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

JAMES BAILEY,

Petitioner,

No. 2:09-cv-1856 GEB KJN P

vs.

KEN CLARK,

Respondent.

ORDER

_____ /

I. Introduction

Petitioner is a state prisoner proceeding without counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court are petitioner’s December 28, 2009 and February 18, 2010 motions to compel discovery. Dkt. Nos. 24, 32.

II. Background

This action proceeds on the original petition filed on June 26, 2009. On January 28, 2000, petitioner was sentenced to two indeterminate state prison terms of twenty-five years to life. Two prior strike convictions were used to enhance petitioner’s January 2000 sentence, including a January 1986 burglary conviction, A703991. In the instant petition, petitioner does not challenge his 2000 conviction. Instead, he contends that the 1986 conviction, where he pled guilty, was illegally obtained and was therefore improperly used to enhance the 2000 sentence.

1 On September 28, 2009, respondent filed a motion to dismiss the petition for
2 being filed after the expiration of the statute of limitations. Dkt. No. 15. Rather than filing an
3 opposition to the motion to dismiss, petitioner filed the instant motions to compel, arguing that
4 he needs certain discovery to adequately respond to the motion to dismiss.

5 Petitioner requests the plea, arraignment and sentencing transcripts from the 1986
6 case where he pled guilty, A703991.¹ Respondent first indicated that the plea transcript was part
7 of the lodged documents connected to the motion to dismiss and then realized that the document
8 had been misidentified and was a different transcript on a different case that simply discussed the
9 1986 conviction. Respondent's Opposition to Motion to Compel.

10 However, after reviewing the lodged documents, it appears to the court that
11 Lodged Document 9 may be the plea transcript for case A703991. The cover page of the
12 transcript states No. A703991 and the body of the transcript states that petitioner is pleading
13 guilty to Information A703991. Accordingly, the court will annex Lodged Document 9 to this
14 order, for petitioner to review.

15 II. Analysis

16 Discovery is not permitted as of right in habeas corpus proceedings. Bracy v.
17 Gramley, 520 U.S. 899, 904 (1997); see Campbell v. Blodgett, 982 F.2d 1356, 1358 (9th Cir.
18 1993). Rather, a “judge may, for good cause, authorize a party to conduct discovery under the
19 Federal Rules of Civil Procedure, and may limit the extent of discovery.” Rule 6(a), Rules
20 Governing § 2254 Cases. Whether a petitioner has established “good cause” for discovery
21 requires the court to determine the essential elements of the petitioner's substantive claim and
22 evaluate whether “specific allegations before the court show reason to believe that the petitioner
23 may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief.”
24 Bracy, 520 U.S. at 908-09 (quoting Harris v. Nelson, 394 U.S. 286, 300 (1969)).

25
26 ¹ Petitioner argues that he was not competent to enter the plea in 1986 and his counsel at
that time was ineffective.

1 To the extent that petitioner requests additional discovery, and if Lodged
2 Document 9 is not what petitioner seeks, the request for discovery is denied. While the discovery
3 petitioner requests may be related to petitioner's underlying claims, petitioner has failed to set
4 forth any facts or arguments concerning how the discovery would aid in responding to the motion
5 to dismiss regarding the statute of limitations. Petitioner did not file his federal habeas petition
6 until eight years after the statute of limitations expired. No state habeas petitions were filed until
7 six years after the statute of limitations expired.

8 Nor has petitioner set forth any arguments why he has waited near twenty-four
9 years to request the transcripts from the 1986 case. The court also notes that it appears petitioner
10 reviewed the plea transcripts in question prior to sentencing in the January 2000 case. Attached
11 to petitioner's motion to compel is a portion of a transcript from January 28, 2000, which
12 indicated that petitioner obtained transcripts from a prior case and after reviewing them,
13 petitioner stated that he had exercised his rights in the correct way in the prior case. December
14 28, 2009 Motion to Compel, Exh. B. While it is not entirely clear if this reference concerns the
15 1986 plea, it appears from petitioner's pleadings that he had reviewed the relevant plea
16 transcripts at some point in 2000.

17 Regardless, after reviewing petitioner's allegations and his proposed discovery,
18 the court finds that good cause does not exist to compel discovery at this time. Petitioner shall
19 reply to the motion to dismiss, and if the case is not dismissed the court will consider at a future
20 date petitioner's request for additional discovery.


21 Accordingly, IT IS HEREBY ORDERED that:

22 1. Petitioner's December 28, 2009 (Dkt. No. 24) and February 18, 2010 (Dkt. No.
23 32) motions be denied without prejudice.

24 2. Petitioner is granted 21 days from the date of service of this order to file an
25 opposition to the motion to dismiss. Failure to file an opposition may result in a
26 recommendation that this action be dismissed.

1 3. Respondent may file a reply to petitioner's opposition within 14 days of
2 petitioner filing an opposition. Respondent is not obligated to file a reply.

3 DATED: April 20, 2010
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6 
7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE
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Attorney General of California
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6 *Attorneys for Respondent*

RECEIVED

SEP 29 2009

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

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11
12 **JAMES BAILEY,**

2:09-cv-1856-JFM (HC)

Petitioner,

DOCUMENT TO BE LODGED

13
14 v.

15
16 **KEN CLARK,**

17 Respondent.
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19 Document 9 – Plea transcript filed in Los Angeles County Superior Court case number

20 A703991
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Prior^{II} alleged information

First Degree Burg
Rights advised pgs 3-6
Plea of Guilty - page 8:21

Lodged
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RETURN DATE: JANUARY 2, 1986 By

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NV F HON. ROBERT D. FRATIANNE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF,
VS.
JAMES EDWARD BAILEY, JR., AKA
WILLIAM BAILEY, JR.,
DEFENDANT.

COPY

NO. A703991
PLEA

SAN FERNANDO, CALIFORNIA; THURSDAY, DECEMBER 5, 1985
10:04 A.M.

UPON THE ABOVE DATE, THE DEFENDANT BEING
PRESENT, REPRESENTED BY A. BUDDE, DEPUTY
PUBLIC DEFENDER; THE PEOPLE BEING PRESENT
AND REPRESENTED BY K. BARSHOP, DEPUTY
DISTRICT ATTORNEY, THE FOLLOWING
PROCEEDINGS WERE HELD:
(MERLE SANDERS, CSR NO. 907,
OFFICIAL REPORTER.)

1 THE COURT: JAMES EDWARD BAILEY, JR.

2 MR. BUDDE: YES, YOUR HONOR. IN THIS CASE, WE
3 HAVE BEEN DISCUSSING A DISPOSITION. THE DISTRICT
4 ATTORNEY IS OFFERING MR. BAILEY FOUR YEARS, WHICH I
5 THINK THEY WOULD PROBABLY BE LENIENT ENOUGH PRESENTING
6 IT AS A FOUR-YEAR LID.

7 MR. BAILEY THINKS THAT IS TOO MUCH TIME.
8 HE WANTS TO AT LEAST HAVE A HOPE FOR A LOW TERM OF TWO
9 YEARS. HE IS ASKING THE COURT TO INDICATE THAT THERE
10 MAY BE SUCH A POSSIBILITY BEFORE HE PLEADS.

11 THE COURT: TELL YOU WHAT. TODAY A FOUR-YEAR
12 LID -- LET ME SEE.

13 MR. BUDDE: WELL, THE COURT SHOULD BE AWARE THAT
14 HE IS ON PAROLE, CYA PAROLE.

15 THE COURT: I SEE THAT.

16 MR. BARSHOP: AND ON PROBATION.

17 THE DEFENDANT: I'M ON PROBATION.

18 THE COURT: WELL, I CAN'T GUARANTEE YOU TWO
19 YEARS, MR. BAILEY. I CAN GUARANTEE YOU A FOUR-YEAR
20 LID, WHICH IS THE MID-TERM. IF THERE IS ANY MITIGATING
21 CIRCUMSTANCE IN YOUR PROBATION REPORT, I WILL CONSIDER
22 THE TWO YEARS, BUT AT THIS POINT THIS IS A FIRST DEGREE
23 BURGLARY.

24 I DON'T KNOW WHAT YOUR BACKGROUND IS. I
25 DON'T KNOW WHAT IS PENDING AS FAR AS YOUR PROBATION IS
26 CONCERNED.

27 IF YOU WANT TO PLEAD NOW, FOUR YEAR LID,
28 IT IS UP TO YOU, SIR. I'M NOT GOING TO COERCE YOU IN

1 ANY WAY.

2 THE DEFENDANT: YES, YOUR HONOR.

3 THE COURT: WHAT?

4 THE DEFENDANT: I'LL PLEAD GUILTY.

5 THE COURT: ALL RIGHT. YOU UNDERSTAND THAT THE
6 MAXIMUM YOU COULD RECEIVE AS FAR AS SENTENCING IN THIS
7 CASE IS FOUR YEARS? THERE IS A POSSIBILITY THAT YOU CAN
8 RECEIVE TWO YEARS BASED UPON YOUR PROBATION REPORT.

9 DO YOU UNDERSTAND THAT?

10 THE DEFENDANT: YES.

11 THE COURT: GIVE YOU CREDIT FOR TIME YOU HAVE
12 SERVED, AND CREDIT FOR GOOD TIME, ALSO.

13 ALL RIGHT. BEFORE WE TAKE YOUR PLEA, YOU
14 HAVE SOME CONSTITUTIONAL RIGHTS THAT YOU HAVE TO BE
15 ADVISED OF. THE DEPUTY DISTRICT ATTORNEY IS GOING TO
16 DO THAT. YOU HAVE TO GIVE UP AND WAIVE THOSE RIGHTS.

17 DO YOU UNDERSTAND THAT, SIR?

18 THE DEFENDANT: YES.

19 THE COURT: THANK YOU.

20 MR. BARSHOP: MR. BAILEY, YOU ARE CHARGED IN
21 INFORMATION A703991 WITH ONE COUNT, A VIOLATION OF
22 PENAL CODE SECTION 459, BURGLARY. IT IS BURGLARY OF A
23 RESIDENCE, THUS BURGLARY IN THE FIRST DEGREE.

24 YOUR ATTORNEY HAS INDICATED THAT YOU WISH
25 TO ENTER A PLEA OF GUILTY TO THIS CHARGE. BEFORE YOU
26 CAN DO SO, YOU HAVE CERTAIN CONSTITUTIONAL RIGHTS WHICH
27 YOU HAVE TO UNDERSTAND AND GIVE UP.

28 YOU HAVE THE RIGHT TO HAVE A JURY TRIAL.

1 A JURY TRIAL IS WHERE TWELVE PEOPLE FROM THE COMMUNITY
2 LISTEN TO THE EVIDENCE TO DETERMINE WHETHER YOU ARE
3 GUILTY OR NOT.

4 DO YOU UNDERSTAND WHAT A JURY TRIAL IS,
5 SIR?

6 THE DEFENDANT: YES.

7 MR. BARSHOP: AND DO YOU GIVE UP THAT RIGHT?

8 THE DEFENDANT: YES.

9 MR. BARSHOP: YOU ALSO HAVE THE RIGHT TO HAVE A
10 COURT TRIAL. THAT IS WHERE THE JUDGE ALONE LISTENS TO
11 THE EVIDENCE TO DETERMINE WHETHER YOU ARE GUILTY OR
12 NOT.

13 DO YOU UNDERSTAND WHAT A COURT TRIAL IS?

14 THE DEFENDANT: YES.

15 MR. BARSHOP: AND DO YOU GIVE UP THAT RIGHT?

16 THE DEFENDANT: YES.

17 MR. BARSHOP: YOU HAVE THE RIGHT TO CONFRONT AND
18 CROSS-EXAMINE THE WITNESSES AGAINST YOU. WHAT THAT
19 MEANS IS THE PEOPLE'S WITNESSES WOULD TAKE THE WITNESS
20 STAND, YOU WOULD BE ABLE TO SEE WHO THEY ARE, AND YOUR
21 ATTORNEY WOULD HAVE THE OPPORTUNITY TO CROSS-EXAMINE
22 THEM, OR ASK THEM QUESTIONS.

23 SINCE THERE IS NOT GOING TO BE A TRIAL,
24 THE WITNESSES WILL NOT BE COMING FORWARD, THEY WILL NOT
25 BE TESTIFYING, AND YOUR ATTORNEY WILL NOT BE ASKING
26 THEM ANY QUESTIONS.

27 DO YOU UNDERSTAND YOUR RIGHT OF
28 CONFRONTATION AND CROSS-EXAMINATION?

1 THE DEFENDANT: YES.

2 MR. BARSHOP: AND DO YOU GIVE UP THIS RIGHT?

3 THE DEFENDANT: YES.

4 MR. BARSHOP: YOU HAVE THE RIGHT AGAINST SELF-
5 INCRIMINATION. WHAT THAT MEANS IS NO ONE COULD FORCE
6 YOU TO SAY ANYTHING THAT MIGHT INCRIMINATE YOURSELF; NO
7 ONE CAN FORCE YOU TO SAY ANYTHING WHATSOEVER.

8 BY PLEADING GUILTY, YOU ARE IN FACT
9 INCRIMINATING YOURSELF.

10 DO YOU UNDERSTAND YOUR RIGHT AGAINST
11 SELF-INCRIMINATION?

12 THE DEFENDANT: YES.

13 MR. BARSHOP: AND DO YOU GIVE UP THIS RIGHT?

14 THE DEFENDANT: YES.

15 MR. BARSHOP: THIS OFFENSE CARRIES WITH IT A
16 MAXIMUM PERIOD OF TIME IN STATE PRISON OF TWO, FOUR, OR
17 SIX YEARS.

18 DO YOU UNDERSTAND THAT?

19 THE DEFENDANT: YES.

20 MR. BARSHOP: HAVE THERE BEEN ANY THREATS MADE TO
21 YOU, OR ANYONE CLOSE TO YOU, IN ORDER TO MAKE YOU ENTER
22 THIS PLEA?

23 THE DEFENDANT: NO, SIR.

24 MR. BARSHOP: HAVE THERE BEEN ANY PROMISES, OTHER
25 THAN THE FACT THAT YOU WOULD RECEIVE NO MORE THAN THE
26 MID-BASE TERM OF FOUR YEARS FOR THIS OFFENSE?

27 THAT IS THE MAXIMUM THAT YOU WOULD RECEIVE
28 WOULD BE THE MID-BASE TERM OF FOUR YEARS.

1 OTHER THAN THAT, HAVE THERE BEEN ANY
2 PROMISES MADE TO YOU?

3 THE DEFENDANT: COULD YOU EXPLAIN THAT AGAIN.

4 I --

5 MR. BARSHOP: THE MAXIMUM THAT YOU COULD RECEIVE
6 IN THIS CASE WOULD BE THE MID-TERM OR FOUR YEARS. YOU
7 WILL NOT RECEIVE THE HIGH TERM OF SIX YEARS.

8 THE DEFENDANT: YES.

9 MR. BARSHOP: YOU COULD RECEIVE THE LOW TERM;
10 THAT IS WITHIN THE DISCRETION OF THE COURT.

11 OTHER THAN THE PROMISE THAT YOU RECEIVE NO
12 MORE THAN THIS MID-BASE TERM, HAVE THERE BEEN ANY
13 PROMISES MADE TO YOU?

14 THE DEFENDANT: NO, SIR.

15 MR. BARSHOP: YOU UNDERSTAND THAT THIS OFFENSE,
16 THE LAW REQUIRES THAT YOU BE SENT TO STATE PRISON
17 UNLESS THERE ARE UNUSUAL CIRCUMSTANCES, AND IN THIS
18 CASE YOU WILL GO TO PRISON? YOU UNDERSTAND THAT?

19 THE DEFENDANT: YES.

20 MR. BARSHOP: IF YOU ARE ON PROBATION OR PAROLE
21 AT THIS TIME, THE ENTRY OF THIS PLEA COULD CAUSE A
22 VIOLATION OF THAT PROBATION OR PAROLE.

23 DO YOU UNDERSTAND THAT?

24 THE DEFENDANT: YES.

25 MR. BARSHOP: IF YOU ARE NOT A CITIZEN OF THE
26 UNITED STATES, THE ENTRY OF THIS PLEA COULD CAUSE YOUR
27 DEPORTATION FROM THE UNITED STATES, DENIAL OF
28 NATURALIZATION, OR KEEP YOU FROM EVER OBTAINING A GREEN

1 CARD, WORKING PRIVILEGES.

2 DO YOU UNDERSTAND THAT?

3 THE DEFENDANT: YES.

4 MR. BARSHOP: WHEN YOU ARE RELEASED FROM PRISON
5 ON THIS CASE, YOU WILL BE PLACED ON A PERIOD OF PAROLE.
6 IF YOU VIOLATE ANY OF THE TERMS AND CONDITIONS OF YOUR
7 PAROLE, YOU COULD BE RETURNED TO STATE PRISON FOR ONE
8 YEAR FOR EACH VIOLATION.

9 DO YOU UNDERSTAND THAT, SIR?

10 THE DEFENDANT: YES.

11 MR. BARSHOP: THIS OFFENSE IS CONSIDERED A
12 SERIOUS FELONY UNDER THE LAW.

13 WHAT THAT MEANS IS IF YOU EVER ARE
14 CONVICTED OF ANOTHER SERIOUS FELONY, BECAUSE YOU STAND
15 CONVICTED OF THIS OFFENSE, THAT COULD ADD FIVE YEARS IN
16 STATE PRISON FOR THAT OFFENSE BECAUSE YOU STAND
17 CONVICTED OF THIS OFFENSE.

18 THE DEFENDANT: YES.

19 MR. BARSHOP: YOU UNDERSTAND THAT?

20 THE DEFENDANT: YES.

21 MR. BARSHOP: THE LAW REQUIRES THAT A RESTITUTION
22 FINE BE GIVEN. THAT IS, THE MINIMUM -- DEPENDING ON THE
23 AMOUNT OF LOSS OR THE AMOUNT OF DAMAGE, THE MINIMUM
24 AMOUNT IS \$100; THE MAXIMUM AMOUNT IS \$10,000. DEPENDS
25 ON WHAT THE AMOUNT OF LOSS IS, IF ANY, OR THE AMOUNT OF
26 DAMAGES, IF ANY. BUT THERE IS A MINIMUM AMOUNT OF \$100.

27 DO YOU UNDERSTAND THAT?

28 THE DEFENDANT: YES.

1 MR. BARSHOP: DO YOU HAVE ANY QUESTIONS
2 WHATSOEVER, MR. BAILEY?
3 THE DEFENDANT: NO, SIR.
4 MR. BARSHOP: DOES COUNSEL STIPULATE THERE IS A
5 FACTUAL BASIS FOR THE PLEA?
6 MR. BUDDE: YES.
7 MR. BARSHOP: IS THE COURT SATISFIED WITH THE
8 WAIVERS?
9 THE COURT: ALL RIGHT. THE COURT FINDS A
10 KNOWING, INTELLIGENT WAIVER OF HIS RIGHTS.
11 READY TO ENTER A PLEA, MR. BAILEY?
12 THE DEFENDANT: YES.
13 THE COURT: THANK YOU.
14 ALL RIGHT. TAKE THE PLEA.
15 MR. BARSHOP: THANK YOU.
16 JAMES EDWARD BAILEY, JR., TO INFORMATION
17 A703991, WHICH CHARGES YOU WITH A VIOLATION OF PENAL
18 CODE SECTION 459, BURGLARY; FURTHER, IT IS BURGLARY OF
19 A RESIDENCE, THUS BURGLARY IN THE FIRST DEGREE, DO YOU
20 NOW PLEAD GUILTY OR NOT GUILTY?
21 THE DEFENDANT: GUILTY.
22 MR. BARSHOP: DOES COUNSEL JOIN IN THE WAIVERS,
23 CONCUR IN THE PLEA?
24 MR. BUDDE: YES.
25 MR. BARSHOP: PEOPLE JOIN IN THE WAIVER.
26 THE COURT: THE COURT FINDS THE PLEA WAS FREELY
27 AND VOLUNTARILY MADE, WITH A FULL KNOWLEDGE AND
28 UNDERSTANDING OF THE CONSEQUENCES OF THE PLEA; THERE IS

1 A FACTUAL BASIS FOR ACCEPTING IT; THAT THE DEFENDANT
2 UNDERSTANDS THE NATURE AND THE CONSEQUENCES OF THE
3 ENTRY OF THE PLEA.

4 THE PLEA OF GUILTY MAY NOW BE RECORDED.
5 MR. BUDDE, THE 28TH DAY IS JANUARY THE
6 2ND.

7 MR. BUDDE: THAT'S FINE.

8 THE COURT: ALL RIGHT. SIR, YOU ARE ORDERED BACK
9 HERE JANUARY 2ND.

10

11 (PROCEEDINGS CONTINUED TO THURSDAY,
12 JANUARY 2, 1986.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NV F

HON. ROBERT D. FRATIANNE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. A703991

JAMES EDWARD BAILEY, JR., AKA)
WILLIAM BAILEY, JR.,)

DEFENDANT.)

REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA)

SS.


COUNTY OF LOS ANGELES)

I, MARCETTA PONZIO, NOTE READER, DO HEREBY
CERTIFY:

THAT I HAVE TRANSCRIBED THE STENOGRAPHIC NOTES
OF MERLE SANDERS, CSR #907;

THAT THE FOREGOING PAGES 1 THROUGH 9,
INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT
TRANSCRIPT, TO THE BEST OF MY ABILITY, OF SAID NOTES OF
THE PROCEEDINGS REPORTED BY SAID MERLE SANDERS, CSR
#907, IN DEPARTMENT NV F, ON THURSDAY, DECEMBER 5,
1985, IN THE ABOVE-ENTITLED MATTER.

DATED THIS 4TH DAY OF JANUARY, 2000.



NOTE READER