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E-Filed 8/24/12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JASON DARN,

No. C 12-2029 RS (PR)

Petitioner,

**ORDER DISMISSING PETITION
WITH LEAVE TO AMEND**

v.

ANTHONY HEDGPETH, Warden,

Respondent.

United States District Court
For the Northern District of California

INTRODUCTION

Petitioner seeks federal habeas relief from his state convictions. The petition for such relief is now before the Court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases. The filing fee has been paid.

BACKGROUND

According to the petition, in 2008, an Alameda County Superior Court jury convicted petitioner of murder. He received a sentence of life without the possibility of parole, plus another sentence of 25 years-to-life.

No. C 12-2029 RS (PR)
ORDER DISMISSING PETITION

DISCUSSION

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2 This Court may entertain a petition for writ of habeas corpus “in behalf of a person in
3 custody pursuant to the judgment of a State court only on the ground that he is in custody in
4 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).
5 A district court considering an application for a writ of habeas corpus shall “award the writ
6 or issue an order directing the respondent to show cause why the writ should not be granted,
7 unless it appears from the application that the applicant or person detained is not entitled
8 thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in
9 the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See*
10 *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

11 As grounds for federal habeas relief, petitioner alleges that (1) defense counsel
12 rendered ineffective assistance; and (2) there is new evidence showing his innocence. Claim
13 1, when liberally construed, appears to be cognizable on federal habeas review. Claim 2,
14 however, does not. “Claims of actual innocence based on newly discovered evidence have
15 never been held to state a ground for federal habeas relief absent an independent
16 constitutional violation occurring in the underlying state criminal proceeding.” *Herrera v.*
17 *Collins*, 506 U.S. 390, 400 (1993). “[S]uch evidence must bear upon the constitutionality of
18 the applicant’s detention; the existence merely of newly discovered evidence relevant to the
19 guilt of a state prisoner is not a ground for relief on federal habeas corpus.” *Townsend v.*
20 *Sain*, 372 U.S. 293, 317 (1963). So, for this claim to be cognizable on federal habeas review,
21 petitioner must show that an independent constitutional violation occurred in the underlying
22 state criminal proceedings in regard to this evidence.

23 Accordingly, the petition is **DISMISSED WITH LEAVE TO AMEND**. Petitioner
24 shall file an amended petition addressing the concerns detailed above within 30 days from
25 the date this order is filed. The amended petition must include the caption and civil case
26 number used in this order (12-2029 RS (PR)) and the words **AMENDED PETITION** on the
27 first page. Because an amended petition completely replaces the previous petitions,
28

1 petitioner must include in his first amended petition all the claims he wishes to present,
2 including the ineffective assistance of counsel claim found cognizable above. Petitioner may
3 not incorporate material from the prior petition by reference. Failure to file an amended
4 petition in accordance with this order will result in dismissal of this action with prejudice for
5 failure to prosecute under Federal Rule of Civil Procedure 41(b).

6 **IT IS SO ORDERED.**

7 DATED: August 23, 2012


RICHARD SEEBORG
United States District Judge

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