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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HECTOR PABLO MOLINA,
Petitioner,
v.
ERIC ARNOLD, Warden,
Respondent.

Case No.: 16cv720-JLS-MDD

**ORDER DENYING PETITIONER'S
MOTION FOR AN EVIDENTIARY
HEARING**

[ECF No. 20]

Hector Pablo Molina (“Petitioner”), a state prisoner proceeding *pro se*, seeks federal habeas relief from a felony conviction for second degree murder. On November 11, 2016, Petitioner constructively filed a motion for an evidentiary hearing. (ECF No. 20). On December 9, 2016, Respondent timely filed an opposition. (ECF No. 22). Petitioner did not file a reply. (*See* Docket). Petitioner requests that the Court conduct an evidentiary hearing. (*See* ECF No. 20). A federal court’s discretion to hold an evidentiary hearing is governed by 28 U.S.C. § 2254(e)(2), which provides:

If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that –

(A) the claim relies on –

1 (i) a new rule of constitutional law, made retroactive to cases on
2 collateral review by the Supreme Court, that was previously made
3 unavailable; or

4 (ii) a factual predicate that could not have been previously
5 discovered through the exercise of due diligence; and

6 (B) the facts underlying the claim would be sufficient to establish
7 by clear and convincing evidence that but for constitutional error,
8 no reasonable factfinder would have found the applicant guilty of
9 the underlying offense.

10 “Federal courts sitting in habeas are not an alternative forum for trying
11 facts and issue which a prisoner made insufficient effort to pursue in state
12 proceedings.” *Williams*, 529 U.S. at 437. Petitioner generally argues that the
13 state court “failed to provide a full and fair [h]earing and the District Court
14 now is required to hold an . . . Evidentiary hearing in accord” because the
15 verdict was “illogical,” “unbelievable” and “witnesses are of central issue.”
16 (ECF No. 20 at 8-9). Petitioner does not establish that his request relies on a
17 new rule of constitutional law, or a factual predicate that could not have been
18 previously discovered through due diligence. (*See* ECF No. 20). Similarly,
19 Petitioner has not alleged facts that would be sufficient to establish by clear
20 and convincing evidence that but for constitutional error, no reasonable
21 factfinder would have found him guilty of the underlying offense. (*See id.*).
22 Accordingly, the Court **DENIES** Petitioner’s request for an evidentiary
23 hearing.

24 **IT IS SO ORDERED.**

25 Dated: January 23, 2017



26 Hon. Mitchell D. Dembin
27 United States Magistrate Judge