

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RICARDO RIVERA,

97 CV 4817

Petitioner,

MEMORANDUM  
AND  
ORDER

- against -

CHRISTOPHER P. ARTUZ, Superintendent,  
Green Haven Correctional Facility,

Respondent.

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RICARDO RIVERA  
94-A-1711  
Green Haven Correctional Facility  
Drawer B  
Stormville, New York 12582  
petitioner pro se

RICHARD A. BROWN  
Queens County District Attorney  
(John M. Castellano, Robin A. Rorshaw, of counsel)  
125-01 Queens Boulevard  
Kew Gardens, New York 11415  
for respondent

NICKERSON, District Judge:

Petitioner brought this proceeding under 28 U.S.C.  
§ 2254 for a writ of habeas corpus.

He was convicted in the Supreme Court Queens  
County of Murder in the Second Degree and sentenced on  
February 22, 1994, to twenty-five years to life. On  
appeal he argued that he was deprived of his right to  
counsel because the court denied a motion to substitute  
his trial attorney and because his defense counsel

cfm

failed to prepared a defense. He also asserted that he was not proven guilty beyond a reasonable doubt. The Appellate Division affirmed, and the New York Court of Appeals denied leave to appeal.

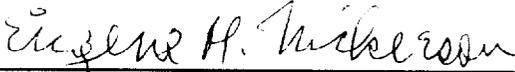
In this court petitioner raises twenty claims.

Respondent moves to dismiss the petition on the ground that it contains both exhausted and unexhausted claims. Petitioner has asked the court to hold his petition in abeyance while he exhausts his State court remedies.

The petition is dismissed without prejudice for failure to exhaust State court remedies. Petitioner may file a further petition after removal of the unexhausted claims or their exhaustion at the State level.

So ordered.

Dated: Brooklyn, New York  
October 20, 1998

  
Eugene H. Nickerson, U.S.D.J.