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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WARREN HAVENS,  
Petitioner,  
v.  
XAVIER BECERRA,  
Respondent.

Case No. [17-cv-06772-PJH](#)

**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS AND  
DENYING A CERTIFICATE OF  
APPEALABILITY**

This is a habeas corpus case filed pro se by a former detainee pursuant to 28 U.S.C. § 2254.<sup>1</sup> Petitioner challenges his five-day sentence and one-thousand dollar fine after being found in contempt by the Alameda County Superior Court. The court ordered respondent to show cause why the writ should not be granted. Respondent filed an answer and lodged exhibits with the court and petitioner filed a traverse.<sup>2</sup> For the reasons set out below, the petition is denied.

**BACKGROUND**

Susan Uecker is the court-appointed receiver in the state receivership case of *Leong v. Havens [petitioner]*, No. 2002-070640 (Alameda Cnty. Super. Ct. filed Oct. 31, 2002). Answer, AG0000556-68. On August 27, 2016, the receiver filed a motion seeking contempt of court sanctions under Cal. Civ. Proc. Code section 1209 against petitioner for violating an order of the court. *Id.* After a hearing was held on November 30,

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<sup>1</sup> To the extent petitioner seeks to reclassify this action as a civil rights case, his request is denied. If a petitioner is in custody at the time he files his federal habeas petition, his subsequent release from custody does not deprive the court of its jurisdiction. See *Chaker v. Crogan*, 428 F.3d 1215, 1219 (9th Cir. 2005).

<sup>2</sup> Petitioner filed an initial traverse and then a more extensive traverse. The court has reviewed both filings.

1 December 7 and December 14, 2016, petitioner was convicted of two counts of contempt  
2 and sentenced to ten days of confinement and a two-thousand-dollar fine. *Id.* On August  
3 3, 2017, the California Court of Appeal granted an alternative writ of prohibition as to the  
4 second contempt count but denied relief for the remaining contempt count, which is the  
5 subject of this federal petition. *Id.* at AG0001747-51. The California Supreme Court  
6 denied the petition for review on November 15, 2017. *Id.* at AG0001850.

7 **STATEMENT OF FACTS**

8 Starting in 1999 petitioner formed several related companies involving wireless  
9 services and obtained licenses from the Federal Communications Commission ("FCC").  
10 *Id.* at AG0000422-23. One such company, Skybridge Spectrum Foundation ("SSF"),  
11 founded in 2006, was formed as a Delaware nonprofit corporation. *Id.* Since 2002  
12 petitioner and Arnold Leong, have been involved in a dispute over the ownership and  
13 control of the companies and their licenses. *Id.* at AG0000557.

14 Petitioner was also involved in a separate administrative proceeding before the  
15 FCC. *Id.* at AG0000439. On April 22, 2015, an FCC administrative law judge ("ALJ")  
16 issued an order in *Maritime Communications/Land Mobile LLC*, FCC Docket No. 11-71,  
17 2015 WL 1890837 (FCC Apr. 22, 2015). *Id.* at AG0000439. The ALJ described  
18 petitioner's extensive amount of frivolous and vexatious litigation. *Id.* at AG0000439-52.  
19 The ALJ recommended that the FCC issue a Hearing Designation Order, which if issued  
20 could result in the FCC licenses being frozen. *Id.* at AG0000557-58. As a result of the  
21 ALJ's order, Leong moved to appoint a receiver in Alameda County Superior Court. *Id.* at  
22 AG0000558.

23 On November 16, 2015, the Alameda County Superior Court appointed the  
24 receiver. *Id.*; *Id.* at AG0000236-41. In so doing the court enjoined petitioner, among  
25 other restrictions, from contacting the FCC regarding the licenses in the receivership  
26 entities; interfering with the receiver in the discharge of her duties; and otherwise  
27 commencing or prosecuting any suit in the name of the receivership entities or acting on  
28 their behalf. *Id.* at AG0000241. In July 2016, a second order was issued for petitioner

1 not to communicate with the FCC or anyone else that would lead the recipient to believe  
2 that petitioner was communicating on behalf of a receivership entity. *Id.* at AG0000244.  
3 Four months earlier in March 2016, petitioner filed a voluntary petition for bankruptcy on  
4 behalf of SSF, one of the receivership entities, in the United States Bankruptcy Court for  
5 the District of Delaware. *Id.* at AG0000456-512. The bankruptcy court found that, due to  
6 the receivership order from the Alameda County Superior Court, petitioner was not  
7 authorized to bring the action. *Id.* at AG0000500-07.

8 On August 22, 2016, petitioner filed an involuntary petition against the Leong  
9 Partnership in the United States Bankruptcy Court for the Northern District of California in  
10 his name and in the name of SSF, a receivership entity. *Id.* at AG0000247-73. Petitioner  
11 sought to have the Leong Partnership forced into bankruptcy. *Id.* at AG0000559.  
12 Petitioner also attempted to impose a stay on the receivership's assets. *Id.* at  
13 AG0000560. On August 25, 2016, petitioner filed a notice to dismiss SSF as a petitioning  
14 creditor. *Id.* at AG0000275.

15 On August 29, 2016, the Alameda County Superior Court issued a show-cause  
16 order on a contempt petition filed by the receiver against petitioner. *Id.* at AG0000556.  
17 Petitioner was found in contempt on December 14, 2016, on the basis of filing the  
18 involuntary bankruptcy petition in the name of SSF. *Id.* at AG0000556-65. Specifically,  
19 the court ruled that by filing the petition, petitioner had violated its orders to not  
20 communicate with other persons or entities in a manner that would lead them to believe  
21 that petitioner was acting on behalf of the receivership entity and to not interfere with the  
22 receiver's discharge of her duties. *Id.* at AG0000559-61.<sup>3</sup>

### 23 STANDARD OF REVIEW

24 A party may challenge the legality of custody under a civil contempt order in a  
25 federal habeas petition. *See Duncan v. Walker*, 533 U.S. 167, 176 (2001). A district  
26 court may not grant a petition challenging a state conviction or sentence on the basis of a  
27

28 <sup>3</sup> This court has not discussed the second contempt finding regarding the submission of  
an FCC filing because petitioner was already granted relief in state court.

1 claim that was reviewed on the merits in state court unless the state court's adjudication  
2 of the claim: "(1) resulted in a decision that was contrary to, or involved an unreasonable  
3 application of, clearly established Federal law, as determined by the Supreme Court of  
4 the United States; or (2) resulted in a decision that was based on an unreasonable  
5 determination of the facts in light of the evidence presented in the State court  
6 proceeding." 28 U.S.C. § 2254(d). The first prong applies both to questions of law and  
7 to mixed questions of law and fact, see *Williams (Terry) v. Taylor*, 529 U.S. 362, 407-09  
8 (2000), while the second prong applies to decisions based on factual determinations, see  
9 *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003).

10 A state court decision is "contrary to" Supreme Court authority, that is, falls under  
11 the first clause of § 2254(d)(1), only if "the state court arrives at a conclusion opposite to  
12 that reached by [the Supreme] Court on a question of law or if the state court decides a  
13 case differently than [the Supreme] Court has on a set of materially indistinguishable  
14 facts." *Williams (Terry)*, 529 U.S. at 412-13. A state court decision is an "unreasonable  
15 application of" Supreme Court authority, falling under the second clause of § 2254(d)(1),  
16 if it correctly identifies the governing legal principle from the Supreme Court's decisions  
17 but "unreasonably applies that principle to the facts of the prisoner's case." *Id.* at 413.  
18 The federal court on habeas review may not issue the writ "simply because that court  
19 concludes in its independent judgment that the relevant state-court decision applied  
20 clearly established federal law erroneously or incorrectly." *Id.* at 411. Rather, the  
21 application must be "objectively unreasonable" to support granting the writ. *Id.* at 409.

22 Under 28 U.S.C. § 2254(d)(2), a state court decision "based on a factual  
23 determination will not be overturned on factual grounds unless objectively unreasonable  
24 in light of the evidence presented in the state-court proceeding." See *Miller-El*, 537 U.S.  
25 at 340; see also *Torres v. Prunty*, 223 F.3d 1103, 1107 (9th Cir. 2000).

26 The state court decision to which § 2254(d) applies is the "last reasoned decision"  
27 of the state court. See *Ylst v. Nunnemaker*, 501 U.S. 797, 803-04 (1991); *Barker v.*  
28 *Fleming*, 423 F.3d 1085, 1091-92 (9th Cir. 2005). When there is no reasoned opinion

1 from the highest state court to consider the petitioner’s claims, the court looks to the last  
2 reasoned opinion. See *Nunnemaker* at 801-06; *Shackleford v. Hubbard*, 234 F.3d 1072,  
3 1079 n.2 (9th Cir. 2000). Here, the court looks to the California Court of Appeal opinion  
4 for the sole claim in the petition.

5 **DISCUSSION**

6 As grounds for federal habeas relief, petitioner asserts that there was insufficient  
7 evidence for the finding of contempt because the state court order enjoining his actions  
8 on behalf of SSF violated the Constitution.

9 **LEGAL STANDARD**

10 The Due Process Clause “protects the accused against conviction except upon  
11 proof beyond a reasonable doubt of every fact necessary to constitute the crime with  
12 which he is charged.” *In re Winship*, 397 U.S. 358, 364 (1970). A state prisoner who  
13 alleges that the evidence in support of his state conviction cannot be fairly characterized  
14 as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt  
15 therefore states a constitutional claim, see *Jackson v. Virginia*, 443 U.S. 307, 321 (1979),  
16 which, if proven, entitles him to federal habeas relief, see *id.* at 324.

17 The Supreme Court has emphasized that “*Jackson* claims face a high bar in  
18 federal habeas proceedings . . . .” *Coleman v. Johnson*, 566 U.S. 650, 651, 655 (2012)  
19 (per curiam) (finding that the 3rd Circuit “unduly impinged on the jury’s role as factfinder”  
20 and failed to apply the deferential standard of *Jackson* when it engaged in “fine-grained  
21 factual parsing” to find that the evidence was insufficient to support petitioner’s  
22 conviction). A federal court reviewing collaterally a state court conviction does not  
23 determine whether it is satisfied that the evidence established guilt beyond a reasonable  
24 doubt. *Payne v. Borg*, 982 F.2d 335, 338 (9th Cir. 1992); see, e.g., *Coleman*, 566 U.S. at  
25 656 (“the only question under *Jackson* is whether [the jury’s finding of guilt] was so  
26 insupportable as to fall below the threshold of bare rationality”). The federal court  
27 “determines only whether, ‘after viewing the evidence in the light most favorable to the  
28 prosecution, any rational trier of fact could have found the essential elements of the crime

1 beyond a reasonable doubt.” *Payne*, 982 F.2d at 338 (quoting *Jackson*, 443 U.S. at 319).  
2 Only if no rational trier of fact could have found proof of guilt beyond a reasonable doubt,  
3 has there been a due process violation. *Jackson*, 443 U.S. at 324; *Payne*, 982 F.2d at  
4 338.

### 5 ANALYSIS

6 The Alameda County Superior Court which had enjoined petitioner from interfering  
7 with the discharge of the receiver’s duties and from communicating in a way that could  
8 lead the recipient to believe the communication was made on behalf of the receivership  
9 entity, found him in contempt for violating these orders by filing the involuntary  
10 bankruptcy petition against Leong on behalf of SSF. Answer, AG0000556-65. After the  
11 California Court of Appeal granted relief as to another contempt finding, the court stated  
12 that it had “considered petitioner’s challenge to the remaining contempt count [regarding  
13 the bankruptcy petition] and concludes it does not appear petitioner has persuasively  
14 demonstrated an entitlement to writ relief regarding that count.” *Id.* at AG0001748, n.1.

15 Petitioner argues that the Alameda County Superior Court order preventing him  
16 from filing a bankruptcy petition in federal court violated his rights under the Constitution;  
17 therefore, the order of contempt for violating the superior court order was improper and  
18 lacked sufficient evidence. Petitioner has failed to demonstrate that the state court  
19 opinion denying his petition was an objectively unreasonable application of Supreme  
20 Court authority.

21 Petitioner argues that he has a constitutionally protected right to file a petition in  
22 the bankruptcy court. While he cites cases that support this proposition, it is not a  
23 uniform rule and there are exceptions. Petitioner relies on *Donovan v. City of Dallas*, 377  
24 U.S. 408 (1964), to support his argument. However, *Donovan* involved plaintiffs whom  
25 the state court sought to enjoin from proceeding with a pending federal action. *Id.* The  
26 Supreme Court noted that “[e]arly in the history of our country a general rule was  
27 established that state and federal courts would not interfere with or try to restrain each  
28 other’s proceedings.” *Id.* at 412. The Supreme Court also noted, “An exception has

1 been made in cases where a court has custody of property, that is, proceedings in rem or  
2 quasi in rem. In such cases this Court has said that the state or federal court having  
3 custody of such property has exclusive jurisdiction to proceed.” *Id.*

4 In the instant case the Alameda County Superior Court had exercised jurisdiction  
5 over SSF, that is the subject of the parties’ dispute, before petitioner began litigation in  
6 federal courts. This is distinguishable from *Donovan*, where the parties had already been  
7 litigating in federal court before the state court took action. Furthermore, because SSF  
8 was in state receivership, the California Court of Appeal could have construed the facts in  
9 this case to fall within the exception noted in *Donovan*. The state court’s finding is  
10 supported by the record and was not objectively unreasonable.

11 Nor has petitioner identified established Supreme Court authority pertaining to a  
12 constitutionally protected right to file an involuntary bankruptcy against another party.  
13 The Second Circuit noted, “We hold that while it should be sparsely exercised, district  
14 courts possess the authority and discretion to enter anti-litigation orders, including those  
15 that bar the filing of involuntary bankruptcy petitions absent the district court’s  
16 permission.” *Sec. & Exch. Comm’n v. Byers*, 609 F.3d 87, 89 (2d Cir. 2010). For all  
17 these reasons, petitioner has failed to show that the state court denial of his claim was  
18 contrary to, or involved an unreasonable application of, clearly established Federal law.

19 There was also sufficient evidence that the petitioner’s actions violated the state  
20 court order. The superior court set forth specific reasons as to how petitioner was in  
21 contempt by filing the bankruptcy petition, and the California Court of Appeal found he  
22 was not entitled to relief. To the extent petitioner argues that the state court was  
23 incorrect in its analysis of state law and the contempt statute, he is not entitled to habeas  
24 relief. The *Jackson* standard must be applied with reference to the substantive elements  
25 of the criminal offense as defined by state law. *Jackson*, 443 U.S. at 324 n.16; see, e.g.,  
26 *Boyer v. Belleque*, 659 F.3d 957, 968 (9th Cir. 2011) (concluding it was not  
27 unreasonable, in light of Oregon case law, for Oregon court to conclude that a rational  
28 jury could find beyond a reasonable doubt that petitioner intended to kill his victim based

1 on proof that he anally penetrated several victims with knowledge that he could infect  
2 them with AIDS). The state court’s ruling on the state law issue is binding on this court.

3 The “minimum amount of evidence that the Due Process Clause requires to prove  
4 the offense is purely a matter of federal law,” *Coleman*, 566 U.S. at 655, and petitioner  
5 has not shown that the state court was objectively unreasonable in finding sufficient  
6 evidence to support the contempt finding in light of the high bar for *Jackson* claims.  
7 Multiple orders were issued barring petitioner from certain actions and from interfering  
8 with the receiver. Yet he filed two bankruptcy petitions on behalf of receivership entities  
9 in the United States Bankruptcy Court in the District of Delaware and an involuntary  
10 petition in the Northern District of California. The state courts found that trying to put the  
11 receivership entities into bankruptcy and trying to impose a stay over receivership assets  
12 amounted to interference with the receiver’s duties. The receivership incurred costs and  
13 it complicated pending and future sale transactions that had been authorized by the  
14 court. The state courts also found that petitioner communicated with other persons or  
15 entities in a manner that would lead them to believe that petitioner was acting on behalf  
16 of a receivership entity. Viewing the evidence in the light most favorable to the receiver,  
17 there was sufficient evidence for the state court to find petitioner in contempt. The state  
18 court decision was not objectively unreasonable; therefore, petitioner is not entitled to  
19 habeas relief.

20 **APPEALABILITY**

21 The federal rules governing habeas cases brought by state prisoners require a  
22 district court that denies a habeas petition to grant or deny a certificate of appealability  
23 (“COA”) in the ruling. See Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll.  
24 § 2254 (effective December 1, 2009).

25 To obtain a COA, petitioner must make “a substantial showing of the denial of a  
26 constitutional right.” 28 U.S.C. § 2253(c)(2). “Where a district court has rejected the  
27 constitutional claims on the merits, the showing required to satisfy § 2253(c) is  
28 straightforward: The petitioner must demonstrate that reasonable jurists would find the



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district court's assessment of the constitutional claims debatable or wrong." See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Section 2253(c)(3) requires a court granting a COA to indicate which issues satisfy the COA standard. Here, petitioner has made no showing warranting a certificate, and so none is granted.

**CONCLUSION**

1. The petition for writ of habeas corpus is **DENIED** on the merits. A certificate of appealability is **DENIED**. See Rule 11(a) of the Rules Governing Section 2254 Cases.

2. The clerk shall close the file.

**IT IS SO ORDERED.**

Dated: November 21, 2018



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PHYLLIS J. HAMILTON  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3 WARREN HAVENS,  
4 Plaintiff,

5 v.

6 XAVIER BECERRA,  
7 Defendant.  
8

Case No. [17-cv-06772-PJH](#)

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
10 District Court, Northern District of California.

11  
12 That on November 21, 2018, I SERVED a true and correct copy(ies) of the attached, by  
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
15 receptacle located in the Clerk's office.

16  
17 Warren Havens  
18 2649 Benvenue Avenue  
19 Berkeley, CA 94704

20 Dated: November 21, 2018

21  
22 Susan Y. Soong  
23 Clerk, United States District Court

24 

25  
26 Kelly Collins, Deputy Clerk to the  
27 Honorable PHYLLIS J. HAMILTON