



FOR PUBLICATION



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N/A

IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ALFREDO E. REYES,	)	CIVIL ACTION NO. 20-0143-CV
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER DENYING WRIT OF HABEAS</b>
<b>WALLY F. VILLAGOMEZ,</b>	)	<b>CORPUS</b>
<b>COMMISSIONER FOR THE CNMI</b>	)	
<b>DEPARTMENT OF CORRECTIONS,</b>	)	
	)	
<b>Respondent.</b>	)	

**I. INTRODUCTION**

**THIS MATTER** was filed with the Court on June 2, 2020 bringing forth Petitioner’s Petition for Writ of Habeas Corpus (“Petition”). Having considered Petitioner’s Petition, and the applicable law, this Court is prepared to issue its ruling.

For the reasons stated below, Petitioner’s petition for a Writ of Habeas Corpus is hereby **DENIED.**

**II. SYNOPSIS**

Petitioner was initially charged with fifteen (15) criminal counts: three (3) counts of Sexual Assault in the First Degree, three (3) counts of Sexual Abuse of a Minor in the First Degree, three (3) counts of Incest, three (3) counts of Assault and Battery, and three (3) counts of Child Abuse. At his criminal trial, after the Commonwealth’s case-in-chief, three (3) counts of Child Abuse were dismissed because they merged into the counts for Sexual Abuse of a Minor in the First Degree. After the defense’s case-in-chief, three (3) counts of Sexual Assault in the First Degree and three (3) counts

By Order of the Court, Judge TERESA KIM-TENORIO

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1 of Incest were dismissed under the merger doctrine. The only remaining jury counts were three (3)  
2 counts of Sexual Abuse of a Minor in the First Degree. At the end of his jury trial, the jury found  
3 Petitioner to be guilty on three (3) counts of Sexual Abuse of a Minor in the First Degree while the  
4 court found him guilty on three (3) counts of Assault and Battery. Following, the court sentenced  
5 Petitioner to thirty (30) years imprisonment for each of the three (3) counts of Sexual Abuse of a  
6 Minor in the First Degree and one (1) year imprisonment for each of the three (3) counts of Assault  
7 and Battery, with all sentences to run concurrently, for a total of thirty (30) years. Each sentence was  
8 imposed “without the possibility of probation, parole, early release, work release, weekend release or  
9 any other similar program.” *Commonwealth v. Reyes*, Crim. No. 13-0180 (NMI Super. Ct. Jan. 22,  
10 2014) (Sentencing Order 2–3).

11         Petitioner appealed his criminal matter to the CNMI Supreme Court, arguing that the trial  
12 court erred by failing to read substantive jury instructions following the close of evidence and by  
13 denying his request for a presentence investigation report (“PSI”). *Commonwealth v. Reyes*, 2016 MP  
14 3 ¶ 1. Upon hearing arguments from both parties, the CNMI Supreme Court concluded that ample  
15 evidence existed to support a Sexual Abuse of a Minor in the First Degree conviction, and that  
16 Petitioner failed to demonstrate a reasonable probability that the error by the trial court affected the  
17 outcome of the proceeding. *Id.* at ¶ 17. The Court also concluded that the trial court abused its  
18 discretion in denying Petitioner’s request for a PSI. *Id.* at ¶ 20. Thus, the CNMI Supreme Court  
19 Affirmed Petitioner’s convictions for Sexual Abuse of a Minor in the First Degree and Assault and  
20 Battery, and Vacated his sentence, remanding the matter to the trial court for resentencing. *Id.* at ¶  
21 21.

22         Upon return to the trial court, and upon consideration of a submitted PSI, trial evidence and  
23 testimony, and Arguments by Counsels, the trial court once more sentenced Petitioner to a maximum  
24 sentence of thirty (30) years for three (3) counts of Sexual Abuse of a Minor in the First Degree, to

1 be served day to day, without the possibility of probation, early release, and work or weekend release  
2 or any other similar program. *Commonwealth v. Reyes*, Crim. No. 13-0180 (NMI Super. Ct. Nov. 29,  
3 2017) (Sentencing and Commitment Order at 6). No sentence was imposed as to the three (3) charges  
4 of Assault and Battery as these charges were subsumed into the charges for Sexual Abuse of a Minor  
5 in the First Degree. *Id.*

### 6 III. LAW GOVERNING HABEAS CORPUS

7 Commonwealth law expressly recognizes writs of habeas corpus. N.M.I. Const. art. IV, §§ 2-  
8 3; 6 CMC § 7101 *et seq.* “Writs of habeas corpus may be granted by the Commonwealth Superior  
9 Court or any of its judges. Every person unlawfully imprisoned or restrained of his or her liberty  
10 under any pretense whatsoever, or any person on behalf of an unlawfully imprisoned individual, may  
11 apply for a writ of habeas corpus to inquire into the cause of the imprisonment or restraint.” 6 CMC  
12 § 7101. Habeas corpus furnishes an extraordinary remedy, namely securing the release of prisoners  
13 who are restrained of their liberty. Traditionally, habeas corpus provides a remedy for a prisoner  
14 challenging the fact or duration of his confinement and seeking immediate or speedier release. *Heck*  
15 *v. Humphrey*, 512 U.S.477 (1994).

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

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

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

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

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

21           Thus, a convicted person bears a heavy burden and must present evidence of unlawful  
22 imprisonment. Here, Petitioner was convicted by a jury for crimes which are intolerable by a society  
23 and, therefore, has the burden to sufficiently plead and prove his grounds for relief. Merely making  
24 vague allegations of inefficient assistance of counsel without an iota of actual examples or evidence  
of such, will not suffice for a serious inquiry into the legality of Petitioner's imprisonment. *See Juan  
B. Camacho v. Lino S. Tenorio*, Civ. No. 08-0183, at 4 (NMI Super. Ct. Aug. 12, 2009).

1 Notwithstanding the petition's complete absence of evidence, by affidavit or otherwise, the  
2 Court will address Petitioner's claim of ineffective assistance of counsel.

#### 3 IV. DISCUSSION

4 Petitioner's Writ states ineffective assistance of counsel as the basis for habeas relief.

##### 5 Ineffective assistance of Counsel

6 The CNMI has adopted the federal standard of ineffective assistance of counsel ("IAC").  
7 *Commonwealth v. Shimabukuro*, 2008 MP 10, ¶ 11. To succeed on an IAC claim; first it must be  
8 shown that counsel's performance was deficient; and second, that the deficiency prejudiced the  
9 defendant so that but for counsel's deficiency, there is a reasonable probability that the outcome  
10 would have been different. *Id.* (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

11 To show that counsel's performance was 'deficient', Petitioner must show that his attorney's  
12 performance "fell below an objective standard of reasonableness" or was not within the range of  
13 competence demanded of attorneys in criminal cases. *Shimabukuro*, 2008 MP at ¶ 9 (quoting  
14 *McMann v. Richardson*, 397 U.S. 759, 770-71 (1970)). The reasonableness of counsel's performance  
15 cannot be viewed in hindsight, rather, the performance must be viewed according to the facts and  
16 circumstances of the particular case at that particular time. *Id.* (citing *Strickland*, 466 U.S. at 690).

17 Here, Petitioner alleges that his trial attorney in his original criminal matter ineffectively  
18 assisted him. However, he provides no evidence supporting his assertion. He points to the fact that  
19 after his sentencing, his attorney and the Public Defender's Office (PDO) filed a motion for  
20 withdrawal as court appointed counsel as evidence to support his allegation of IAC. He next alleges  
21 that his appellate attorney for his initial trial court sentence failed to comply with his instruction to  
22 include IAC of his trial attorney before the CNMI Supreme Court, thus subjecting his appellate  
23 attorney to an allegation of IAC as well.

1 While Petitioner makes baseless accusations regarding IAC, the Court notes that throughout  
2 his criminal matter, at least nine (9) court-appointed attorneys either withdrew their representation by  
3 their own volition, or were withdrawn due to complaints by Petitioner. The Court finds it highly  
4 improbable that the reasons for all withdrawals were because the attorneys of the CNMI are incapable.  
5 And just as before, Petitioner attempts to blame the outcome of his fate on others rather than on  
6 himself.

7 Furthermore, the Court is unconvinced of Petitioner's allegations of IAC at both the trial level  
8 and appellate level of his criminal matter. Petitioner provides no factual support for his allegations,  
9 except to indirectly complain that his criminal matter did not result in his favor. In fact, Petitioner's  
10 Petition is severely bereft of information regarding his IAC allegations that in addressing it, the Court  
11 takes on an unneeded burden. As such, the Court finds it illogical to arrive at any other conclusion  
12 other than to **DENY** Petitioner's petition for Writ of habeas Corpus relief.<sup>1</sup>

13 **V. CONCLUSION**

14 Consistent with the foregoing opinion, the petition for Writ of Habeas Corpus relief is hereby  
15 **DENIED.**

16 **SO ORDERED** on this 8<sup>th</sup> day of June 2020.

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18  
19 /s/

20 **Teresa Kim-Tenorio, Associate Judge**

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23 <sup>1</sup> While the Court addresses Petitioner's Writ of Habeas Corpus, the Court notes that Petitioner's Petition was submerged  
24 within "Petitioner's Memorandum of Law in Support of Providing Petitioner with Court-appointed counsel." In  
determining that Petitioner's is not entitled to a Writ, the Court need not address the matter of Court-appointed counsel.  
See 6 CMC § 7104.