

ELERI CHARLES
NAME

G-56862
PRISON IDENTIFICATION/BOOKING NO.

P. O. Box 900, 520-854p
ADDRESS OR PLACE OF CONFINEMENT

AVENAL, GA 93204

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

FILED

OCT 17 2011

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY ck
DEPUTY CLERK

^u
EVIDENTIARY HEARING REQUESTED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELERI CHARLES

FULL NAME (Include name under which you were convicted)

Petitioner,

v.

JAMES D. HARTLEY

NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER

Respondent.

CASE NUMBER:

CV 2: 11-cv-2729 DAD (HCJ)
To be supplied by the Clerk of the United States District Court

AMENDED

PETITION FOR WRIT OF HABEAS CORPUS
BY A PERSON IN STATE CUSTODY
28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION _____
PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(List by case number)
CV _____
CV _____

Eleri Charles v. James D Hartley

Doc. 1

INSTRUCTIONS - PLEASE READ CAREFULLY

- To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
- In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
- Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
- Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
- You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
- You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
- When you have completed the form, send the original and two copies to the following address:
Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

1. a conviction and/or sentence.
2. prison discipline.
3. a parole problem.
4. other.

PETITION

1. Venue

- a. Place of detention AVENAL STATE PRISON
- b. Place of conviction and sentence VAN NUYS SUPERIOR COURT

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

- a. Nature of offenses involved (include all counts):
Sexual Assault by force

- b. Penal or other code section or sections: 289, 261

- c. Case number: LA 056220 "EVIDENTIARY HEARING REQUESTED"

- d. Date of conviction: APRIL 16, 2009

- e. Date of sentence: MAY 8, 2009

- f. Length of sentence on each count: 5 YEARS

g. Plea (check one):

Not guilty

Guilty

Nolo contendere

h. Kind of trial (check one):

Jury

Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? Yes No

If so, give the following information for your appeal (and attach a copy of the Court of Appeal decision if available):

- a. Case number: B217496

b. Grounds raised (list each):

- (1) INNEFFECTIVE ASSISTANCE OF COUNSEL

(2) DENIAL OF MOTION TO SUPPRESS
(3) DENIAL OF PITCHESS MOTION

(4)
(5)
(6)

c. Date of decision: AUGUST 10, 2011

d. Result THE PETITION WAS DENIED

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? Yes No

If so give the following information (and attach copies of the Petition for Review and the Supreme Court ruling if available):

a. Case number: S 196220

b. Grounds raised (list each):

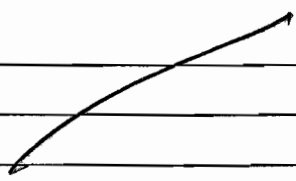
(1) DENIAL OF PITCHESS MOTION
(2) INEFFECTIVE ASSISTANCE OF COUNSEL
(3) SUPPRESSION OF DNA EVIDENCE
(4)
(5)
(6)

c. Date of decision: SEPTEMBER 28, 2011

d. Result THE PETITION WAS DENIED

5. If you did not appeal:

a. State your reasons



b. Did you seek permission to file a late appeal? Yes No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

Yes No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

a. (1) Name of court: _____
 (2) Case number: _____
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____
 (4) Grounds raised (list each):
 (a) _____
 (b) _____
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: _____
 (6) Result _____
 (7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: COURT OF APPEAL
 (2) Case number: B234926
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): AUGUST 10, 2011
 (4) Grounds raised (list each):
 (a) INNEFFECTIVE ASSISTANCE OF COUNSEL
 (b) DENIAL OF MOTION TO SUPPRESS
 (c) DENIAL OF PITCHESS MOTION
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: AUGUST 10, 2011
 (6) Result THE PETITION WAS DENIED
 (7) Was an evidentiary hearing held? Yes No

c. (1) Name of court: SUPREME COURT OF CALIFORNIA
 (2) Case number: S196220
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____
 (4) Grounds raised (list each):
 (a) DENIAL OF PETITIONER'S MOTION TO SUPPRESS
 (b) INNEFFECTIVE ASSISTANCE OF COUNSEL

- (c) DENIAL OF PITCHESS MOTION
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: SEPT. 28, 2011
 (6) Result: THE PETITION WAS DENIED

(7) Was an evidentiary hearing held? Yes No

7. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: INEFFECTIVE ASSISTANCE OF COUNSEL

(1) Supporting FACTS: COUNSEL FAILED TO REQUEST A JUDICIAL RECOMMENDATION AGAINST DEPORTATION. IN FACT DEFENSE COUNSEL'S FAILURE TO ADVISE THE DEFENDANT OF IMMIGRATION CONSEQUENCES, AS WELL AS INCORRECT ADVICE TO THE CLIENT ON

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No
- (3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No
- (4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

b. Ground two: EXCULPATORY EVIDENCE DESTROYED

(1) Supporting FACTS: The state destroyed the boxer petitioner wore the day of incident. The material evidence that possessed an exculpatory value. In addition, the prosecution's failure to disclose material exculpatory

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No
- (3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

INEFFECTIVE ASSISTANCE OF COUNSEL

THE IMMIGRATION CONSEQUENCES OF A CRIMINAL CASE. PETITIONER'S GUILTY PLEA WAS OBTAINED WITHOUT A KNOWING AND UNDERSTANDING OF THE CONSEQUENCES. COUNSEL FAILED TO MAKE A MOTION FOR A NONDEPORTABLE SENTENCE.

CASE LAWS

SEE: PEOPLE V BAUTISTA (2004) 115 CA 4th
229, 241, 8 CR 3d 862

BOYKIN V ALABAMA, 395 U.S. 238 (1965)

HILL V. LOUSHART 474 U.S. 52 (1985)

SEE: PEOPLE V VASILYN (2009) 174 CA 4th 443,
94 CR 3d 260

* U.S. V KWAN (9th Cir. 2005) 407 F3d
1005

PEOPLE V BAROJO (1989) 216 CA 3d 99

* SEE CASTILLO PEREZ V INS (9th Cir 2000)
212 F3d 518

* NATH V GONZALES (9th Cir. 2006) 467 F3d
1185

* WIEDERSPERG V INS (9th Cir 1990) 896
F2d 1179

EXCULPATORY EVIDENCE DESTROYED

Evidence which casts doubt on the DNA evidence or guilt of the defendant. An objection or Motion was made on that issue during the trial Court proceedings. e.g. Suppression of evidence hearing.

It was in how the police came to that DNA Semen Evidence that the case tottered on an Unsteady foundation.

The accuser testified and told the truth that petitioner didn't ejaculate. No Semen was found anywhere when examined by the Hospital.

It is wrong for the police to plant an evidence by stealing my wife's shirt in our laundry bag and put an innocent man in prison.

The Shirt then claimed Semen was found doesn't even belong to me.

CASE LAWS

CALIFORNIA V Trombetta 467 U.S. 479
(1984)

* SEE: Farp V Dronski, 431 F.3d 1158,
1167 (9th Cir. 2005)

Petitioner has never been accorded an evidentiary hearing in State Court

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

c. Ground three: COURT'S DENIAL OF PETITIONER'S
PITCHESS MOTION

(1) Supporting FACTS: Court failed to hear petitioners
pitchess motion on the basis of police mis-
conduct. Court had been wrong in finding that
certain officers were free from miscon-
duct, as well as committing misconduct.

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

d. Ground four: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

e. Ground five: _____

(1) Supporting FACTS: _____

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

8. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: _____

9. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?
 Yes No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

a. (1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

(7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

(5) Date of decision: _____

(6) Result _____

"PRAYER OF RELIEF"

I pray the Court to vacate the plea conviction on some ground of legal invalidity or Constitutional or Statutory reasons. Petitioner alleges that the truth of those facts cannot be determined from the claimed evidence on record, an evidentiary hearing may be appropriate.

The merits of the factual short / boxer DNA evidence in dispute were not resolved in the state hearing.

The new discovered short evidence discovered is a substantial allegation.

Petitioner is completely innocent.

Please review the nature of the conviction, DNA Semen evidence, the charges and the individual facts and circumstance surrounding the charges.

No Semen ever found that day.
I did not commit the crime.

(7) Was an evidentiary hearing held? Yes No

10. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? Yes No

If so, give the following information (and attach a copy of the petition if available):

(1) Name of court: _____

(2) Case number: _____

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

11. Are you presently represented by counsel? Yes No

If so, provide name, address and telephone number: _____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on

Oct. 11, 2011
Date


Signature of Petitioner

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL - SECOND DIST.
FILED
AUG 10 2011
JOSEPH A. LANE Clerk
Z. CLAYTON Deputy Clerk

In re

CHARLES ELERI,

on

Habeas Corpus.

B234926

(Los Angeles County
Super. Ct. No. LA056220)

ORDER

BY THE COURT:

The petition for writ of habeas corpus, filed August 4, 2011, has been read and considered with the appeal (B217496). Contentions raised and rejected on appeal will not be reconsidered on petition for writ of habeas corpus. (*In re Clark* (1993) 5 Cal.4th 750, 765-766.) Petitioner fails to show the existence of an issue with a reasonable potential for success in support of his claim of ineffective assistance of counsel. (*People v. Cash* (2002) 28 Cal.4th 703, 734; *People v. Cain* (1995) 10 Cal.4th 1, 28; *Strickland v. Washington* (1984) 466 U.S. 668; *People v. Mayfield* (1993) 5 Cal.4th 142, 175.) There is nothing in the petition that casts doubt on the accuracy and reliability of the trial court proceeding. Petitioner fails to show a "fundamental miscarriage of justice" occurred. (*In re Clark, supra*, 5 Cal.4th at p. 799.) The petition is denied.

Received 8/16/11

S196220

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re CHARLES ELERI on Habeas Corpus.

The petition for writ of habeas corpus is denied.

SUPREME COURT
FILED

SEP 28 2011

Frederick K. Ohlrich Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice