


FILED

JAN 24 2011

UNITED STATES DISTRICT COURT
WESTERN DISTRICT of TEXAS
SAN ANTONIO DIVISION

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

DANIEL SANCHEZ, TDCJ # 1211768,

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Plaintiff

Civil Action
No. SA-11-CA-36-OG

v.

Consolidated With Civil Action Nos.
SA-11-CA-37-OG, SA-11-CA-38-OG,
and SA-11-CA-39-OG ✓

RICK THALER,
Texas Department of Criminal Justice
Correctional Institutions Division Director,

Respondent

ORDER

Petitioner Daniel Sanchez' 28 U.S.C. § 2254 Habeas Corpus Petitions challenge his Atascosa County convictions for two cases of aggravated assault on a public servant, possession of a controlled substance, and evading detention while using a motor vehicle in *State v. Sanchez*, Case Nos. 3-3-86-CRA, 3-5-153-CRA, 3-3-88-CRA, and 3-3-89-CRA (Tex. 218th Jud. Dist. Ct., *jmts. entered* Nov. 19, 2003); Sanchez was sentenced to fifteen years on the evading detention using a motor vehicle conviction, and was sentenced to sixty years on each of the other convictions. Sanchez' § 2254 Petitions allege: trial counsel was ineffective for failing to challenge alternate juror Pacheco who was the uncle of a deputy sheriff who was a witness in the case; during voir dire juror Guilmino withheld that she knew witness assistant police chief Gonzalez for over twenty years; trial counsel was ineffective for failing to produce evidence that Sanchez was harmed by these instances of juror misconduct; and counsel was ineffective for failing to object when the prosecution asked a friend of Sanchez' questions leading the witness to state Sanchez was "always in jail." **Because these cases involve common legal issues and common parties, IT IS ORDERED** the cases are consolidated and shall proceed as Case No. SA-11-CA-36-OG. See Fed. R. Civ. P. 42(a).

Furthermore, in accordance with Rules 4 and 5 of the Rules Governing Section 2254 Cases, **the Clerk shall serve Respondent with a copy of Petitioner's § 2254 Habeas Corpus Petitions and direct Respondent to file an answer or other response.**

Accordingly, **IT IS ORDERED:**

1. Service on Respondent: The § 2254 Petitions, Memorandum In Support, and orders will be served electronically on the Texas Attorney General and counsel for the Director, and will be directed to the attention of Gretchen Merenda, Assistant Attorney General, Postconviction Litigation Division, at Gretchen.Merenda@oag.state.tx.us and Laura Haney at Laura.Haney@oag.state.tx.us. See Fed. R. Civ. P. 5(b)(2)(D).

2. Respondent's Answer: Respondent shall file an answer within twenty-eight (28) days after receipt of Petitioner's Petitions. Respondent's answer shall conform to Rule 5 of the Rules Governing Section 2254 Cases and Fed. R. Civ. P. 12. Respondent shall serve Petitioner with a copy of the answer as required by Fed. R. Civ. P. 5(b).

3. Affirmative Defenses: Respondent should address whether Petitioner has exhausted state remedies, whether the Petitions were filed within the one-year limitations period of 28 U.S.C. § 2244(d), and whether Petitioner's claims are barred by abuse of the writ.

4. Petitioner's Reply: Petitioner shall file his reply to Respondent's answer within twenty-one (21) days after Respondent serves Petitioner with Respondent's answer.

5. Duty to Serve Opposing Counsel: Federal Rule of Civil Procedure 5 requires that all documents submitted to the Clerk of this Court for filing must be served on the opposing party through service on opposing counsel. All documents submitted for filing must contain a certificate of service indicating the date and method (e.g. hand-delivery, certified mail, first class mail, etc.) by which Petitioner sent a copy of that document to Respondent's counsel of record. The Court will disregard any document submitted for filing by Petitioner that does not include a certificate of service.

6. Duty to Inform Court of Change of Address: Petitioner shall immediately notify the Clerk and Respondent's counsel in writing of any change of address. He shall caption any such advisories as "Notice to the Court of Change of Address" and not include any motions or other matters in such notice. Failure by Petitioner to furnish the Court and Respondent of a change of address may result in dismissal of the Petitions.

7. State Court Records: Within twenty-eight (28) days after Respondent files an answer or other responsive pleading, Respondent shall file the State court records.

8. **Case Referred to a U.S. Magistrate Judge for Report and Recommendation:** Habeas corpus petitions filed in this District are referred to a Magistrate Judge for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B).

9. **Consent to Have Case Decided Before a U.S. Magistrate Judge:** Pursuant to 28 U.S.C. § 636(c) the parties may consent to have a case proceed and decided before a United States Magistrate Judge with final judgment entered by the Magistrate Judge. Because of the District Court's very busy docket, the parties may wish to consent to have this case decided by a Magistrate Judge. Within twenty-eight (28) days the parties **shall** file an advisory with this Court (using the attached form) stating whether the party consents to have this case proceed to final judgment before the undersigned Magistrate Judge or wishes to have this case proceed before a District Judge.

SIGNED: January 24, 2011


PAMELA A. MATHY
United States Magistrate Judge

