such a decision, a  
6 federal court should conduct an independent review of the record to determine whether the state  
7 court's decision was an objectively unreasonable application of clearly established federal law.  
8 *Himes*, 336 F.3d at 853; *Delgado*, 223 F.3d at 982.

## 9 DISCUSSION

10 As grounds for federal habeas relief, petitioner asserts that: (1) counsel was ineffective for  
11 refusing to file a motion to withdraw the plea and for failing to obtain a certificate of probable  
12 cause; and (2) the trial court erroneously denied his motion to substitute counsel at a *Marsden*  
13 hearing.<sup>2</sup>

### 14 I. INEFFECTIVE ASSISTANCE OF COUNSEL

#### 15 A. Legal Standard

16 A claim of ineffective assistance of counsel is cognizable as a claim of denial of the Sixth  
17 Amendment right to counsel, which guarantees not only assistance, but effective assistance of  
18 counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The benchmark for judging any  
19 claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning  
20 of the adversarial process that the trial cannot be relied upon as having produced a just result. *Id.*

21 In order to prevail on a Sixth Amendment ineffectiveness of counsel claim, petitioner must  
22 establish two things. First, he must establish that counsel's performance was deficient, i.e., that it  
23 fell below an "objective standard of reasonableness" under prevailing professional norms.

24 *Strickland*, 466 U.S. at 687-88. Second, he must establish that he was prejudiced by counsel's  
25 deficient performance, i.e., that "there is a reasonable probability that, but for counsel's  
26 unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "A  
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28 <sup>2</sup> *People v. Marsden*, 2 Cal. 3d 118 (1970).

1 reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*  
2 The benchmark for judging any claim of ineffectiveness is whether counsel’s conduct so  
3 undermined the proper functioning of the adversarial process that the trial cannot be relied upon as  
4 having produced a just result. *Id.* at 686.

5 **B. Analysis**

6 The California Court of Appeal set forth the general background regarding the plea:

7 After the case had been set for trial many times, on March 17, 2011,  
8 in a negotiated plea agreement defendant entered no contest pleas in  
9 both cases: in case number SCR-552115, to burglary (Pen. Code, §  
10 459) and a firearm use enhancement (Pen. Code, § 12022.5), with a  
11 sentencing range of a minimum of five to a maximum exposure of  
12 16 years in state prison; in case number SCR-552981, to resisting an  
13 executive officer by threat, force or violence (Pen. Code, § 69), with  
14 a specified consecutive term of eight months. FN2 The pleas  
15 specified that probation “will be denied.”

16 FN2. Additional charges in case number SCR-552115 were  
17 dismissed.

18 On May 4, 2011, defendant moved pursuant to *People v. Marsden*  
19 (1970) 2 Cal.3d 118 (*Marsden*), to relieve his appointed counsel and  
20 pursue withdrawal of his no contest plea. At a closed hearing  
21 defendant asserted that counsel refused to confer with him, failed to  
22 disclose evidence to him, and “misled” him as to his potential state  
23 prison term and the immigration consequences of the plea. When  
24 questioned, counsel recounted for the trial court his preparation for  
25 trial, his many conferences with defendant, the evidence he  
26 presented to defendant, his discussions of the plea offer and  
27 sentencing range, specifically his admonishment to defendant that  
28 “probation was going to be precluded” by the plea, and his  
explanation to defendant “that he would, in fact be deported” if he  
was sentenced to state prison. Counsel also stated that he was  
“ready, willing and able to go to trial” in the case, and had not  
encouraged defendant to accept the plea offer, but felt the offer was  
in defendant's best interests.

At a continued *Marsden* hearing two days later, defendant indicated  
that he was seeking to retain private counsel, so the hearing was  
further continued. By May 16, 2011, defendant advised the court  
that he did not hire private counsel, and wanted to proceed with the  
*Marsden* motion to appoint substitute counsel. Defendant reiterated  
his complaints with his appointed attorney, particularly the failure of  
counsel to assist with withdrawal of his plea. He also indicated that  
if counsel refused to move to withdraw his plea, he wanted to “go  
ahead and file the motion” himself. The court advised defendant  
that if his *Marsden* motion was denied, he could seek to represent  
himself. Counsel responded that he advised defendant “there was no  
legal basis to withdraw the plea,” and “it wouldn't be in his best  
interest” to do so. At the conclusion of the hearing the court denied  
the *Marsden* motion.

Defendant did not thereafter bring a motion to represent himself or a  
motion to vacate the plea. The sentencing hearing was conducted on  
May 26, 2011. The trial court denied probation and imposed an

1 aggregate state prison term on defendant of 10 years and 8 months,  
2 computed as follows: the aggravated term for burglary of six years;  
3 a consecutive middle term of four years for the firearm  
enhancement; and, a consecutive middle term of eight months for  
the offense of resisting an executive officer by threat, force or  
violence.

4 *Isaac*, 2012 WL 3055420, at \*1-2.

5 This claim was denied without a reasoned opinion by the state courts, therefore this Court  
6 has conducted an independent review of the record to determine whether the state court's decision  
7 was an objectively unreasonable application of clearly established federal law. *Delgado*, 223 F.3d  
8 at 982. Petitioner argues that counsel was ineffective for failing to pursue a motion to withdraw  
9 the plea. Petitioner contends that counsel misadvised him about his eligibility for probation and  
10 the immigration consequences of his plea. The California Court of Appeal reviewed an in camera  
11 hearing held by the trial court with petitioner and his counsel, which indicated that counsel  
12 explained to petitioner the prison term and immigration consequences of the plea. At the change  
13 of plea hearing, petitioner stated that he understood he would be sentenced to a prison term from  
14 five to sixteen years. Reporter's Transcript ("RT") at 486. Petitioner also signed plea waiver  
15 forms that reflected the prison term and immigration consequences. Clerk's Transcript ("CT") at  
16 192-95. As a result, counsel stated at the in camera hearing that there was no legal basis to file a  
17 motion to withdraw the plea. *Isaac*, 2012 WL 3055420, at \*2. While not specifically addressing  
18 the ineffective assistance of counsel claim for failing to file a motion to withdraw the plea, the  
19 California Court of Appeal did find that the record did not establish any ground to support  
20 withdrawing the plea. *Id.* at \*3.

21 Petitioner has failed to demonstrate that the California Supreme Court's denial of this  
22 claim was an unreasonable determination of Supreme Court authority or the facts of this case.  
23 Petitioner has not shown that counsel was deficient or that he suffered prejudice. The trial court  
24 also informed petitioner that he could file a motion to represent himself and a motion to withdraw  
25 the plea, but petitioner did not file any motions.

26 Nor has petitioner shown that counsel was ineffective for failing to file a request for a  
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1 certificate of probable cause to preserve the issue for appeal.<sup>3</sup> The state courts affirmed  
2 petitioner’s conviction and found no meritorious issues. Counsel could not be ineffective for  
3 failing to seek a certificate of probable cause for meritless claims. The state court denial of  
4 petitioner’s claim of ineffective assistance of counsel was not unreasonable, and this claim is  
5 denied.

6 **II. SUBSTITUTION OF COUNSEL**

7 **A. Legal Standard**

8 A criminal defendant who cannot afford to retain counsel has no right to counsel of his  
9 own choosing. *Wheat v. United States*, 486 U.S. 153, 159 (1988). Nor is he entitled to an attorney  
10 who likes and feels comfortable with him. *United States v. Schaff*, 948 F.2d 501, 505 (9th Cir.  
11 1991). The Sixth Amendment guarantees effective assistance of counsel, not a “meaningful  
12 relationship” between an accused and his counsel. *Morris v. Slappy*, 461 U.S. 1, 14 (1983). The  
13 denial of an indigent criminal defendant’s motion for substitution of counsel may nevertheless  
14 violate his Sixth Amendment right to counsel. *See Daniels v. Woodford*, 428 F.3d 1181, 1197-98  
15 (9th Cir. 2005) (noting that test for determining whether court should have granted substitution  
16 motion is same as test for determining whether an irreconcilable conflict existed).

17 The denial of a motion to substitute counsel implicates a defendant’s Sixth Amendment  
18 right to counsel and is properly considered in federal habeas. *Bland v. Cal. Dep’t of Corr.*, 20  
19 F.3d 1469, 1475 (9th Cir. 1994), *overruled on other grounds by Schell v. Witek*, 218 F.3d 1017  
20 (9th Cir. 2000) (en banc). The Ninth Circuit has held that when a defendant voices a seemingly  
21 substantial complaint about counsel, the trial judge should make a thorough inquiry into the  
22 reasons for the defendant's dissatisfaction. *Id.* at 1475-76.

23 \_\_\_\_\_  
24 <sup>3</sup> California Penal Code § 1237.5 states: “No appeal shall be taken by the defendant from a  
25 judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation  
following an admission of violation, except where both of the following are met:

26 (a) The defendant has filed with the trial court a written statement, executed under oath or  
27 penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going  
to the legality of the proceedings.

28 (b) The trial court has executed and filed a certificate of probable cause for such appeal  
with the clerk of the court.”

1           **B. Analysis**

2           The factual background for this claim was set forth above, and this claim was denied by the  
3 California Court of Appeal on direct appeal:

4           The denial of defendant’s post-plea *Marsden* motion is cognizable  
5 on appeal, but was not error. (*People v. Oglesby* (2008) 158 Cal.  
6 App. 4th 818, 826; *People v. Vera* (2004) 122 Cal. App. 4th 970,  
7 977.) Before denying the motion, the trial court properly granted  
8 appellant the opportunity to explain the specific reasons for seeking  
9 substitution of counsel. (*People v. Lucky* (1988) 45 Cal.3d 259, 281;  
10 *People v. Lewis* (1978) 20 Cal. 3d 496, 497; *People v. Sharp* (1994)  
11 29 Cal. App. 4th 1772, 1786.) The motion was also properly denied.  
12 “[T]he decision whether to permit a defendant to discharge his  
13 appointed counsel and substitute another attorney during the trial is  
14 within the discretion of the trial court, and a defendant has no  
15 absolute right to more than one appointed attorney.’ [Citation.]”  
16 (*People v. Leonard* (2000) 78 Cal. App. 4th 776, 786.) The court is  
17 not obligated to appoint independent counsel absent adequate proof  
18 of need by the defendant. (*People v. Memro* (1995) 11 Cal. 4th 786,  
19 858-859; *People v. Smith* (1993) 6 Cal. 4th 684, 696; *People v.*  
20 *Sharp, supra*, at p. 1786, *overruled on other grounds in People v.*  
21 *Martinez* (1995) 11 Cal. 4th 434, 452.) “The court should deny a  
22 request for new counsel at any stage unless it is satisfied that the  
23 defendant has made the required showing.” (*People v. Smith, supra*,  
24 at p. 696; *Ng v. Superior Court* (1997) 52 Cal. App. 4th 1010, 1022-  
25 1023.) Appointment of substitute counsel is necessary, “when, and  
26 only when, . . . under the *Marsden* standard, . . . in the exercise of its  
27 discretion, the court finds that the defendant has shown that a failure  
28 to replace the appointed attorney would substantially impair the  
right to assistance of counsel [citation], or, stated slightly  
differently, if the record shows that the first appointed attorney is  
not providing adequate representation or that the defendant and the  
attorney have become embroiled in such an irreconcilable conflict  
that ineffective representation is likely to result [citation].” (*People*  
*v. Smith, supra*, at p. 696; *see also People v. Fierro* (1991) 1 Cal.  
4th 173, 204; *People v. Crandell* (1988) 46 Cal. 3d 833, 854; *People*  
*v. Leonard, supra*, at p. 786.) Defendant did not articulate adequate  
grounds to obtain substitution of counsel.

21 *Isaac*, 2012 WL 3055420, at \*3.

22           The California Court of Appeal found that the trial court properly denied petitioner’s  
23 *Marsden* motion, and petitioner has not shown that this decision was an unreasonable application  
24 of Supreme Court authority. The state court also stated, “[o]n the record before us we find that  
25 defendant was represented by competent counsel throughout the proceedings.” *Isaac*, 2012 WL  
26 3055420, at \*4. Petitioner’s allegations regarding counsel’s actions prior to the plea were  
27 contradicted by counsel’s statements at the *Marsden* hearing and by the transcript of the plea  
28 hearing and the plea documents that petitioner signed. The Court has already found that counsel

1 was not ineffective for failing to file a motion to withdraw the plea, nor has petitioner shown that  
2 the trial court erred by denying the motion for new counsel. The trial court made a thorough  
3 inquiry into the reasons for petitioner’s dissatisfaction with his attorney but ultimately found there  
4 was no irreconcilable conflict and described the manner in which petitioner could file his own  
5 motion to withdraw the plea. The California Court of Appeal’s denial of this claim was not  
6 unreasonable, and the claim is denied.

7 **III. CERTIFICATE OF APPEALABILITY**

8 1. The petition for writ of habeas corpus is **DENIED** on the merits. A certificate of  
9 appealability will not issue. See 28 U.S.C. § 2253(c). This is not a case in which “reasonable  
10 jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”  
11 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Clerk shall enter judgment in favor of  
12 respondent and close the file

13 2. Petitioner’s motion to file a late traverse (Docket No. 20) is **GRANTED** and the  
14 Court has considered the filing.

15 3. The Clerk shall reclassify this action as a habeas case brought pursuant to 28  
16 U.S.C. § 2254 (530 nature of suit code).

17 **IT IS SO ORDERED.**

18 Dated: December 2, 2014

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21 JAMES DONATO  
22 United States District Judge  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ISAAC,  
Plaintiff,

v.

RICK HILL, et al.,  
Defendants.

Case No. [13-cv-03007-JD](#)

**CERTIFICATE OF SERVICE**

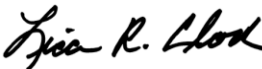
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/2/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael Isaac ID: AH4756  
California State Prison-Solano  
P.O. Box 4000  
#AH4756  
Vacaville, CA 95696-4000

Dated: 12/2/2014

Richard W. Wieking  
Clerk, United States District Court

By:  \_\_\_\_\_  
LISA R. CLARK, Deputy Clerk to the  
Honorable JAMES DONATO