

1 counsel. In any event, appointed counsel did in fact file a motion under *Pitchess v.*
2 *Superior Court*, 11 Cal. 3d 531 (1974), for discoverable material about the police
3 officers in this case, but that process yielded no discoverable material. (2 RT at B-
4 7.) Appointed counsel also explored an issue as to whether an eyewitness, Delores
5 Porter, had been prompted by the police to select petitioner's photograph from a
6 six-pack lineup, but Porter and the officer testified that Porter selected petitioner's
7 photograph without any prompting, and their testimony was corroborated by
8 videotape. (4 RT 1802, 1805, 1829, 2146).

9 The Court accepts the findings and recommendations of the Magistrate
10 Judge. IT THEREFORE IS ORDERED that (1) the Report and Recommendation
11 of the Magistrate Judge is accepted and adopted; (2) petitioner's request for an
12 evidentiary hearing is denied; and (3) Judgment shall be entered denying the
13 Petition and dismissing the action with prejudice.

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15 DATED: November 16, 2017

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18 JOHN A. KRONSTADT
19 UNITED STATES DISTRICT JUDGE
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