

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

ERIC CHARLES K'nAPP,

Petitioner, No. 2:08-cv-1040 JFM (HC)

VS.

WARDEN OF SALINAS VALLEY
STATE PRISON,

Respondent. ORDER

Petitioner is a state prison inmate proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254.¹ In 1993, petitioner was sentenced to 98 years in state prison following his conviction on multiple counts of rape, oral copulation, digital penetration, and sexual battery, as well as one count each of burglary and assault with a deadly weapon, all in violation of state law. Petitioner's commitment offenses involved two victims. In the instant petition, filed in March 2008, petitioner challenges the 1993 conviction and the sentence imposed thereon. The petition contains six claims: (1) newly discovered evidence of actual innocence as to one of the victims; (2) ineffective assistance of counsel at trial, sentencing and on appeal; (3)

¹ The parties have consented to proceed before the undersigned pursuant to 28 U.S.C. § 636(c).

1 prosecutorial misconduct at trial; (4) jury prejudice; (5) cumulative errors; and (6) the sentence
2 imposed is arbitrary, capricious and vindictive.

11 || DATED: January 13, 2009.

John F. Morris
UNITED STATES MAGISTRATE JUDGE

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25 ² Claim one of the petition is based on newly discovered evidence of alleged actual
26 innocence of the crimes against one of the two victims. This claim was the subject of a 2006
evidentiary hearing in state court and respondent does not contend that this claim is time-barred.