

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CESAR ALFREDO TORRES,

Petitioner,

v.

JAMES A. YATES,

Respondent.

No. 1:07-00328 CW (HC)

ORDER DENYING PETITION
FOR WRIT OF HABEAS
CORPUS

United States District Court
For the Northern District of California

On April 20, 2007, Petitioner Cesar Alfredo Torres, a state prisoner incarcerated at Pleasant Valley State Prison, filed a petition for a writ of habeas corpus on the grounds that the prosecution of his offenses violated the Constitution's Ex Post Facto Clause and that he was unconstitutionally sentenced to consecutive terms. On December 31, 2008, Respondent filed an answer. Petitioner has not filed a traverse. Having read all the papers filed by the parties, the Court DENIES the petition.

PROCEDURAL BACKGROUND

On February 11, 2004, an information was filed against Petitioner and, on August 11, 2004, an amended information was filed, charging him with the following offenses: three counts of forcible rape in violation of California Penal Code § 261(a)(2)¹ (counts 1, 4 and 7), oral copulation with a person under the age of

¹All further statutory references are to the California Penal Code, unless otherwise noted.

1 fourteen in violation of § 288a(c)(1) (count 2), forcible oral
2 copulation in violation of § 288a(c)(2) (count 3), two counts of
3 committing a lewd act on a child under the age of fourteen in
4 violation of § 288(a) (counts 5 and 6), forcible sodomy in
5 violation of § 286(c)(2) (count 8), and sodomy with a person under
6 the age of fourteen and more than ten years younger than Petitioner
7 in violation of § 286(c)(1) (count 9). On August 11, 2004, a jury
8 trial began. On Petitioner's motion, counts 6, 7, and 9 were
9 dismissed. On August 13, 2004, the jury returned a verdict of
10 guilty as to counts 1 and 4 for forcible rape, count 3 for forcible
11 oral copulation, count 5 for committing a lewd act on a child under
12 the age of fourteen, and count 8 for forcible sodomy. Petitioner
13 was found not guilty as to count 2.

14 On October 14, 2004, Petitioner was sentenced to a twenty-six
15 year prison term consisting of: consecutive six-year terms for
16 counts 1, 4, 5, and 8, and a consecutive two-year term (one-third
17 the midterm) for count 3. The trial court did not impose a full,
18 consecutive term on count 3 because that would have required the
19 court to find that multiple victims were involved in the offense.
20 The court concluded this would violate the rule of Apprendi v. New
21 Jersey, 530 U.S. 466, 488-90 (2000), and Blakely v. Washington, 542
22 U.S. 296, 303-04 (2004), that other than a prior conviction, any
23 fact that increases the penalty for a crime beyond the prescribed
24 statutory maximum must be submitted to a jury, and proved beyond a
25 reasonable doubt.

26 Petitioner timely appealed the imposition of the consecutive
27 sentences and the denial of his Ex Post Facto Clause and statute of
28 limitations claims. The appellate court held that "there is no

1 requirement that the factual prerequisite for the imposition of
2 full-term consecutive sentences under § 667.6(d) be submitted to
3 the jury." Resp's Lodged Item # 5, People v. Torres, No. F046568
4 at 12-13 (Cal. App. Mar. 17, 2006).² The court struck the one-
5 third minimum sentence on count 3 and modified it to a separate,
6 full, six-year consecutive sentence. Id. at 14. The court also
7 rejected Petitioner's claim that his prosecution for the charged
8 offenses violated the Ex Post Facto Clause and the claim that the
9 prosecution was time-barred.³ Petitioner filed a petition for
10 review with the California Supreme Court, which summarily denied
11 it.

12 FACTUAL BACKGROUND

13 The following facts are taken from the appellate court's
14 opinion. Maria, Monica and Myra are sisters who lived with their
15 grandparents in the mid-1980's while their parents were farm
16 workers. Petitioner lived with them. Maria, who was twenty-five
17 at the time of the trial, testified that Petitioner molested her
18 from the time she was eight years old until she was twelve years
19 old. Maria did not disclose the abuse until late 2003 or early
20 2004 because she was afraid of Petitioner.

21 Monica, who was twenty-three years old at the time of the
22 trial, testified that Petitioner began molesting her when she was

23
24 ²Section 667.6 requires the court to impose full, consecutive
25 sentences for certain offenses, including rape and forcible sodomy,
if the crimes involve separate victims or involve the same victim
on different occasions. Cal. Penal Code § 667.6.

26 ³A law violates the Ex Post Facto Clause if it: (1) punishes
27 as criminal an act which was innocent when committed; (2) makes a
28 crime's punishment greater than when the crime was committed; or
(3) deprives a person of a defense available at the time the crime
was committed. Collins v. Youngblood, 497 U.S. 37, 42 (1990).

1 seven or eight years old and continued to do so until she was ten.
2 She testified that Petitioner threatened that he would hurt her or
3 her grandmother if she ever told anyone.

4 Myra, who was twenty years old at the time of the trial,
5 testified that Petitioner molested her from when she was four or
6 five until she finished first grade. She also testified that
7 Petitioner told her not to say anything.

8 Petitioner's defense was that he never inappropriately touched
9 Maria, Monica or Myra. Cynthia, the victims' cousin, testified, on
10 Petitioner's behalf, that he never molested her or tried to touch
11 her inappropriately.

12 LEGAL STANDARD

13 A federal court may entertain a habeas petition from a state
14 prisoner "only on the ground that he is in custody in violation of
15 the Constitution or laws or treaties of the United States." 28
16 U.S.C. § 2254(a). Under the Antiterrorism and Effective Death
17 Penalty Act (AEDPA), a district court may not grant a petition
18 challenging a state conviction or sentence on the basis of a claim
19 that was reviewed on the merits in state court unless the state
20 court's adjudication of the claim: "(1) resulted in a decision that
21 was contrary to, or involved an unreasonable application of,
22 clearly established federal law, as determined by the Supreme Court
23 of the United States; or (2) resulted in a decision that was based
24 on an unreasonable determination of the facts in light of the
25 evidence presented in the State court proceeding." 28 U.S.C.
26 § 2254(d). A decision is contrary to clearly established federal
27 law if it fails to apply the correct controlling authority, or if
28 it applies the controlling authority to a case involving facts

1 materially indistinguishable from those in a controlling case, but
2 nonetheless reaches a different result. Clark v. Murphy, 331 F.3d
3 1062, 1067 (9th. Cir. 2003).

4 The only definitive source of clearly established federal law
5 under 28 U.S.C. § 2254(d) is the holdings of the Supreme Court as
6 of the time of the relevant state court decision. Williams v.
7 Taylor, 529 U.S. 362, 412 (2000).

8 To determine whether the state court's decision is contrary
9 to, or involved an unreasonable application of, clearly established
10 law, a federal court looks to the decision of the highest state
11 court that addressed the merits of a petitioner's claim in a
12 reasoned decision. LaJoie v. Thompson, 217 F.3d 663, 669 n.7 (9th
13 Cir. 2000). In the present case, the appellate court is the only
14 state court to address the merits of Petitioner's claims.

15 DISCUSSION

16 I. Statute of Limitations and Violation of Ex Post Facto Clause

17 Petitioner argues his conviction must be reversed because the
18 prosecution of the offenses charged against him were time-barred
19 and violated the Constitution's Ex Post Facto Clause, relying on
20 Stogner v. California, 539 U.S. 607 (2003).

21 The California appellate court explained that the information
22 against Petitioner was filed pursuant to § 803(g)(1) which, at the
23 time,⁴ provided:

24 Notwithstanding any other limitation of time described in
25 this chapter, a criminal complaint may be filed within
26 one year of the date of a report to a California law
27 enforcement agency by a person of any age alleging that
he or she, while under the age of 18 years, was the
victim of a crime described in Section 261, 286, 288,

28 ⁴Section 803(g) was subsequently amended.

1 288a, 288.5, 289, or 289.5.

2 People v. Torres at 6. It noted that the earliest the statute of
3 limitations could have expired on Petitioner's charged offenses was
4 January 1, 1994 and that the legislature enacted § 803(g) effective
5 January 1, 1994. Id. at 5-6. The court also noted that the action
6 against Petitioner was first filed on February 11, 2004, within one
7 year from the date the crimes were reported and that it met the
8 other requirements of § 803(g). Id. at 6. Therefore, the court
9 concluded that the charges were timely filed.

10 The court then explained that in Stogner, the Supreme Court
11 held that § 803(g) was unconstitutional only when applied to
12 offenses in which the statute of limitations had expired before the
13 effective date of § 803(g). Id. at 6-7. Because the statute of
14 limitations for Petitioner's offenses had not expired when § 803(g)
15 became effective, the court held they were not barred.

16 The appellate court's interpretation of Stogner is correct.
17 In Stogner, the Supreme Court held that the Ex Post Facto Clause
18 prohibited criminal prosecutions that the passage of time had
19 previously barred because it inflicted punishment where the party
20 was not, by law, liable to any punishment. 539 U.S. at 610.
21 However, the Court explicitly excepted those cases in which the
22 statute of limitations for the offense in question had not expired
23 because the party could still be punished for the alleged crime.
24 Id. at 613, 618. Because the statute of limitations on the
25 offenses charged against Petitioner had not expired on the
26 effective date of § 803(g), the Ex Post Facto Clause does not
27 apply.

28 In his petition for review to the California Supreme Court,

1 Petitioner pointed out that a condition precedent to the operation
2 of § 803(g), included in the statute itself, is that the
3 limitations period specified for the charged offenses must have
4 expired. Petitioner concluded that this condition made it subject
5 to the Ex Post Facto Clause as explicated in Stogner. Petitioner
6 is incorrect. The expiration of the statute of limitations on the
7 offenses would have to be a condition precedent to the operation of
8 § 803(g); if the limitations period had not expired, there would be
9 no need for § 803(g). Because the statute of limitations had not
10 expired on the charged offenses when § 803(g) became effective,
11 application of § 803(g) did not subject Petitioner to an
12 unconstitutional extension of punishment for those offenses. The
13 fact that, in 2004, when the information was filed, the statute of
14 limitations on the offenses had expired does not change this.

15 Therefore, the state court's denial of this claim was not
16 contrary to or an unreasonable application of established Supreme
17 Court authority.

18 II. Imposition of Consecutive Sentences

19 Petitioner argues that he was improperly sentenced to
20 consecutive sentences under § 667.6 in violation of his Fifth,
21 Sixth and Fourteenth Amendment rights. Petitioner's theory is that
22 because the court, rather than a jury, found that the offenses
23 involved separate victims or the same victim on separate occasions,
24 his right to a jury trial on all facts increasing his sentence, as
25 explicated in Apprendi and Blakely, was violated.

26 However, Petitioner's argument is foreclosed by a recent
27 Supreme Court case, Oregon v. Ice, __ U.S. __, 129 S. Ct. 711
28 (2009). At issue in Ice was an Oregon statute which required a

1 finding of certain facts about the charged offenses before the
2 judge could impose consecutive sentences. Id. at 715. The
3 petitioner argued that the Sixth Amendment's guarantee of a jury
4 trial, as stated in Apprendi and Blakely, required that the jury,
5 rather than the judge, determine any fact that increased the
6 maximum punishment authorized for a particular crime, which
7 included the imposition of consecutive sentences. Id. at 716.
8 Declining to extend Apprendi and Blakely, the Court held that the
9 Sixth Amendment does not prohibit states from assigning to judges,
10 rather than to juries, the finding of facts necessary to impose
11 consecutive, rather than concurrent, sentences for certain
12 offenses. Id. at 718.

13 Thus, pursuant to Ice, Petitioner's claim that the imposition
14 of consecutive sentences violated his constitutional rights fails.
15 The state court's denial of this claim was not contrary to or an
16 unreasonable application of Supreme Court authority.

17 CONCLUSION

18 For the foregoing reasons, Petitioner's petition for a writ of
19 habeas corpus is DENIED. The Clerk of the Court shall enter
20 judgment and close the case.

21
22 IT IS SO ORDERED.

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24 Dated: 4/1/09



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CLAUDIA WILKEN
United States District Judge