IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS

CHARLES JASON BALDWIN PETITIONER

vs. No. CR 93-450B

STATE OF ARKANSAS RESPONDENT

ORDER DENYING POST-CONVICTION RELIEF

The Petitioner's three capital-murder convictions were affirmed on direct appeal in December 1996, Echols & Baldwin v. State, 326 Ark. 917, 936 S.W.2d 509 (1996), and he timely filed a petition for relief under A.R.Cr.P. 37 in 1997. For reasons not entirely clear to the Court, he apparently did not pursue any action on that petition for a decade.[1] The Court need not, however, determine whether such inaction warrants dismissal for want of prosecution because the Court permitted him to file an amended petition in May 2008, and, over the State's objection, to enlarge it by attaching as exhibits those that he filed jointly with his DNA-testing habeas-corpus petition.[2] In that parallel litigation, the Court denied

[1]It may be that the petitioner (or his post-conviction counsel) during that decade was content to await the outcomes of the post-conviction relief efforts undertaken by his codefendant Damien Echols. The Court recognizes that the petitioner had begun pursuit of DNA-testing under a statute adopted during that time and that, once Echols' federal proceeding was stayed to return to state court in 2007, the petitioner joined his codefendants in pursuit of relief under that statute and by renewing his own Rule 37 efforts. However, given that his 1997 Rule 37 petition purported to identify grounds on which he believed he could obtain relief, it is unclear why he would countenance any delay in the interim.

[2]While Rule 37 does not explicitly authorize dismissal for failure to prosecute as A.R.C.P. 41 does, Rule 37 proceedings are civil, not criminal, in nature, and several provisions of the rule suggest that dismissal for failure to prosecute might be appropriate in a given case—from the jurisdictional deadlines for seeking relief in Rule 37.2 to the prompt-hearing requirement in Rule 37.3. Whether dismissal might have been appropriate in this

the habeas-corpus petition and its companion motion for a new trial under the DNA-testing statute, and the petitioner separately has appealed the order doing so. The Court conducted hearings on several occasions over the course of a year, concluding in October 2009, taking testimony of witnesses for the petitioner, his codefendant Misskelley, and the State. In lieu of post-hearing briefing, the Court instructed the parties to file proposed precedents directly with the Court. Based on the pleadings filed, the original trial record, and from the hearing testimony, the Court makes the following findings of fact and conclusions of law and denies the petitioner's amended Rule 37 petition.

Recusal

As at the hearings, the Court denies the petitioner's requests (joining as applicable the requests made by counsel for the petitioner's codefendant Misskelley) for its recusal.[3] The supreme court has "consistently held that the judge who presides over a defendant's trial may also preside over that defendant's postconviction proceeding." Echols v. State, 344 Ark. 513, 519, 42 S.W.3d 467, 471 (2001). Moreover, "[a] trial judge's development of opinions, biases, or prejudices during a trial do not make the trial judge so biased as to require that he or she recuse from further proceedings in the case." Anderson v. State, 357 Ark. 180, 210, 163 S.W.3d 333, 351 (2004) (citation and internal quotation marks omitted). Indeed, the presumption is that a judge is impartial, and a judge has a duty to remain on a case where no prejudice exists. See, e.g., Owens v. State, 354 Ark. 644, 654, 128 S.W.3d

---

case before, it is fair to observe now that the lengthy delay to disposition here ill serves all concerned, including the criminal justice system's interest in the finality of its judgments.

[3]The Court assumes that the petitioner would join in his codefendant Misskelley's most recently filed renewed motion seeking the Court's disqualification or recusal or file his own like motion.

445, 451 (2003). The suggestion that the undersigned judge's *future* political plans—particularly that he will be a candidate for state senate in 2010—will cause the Court to decide this case as part of a political agenda are flatly rejected. Neither do those plans require resignation of the judicial office the Court holds prior to filing for the nonjudicial elective office.[4] Finally, as the supreme court has explained, a claim of bias is evaluated on the record of the proceeding, presuming impartiality, and even apparent ethical lapses—which the Court denies exist here despite various allegations under the code of judicial conduct—do not alone demonstrate bias. See, e.g., Walls v. State, 341 Ark. 787, 791-92, 20 S.W.3d 322, 324-25 (2000).

The decision whether to recuse rests in the sound discretion and conscience of the judge, see, e.g., Davis v. State, 345 Ark. 161, 173, 44 S.W.3d 726, 733 (2001), and the Court's conscience is clear; it has presided over this case and the petitioner's codefendants' cases impartially for over 15 years and has done so as to this proceeding. Particularly given the lengthy history of the cases, it is the Court's obligation to continue to so preside.

Claims I, II, III, IV, and VI

As the Court orally ruled at the onset of hearing testimony on September 24, 2008, five of the petitioner's six claims, numbers I through IV and VI, are not cognizable in Rule

[4]The comments to Rule 4.5 that explain the resign-to-run principle of the Rule illustrate that the Court's continuing to preside in this case after its retirement hardly raises the twin specters of political promises by a judge as candidate or of retaliation by a losing candidate who remains a judge. See In re: Arkansas Bar Association Petition to Amend Code of Judicial Conduct, 2009 Ark. 238 (per curiam). The Court can conceive of no politically motivated promise or threat to be made in connection with this case, save its impartial disposition of it.

37 proceedings and are denied as a matter of law. The State's assessment of those claims in its July 15, 2008, Response to the Amended Petition is correct.

His first claim—that he is actually innocent of his crimes—is the claim he made in his companion petition for habeas corpus relief and a new trial filed in this Court pursuant to Ark. Code Ann. §16-112-201, *et seq.* (Act 1780 of 2001), the Court's denial of which is now pending on appeal. His assertion of actual innocence alleges no error in the proceedings by which he was convicted and is, consequently, simply outside the scope of Rule 37. See generally A.R.Cr.P. 37.1(a) (2009); cf. Graham v. State, 358 Ark. 296, 298, 188 S.W.3d 893, 895 (2004) (per curiam) (Act 1780 not substitute for Rule 37 or coram-nobis proceedings, but provides narrow post-conviction review for claims of actual innocence).

To the extent that his introductory paragraph of his claims for relief relies on Johnson v. State, 356 Ark. 534, 157 S.W.3d 151 (2004), to suggest otherwise, see Pet. at ¶4, he is wrong. Johnson, like the petitioner, filed two distinct pleadings in circuit court, and the circuit court there, too, denied Johnson relief in separate orders. Id. at 541, 157 S.W.3d at 157. That the supreme court entertained appeals of those orders in one appellate case is no demonstration that the claims and their distinct rule and statutory frameworks are interchangeable. The petitioner's actual-innocence claim is not cognizable here and is denied.

The petitioner's second and third claims—that he was denied a right to a fair and impartial jury and particular cross-examination of Michael Carson—are *direct* challenges that should have been, or were, raised on direct review. Consequently, they are not

cognizable in Rule 37 proceedings. See, e.g., Howard v. State, 367 Ark. 18, 26, 238 S.W.3d 24, 32 (2006); see also Davis, 345 Ark. at 169, 44 S.W.3d at 730 (Rule 37 not opportunity to reargue points settled on direct appeal). Several years ago, the Arkansas Supreme Court flatly rejected his codefendant Echols' similar claim. Echols v. State, 360 Ark. 332, 201 S.W.3d 890 (2005). As to the petitioner's cross-examination claim, it was raised and rejected on direct appeal. Echols, 326 Ark. at 973, 936 S.W.2d at 538.

The Petitioner's fourth and sixth claims also are not cognizable in Rule 37. His prosecutorial misconduct claims, advanced as his fourth basis, are not cognizable. See generally, e.g. Howard, 367 Ark. at 27, 238 S.W.3d at 32. Such claims founded on Brady v. Maryland, 373 U.S. 83 (1963), must be diligently pursued in error-coram-nobis proceedings, which are not interchangeable with Rule 37 proceedings. See generally Larimore v. State, 327 Ark. 271, 938 S.W.2d 818 (1997). As for his grapefruit-demonstration misconduct claim, because it was raised on direct appeal, see Echols, 326 Ark. at 993, 936 S.W.2d at 549, it is not also directly cognizable here. The petitioner's sixth basis, actual or constructive denial of counsel, also is not cognizable because it is a claim of cumulative error, see Pet. at ¶11, which is not cognizable. See, e.g., Howard, 367 Ark. at 50, 238 S.W.3d at 48.

Finally, the Court rejects the petitioner's argument (made in reply to the State's Response to his amended petition) that his erstwhile non-cognizable claims are cognizable under Rowbottom v. State, 341 Ark. 33, 13 S.W.3d 904 (2000), because they would render his judgment of conviction void. While Rowbottom discussed several claims that are cognizable for the first time in Rule 37 proceedings, such as a double-jeopardy claim like

Rowbottom raised, the petitioner does not advance such claims. More importantly, he does not provide any authority for his bare claim that his claims, like Rowbottom's jeopardy claim, would void his conviction. Nor does he distinguish the binding authorities recited above as to each of his non-cognizable claims. Those authorities dictate that the Court deny his five non-cognizable claims.

Claim V

Claim V—that trial counsel was ineffective under the Sixth Amendment and the like provision of the Arkansas Constitution, art. 2, §10[5]—contains many underlying claims. In just under five pages it contains 16 lettered paragraphs, some of which in turn contain several claims. Given the volume of claims, they are all necessarily only conclusorily pleaded and, for that reason alone, cannot support relief. See, e.g., Jackson v. State, 352 Ark. 359, 371, 105 S.W.3d 352, 360 (2003). That the Court permitted the petitioner to enlarge his amended petition with exhibits purportedly supporting his claims does not relieve him of the burden to demonstrate their merit in his petition, as the Court is not obligated to peruse the record and divine for him what exhibit or proof from the hearing can be said to support particular claims in his petition. See, e.g., Elmore v. State, 285 Ark. 42, 44, 684 S.W.2d 263, 264 (1985) (per curiam). Bearing that in mind that it has no duty to

[5]The petitioner also cites art. 2, §8 of the Arkansas Constitution, perhaps because it contains a due-process clause paralleling the Fourteenth Amendment, through which the Sixth Amendment is incorporated against the states. He provides no argument or authority, however, for the proposition that he would be entitled to greater relief under either provision of the state constitution than that available under the Sixth and Fourteenth Amendments. As the supreme court long ago adopted the Sixth Amendment rubric for such ineffective-assistance-of-counsel claims, see Hicks v. State, 289 Ark. 83, 85, 709 S.W.2d 87, 89 (1986) (citing cases), the Court analyzes the petitioner's claims under only it.

search out any purported proof of his claims there or in his exhibits,[6] the Court makes the following findings on his claims of ineffective assistance of counsel, as to each of which he must, of course, satisfy both the deficiency and prejudice showings of Strickland v. Washington, 466 U.S. 668 (1984), in order to obtain relief.

In so doing, the Court is mindful of the Supreme Court's observations in Strickland, 466 U.S. 689, 697 (citations omitted), that:

> Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.

And that

> [A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed. Courts should strive to ensure that ineffectiveness claims not become so burdensome to defense counsel that the entire criminal justice system suffers as a result.

---

[6]In permitting the petitioner, over the State's objection, to enlarge his amended petition with exhibits, the Court's expectation was that he would delineate by his hearing proof the fewer, discrete claims from the amended petition on which he was proceeding. Nevertheless, the Court endeavors to make a ruling on each lettered claim from that amended petition, although not all of them were addressed at the hearing.

The Court also is mindful that ineffective-assistance-of-counsel claims are evaluated on the totality of the evidence. See, e.g., Howard, 367 Ark. at 31, 238 S.W.3d at 35. Given evidence of the petitioner's admission to the crimes as noted on direct appeal, Echols, 326 Ark. at 941, 936 S.W.2d at 519-20, he can hardly demonstrate prejudice, even assuming a demonstration of counsel's deficiency in most respects, by showing that there is a reasonable probability that he would have been acquitted despite that evidence (save, perhaps, as to a claim concerning the admission of that particular evidence).

Indeed, most of the petitioner's claims make no allegation (much less a showing) of prejudice. The only statements about prejudice are few and made wholly conclusorily by the occasional claim that the petitioner "would have been acquitted," had counsel done or not done certain things. That the Court permitted him to supplement his petition with the exhibits filed in his companion DNA-testing case, is not a substitute for a demonstration of prejudice on a particular claim. The mere appendage of exhibits makes no such demonstration, particularly without references to specific exhibits as support for particular claims. His petition's three fleeting references to exhibits at Pet. ¶ 10 b), h), and m) hardly serve to explain his claims much less demonstrate their merit. Similarly, even while the Court, consistently with its oral ruling of September 24, 2008, permitted testimony as to ineffective-assistance-of-counsel claims contained in claim V, that testimony also does not self-evidently demonstrate prejudice. The petitioner's claims of ineffective assistance of counsel are all denied for want of a demonstration of prejudice.

Even while the petition should be and is denied as above, the Court indulged the petitioner a hearing at which he and his codefendant presented many witnesses and at

which the State presented witnesses, and it is appropriate to make alternative findings as to his lettered claims. Bearing in mind the numerosity of his claims, the bareness of their pleading, and that the Court is not obligated to search out proof of the petitioner's claims for him, the Court makes the following findings of fact and conclusions of law under Strickland and its Arkansas progeny as to the petitioner's enumerated claims from ¶ 10 of the petition, grouping them as follows.[7]

a), i), & p)

As to the global, general claims in a), that trial counsel failed to prepare and investigate, particularly by not retaining an investigator or using that of his codefendant Echols, and i), that counsel labored under a conflict from motives of professional aggrandizement due to the high-profile nature of the case, the Court finds neither deficiency nor prejudice. The Court credits the testimony of trial counsel Paul Ford (the petitioner did not call co-counsel George Wadley) concerning his investigation and thorough preparation

[7]In doing so, the Court rejects the petitioner's reliance on guidelines adopted by the American Bar Association to evaluate the reasonableness of the performance of trial counsel under the Sixth Amendment. While the Court recognizes that the guidelines have been used in evaluating the performance of trial counsel in capital cases, contrary to what the petitioner suggests, counsel can be said to have reasonably represented a capital defendant without following the guidelines or even knowing of them. Indeed, the United States Supreme Court recently has reiterated that they are only guides in evaluating the reasonableness of a lawyer's performance under the Sixth Amendment, they do not define it. Bobby v. Van Hook, 558 U.S. ___, No. 09-144, slip op. at 5 (Nov. 9, 2009) (per curiam). Moreover, the Court shares the opinion of Justice Alito on the point—to wit: it is a legal question for courts whether counsel fell below the standards the Sixth Amendment limns, and the views of an advisory committee of a private association of lawyers hold no privileged position to inform the courts in doing so. Id. (Alito, J., concurring). In this case, for example, the petitioner's reliance on Attorney Jack Lassiter as an expert at the hearing only illustrates the wisdom of the cautions which Strickland itself admonishes must be observed—particularly that even the best criminal defense lawyers, of which Mr. Lassiter is surely one, would not defend a particular client in the same way.

of the case. The petitioner's effort at the hearing to demonstrate in hindsight particular deficiencies does not serve to demonstrate his global failure-to-investigate-and-prepare claim made at a). Moreover, the claim at a) does not allege, much less demonstrate the reasonable probability of a different outcome, particularly in the face of the petitioner's admission to participation in the crimes. The Court finds no basis to credit the claim in i) that the petitioner's counsel labored under a conflict of motives as a matter of deficient performance or prejudice. See generally Echols v. State, 354 Ark. 530, 541-43, 127 S.W.3d 486, 492-94 (2003). As to the particular conflict claim made in p) concerning the HBO contract, the Court finds a failure of hearing proof and no demonstration of prejudice. See id. at 544-47, 127 S.W.3d at 494-97.

b), c), f), g), & m)

As to claims in b), c), f), g), and m) concerning the presentation of fact witnesses and evidence that counsel should have pursued to distance the petitioner from the crime as a matter of alibi and demeanor, general defense strategy, the petitioner's testimony, and the absence of evidence directly linking him to the crime, the Court finds neither deficient performance nor prejudice. Disputes with decisions about which witnesses to call and what defense strategy would be most provident—matters about which counsel might endlessly debate—are ill-suited to advance claims of ineffective assistance. "Generally, the decision whether to call a witness is a matter of trial strategy that is outside the purview of Rule 37..., including [as] to expert witnesses." Echols, 354 Ark. at 554, 127 S.W.3d at 501 (citations omitted). Thus, "[w]hen assessing an attorney's decision not to call a particular witness, it must be taken into account that the decision is largely a matter of professional judgment that

experienced advocates could endlessly debate, and the fact that there was a witness or witnesses who could have offered testimony beneficial to the defense is not in itself proof of counsel's ineffectiveness." Id. Decisions regarding what theory of a case to pursue and how best to do so are the epitome of trial strategy and not readily grounds for claims ineffective assistance of counsel. See, e.g., Howard, 367 Ark. at 34, 238 S.W.3d at 37. Even choices which prove to be improvident do not render counsel ineffective. See, e.g., Jenkins v. State, 348 Ark. 686, 700, 75 S.W.3d 180, 189 (2002), overruled on other grounds, Grillot v. State, 353 Ark. 294, 107 S.W.3d 136 (2003). Finally, as a general matter a hearing is not even warranted as to such disputes with trial strategy. E.g. Fretwell v. State, 292 Ark. 96, 99, 728 S.W.2d 180, 181-82 (1987) (per curiam).

The petitioner's current counsel's views about these matters and testimony of various witnesses about them 15 years after the trial do not demonstrate that counsel was deficient in any particular. Moreover, the petitioner has not demonstrated that, had additional witnesses testified about his demeanor, alibi, and the police investigation, that there is a reasonable probability that the jury would have credited them *and rejected* his admission of guilt to Michael Carson. Finally, as to his claim at f) that counsel failed to present him as a witness, the decision whether to take the stand rests with a defendant and is a strategic matter not available as a ground for postconviction relief. See, e.g., Dansby v. State, 347 Ark. 674, 679-80, 66 S.W.3d 585, 589 (2002). In any event, the Court credits the hearing testimony of Ford concerning the matter; he did not prevent the petitioner from testifying.

d), j), & k)

As to the claims in d), j), and k), that counsel failed to investigate the cause and mechanism of death and evidence, *vel non*, of a sexual assault and fiber evidence and failed to consult with experts concerning these matters, the Court here, too, must conclude that whether to devote resources to these matters or to call witnesses concerning them were strategic decisions. Here again, decisions regarding what theory of a case to pursue and how best to do so are the epitome of trial strategy and not readily grounds for claims ineffective assistance of counsel. See, e.g., Howard, 367 Ark. at 34, 238 S.W.3d at 37. Counsel was not deficient. Whether to call certain experts—such as criminal profilers, forensic odontologists, entomologists or pathologists, like any witnesses, is largely a strategic decision. See, e.g., Echols, 354 Ark. at 553-54, 127 S.W.3d at 500-01.

In particular, the Court finds that the hearing proof on these matters demonstrated, at best, that experts might disagree on whether animal predation caused some injuries to the victims. While the petitioner presented several expert witnesses who believed photographic evidence supported their conclusions that post-mortem animal predation caused most of the victims' injuries, they could not identify, much less agree upon, a particular animal that would have done so. The absence of specific exemplars in particular undermines their opinions. To the extent they posited it was turtles, the Court credits the testimony of the State's medical examiner, who performed the autopsies on the victims and is a turtle expert, to the effect that turtles did not cause the victims' injuries. Moreover, each of the pathologists that the petitioner called agreed that the manner of death was homicide, save Dr. Spitz, whose testimony the Court cannot credit in light of the contrary testimony of

each of the other pathologists. Indeed, the opinions that there were post-mortem injuries from animal predation, even in the face of massive blood loss as to a victim who died in part due to exsanguination, which necessarily occurred ante-mortem, are not only difficult to credit, but would be of little value to the petitioner in trying to defend the charge that he participated in the ante-mortem crimes. Thus, the Court concludes that counsel was hardly deficient for not pursuing a sideshow about post-mortem animal predation, any more than the counsel of his codefendant Echols was as to human bite marks. See Echols, 354 Ark. at 554-55, 127 S.W.3d at 501-02. In other words, the petitioner did not demonstrate that it was deficient not to call experts who could not dispute that the victims had been killed, hogtied, and drowned.

The Court concludes similarly as to the serology and fiber claims. Counsel was not deficient for not further challenging serological evidence from which it could be argued that the jury could conclude that a sexual assault occurred as part of the crimes. The circumstance of the victims being hogtied and naked required no additional evidence to suggest a sexual assault. As to the fiber claim, counsel was no more deficient than his codefendant Echols' counsel was. See Echols, 354 Ark. at. 554, 127 S.W.3d at 501.

e), h), *l*), n), & o)

The balance of the petitioner's claims cannot support relief for a variety of reasons. His claim in e), that Michael Carson could have been further discredited through the use of additional witnesses, is simply a dispute about further witnesses to call and does not demonstrate counsel's deficiency, much less prejudice. As noted by the Arkansas Supreme Court, Carson was rigorously cross-examined by counsel at trial and this Court did not err

by denying further cross-examination on particular matters. See Echols, 354 Ark. at 549, 127 S.W.3d at 498; Echols, 326 Ark. at 973, 936 S.W.2d at 538. Further efforts to discredit Carson would not have had a reasonable probability of rejection of his testimony that the petitioner admitted his participation in the crimes.

His claim in h) is simply too vague to apprehend. So far as the Court can discern it is a cumulative-error claim as to deficient performance, which is not cognizable. See, e.g., Howard, 367 Ark at 50, 238 S.W.3d at 48. His claim in *l*), that his counsel failed to investigate the circumstances of his codefendant Echols' admissions as harmless cannot support relief because the jury was instructed to separate the proof at trial, although it could consider whether the petitioner and Echols were accomplices of one another. See Echols, 326 Ark. at 981-82, 936 S.W.2d at 543. Moreover, the Court correctly denied Rule 37 relief to Echols on a similar complaint with his counsel's performance as to the petitioner's admission in the testimony of Carson. See Echols, 354 Ark. at 549, 127 S.W.3d at 498. Likewise, this claim establishes neither deficiency nor prejudice.

The claims in n) concerning counsel's alleged failures as to preservation of certain matters for appellate review are denied for several reasons. As to the severance claims in n), they were resolved against the petitioner on direct appeal. See Echols, 326 Ark. 948-49, 936 S.W.2d at 523-24. The remaining claims—concerning evidentiary objections purportedly unpreserved for appellate review—are denied for failure to demonstrate how the claim would have supported, much less yielded, a finding of reversible error on appeal or, even assuming such a demonstration, why nevertheless counsel might not forego the claim as a strategic matter at trial. In other words, none demonstrates deficiency. As to the claims

about further casting doubt on Michael Carson's testimony, they do no demonstrate a reasonable probability that the jury would have rejected it and acquitted the petitioner. Similarly, the claims about the medical examiner's opinions about possible sources of the victims' injuries do not demonstrate a reasonable probability that the jury would have rejected evidence of the petitioner's admission to participation in the crimes and acquitted him.

The claims in o) are rejected for several reasons. As to the claim concerning a motion in limine to exclude the State's expert testimony on Satanism and the occult, the petitioner has not demonstrated that a motion would have prevailed, and he could hardly do so given that on direct appeal the Court's evidentiary rulings on this matter were affirmed. See Echols, 326 Ark. at 954-55, 936 S.W.2d at 527-28. As to the claim concerning the State's calling Dr. Duke Jennings, it was resolved against the petitioner on direct appeal. See Echols, 326 Ark. at 978-79, 936 S.W.2d at 540-41. Moreover, as to both claims, the petitioner has not shown a reasonable probability that the jury would have rejected his admission to participation in the crimes and acquitted him. Finally, the petitioner's *ex parte* communications claim is too vague and conclusory to reach.

IT IS SO ORDERED.

David Burnett
CIRCUIT JUDGE DAVID BURNETT

DATE OF ENTRY: 1/20/10