

Filed Oct. 25, 2000

## IN THE SUPREME COURT OF CALIFORNIA

In re Andre Burton ) S034725  
on Habeas Corpus. )  
\_\_\_\_\_ )

### BY THE COURT

In the matter of Ronald Andre Burton on Habeas Corpus, S034725 (Superior Court of Los Angeles County, No. A026664), good cause appearing, it is ordered that the Presiding Judge of the Los Angeles County Superior Court shall select a judge of that court to sit as a referee in this proceeding and that the court shall promptly notify this court of the referee selected.

After appointment by this court, the referee, after proper notice to the parties, is directed to hold an evidentiary hearing and to make findings upon the following questions:

1. Did petitioner give attorney Ron Slick or his investigator the names of witnesses he believed should be interviewed and tell Slick that those witnesses could support a guilt phase defense or defenses? If so, when did petitioner do so, who are those witnesses, and what theory or theories of defense did petitioner tell Slick those witnesses would support? In particular, did petitioner tell Slick that he wanted Slick to present an alibi defense and/or defend on the ground that the eyewitness identification was mistaken or could be undermined by other eyewitnesses?

2. Did petitioner tell Slick that petitioner's purported confession had been falsified. If so, when did he do so, and did Slick have any reason to believe that the officer or officers who reportedly took the confession were not credible?

3. If petitioner gave Slick the names of potential guilt phase defense witnesses, did Slick or his investigator interview those witnesses, when did they do so, what information did they obtain from the witnesses, and of what potential prosecution rebuttal or impeachment evidence was Slick aware when he developed his trial strategy? Did Slick have reason to believe that those witnesses would not be credible?

4. Did Slick keep petitioner informed of Slick's trial plans and/or discuss trial strategy with petitioner and, in particular, did he tell petitioner that Slick did not intend to call witnesses or put on a guilt phase defense because Slick believed that a guilt phase defense likely would be unsuccessful and would make the penalty phase defense less credible? If so, when and in what circumstances did Slick advise petitioner of this? If not, did Slick discuss his planned guilt phase defense with petitioner, when did he do so, and what did he tell petitioner?

5. If Slick discussed a planned guilt phase strategy of presenting no defense with petitioner, did petitioner then or thereafter object (other than in open court during or before trial) and tell Slick that, notwithstanding Slick's conclusion about presenting a guilt phase defense, petitioner wanted a guilt phase defense presented? If so, when did petitioner do so and what was Slick's response?

6. Did Slick have reason to believe that petitioner's in court requests to represent himself were made for the purpose of delaying trial, rather than dissatisfaction with Slick's trial strategy?

7. Was Slick aware of potential witnesses Elizabeth Black, Ora Trimble, Gloria Burton, Michael Stewart, Susan Camacho and Zarina Khwaja, and, as to each, if so did Slick have reason to believe the testimony of each would be incredible or insufficiently probative to justify presenting them at the guilt phase?

8. Did petitioner tell or make clear to Slick's investigator that he wanted to put on a guilt phase defense? If so, when did he do so and did the investigator relay that information to Slick?

9. Would the potential witnesses, if any, identified by petitioner, have been credible, would they have enabled Slick to put on a credible defense, and did Slick have reason to believe that any would commit perjury if they testified as suggested by petitioner?

10. In particular:

a. Did detective William Collette tell Slick that Elizabeth Black told him that she did not know petitioner's whereabouts at the time and on the day of the charged homicide?

b. Did Black tell Collette that she did not know petitioner's whereabouts at the time and on the day of the charged homicide?

c. Did Collette tell Slick that Ora Trimble told him that petitioner had asked her to provide him with a false alibi for the charged homicide?

d. Did Ora Trimble tell Collette that petitioner had asked her to provide him with a false alibi for the charged homicide?

11. In sum, did Slick override a clearly expressed desire of petitioner to put on a guilt phase defense, and, if so, would that defense have been credible. (People v. Frierson (1985) 39 Cal.3d 803, 814-815.)

It is further ordered that the referee prepare and submit to this court a report of the proceedings conducted pursuant to this appointment, of the evidence adduced, and of the findings of fact made.