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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FELIPE GARCIA,  
Petitioner,  
v.  
R.J. SUBIA, Warden,  
Respondent.

Civil No.07cv1869 JAH (PCL)

ORDER OVERRULING  
PETITIONER’S OBJECTIONS;  
ADOPTING THE MAGISTRATE  
JUDGE’S REPORT AND  
RECOMMENDATION; DENYING  
PETITION FOR WRIT OF HABEAS  
CORPUS IN ITS ENTIRETY; AND  
DENYING A CERTIFICATE OF  
APPEALABILITY

INTRODUCTION

Petitioner Felipe Garcia (“Garcia” or “petitioner”), a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction in state court following a jury trial. After the petition was fully briefed by the parties, the Honorable Peter C. Lewis, United States Magistrate Judge, issued a report and recommendation (“report”) recommending that the petition be denied in its entirety. Petitioner filed objections to the report. After careful consideration of the entire record in this matter, and for the reasons set forth below, this Court **ADOPTS** the report and recommendation, **DENIES** the petition in its entirety, and **DENIES** a certificate of appealability.

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1 BACKGROUND

2 1. **Factual Background**

3 The magistrate judge, in the report, detailed the factual history of this case as  
4 presented by the state court in its denial of petitioner’s writ of habeas corpus, correctly  
5 noting that the state court’s factual determinations are presumed correct absent clear and  
6 convincing evidence rebutting the presumption.<sup>1</sup> See Doc. # 16 at 2 (citing 28 U.S.C.  
7 § 2254(e)(1)). The facts presented in the report are as follows:

8 The prosecution’s evidence at trial established that in January 2002, while  
9 Garcia was in Fidel Mora’s apartment with Mora, Marcos Garcia (Marcos)  
10 and Macio Watts, Garcia pulled out a gun and ordered Marcos to tie up  
11 Watts with a lamp cord. Garcia then took Watts’s car keys and drove off in  
12 Watts’s car. Before leaving, Garcia took the phone from the apartment and  
threatened to hurt anyone who called the police. Watts later recovered his  
car with several items missing from it. Mora, Marcos and Watts testified at  
trial and identified Garcia as the perpetrator. The jury convicted Garcia of  
carjacking and first degree robbery.

13 Id. (quoting Supp. Lodgment 8 at 2-3). An earlier jury had already found petitioner guilty  
14 of similar charges during proceedings conducted prior to the appeal at issue here. Id.  
15 Petitioner’s trial was originally set to begin on August 12, 2002, but petitioner submitted  
16 a letter to the trial court seeking to represent himself at trial. Id. Petitioner also filed a  
17 motion to disqualify the judge, which was granted. Id. The trial began on September 10,  
18 2002, despite the fact that petitioner’s request to represent himself was never ruled upon.  
19 Id. Petitioner was convicted and subsequently sentenced to twenty-two years in prison.  
20 Id.

21 Petitioner appealed his conviction and sentence to the California Court of Appeal  
22 based on his unresolved request to represent himself at trial. Id. The Court of Appeal  
23 reversed the judgment, remanding the case back to the trial court “for a hearing on  
24 whether Garcia is competent to represent himself and knowingly wishes to do so.” Id.

25 \_\_\_\_\_  
26 <sup>1</sup> Petitioner contends, in his objections to the magistrate judge’s report, that the factual background  
27 presented by the magistrate judge is “incorrect” because it is missing certain facts. See Doc. # 17 at 2-12.  
28 For the most part, petitioner’s “missing” facts are not relevant to the issues presented here and will not be  
discussed. However, any “missing” facts that pertain to the issues presented will be discussed *infra*.  
Petitioner does appear to agree that the factual background presented by the magistrate judge and the  
California Court of Appeal sufficiently provides a general summary of the case. See id. at 2.

1 (quoting Supp. Lodgment 8 at 6). The Court of Appeal further instructed that “[i]f the  
2 court finds [Garcia] is competent to represent himself, it shall hold a new trial. If the  
3 court finds [he] is not competent to represent himself or knowingly chooses not to do so,  
4 the jury verdict and sentence will take effect.” Id.

5 Petitioner chose to represent himself at his new trial and was assisted by a privately  
6 retained co-counsel. Id. at 3. After a jury was impaneled and just prior to the start of trial  
7 proceedings, petitioner was assaulted in jail, suffering serious injuries that included a  
8 shattered jaw, a broken collar bone, along with injury to his back and eyes. Id. Petitioner  
9 claimed that the injuries impaired his memory and ability to focus. Id. Due to these  
10 injuries, the jury panel was dismissed and the trial date was continued. Id. The trial court  
11 subsequently held two lengthy hearings in order to determine whether petitioner would  
12 continue to represent himself in light of the injuries. Id.

13 The Court of Appeal found the trial court, during these hearings, “made it  
14 unequivocally clear that it was Garcia’s choice whether to represent himself at trial” based  
15 on the fact that it was clear “[t]he trial court viewed Garcia’s recent injuries as a *new*  
16 circumstance to be dealt with by giving Garcia the right to elect whether to continue with  
17 self-representation.” Id. (quoting Supp. Lodgment 8 at 3-4). Thereafter, petitioner chose  
18 to continue to represent himself at trial.

19 Petitioner was dressed in civilian clothes and not restrained during trial. Id. Prior  
20 to petitioner’s injuries, the trial court asked petitioner whether he would like the court to  
21 instruct the jury to not draw inferences regarding petitioner’s custodial status since there  
22 was a possibility the jurors might glimpse petitioner while he was being transported to and  
23 from court. Id. Petitioner declined such an instruction. After the trial resumed, the issue  
24 was again addressed by the court but petitioner did not request an instruction at that time  
25 either. Id. During trial, petitioner pointed out to the court that jurors had seen him in  
26 shackles on two separate occasions but did not request an instruction regarding his  
27 custodial status in response to these incidents. Id.

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1 The jury ultimately found petitioner guilty of carjacking and robbery and petitioner  
2 was sentenced to prison for eighteen years. Id. at 4. The magistrate judge also noted that  
3 petitioner raised concerns regarding “problems with the deputy sheriffs” at his sentencing  
4 hearing. Id.

## 5 **2. Procedural History**

6 Petitioner appealed his convictions to the California Court of Appeal. The Court  
7 of Appeal affirmed the convictions on August 31, 2006. Petitioner then filed two separate  
8 petitions for review before the California Supreme Court, which were denied on  
9 November 15, 2006, without comment.

10 The instant petition was filed on September 24, 2007. Respondent, on  
11 November 6, 2007, filed a motion to dismiss on exhaustion grounds, based on petitioner’s  
12 inclusion of two additional claims not presented to the California Supreme Court for its  
13 review. *See* Doc. # 6. Petitioner, in response to the motion, requested to abandon his new  
14 claims, thus rendering the motion to dismiss moot. *See* Doc. # 7. The motion was  
15 subsequently denied as recommended by the magistrate judge and petitioner’s two  
16 unexhausted claims were dismissed. *See* Docs. # 8, 9.

17 Respondent then filed an answer to the petition on August 11, 2008. The  
18 magistrate judge’s report was filed on December 18, 2008. Petitioner timely filed his  
19 objections to the magistrate judge’s report.

## 20 **DISCUSSION**

### 21 **1. Legal Standard**

#### 22 **a. Scope of Review**

23 The district court’s role in reviewing a magistrate judge’s report and  
24 recommendation is set forth in 28 U.S.C. § 636(b)(1). Under this statute, the district  
25 court “shall make a *de novo* determination of those portions of the report . . . to which  
26 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings  
27 or recommendations made by the magistrate [judge].” Id.

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1 **2. Analysis**

2 Petitioner claims, in the instant petition, that (a) his due process rights were  
3 violated (1) when members of the jury saw petitioner shackled in the courthouse; (2)  
4 when the trial failed to *sua sponte* instruct the jury regarding petitioner’s custodial status;  
5 (b) his right to self-representation was violated (1) when he was “forced” to represent  
6 himself on remand due to the wording of the Court of Appeal’s decision; and (2) through  
7 reference to the sheriff’s deputy in charge of *pro per* inmates during his trial. The  
8 magistrate judge determined that each of petitioner’s claims lacked merit.

9 **a. Due Process**

10 Petitioner first argues trial error resulted in a due process violation. A harmless  
11 error analysis is applied to determine whether due process was violated. See Brecht v.  
12 Abrahamson, 507 U.S. 619, 629 (1993). “[T]he standard for determining whether  
13 habeas relief must be granted is whether the ... error ‘had substantial and injurious effect  
14 or influence in determining the jury’s verdict.’” Brecht, 507 U.S. at 623, 637. The  
15 magistrate judge correctly points out, and petitioner agrees, that petitioner is only entitled  
16 to habeas relief if he establishes prejudice. Doc. # 16 at 6-7 (citing Cal. v. Roy, 519 U.S.  
17 2, 5-6 (1996)); Doc. # 17 at 14-15.

18 **1. Shackles**

19 The magistrate judge found that petitioner’s claim concerning being viewed by the  
20 jury when shackled on two occasions did not prejudice petitioner because neither of the  
21 instances at issue occurred in the courtroom or during any phase of the trial, the bailiff  
22 made extra efforts to minimize the visibility of petitioner’s restraints and petitioner never  
23 made any affirmative requests concerning the incidents other than announcing the  
24 incidents in open court. Doc. # 16 at 8. In addition, the magistrate judge disagreed with  
25 petitioner’s claim that the trial court erred by not considering reasonably available  
26 alternatives. Id. at 8-9. Petitioner disagrees with these findings. See Doc. # 17 at 14-25.  
27 Although petitioner appears to present specific objections to the magistrate judge’s  
28 findings and conclusions, this Court’s careful review of the record reveals that petitioner

1 simply reiterates in his objections the same arguments he made previously in support of  
2 his claim. Despite the lengthy discussion presented by petitioner, this Court finds  
3 petitioner presents no specific objections to the report's findings and conclusions but,  
4 instead, rehashes and reiterates the same arguments he presented in his petition. *See id.*;  
5 *compare* Doc. # 28-4 at 29-33. Thus, only general objections to the report have been  
6 presented by petitioner. As such, this Court may adopt the magistrate judge's findings and  
7 conclusions regarding this claim, provided they are not clearly erroneous. *See Thomas*, 474  
8 U.S. at 153. This Court, after a careful review of the record, finds that the magistrate  
9 judge presented a cogent analysis of the issues presented in petitioner's claim. This Court  
10 agrees with the magistrate judge's assessment that petitioner was not prejudiced by the  
11 brief viewing by the jury of petitioner in shackles on two occasions outside the courtroom  
12 based on the location of the viewing, the bailiff's attempt to minimize the view, and  
13 petitioner's lack of objection to the incidents at the time. Therefore, this Court finds the  
14 magistrate judge's findings and conclusions were not clearly erroneous as to this claim.  
15 Accordingly, this Court overrules petitioner's general objections to the magistrate judge's  
16 findings regarding this claim and adopts the magistrate judge's findings and conclusions  
17 in full.

## 18 2. *Sua Sponte* Jury Instruction

19 The magistrate judge next found petitioner's claim that the trial court should have  
20 *sua sponte* instructed the jury using a cautionary instruction about physical restraints used  
21 on a defendant lacked merit. *See* Doc. # 16 at 9-10. The magistrate judge explained that  
22 California law does not require such a *sua sponte* instruction where, as here, the defendant  
23 is viewed in restraints while transported through the courthouse. *Id.* at 9 (citing *People*  
24 *v. Jacobs*, 210 Cal.App.3d 1135, 1140 (1989)). Because there is no dispute petitioner did  
25 not request an instruction and California law does not require a *sua sponte* instruction, the  
26 magistrate judge determined there was no trial error and thus no due process violation.  
27 *Id.* at 10. Petitioner presents no objection to these findings and this Court agrees with the  
28 findings and conclusions made by the magistrate judge. Therefore, this Court adopts the

1 magistrate judge's finding and conclusions regarding this claim *in toto*.

2 **b. Self-Representation**

3 Petitioner presents two claims that arise from his self-representation at trial: (1)  
4 the Court of Appeal's decision requiring him to represent himself at his new trial  
5 amounted to coercion; and (2) the Sheriff's Deputy in charge of *pro per* inmates interfered  
6 with petitioner's rights to self-representation.

7 **1. The Court of Appeal's Decision**

8 Petitioner claims that the decision rendered by the Court of Appeals "coerced  
9 Petitioner to continue representing himself" on remand after he was assaulted in jail prior  
10 to the competency hearing. Doc. # 1 at 18. Petitioner explains that the Court of Appeals'  
11 order on remand, directing that petitioner would be granted a new trial if he represents  
12 himself or the prior verdict and sentence will stand if petitioner is deemed incompetent  
13 or chooses not to represent himself, "force[d] Petitioner to continue to self-represent if he  
14 wanted a new trial" even though he was injured. Lodgment 2 at 3. The magistrate judge  
15 pointed out that the trial court held two hearings in order to determine petitioner's  
16 competency after which the trial court informed petitioner he could retain counsel but  
17 petitioner chose to continue to represent himself. Doc. # 16 at 12 (citing Supp.  
18 Lodgment 2, 1 RT at 6-11; 2 RT at 69, 98).

19 The magistrate judge construed petitioner's coercion argument as contending his  
20 waiver of counsel at the second trial was involuntary, that is, not knowingly and  
21 intelligently made, in violation of Faretta v. California, 422 U.S. 806 (1975). Id. Based  
22 on that construction, the magistrate judge found the record clearly reflected the trial court  
23 "was careful to make Petitioner aware of the repercussions of representing himself at trial"  
24 and "made more than several mentions of the fact that Petitioner was not required to  
25 adhere to his pro per status to obtain a retrial." Id. at 13. Thus, based on these findings,  
26 the magistrate judge determined petitioner's decision to represent himself was made  
27 knowingly and voluntarily. Id. at 14. The magistrate judge further found that "[t]here  
28 is nothing in the record indicating Petitioner was forced to represent himself by the

1 instruction of the Court of Appeal when the trial court clearly explained to him that under  
2 the changed circumstances, he was not only entitled to a new trial but to counsel if he  
3 chose to retain such.” Id.

4         Petitioner objects to the magistrate judge’s findings and conclusions as to this claim.  
5 *See* Doc. # 17 at 26-32. Although petitioner appears to present new arguments in support  
6 of his claim, this Court’s review of petitioner’s objections reveals that petitioner, again,  
7 presents the same arguments made previously in his petition, albeit worded differently.  
8 *See id.*; *compare* Doc. # 1 at 21-29. Thus, petitioner presents only general objections to the  
9 magistrate judge’s decision on this claim. As such, this Court may adopt the magistrate  
10 judge’s findings and conclusions regarding this claim, provided they are not clearly  
11 erroneous. Thomas, 474 U.S. at 153. This Court, after a careful review of the record,  
12 finds that the magistrate judge presented a cogent analysis of petitioner’s coercion claim  
13 in regards to self-representation. Therefore, this Court finds the magistrate judge’s  
14 findings and conclusions were not clearly erroneous. Accordingly, this Court overrules  
15 petitioner’s general objections to the magistrate judge’s findings regarding this claim and  
16 adopts the magistrate judge’s findings and conclusions in full.

## 17                   2.       **Sheriff’s Deputy in Charge of *Pro Per* Inmates**

18         Petitioner’s final claim alleges the Sheriff’s Deputy in charge of *pro per* inmates at  
19 the San Diego County jail committed acts which petitioner claims “hindered and denied  
20 [him] any opportunity to prepare an adequate defense in preparation for trial.” Doc. # 1  
21 at 30-31. Petitioner asserts that he was moved several times during the trial, his cell was  
22 searched, a legal runner was not allowed to visit petitioner in jail, and petitioner was  
23 placed in ankle and waist restraints on the date of sentencing. Id. at 34-35. The  
24 magistrate judge found these incidents to be “consistent with normal operations of  
25 corrections facilities” and noted petitioner presents “no authority which indicates any of  
26 these actions were either unlawful or prejudiced his defense in any way.” Doc. # 16 at 15.  
27 In addition, the magistrate judge noted that, despite the difficulties alleged, petitioner  
28 “appeared familiar with court proceedings and represented himself competently and



1 reasonably well.” Id. (citing Supp. Lodgment 2, Vols. 7-15). The magistrate judge further  
2 observed that the Court of Appeals concluded the claim lacked merit because “the record  
3 ... shows [petitioner] extensively participated in all phases of the proceedings and, when  
4 necessary and appropriate, was accommodated by the trial court when difficulties were  
5 posed by his status as an incarcerated defendant representing himself in pro per.” Id.  
6 (quoting Supp. Lodgment 8 Opinion at 13). The magistrate judge agreed with the Court  
7 of Appeals, finding the claim lacked merit. Id.

8         Petitioner’s objections to the magistrate judge’s findings and conclusions regarding  
9 this claim are almost a verbatim recitation of the arguments and authority he presented  
10 in his petition in support of this claim. *See* Doc. # 17 at 33-37; *compare* Doc. # 1  
11 at 31-44. Again this Court is faced with only general objections to the magistrate judge’s  
12 decision on this claim and, as such, this Court may adopt the magistrate judge’s findings  
13 and conclusions provided they are not clearly erroneous. Thomas, 474 U.S. at 153. This  
14 Court, after a careful review of the record, finds that the magistrate judge presented a  
15 cogent analysis of petitioner’s interference claim in regards to self-representation.  
16 Therefore, this Court finds the magistrate judge’s findings and conclusions were not clearly  
17 erroneous. Accordingly, this Court overrules petitioner’s general objections to the  
18 magistrate judge’s findings regarding this claim and adopts the magistrate judge’s findings  
19 and conclusions in full.

20         **c. Certificate of Appealability**

21         Pursuant to Rule 11 of the Rules following 28 U.S.C. § 2254, which was amended  
22 effective December 1, 2009, a district court “must issue or deny a certificate of  
23 appealability when it enters a final order adverse to the applicant.” A state prisoner may  
24 not appeal the denial of a section 2254 habeas petition unless he obtains a certificate of  
25 appealability from a district or circuit judge. 28 U.S.C. § 2253(c)(1)(A); *see also* United  
26 States v. Asrar, 116 F.3d 1268, 1269-70 (9th Cir. 1997) (holding that district courts  
27 retain authority to issue certificates of appealability under AEDPA). A certificate of  
28 appealability is authorized “if the applicant has made a substantial showing of the denial

1 of a constitutional right.” 28 U.S.C. § 2253(c)(2). To meet this threshold showing,  
2 petitioner must show that: (1) the issues are debatable among jurists of reason, (2) that  
3 a court could resolve the issues in a different manner, or (3) that the questions are  
4 adequate to deserve encouragement to proceed further. Lambright v. Stewart, 220 F.3d  
5 1022, 1024-25 (9th Cir. 2000) (citing Slack v. McDaniel, 529 U.S. 473 (2000); Barefoot  
6 v. Estelle, 463 U.S. 880 (1983)).

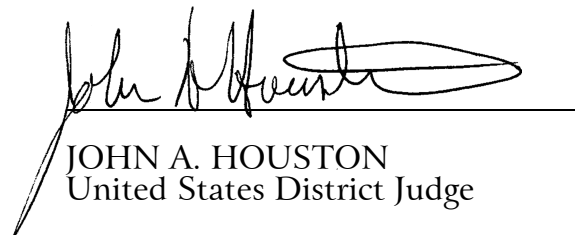
7 This Court must decide whether to grant petitioner a certificate of appealability  
8 because denial of the instant petition constitutes a “final order adverse to the applicant.”  
9 Based on this Court’s review of the report, this Court finds that no issues are debatable  
10 among jurists of reason. This Court further finds that no issues could be resolved in a  
11 different manner. Lastly, this Court finds that no questions are adequate to deserve  
12 encouragement to proceed further. Accordingly, this Court **DENIES** petitioner a  
13 certificate of appealability.

14 **CONCLUSION AND ORDER**

15 For the reasons set forth above, **IT IS HEREBY ORDERED** that:

- 16 1. The findings and conclusions of the magistrate judge presented in the report  
17 are **ADOPTED** in their entirety;
- 18 2. The claims presented in the instant petition is **DENIED** in full; and
- 19 3. The Clerk of Court shall enter judgment accordingly; and
- 20 4. Petitioner is **DENIED** a certificate of appealability

21  
22 Dated: March 28, 2011

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24   
25 JOHN A. HOUSTON  
26 United States District Judge  
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