

United States District Court  
For the Northern District of California

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E-FILED on 10/12/2011

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

ANTHONY DANIEL GONZALES,  
  
Petitioner,  
  
v.  
  
MATTHEW CATE, Secretary of California  
Department of Corrections and Rehabilitation,  
  
Respondent.

No. C-08-03378 RMW

ORDER DENYING PETITION FOR WRIT  
OF HABEAS CORPUS, DENYING  
REQUEST FOR AN EVIDENTIARY  
HEARING, AND DENYING CERTIFICATE  
OF APPEALABILITY

[Re Docket Nos. 1, 15]

Anthony Daniel Gonzales petitions for a writ of habeas corpus under 28 U.S.C. § 2254. For the reasons set forth below, the petition for writ of habeas corpus is denied. Petitioner also moves or an evidentiary hearing, or, in the alternative, oral argument. For the reasons set forth below, the motion for an evidentiary hearing or oral agument is also denied.

**I. BACKGROUND**

On May 22, 2004, petitioner fatally stabbed David Quiroz at a birthday party. According to the testimony of witnesses, petitioner became involved in an altercation with the party's host and was asked to leave the party. Petitioner refused to leave. Rep. Tr. vol. 5, 585, 632-633. A fight involving petitioner, David Quiroz, and Moses Escamilla broke out in the driveway. Rep. Tr. vol. 4,

1 509-510, 534-535. Witnesses testified that shortly after the fight began, they saw Quiroz collapse  
2 into the bushes in the face of petitioner's attack. Rep. Tr. vol. 4, 509-510, 534-535; vol. 5, 642. The  
3 fight ended when several guests were able to restrain petitioner. Rep. Tr. vol. 4, 513, 518. By this  
4 time, Quiroz was limp and nonresponsive, Rep. Tr. vol. 4, 519-520, and he died at the scene shortly  
5 after the arrival of paramedics. Rep. Tr. vol. 4, 281, 560. The forensic pathologist testified that  
6 Quiroz suffered eight stab wounds, three of which were potentially fatal. Rep. Tr. vol. 3, 238, 240,  
7 246. These wounds were all three-and-a-half inches deep, the full length of the knife blade. Rep.  
8 Tr. vol. 3, 240-241; 244-245; 246. The pathologist testified that the wounds were "stabbing  
9 wounds" that were deeper than they were wide or long, and that there were no wounds consist with  
10 waving a knife back and forth. Rep. Tr. vol. 3, 248-49. The pathologist also testified that Quiroz  
11 had injuries consistent with being punched, but no injuries consistent with having punched anyone  
12 else, and that Quiroz's blood alcohol level of 0.22 would have made it difficult for Quiroz to defend  
13 himself or have much coordination. Rep. Tr. vol. 3, 225; 230-231; 250.

14         Petitioner testified that when he tried to leave the party, a group led by Quiroz attacked and  
15 punched him. Rep. Tr. vol. 7, 977. Petitioner testified that he feared for his life, and that he pulled a  
16 knife out of his pocket, flicked it open with his thumb, and began swinging it back and forth to force  
17 his attackers back. Rep. Tr. vol. 7, 979-80, 1051. He testified that he felt that he "did get somebody  
18 a couple time" with the knife as he was swinging it, but that the knife was almost immediately  
19 knocked from his hand. Rep. Tr. vol. 7, 980. Petitioner acknowledged that he had lied to the police  
20 after he was arrested when he told them that Quiroz pulled the knife on him and attempted to stab  
21 him, and that petitioner took the knife from Quiroz and swung it at him in self defense. Rep. Tr. vol.  
22 7, 988, 1101. Petitioner testified that he did not know how Quiroz ended up with eight stab wounds,  
23 including two wounds to the back of the head. Rep. Tr. vol. 7, 1077-78.

24         Petitioner was convicted in Santa Clara County Superior Court of second degree murder with  
25 an enhancement for use of a deadly and dangerous weapon. On September 9, 2005, petitioner was  
26 sentenced to sixteen years to life in state prison. Petitioner filed a notice of appeal on September 23,  
27 2005. On December 20, 2006, petitioner filed a petition for writ of habeas corpus in the California  
28 Court of Appeal in conjunction with his appeal. On May 23, 2007, the California Court of Appeal

1 affirmed petitioner's conviction and denied petitioner's habeas petition. The California Supreme  
2 Court denied review of petitioner's appeal on August 13, 2008, and denied review of petitioner's  
3 habeas petition on September 4, 2008. The instant petition for habeas corpus was filed in this court  
4 on July 14, 2008.

## 5 II. ANALYSIS

### 6 A. Legal Standard

7 A court may grant a petition for writ of habeas corpus "on behalf of a person in custody  
8 pursuant to the judgment of a State court only on the ground that he is in custody in violation of the  
9 Constitution or laws and treaties of the United States." 28 U.S.C. § 2254(a). The court may grant  
10 the writ only if the state court's ruling "resulted in a decision that was contrary to, or involved an  
11 unreasonable application of, clearly established Federal law, as determined by the Supreme Court of  
12 the United States" or was "based on an unreasonable determination of the facts in light of the  
13 evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

14 For a state court's decision to be contrary to clearly established federal law, it must apply a  
15 rule that contradicts the governing law set forth in Supreme Court cases, or confront a set of facts  
16 that are materially indistinguishable from a Court decision and nevertheless arrive at a different  
17 result from Court precedent. *Early v. Packer*, 537 U.S. 3, 8 (2002). A state court decision is an  
18 unreasonable application of clearly established federal law "if the state court identifies the correct  
19 governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner's  
20 case." *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). The court cannot grant a habeas petition as  
21 being an "unreasonable application" of federal law merely because, in its opinion, the law was  
22 incorrectly applied in a case. *Bell v. Cone*, 535 U.S. 685, 698-99 (2002). Rather, the state court's  
23 application of federal law must be "objectively unreasonable" in order to justify granting the  
24 petition. *Id.* The review of state court decisions is highly deferential, and state court decisions  
25 should be given the benefit of the doubt. *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002).

26 AEDPA also restricts the district court's discretion to grant an evidentiary hearing. *Baja v.*  
27 *Ducharme*, 187 F.3d 1075, 1077 (9th Cir. 1999). The statute provides that "if the applicant has failed  
28 to develop the factual basis of a claim in State court proceedings, the court shall not hold an

1 evidentiary hearing on the claims" unless the applicant shows that the claim relies on a new rule of  
2 constitutional law previously unavailable or a factual predicate that could not have been previously  
3 discovered through the exercise of due diligence. 28 U.S.C. § 2254(e)(2). The facts underlying the  
4 claim would also need to "be sufficient to establish by clear and convincing evidence that but for  
5 constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying  
6 offense." *Id.* "If the record refutes the applicant's factual allegations or otherwise precludes habeas  
7 relief, a district court is not required to hold an evidentiary hearing." *Schriro v. Landrigan*, 550 U.S.  
8 465, 474 (2007).

9 **B. Petitioner's Claims**

10 Petitioner raises three claims of ineffective assistance of counsel. He contends that trial counsel  
11 was constitutionally ineffective (1) by not asking petitioner to demonstrate one-handed operation of the  
12 knife or retaining an expert witness to testify about the operation of the knife and demonstrate operation  
13 for the jury, (2) by not challenging the court's decision to submit the knife to the jury in sealed plastic,  
14 and (3) by choosing to respond in her closing argument to the prosecution's incorrect statement about  
15 the knife, rather than objecting to the statement.

16 In order to establish that counsel was ineffective, petitioner bears the burden of showing that  
17 counsel's performance fell below an objective standard of reasonableness under prevailing professional  
18 norms and that there is a reasonable probability the result of the proceeding would have been different.  
19 *Strickland v. Washington*, 466 U.S. 668, 687-688, 695-96 (1984). In determining whether performance  
20 fell below an objective standard of reasonableness, the reviewing court "must indulge a strong  
21 presumption that counsel's conduct falls within the wide range of reasonable professional assistance."  
22 *Id.* at 689. Strategic decisions by counsel are "virtually unchallengeable." *Id.* at 690. A reasonable  
23 probability the result of the proceeding would have been different is "a probability sufficient to  
24 undermine confidence in the outcome." *Id.* at 694. Petitioner must affirmatively prove prejudice. *Id.*  
25 at 693.

26 The state court's rejection of petitioner's claims was not an unreasonable application of  
27 *Strickland*. Petitioner argues that defense counsel should have taken additional steps to inform the jury  
28 about how the knife worked, because he asserts that whether he opened the knife with one or two hands

1 was central to his claim of self defense. But because petitioner testified that the knife could be opened  
2 with one hand, the evidence necessary to explain the operation of the knife was before the jury. Rep.  
3 Tr. vol. 7, 1094-95. The prosecution did not offer any evidence that the knife was necessarily operated  
4 with two hands. The operation of a thumb stud to open a knife was not outside the capability of the  
5 average juror to understand and did not require expert testimony. Counsel was not objectively  
6 unreasonable in failing to obtain additional testimony regarding the operation of the knife.

7 Counsel was also not objectively unreasonable in failing to object to the judge's decision to  
8 provide the knife—contaminated with potentially harmful biological matter—in protective packaging to  
9 the jury. Control of whether and how items in evidence are presented to the jury falls within the sound  
10 discretion of the trial court. *See People v. Walker*, 150 Cal. App. 2d 594, 603 (1957). In light of the  
11 evidence presented at trial and given the court's strong interest in protecting the evidence as well as the  
12 jurors from injury, an objection would have been futile.

13 Finally, counsel was not objectively unreasonable in choosing to correct the statement of the  
14 prosecutor in closing argument that "you have to take two hands to open" the knife and that it was  
15 impossible that petitioner "did as he described it was, grabbing on to someone and he's bent over a bush  
16 being beaten up and he's able to pull that knife out of his pocket and open it with one hand and then do  
17 the stabbing. That's a lie. The truth is that he would have had to have taken that knife out and open it  
18 up in preparation." Rep. Tr. vol. 9, 1508-09. Trial counsel heard the challenged comment, was aware  
19 that it was not based on the evidence, and addressed the misstatement of fact in her closing argument.  
20 Rep. Tr. vol. 10, 1552. Her decision to address the comment in her own argument, rather than objecting,  
21 was a tactical decision based on a complete awareness of all the relevant facts and applicable law. It  
22 was not objectively unreasonable.

23 Petitioner contends that an evidentiary hearing is necessary because a factual dispute exists as  
24 to whether he was denied effective assistance of counsel based on the failure of counsel to introduce  
25 testimony by an expert witnesses regarding the likelihood that petitioner could have opened the knife  
26 with one hand. Petitioner is not entitled to an evidentiary hearing regarding the proposed expert  
27 testimony because petitioner has not demonstrated that such testimony would establish that but for  
28 constitutional error, no reasonable factfinder would have found him guilty of the underlying offense.

1 Petitioner has also failed to show that his claims rely on a factual predicate that could not have been  
2 previously discovered through the exercise of due diligence. 28 U.S.C. § 2254(e)(2).

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4 **III. CERTIFICATE OF APPEALABILITY**

5 The federal rules governing habeas cases brought by state prisoners require a district court  
6 that denies a habeas petition to grant or deny a certificate of appealability ("COA") in its ruling. *See*  
7 Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. § 2254 (effective December 1, 2009). For the  
8 reasons set out in the discussion above, petitioner has not shown "that jurists of reason would find it  
9 debatable whether the petition states a valid claim of the denial of a constitutional right [or] that  
10 jurists of reason would find it debatable whether the district court was correct in its procedural  
11 ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, a COA is denied.

12 **IV. ORDER**

13 For the foregoing reasons, the petition for writ of habeas corpus is denied, the request for an  
14 evidentiary hearing is denied and a certificate of appealability will not be issued.

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17 DATED: 10/12/2011

  
RONALD M. WHYTE  
United States District Judge