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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN CRUMP,  
Petitioner,

No. C 07-3707 CRB (PR)

**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS**

v.

ALAMEDA COUNTY SUPERIOR COURT,  
Respondent.

Petitioner was convicted by a jury in the Superior Court of the State of California in and for the County of Alameda of two counts of making criminal threats. On August 5, 2005 the court sentenced Petitioner to three years and eight months in state prison. The California Court of Appeal affirmed the conviction, but remanded the case for re-sentencing. The Supreme Court of California denied review.

Petitioner then filed the instant federal petition for a writ of habeas corpus under 28 U.S.C. § 2254, claiming that he was denied due process when the trial court failed to order a competency hearing. Per order filed on November 16, 2007, the court found that the petition, liberally construed, stated a cognizable claim under § 2254 and ordered Respondent to show cause why a writ of habeas corpus should not be granted. Respondent filed an answer to the order to show cause, and Petitioner filed a traverse.

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1 **BACKGROUND**

2 The California Court of Appeal summarized the pertinent procedural background of the  
3 case as follows:

4 Psychological Evaluations

5 Shortly after Petitioner was charged with two counts of making criminal threats, two  
6 psychological reports were prepared pursuant to California Penal Code section 1368. People v.  
7 Crump, No. A111031, 2007 WL 594469, at \*1 (Cal. Ct. App. Feb. 27, 2007). Both stated that  
8 Petitioner had remained completely silent during his interview. Dr. Davenport noted that he also  
9 interviewed a deputy in Petitioner’s housing unit who said that Petitioner did not speak to other  
10 inmates but did not appear to be suffering from hallucinations or delusions. Dr. Franklin  
11 reported that Petitioner was able to speak when necessary, but remained “selectively mute.” Id.  
12 Dr. Franklin noted that possible reasons for Petitioner’s behavior could be “an underlying mental  
13 disorder such as paranoid schizophrenia; anger and willful refusal to cooperate; or a malingering  
14 psychosis.” Id. Due to Petitioner’s silence, neither doctor was able to make an evaluation  
15 regarding Petitioner’s competency. Id.

16 Arraignment

17 At the arraignment, Petitioner interrupted his court-appointed counsel when a plea of not  
18 guilty was entered and stated: “No, I never entered a plea. You and the judge and the DA are  
19 setting me up for losing the case. I never entered a plea, and I want the record to reflect that so I  
20 can put in for my appeal . . . . I never entered a plea. I want the record to reflect that because my  
21 constitutional rights are being violated.” Id. Petitioner was taken out of the courtroom and a not  
22 guilty plea was entered on his behalf. Id.

23 Preliminary Hearing

24 During the preliminary hearing, Petitioner “repeatedly insisted he never spoke with  
25 counsel; never agreed to a not guilty plea; that the proceeding was unconstitutional; that he  
26 wanted transcripts from [his arraignment]; and that he would appeal. He also insisted he was  
27 not, and had never been found, incompetent.” Id. Petitioner then stated that he did not want to  
28 be represented by an attorney “because he did not trust the judges, the district attorneys, or the

1 public defenders because they worked together to get African-Americans convicted.” Id. at \*2.  
2 He said that he wanted to represent himself so he could lose his case and then appeal. However,  
3 when he was provided with a Faretta form, Petitioner crumpled it up and the court ruled that  
4 Petitioner waived the right to represent himself. Furthermore, Petitioner remained mute when  
5 the court asked him why Mr. McDougall, his counsel, should not represent him. Id.

6 Petitioner interrupted the proceedings several times while the investigating officer  
7 testified. Petitioner was excluded from the courtroom, and the court explained that it had asked  
8 Petitioner repeatedly to cooperate and that Petitioner had continued to interrupt the proceedings  
9 and use profanity. After being excluded from the courtroom, Petitioner banged on the holding  
10 cell door and called, “it’s all set up for me to lose. If I was supposed to be on the porch, why  
11 didn’t I get arrested at that time? Who is Cliff? Where is my name at? I don’t want you  
12 representing me.” Id.

### 13 Pretrial Conference

14 On June 13, 2005 Judge Thomas Reardon presided over a hearing attended by Petitioner.  
15 There is no reporter’s transcript for this hearing, but the clerk’s handwritten notes on the minutes  
16 state, “Defense counsel’s request for 1368 PC referral is denied. Previous 1368 PC reports are  
17 used by the court. The court finds the [defendant] competent. Matter assigned to Judge  
18 Rolefson, D-10, for [jury trial].” Id.

19 At the pretrial conference before Judge Rolefson, Petitioner insisted that he planned to  
20 wear his jail clothes at trial, despite the fact that both his counsel and the court advised against it.  
21 Id. at \*2-3. Petitioner continued to interrupt the proceedings and state that he had never entered  
22 a not guilty plea; that his counsel was a liar; that his constitutional rights were being violated;  
23 and that he wanted his arraignment transcripts. Id.

24 Petitioner then asked if he could take the stand, and stated that his counsel had lied about  
25 Petitioner having a mental problem and that he was never given his court transcripts. He said, “I  
26 want the First Appeal District Court, the California State Supreme Court, the Ninth Circuit Court  
27 of Appeals, if necessary, the U.S. Supreme Court to know that I never entered a plea at my  
28 arraignment.” Id. at \*3. He also insisted on wearing his jail clothes “because it’s already set up

1 for me to lose, so I don't have nothing to lose, but to put in my appeal, and I will be appealing  
2 my case." Id.

3 When the court expressed concern about Petitioner's behavior at previous hearings,  
4 Petitioner stated that he could "conduct myself in a courtroom to the best of my ability. I don't  
5 have no reason to get loud or to get mad . . . . It's just that I don't like it when an attorney and  
6 the courts is trying to play me for a fool, and try to play with my intelligence when I just asked  
7 for certain things." Id. Petitioner claimed again that his attorney was not acting on his behalf.  
8 The judge told Petitioner that if he continued to interrupt the proceedings he would be excluded  
9 from the courtroom. At the end of the hearing, Petitioner expressed gratitude toward the court  
10 for listening to his grievances and said "If I sound loud, I do apologize for that, but due to the  
11 fact of what took place from the arraignment up to now, I had to say what I had to say . . . . So if  
12 I disrespect you in any way, I apologize, because that's not my intent." Id. at \*4.

### 13 Pretrial Motions

14 During pretrial motions, Petitioner refused to sit next to his counsel, stated that he did not  
15 have a mental problem and that he wanted to take the stand at trial, and remained silent when the  
16 court asked him about his insistence on wearing his jail clothes. Id. Petitioner's counsel noted  
17 that he thought Petitioner understood the judge's order to have his shackles removed, and the  
18 court concurred, "I know [Petitioner] understands exactly what I'm saying. He's made that clear  
19 to me." Id. When the court told Petitioner he would be able to testify, Petitioner claimed that his  
20 attorney did not want him to take the stand because "he did not want the jurors to know what he  
21 had to say." Petitioner then repeatedly complained about not receiving his transcripts and stated  
22 that he wanted to wear his shackles "because it would affect the jurors, and that would be  
23 grounds for reversal on my appeal." Id.

### 24 Jury Selection

25 During jury selection, Petitioner remained mute except when the court was explaining  
26 that Petitioner did not have to testify, at which point Petitioner interrupted and said that he was  
27 being set up to lose his case and that he wished to be found guilty. Id. After continued  
28 interruptions, Petitioner was removed from the courtroom. He was brought back later that day as

1 well as the following day, but each time he continued to interrupt, protesting that he did not enter  
2 a not guilty plea and telling the jurors to find him guilty, and was removed. In addressing the  
3 problem, the court stated:

4           It's a Catch-22 for me. So I'm going to choose the lesser of two evils,  
5 particularly in view of his failure, his refusal to answer my questions directly here. And,  
6 in my opinion, he was playing games with me. I also believe that he is doing this in  
7 significant part to intentionally create an appellate issue. We know that he's been – he's  
8 been to trial before. He's been convicted in the case in this county, it went up on appeal,  
9 and it got reversed. So he's seen what creating issues can do. And I'm convinced he's  
not dumb and he's not crazy. I think this is calculated to create issues here. And I think  
that his playing games with the plea is all part of that. And I think that's pretty clear to  
me. And I don't know if the record will bear me out on that, somebody who's not here  
and not seeing what he's doing, but that's specifically what I believe that he's doing  
based on everything I've seen.

10 Id. at \*5.

#### 11 Trial

12           Outside the presence of the jurors, the court told Petitioner that he would only be able to  
13 stay in the courtroom during trial if he did not interrupt the proceedings. Id. Petitioner  
14 responded that it wouldn't be fair for him to be present at the trial because a plea had never been  
15 entered, “[s]o I remove myself.” Id. The court admonished the jurors not to speculate why  
16 Petitioner chose not to be present. That day, Petitioner was brought into the courtroom once to  
17 be identified by a detective, but was removed afterwards because he immediately started  
18 complaining and interrupting the proceedings. Id. at \*6.

19           Throughout the trial, the court brought Petitioner into the courtroom and asked him if he  
20 wanted to participate. Petitioner told the court that he wished to remain mute. The court noted  
21 that Petitioner “apparently refuses to answer, and it's all part of the game playing that's been  
22 going on for days now. In the absence of a commitment by [Petitioner] that he will not interrupt  
23 court proceedings and be disruptive, then I'm going to continue to exclude him from the  
24 courtroom.” Id.

25           Later in the trial, when asked if he wanted to testify, Petitioner complained about his  
26 transcripts and about not being present for jury selection, called the judge “crooked and corrupt,”  
27 and alleged that his constitutional rights were being violated. Id. The court removed Petitioner  
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1 from the courtroom, but allowed him to take the stand after a recess. The court told Petitioner's  
2 counsel that his client would have to behave:

3 [Petitioner] puts on a show the moment he walks into the courtroom. When he's not in  
4 the courtroom, he's not putting on a show. And I'm going to consult with my bailiff as to  
5 whether he's willing to communicate to [Petitioner] just what I've said, that I'm going to  
bring him in at 1:30 and give him a chance to testify. How he acts, he's got to decide  
how he's going to act.

6 Id.

7 Petitioner was brought back into the courtroom to testify, and the court warned him that  
8 if he repeated his past complaints while on the stand, he would be removed. Petitioner took the  
9 stand, but after saying his name he remained mute and refused to answer any questions. Id. at  
10 \*7. Outside the presence of the jurors, the court asked Petitioner if he wanted to stay in the  
11 courtroom, and Petitioner said that "he preferred to leave because he never entered a plea or was  
12 given the opportunity to attend the jury selection, and was not getting a fair trial." Id.

13 The court repeatedly asked Petitioner if he wanted to be present for jury instructions,  
14 argument, and the reading of the verdict. Petitioner said that he did not want to be present  
15 because he wasn't getting a fair trial, then stated that he didn't have his transcripts, that there  
16 were no African-American jurors, and that he never had a chance to meet the jurors or see what  
17 the witnesses said at trial. Petitioner stated that he was sure he would be found guilty, so he  
18 chose to come back only for sentencing to make sure that the case would be appealed. Id.

#### 19 Sentencing Hearing

20 At the sentencing hearing, Petitioner stated that he would rather be sent to prison than put  
21 on probation so that he could appeal the case. Id. The court told Petitioner that he would be able  
22 to appeal either way. Petitioner interrupted the prosecutor and complained that he did not have  
23 his transcripts, that the witnesses lied, that he was not present during the trial, that there were no  
24 African-Americans on the jury, and that he did not witness the jury selection. Id. Petitioner was  
25 removed from the courtroom. Petitioner's counsel sought probation, noting that he "certainly  
26 seems to cooperate with your orders when you ask him to leave. He gets along well with the  
27 deputies, as far as I can see. He just doesn't like to talk to people. He wants his rights  
28 respected." Id. The attorney also suggested that Petitioner may be suffering from a mental

1 illness. Petitioner was brought back one more time, and after complaining again that the  
2 proceedings were unfair, he was sentenced to state prison. Id. at \*8.

### 3 **DISCUSSION**

#### 4 A. Standard of Review

5 This Court may entertain a petition for a writ of habeas corpus on “behalf of a person in  
6 custody pursuant to the judgment of a state court only on the ground that he is in custody in  
7 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). The  
8 writ may not be granted with respect to any claim that was adjudicated on the merits in state  
9 court unless the state court's adjudication of the claim: "(1) resulted in a decision that was  
10 contrary to, or involved an unreasonable application of, clearly established Federal law, as  
11 determined by the Supreme Court of the United States; or (2) resulted in a decision that was  
12 based on an unreasonable determination of the facts in light of the evidence presented in the  
13 State court proceeding." 28 U.S.C. § 2254(d).

14 “Under the ‘contrary to’ clause, a federal habeas court may grant the writ if the state  
15 court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of  
16 law or if the state court decides a case differently than [the] Court has on a set of materially  
17 indistinguishable facts.” Williams v. Taylor, 529 U.S. 362, 412-13 (2000). “Under the  
18 ‘reasonable application clause,’ a federal habeas court may grant the writ if the state court  
19 identifies the correct governing legal principle from [the] Court’s decisions but unreasonably  
20 applies that principle to the facts of the prisoner’s case.” Id. at 413.

21 “[A] federal habeas court may not issue the writ simply because the court concludes in its  
22 independent judgment that the relevant state-court decision applied clearly established federal  
23 law erroneously or incorrectly. Rather, that application must also be unreasonable.” Id. at 411.  
24 A federal habeas court making the "unreasonable application" inquiry should be whether the  
25 state court's application of clearly established federal law was "objectively unreasonable." Id. at  
26 409.

27 The only definitive source of clearly established federal law under 28 U.S.C. § 2254(d) is  
28 in the holdings (as opposed to the dicta) of Supreme Court cases as of the time of the state court

1 decision. Id. at 412; Clark v. Murphy, 331 F.3d 1062, 1069 (9th Cir. 2003). While circuit law  
2 may be “persuasive authority” for purposes of determining whether a state court decision is an  
3 unreasonable application of Supreme Court precedent, only the Supreme Court’s holdings are  
4 binding on the state courts and only those holdings need be “reasonably” applied. Id.

5 B. Claim and Analysis

6 Petitioner claims that the trial court’s failure to hold a competency hearing violated his  
7 due process rights because the trial court had substantial evidence that he was incompetent to  
8 stand trial. Petitioner argues that his disruptive behavior at trial, his distrust in his attorney, and  
9 his alternating decisions to interrupt court proceedings or remain mute when asked questions  
10 constitute proof that he was unable to assist his counsel in his own defense.

11 It is well-established that due process requires that a criminal defendant not be tried  
12 unless he is competent to stand trial. Godinez v. Moran, 509 U.S. 389, 396 (1993). A defendant  
13 is competent to stand trial if he has sufficient present ability to consult with his lawyer with a  
14 reasonable degree of rational understanding and has a rational as well as factual understanding of  
15 the proceedings against him. Id.

16 The California Court of Appeal determined that Petitioner was not incompetent to stand  
17 trial because he was able to assist his counsel in his defense and understood the proceedings.

18 The court explained:

19 The record supports the [trial] court’s implicit and explicit findings that defendant  
20 understood the proceedings and was able to assist his counsel. The problem was that he  
did not want to.

21 . . . .

22 Defendant points to his disruptive and bizarre behavior that resulted in frequent  
23 expulsions from the courtroom and a tenuous relationship with his attorney as evidence  
24 of incompetence. But the court viewed this behavior not as displaying an inability to  
25 participate, but as a calculated attempt to create reversible error. The stratagem employed  
26 by the defendant is not unprecedented. It has been tried before, and failed before. The  
27 record discloses that defendant vociferously argued with the court his desire to legally  
28 stand mute. But he could address the court with respect, and he demonstrated an  
awareness of the gravity and purpose of the proceedings. He could carry on with the  
judge and loudly express to the jury his contempt for the proceedings and desire for legal  
muteness. But the only time he physically stood mute was when he was questioned by a  
doctor or a lawyer. A reasonable inference that can be drawn from this record is not that  
defendant was incompetent, but that he was attempting through his obstreperous conduct  
to pressure the court into acceding to his procedural demands or to inject error into his

1 trial. (See *People v. Stansbury*, supra, 4 Cal.4th at p. 1041; *People v. Clark* (1992) 3  
2 Cal.4th 41, 115). . . . To be sure, the record shows defendant was unwilling to cooperate  
3 with defense counsel or control his behavior during court proceedings. What is lacking,  
4 however, is evidence that he was *unable* to do so, or that his lack of cooperation was  
5 caused by mental defect or disability. We will not second guess the trial court.

6 Crump, 2007 WL 594469, at \*8.

7 The California Court of Appeal reasonably determined from the trial court record that  
8 Petitioner understood the proceedings and had the ability to assist his counsel, but simply chose  
9 not to do so in a deliberate attempt to create reversible error. The court’s determination that  
10 Petitioner was not incompetent is a factual finding that is entitled to a presumption of  
11 correctness. See 28 U.S.C. § 2254(e)(1); Maggio v. Fulford, 462 U.S. 111, 117 (1983) (per  
12 curiam). Petitioner has not rebutted this presumption with clear and convincing evidence. See  
13 28 U.S.C. § 2254(e)(1).

14 The California Court of Appeal also rejected Petitioner’s claim that the trial court found  
15 him competent without the benefit of a competency hearing under section 1368. See Crump,  
16 2007 WL 594469, at \*9. While there are no transcripts from the June 13, 2005 proceeding, the  
17 court of appeal found that the available court minutes show that Judge Reardon considered the  
18 request for a section 1368 referral, took into account the psychological reports as well as  
19 Petitioner’s behavior, and ruled against Petitioner. Id. “The record supplies no basis for  
20 defendant’s insistence that this proceeding was not a ‘competency hearing’ and that the trial  
21 court ‘simply decided’ defendant was competent.” Id. The court of appeal’s factual finding that  
22 a competency hearing took place pursuant to section 1368 is entitled to a presumption of  
23 correctness that Petitioner has not rebutted by clear and convincing evidence. See 28 U.S.C. §  
24 2254(e)(1); Maggio, 462 U.S. at 117.

25 Even if the June 13, 2005 proceeding did not amount to a competency hearing, Petitioner  
26 is not entitled to federal habeas relief because the evidence before the trial court was not  
27 sufficient to show that Petitioner was incompetent. It is well-established that due process  
28 requires a trial court to order a psychiatric evaluation or conduct a competency hearing if the  
court has a good faith doubt concerning the defendant's competence. See Pate v. Robinson, 383  
U.S. 375, 385 (1966); see also Torres v. Prunty, 223 F.3d 1103, 1107 (9th Cir. 2000) (finding

1 that this standard is “clearly established Federal law, as determined by the Supreme Court”  
2 within the meaning of 28 U.S.C. § 2254(d)(1)). A good faith doubt about a defendant's  
3 competence arises only if there is substantial evidence of incompetence. See Cacoperdo v.  
4 Demosthenes, 37 F.3d 504, 510 (9th Cir. 1994); Hernandez v. Ylst, 930 F.2d 714, 716 (9th Cir.  
5 1991).

6 When considering a claim that a state trial court should have held a competency hearing,  
7 a federal habeas court considers only the information that was before the state trial court. See  
8 Amaya-Ruiz v. Stewart, 121 F. 3d 486, 489 (9th Cir. 1997). A state trial court’s finding that a  
9 competency hearing was not required is entitled to a presumption of correctness. See 28 U.S.C.  
10 § 2254(e)(1); Maggio, 462 U.S. at 117.

11 Courts have found sufficient evidence of incompetency in two scenarios: (1) where the  
12 defendant has a history of severe mental illness, and (2) where the defendant’s behavior is  
13 extremely irrational and erratic throughout the trial. See Odle v. Woodford, 238 F.3d 1084,  
14 1087-89 (9th Cir. 2001) (sufficient evidence of incompetency found where defendant had a  
15 massive lobectomy followed by severe personality change and series of psychiatric  
16 hospitalizations and attempted suicide while in jail); Tillery v. Eyman, 492 F.2d 1056, 1057-58  
17 (9th Cir. 1974) (sufficient evidence of incompetency found where defendant displayed erratic  
18 and irrational behavior throughout the course of the trial, including screaming, laughing at the  
19 jury, disrobing in the courtroom, and butting his head through a glass window).

20 In the instant case, Petitioner did not assert that he has a history of severe mental illness  
21 or treatment. In fact, at trial he repeatedly denied that he had mental problems. See Crump,  
22 2007 WL 594469, at \*4 (during pretrial motions, Petitioner stated “I want the record to reflect  
23 that I don’t have a mental problem, and I’m real capable and able to take the stand, and give my  
24 testimony here at trial.”). Nor was Petitioner’s behavior at trial so erratic and irrational as to  
25 compel a competency hearing. His continual disruptions, claims of constitutional rights  
26 violations, complaints about the fairness of the judicial process and requests to be found guilty  
27 were reasonably construed by the state courts as deliberate attempts to inject reversible error into  
28 the trial, rather than evidence that Petitioner was incompetent. Petitioner’s words and actions

1 explicitly support this conclusion – he stated on multiple occasions that he wanted to be found  
2 guilty for the express purpose of appealing his case. See id. (during pretrial motions, Petitioner  
3 insisted on wearing shackles “because it would affect the jurors, and that would be grounds for  
4 reversal on my appeal.”). And, it is clear from the record that Petitioner was able to control  
5 himself when he chose to, as evidenced by his apologies to the judge and his occasional  
6 decisions to remain silent when asked questions. The California Court of Appeal reasonably  
7 found that Petitioner’s behavior was neither erratic nor irrational, but rather deliberate and with a  
8 distinct purpose. See 28 U.S.C. § 2254(d).

9         Petitioner claims that, even if he was properly found competent after an initial  
10 competency hearing, his subsequent behavior differed so greatly that it required a second  
11 competency hearing. Courts have found that additional evaluations are not always necessary  
12 when a defendant’s behavior changes during the course of the proceedings. See Amaya-Ruiz,  
13 121 F.3d at 491 (after defendant was found competent to stand trial, subsequent evidence that he  
14 spoke out in court, insisted on wearing jail clothes and attempted to hang himself after learning  
15 of the death of his brother did not require court to make a second competency determination.)  
16 The California Court of Appeal reasonably determined that Petitioner’s behavior did not change  
17 significantly throughout the trial: “Although defendant’s disruptive behavior appears to have  
18 escalated during the course of the proceedings, its was consistent in nature from the arraignment  
19 through sentencing. It was unnecessary for the court to suspend proceedings and hold a second  
20 competency hearing after June 13, 2005.” Crump, 2007 WL 594469, at \*9. This factual finding  
21 is entitled to a presumption of correctness that Petitioner has failed to rebut with clear and  
22 convincing evidence. See 28 U.S.C. § 2254(e)(1); Maggio, 462 U.S. at 117.

23         The California Court of Appeal’s rejection of Petitioner’s due process claims was not  
24 contrary to, or was based on an unreasonable application of, clearly established Supreme Court  
25 precedent. See 28 U.S.C. § 2254(d). Nor did it involve an unreasonable determination of the  
26 facts. Id. Petitioner is not entitled to federal habeas relief.

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**CONCLUSION**

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For the foregoing reasons, the petition for writ of habeas corpus is DENIED. The clerk shall enter judgment in favor of Respondent and close the file.

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**IT IS SO ORDERED.**

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Dated: November 18, 2008

  
\_\_\_\_\_  
CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

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