

1 **II. SYNOPSIS**

2 On September 21, 2006, a jury found Petitioner Juan Borja Camacho guilty on two counts of
3 sexual abuse of a minor in the first degree in *Commonwealth v. Juan B. Camacho*, Super.Ct. Crim. No.
4 04-0261B. On November 16, 2006, Petitioner was sentenced to 15 years on each count to run
5 consecutively. Petitioner was also found guilty of two counts of disturbing the peace and sentenced to
6 six months for each count, to run concurrently with the imprisonment for the sexual abuse of a minor.

7 Petitioner appealed his conviction arguing that (1) there was insufficient evidence to support his
8 convictions; (2) the trial court erred in admitting handwritten notations on a calendar found at his
9 residence into evidence; (3) the trial court erred in denying his motion for acquittal; and (4) the trial
10 court imposed a sentence that was “detrimental to the interest of justice” in violation of 6 CMC §
11 4102(d). *Commonwealth v. Camacho*, 2009 MP 1. On February 3, 2009 the Supreme Court denied his
12 appeal and his conviction was affirmed. *Id.*

13 Initially, Petitioner filed an inadequate petition but thereafter, was allowed to withdraw his
14 application for writ of habeas corpus without prejudice to re-file the same in accordance with the
15 procedural requirements of 6 CMC §§ 7101-7107. On May 9, 2008 an amended petition for writ of
16 habeas corpus was filed by Petitioner with the assistance of the Public Defender’s office. Thereafter,
17 Petitioner informed the Court that he no longer wished to have the assistance of the Public Defender and
18 was seeking private counsel. This case was reassigned to the undersigned in December, 2008. The first
19 hearing was held on January 29, 2009. Attorney General Kevin Lynch appeared on behalf of
20 Respondent. Petitioner Camacho appeared on his own behalf.

21 Since January, numerous continuances have been granted at the request of Petitioner while he
22 attempted to retain counsel. Finally, at a hearing on May 15, 2009, Petitioner informed the Court that he
23 would not be retaining counsel and was prepared to move forward with the hearing. Respondent filed
24 an Answer to the Petition on March 31, 2009. Petitioner filed a Response on May 13, 2009. The
25 hearing to show cause was heard on May 19, 2009.

1 First, the issue of Petitioner being denied bail while his appeal was pending is now moot because
2 the Supreme Court has since denied his appeal affirming the trial court's conclusion that he was not a
3 candidate for release pending the outcome of his appeal. Secondly, Petitioner has not shown that
4 Defense Counsel's performance was deficient nor that the complained of action impacted the outcome
5 of his trial. Therefore, for the reasons stated below, Defendant's Petition for Writ of Habeas Corpus is
6 hereby DENIED. Each of Petitioner's arguments will be addressed in turn.

8 III. LAW GOVERNING HABEAS CORPUS

9 Commonwealth law expressly recognizes writs of habeas corpus. N.M.I Const. art. IV, §§ 2-3; 6
10 CMC § 7101 *et seq.* "Writs of habeas corpus may be granted by the Commonwealth Superior Court or
11 any of its judges. Every person unlawfully imprisoned or restrained of his or her liberty under any
12 pretense whatsoever, or any person on behalf of an unlawfully imprisoned individual, may apply for a
13 writ of habeas corpus to inquire into the cause of the imprisonment or restraint." 6 CMC § 7101.
14 Habeas corpus furnishes an extraordinary remedy, namely securing the release of prisoners who are
15 restrained of their liberty. Traditionally, habeas corpus provides a remedy for a prisoner challenging the
16 fact or duration of his confinement and seeking immediate or speedier release. *Heck v. Humphrey*, 512
17 U.S.477 (1994).

18 The law of the Commonwealth provides that "[e]very person unlawfully imprisoned or
19 restrained of his or her liberty under any pretense whatsoever, or any person on behalf of an unlawfully
20 imprisoned individual, may apply for a writ of habeas corpus to inquire into the cause of the
21 imprisonment or restraint." 6 CMC § 7101. The court hearing the application for a writ of habeas corpus
22 shall, "without delay or formality, determine the facts, grant the writ unconditionally, deny the writ, or
23 grant the writ on terms fixed by the court and discharge the person for whose relief the application has
24 been brought or make any order as to disposition that law and justice may require." 6 CMC § 7105.

1 While the CNMI Supreme Court has not determined the standard by which the trial court should
2 reach its conclusions, the U.S. Supreme Court and Ninth Circuit have established well accepted
3 principles which constitute the standards for granting relief. Generally, a petition for writ of habeas
4 corpus is extraordinary relief. The U.S. Supreme Court has made it clear that a party seeking relief from
5 conviction carries a heavy burden and is not entitled to the same liberty protections afforded pre-
6 conviction when seeking post conviction relief and have succinctly stated:

7
8 A criminal defendant proved guilty after a fair trial does not have
9 the same liberty interests as a free man. At trial, the defendant is
10 presumed innocent and may demand that the government prove its
11 case beyond reasonable doubt. But once a defendant has been
12 afforded a fair trial and convicted of the offense for which he was
13 charged, the presumption of innocence disappears.

14 *DA's Office v. Osborne*, 129 S. Ct. 2308 (2009) (citing *Herrera v. Collins*, 506 U.S. 390, 399 (1993)
15 (internal quotations removed)).

16 California's constitution, analogous to the protections afforded by the CNMI constitution,
17 guarantees that a person improperly deprived of their liberty has a right to petition for a writ of habeas
18 corpus. Cal. Const. art. I, § 11. In line with the reasoning of the U.S. Supreme Court, California holds
19 that in habeas corpus matters, "all presumptions favor the truth, accuracy, and fairness of the conviction
20 and sentence" and the defendant bears the burden of overturning those findings as a society has a great
21 interest in the finality of judgments. *E.g.*, *People v. Duvall*, 9 Cal.4th 464, 474 (1995) (quoting *People v.*
22 *Gonzalez*, 51 Cal.3d 1179, 1260 (1990) *superseded by statute on other grounds*).

23 Thus, a convicted person bears a heavy burden and must present evidence of unlawful
24 imprisonment. Here, Petitioner was convicted by a jury for crimes which are intolerable by a society
25 and, therefore, Petitioner has the burden to sufficiently plead and prove his grounds for relief. Merely
asserting his innocence, making vague allegations against the CNMI, and alleging elaborate
conspiracies without proffering a scintilla of actual evidence, will not suffice for a serious inquiry into
the legality of Petitioner's imprisonment. Petitioner's repeated assertions that he "did not commit the

1 stupid crimes,” that judicial misconduct abounded, and that the CNMI Judiciary, law enforcement, the
2 Office of the Public Defender, and his own attorney have conspired against him are unsupported by
3 evidence.

4 The intention of habeas corpus is not to impose a duty on the court which compels it to entertain
5 claims that are based on nothing more than Petitioner’s word. In the absence of any contrary evidence,
6 the victims of Mr. Camacho deserve finality in this matter. Notwithstanding the petition’s complete
7 absence of evidence, by affidavit or otherwise, which support the allegations of conspiracy and
8 corruption, the Court will address each of Petitioner’s claims.

9 10 **IV. DISCUSSION**

11 Petitioner’s Writ states two basis for habeas relief, (1) unlawful denial of release pending appeal,
12 and (2) ineffective assistance of counsel. *See* Petitioner’s Application at 2.

13 14 **A. Denial of Release Pending Appeal**

15 In denying Petitioner’s release pending appeal, the trial court concluded that Petitioner’s appeal
16 posed no substantial question of law or fact likely to result in a reversal of his convictions, that
17 Petitioner posed a threat to the community, and that - in addition to Petitioner’s present conviction -
18 Petitioner had demonstrated a pattern of contempt for the laws of the Commonwealth. *See*
19 *Commonwealth v. Juan B. Camacho*, Crim. No. 04-0261 (N.M.I. Super. Ct. Jan. 5, 2007)
20 ([Unpublished] Order Denying Defendant’s Motion for Release Pending Appeal). That he was not a
21 candidate for release pending appeal is further validated by the Supreme Court’s affirmation of his
22 conviction. Further, the Court agrees with Respondent that the final judgment of the appellate court
23 precludes Petitioner from being released and, therefore, any issue regarding Petitioner’s release pending
24 appeal is now moot.

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B. Ineffective Assistance of Counsel

Although Petitioner’s claims for ineffective assistance of counsel are not entirely clear, the Respondent’s summation and approach in response is logical and thorough, therefore, this Court will adopt the Respondent’s approach in addressing each of Petitioner’s claims involving alleged ineffective assistance of counsel (hereinafter “IAC”). Petitioner’s IAC claim is based on the following areas which are identified in Petitioner’s Exhibit B and streamlined in Respondent’s Answer:

1. Exoneration of bail without due process;
2. Failure to mention exoneration of bail in the Petition for Release Pending Appeal and on appeal;
3. Failure to cross-examine Ms. Taitano on “newspaper testimony,” and objecting when AAG John Aguon argued with her;
4. Advising Petitioner not to testify;
5. Comments made to Petitioner’s nephew regarding Petitioner’s conviction and incarceration;
6. Counsel discharging a juror which Petitioner identified as a good candidate;
7. Intentionally betraying Petitioner so that Petitioner’s siblings could take over Petitioner’s home and Talafofo farm;
8. Counsel’s failure to have an allegation from Petitioner’s siblings stricken from the pre-sentence report;
9. Failure to provide a copy of the appellate transcript to Petitioner;
10. Failure to continually renew the motion for acquittal “all the way to the end of the seven days after the verdict”;
11. Counsel handling Petitioner’s appeal without payment arrangement, allegedly to avoid exposure of a plan to take Petitioner’s property;
12. Petitioner did not receive a conflict-free attorney.

The CNMI has adopted the federal standard of review for claims of IAC. *Commonwealth v.*

1 *Shimabukuro*, 2008 MP 10, ¶ 11. To succeed on an IAC claim; first, it must be shown that counsel’s
2 performance was deficient; and second, that the deficiency prejudiced the defendant so that but for
3 counsel’s deficiency, there is a reasonable probability that the outcome would have been different. *Id.*
4 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

5 To show that counsel’s performance was ‘deficient’, Petitioner must show that his attorney’s
6 performance “fell below an objective standard of reasonableness” or was not within the range of
7 competence demanded of attorney’s in criminal cases. *Shimabukuro*, 2008 MP at ¶ 9 (quoting *McMann*
8 *v. Richardson*, 397 U.S. 759, 770-71 (1970)). The reasonableness of counsel’s performance cannot be
9 viewed in hindsight, rather, the performance must be viewed according to the facts and circumstances of
10 the particular case at that particular time. *Id.* (citing *Strickland*, 466 U.S. at 690).

11
12 *1 & 2. Exoneration of Bail Without Due Process and the Failure to Mention Exoneration of*
Bail in the Petition for Release Pending Appeal and on Appeal

13 These issues do not affect the final outcome of Petitioner’s appeal. Whether or not the actions of
14 counsel were deficient or not, neither of these affect the outcome of the trial or have any bearing on the
15 legality of Petitioner’s present imprisonment.

16
17 *3. Failure to Cross-examine Ms. Taitano on “Newspaper Testimony,” and Objecting When*
AAG John Aguon Argued with Her

18 Petitioner argues that the cross-examination of Government’s witness, Ms. Taitano, regarding
19 “newspaper testimony” was a strong point of his defense. However, Petitioner does not detail what
20 information would have been elicited on cross examination or how such information would have
21 impacted the trial. Further, Counsel’s decision regarding objections are decisions of trial strategy and
22 Petitioner cannot simply point to one objection that counsel made and determine that the objection was
23 erroneous. It is logical and reasonable that Counsel determined that the prosecution arguing with the
24 witness was sidetracking the witness from providing testimony which benefitted the defense. Or
25 perhaps counsel believed the prosecution was arguing with a witness he felt he should defend in front of

1 the jury. Counsel objecting to the prosecution arguing with a witness is a legitimate objection and
2 Petitioner does not explain why the objection was unreasonable, the context of the testimony, or what
3 damage the objection potentially created. In any event, such claims of deficiency of performance do not
4 rise to the level of actually impacting the outcome of trial and Petitioner has made no argument that
5 Counsel's actions affected the outcome of his trial.

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7 4. Advising Petitioner not to testify:

8 Whether or not attorney's recommend to their clients that they testify on their own behalf or not
9 are matters of trial strategy. While Petitioner had the *right* to testify if he chose, his counsel merely
10 advising him not to is not unreasonable or deficient. The evidence against Petitioner was strong and
11 Petitioner has failed to show that his testimony, which apparently would have amounted to a declaration
12 of innocence, would have overcome the evidence against him and affected the outcome of his trial.

13
14 5. Counsel's Comments to Petitioner's Nephew Regarding Petitioner's Conviction and
Incarceration

15 The comments that Petitioner is referring to were made *after* the guilty verdict was returned and
16 were benign. The comments could not have possibly impacted the trial or the legality of Petitioner's
17 imprisonment.

18
19 6. Counsel Discharging a Juror Which Petitioner Identified as a Good Candidate

20 Petitioner argues that a juror he identified as a good candidate was discharged by his attorney for
21 no reason and that his attorney claimed it was an accident. First, there is no showing that Petitioner
22 actually identified the juror as a good candidate, and without a declaration or affidavit from the attorney,
23 there is certainly no evidence that the candidate was discharged for no reason. Additionally, Petitioner
24 fails to show how this single juror could have, and would have, skewed the entire outcome of the case.
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1 Was another juror less desirable? Does Petitioner believe that the discharged juror after hearing the
2 compelling evidence against him would have, nevertheless, found him not guilty? Petitioner has not
3 shown that the action of counsel was deficient or that it affected the outcome of his trial.
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5 7. Counsel Intentionally Betraying Petitioner:

6 Again, though Petitioner’s Writ is riddled with accusations of “intention rigging” and ulterior
7 motives, Petitioner presents no evidence which supports his conclusions. Nevertheless, this issue
8 involves the claim that Petitioner did not receive a conflict-free attorney and is more appropriately
9 discussed below.
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11 8. Pre-sentence Report:

12 Petitioner argues that his Counsel failed to have a statement made by his siblings stricken from
13 the pre-sentence report. However, Petitioner does not indicate what the statement was, why it should
14 have been stricken, or how the statement impacted sentencing.
15

16 9. Failure to Provide a Trial Transcript to Petitioner:

17 This claim, if true, did not affect the outcome of the jury trial because it happened after the fact.
18 Further, Petitioner does not argue that the failure to provide the transcript actually affected his appeal
19 and that the appeal would have resulted in a different conclusion but for the failure. Lastly, the Supreme
20 Court unequivocally stated that “[n]otwithstanding Camacho’s failure to submit a trial transcript, it is
21 important to note that even if we accepted [Petitioner’s] version of the evidence presented at trial as true,
22 there is still sufficient evidence to support his convictions for sexual abuse of a minor.” *Commonwealth*
23 *v. Camacho*, 2009 MP 1, ¶ 21. The opinion then details the evidence which supported the conviction;
24 evidence which the Petitioner does not dispute.
25

1 10. Failing to Renew the Motion for Acquittal:

2 Motions for acquittal do not need to be continually renewed during the seven days that follow a
3 trial. Further, the convictions have been affirmed by the Supreme Court. Lastly, Petitioner has failed to
4 show that continuing to renew the motion would have impacted the outcome of his trial or his
5 subsequent sentence.

6
7 11. Counsel Handling Petitioner’s appeal without payment arrangement to avoid exposure
8 of a plan to take Petitioner’s property:

9 Petitioner alleges that Counsel’s had a self serving interest to take Petitioner’s property and so he
10 handled Petitioner’s appeal in an effort to ensure Petitioner was not successful on appeal. This issue
11 involves the claim that Petitioner did not receive a conflict-free attorney and is more appropriately
12 discussed below.

13
14 12. Petitioner’s Attorney Was Not a Conflict-free Attorney

15 The United States Supreme Court has held that the U.S. Constitution’s Sixth Amendment right to
16 counsel ensures that a criminal defendant has the right to representation that is free from conflicts of
17 interest and the assistance of counsel whose loyalties are not divided. *Wood v. Georgia*, 450 U.S. 261,
18 271 (1981); *Lewis v. Mayle*, 391 F.3d 989, 997 (9th Cir. 2004). “An ‘actual conflict’ for Sixth
19 Amendment purposes, is a conflict of interest that adversely affects counsel’s performance.” *Mickens v.*
20 *Taylor*, 535 U.S. 162, 172. This means there is no “inquiry into actual conflict as something separate
21 and apart from adverse effect.” *Id.* “[W]e think ‘an actual conflict of interest’ meant precisely a conflict
22 *that affected counsel’s performance*—as opposed to a mere theoretical division of loyalties.” 535 U.S. at
23 171. The thrust of Petitioner’s argument is that his attorney agreed to represent him, both at trial and
24 during the appeal, to ensure that Petitioner was convicted so that Petitioner’s siblings could prevail in
25 civil matters and take over Petitioner’s property. Petitioner points to, in addition to those accusations

