

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM NATHANIEL WASHINGTON

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA
SUPERIOR COURT, IN THE COUNTY OF LOS ANGELES

WILLIAM N. WASHINGTON

PRISONER ID NO. AT6324

C.S.A.T.F.

P.O. BOX 5242

CORCORAN, CALIFORNIA 93212

IN PRO SE

QUESTION(S) PRESENTED

1. WHETHER THE TRIAL COURT ERRED IN FAILING TO RECALCULATE ALL DAYS OF CUSTODY FROM THE DATE OF ORIGINAL JUDGMENT, AND ONLY AWARDED CUSTODY CREDITS FROM THE DATE OF AMENDMENT, WHEN IT RESENTENCED PETITIONER UNDER THE SAFE NEIGHBORHOODS AND SCHOOLS ACT, ALSO KNOWN AS PROPOSITION 47.

2. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY IMPOSING A TERM LONGER THAN THE ORIGINAL SENTENCE, THUS VIOLATING CALIFORNIA PENAL CODE SECTION 1170.18, SUBDIVISION (E).

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WILLIAM NATHANIEL WASHINGTON, Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA
SUPERIOR COURT, IN THE COUNTY OF LOS ANGELES

Petitioner, William Nathaniel Washington, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the California Superior Court, in the County of Los Angeles, filed on December 6, 2017.

OPINION BELOW

The opinion of the California Superior Court, which was unpublished, was issued on December 6, 2017, and is attached as Appendix A. The Court of Appeal's one-page order denying the petition is attached as Appendix B. The California Supreme Court's one-page order denying the petition is attached as Appendix C. The text of proposed law of proposition 47 is attached as Appendix D.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §

1257(a). The decision of the California Superior Court for which petitioner seeks review was issued on December 6, 2017. The California Supreme Court order denying petitioner's petition for habeas corpus was filed on April 18, 2018. This petition is filed within 90 days of the California Supreme Court's denial of discretionary review, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment 14:

No state...shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The California statutory provisions and court rules that are relevant to this petition, Text of Proposed Proposition 47 Laws, are reprinted in Appendix D.

STATEMENT OF CASE

Petitioner was convicted by a jury of multiple counts of second degree burglary (Pen. Code § 459) and theft of identifying information (Pen. Code § 530.5, subds. (A) & (C)(2)), as well as one count each of grand theft by means of access card (Pen. Code § 484G, subd. (A)) and possession of a controlled substance (Health & Saf. Code § 11350, subd. (A)). The jury also found true an allegation that petitioner had served a prior prison term (Pen. Code § 667.5). The trial court sentenced petitioner to an aggregate prison term of 24 years and 8 months.

On August 31, 2015, and July 10, 2017, petitioner was resentenced pursuant to Proposition 47 (Pen. Code § 1170.18), in which 1,2,6,7,11, 13,14,17, and 21 were reduced to misdemeanors, and nine consecutive one-year terms for the offenses were imposed. Petitioner's term of imprisonment was reduced to 21 years and 4 months.

In the state Superior Court, petitioner argued that the trial court erred in failing to recalculate all days of custody from the date of original judgment, and only awarded custody credits from the date of the amendment, when it resentenced petitioner under Proposition 47. Petitioner, also argued, that the trial court abused its discretion by imposing a term longer than the original sentence, in regards to Count 3, thus violating California Penal Code § 1170.18, subdivision (e).

The California Superior Court rejected petitioner's arguments on the merits and denied his petition for writ of habeas corpus. App. A at pages 2-3.

In the state Court of Appeal, petitioner argued the identical arguments, that he had argued in the state Superior Court.

The California Court of Appeal rejected petitioner's arguments, and summarily denied the petition without opinion. App. B

Petitioner sought discretionary review of these issues in the California Supreme Court, making federal constitutional arguments and citing the same basic authorities set forth above. Petition for Writ of Habeas Corpus, pages 3-4.

The California Supreme Court summarily denied the petition without opinion. App. C

REASONS FOR GRANTING THE PETITION

In *Gonzalez v. Sherman*, case no. 2:13-cv-05248-PA-PLA, the United States Court of Appeals for the Ninth Circuit held that: "In California, a court's recalculation and alteration of the number of time-served or other similar credits awarded to a petitioner constitutes a new judgment." This Court has directed that "[t]he sentence is the judgment" in a criminal case. *Burton v. Stewart*, 549 U.S. 147, 156 (2007)(emphasis added) (quoting *Berman v. United States*, 302 U.S. 211, 212 (1937)). As such, a change to a defendant's sentence is a change to his judgment. Under California law, custody credits are part of that sentence and a court's alteration of the number of credits awarded to a defendant changes both the duration and legality of his sentence. Because the relevant sentence under *Magwood v. Patterson*, 561 U.S. 320, 332 (2010), is the one "pursuant to" which an individual is held "in-custody," such an alteration constitutes a new, intervening judgment.

Under California law, it is clear that the number of presentence credits a prisoner earns is a part of that prisoner's sentence because it is a component of the number of days a convicted individual will spend in prison. When sentencing a defendant, a state court must determine the number of days of custody to which the defendant is entitled to credit and then award credit according to an established formula. Cal. Penal Code § 2900.5(d). Prison officials must then subtract those days from the total number of days to which the defendant would otherwise have been sentenced. *Id.* § 2900.5(a) ("In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody,...all days of custody of the defendant...shall be credited upon his or her term of imprisonment....")

The result is the total duration of time which a convicted person will have to spend in prison. Any erroneous assessment of credits therefore results in the defendant spending more or fewer days in prison than the sentence should have required.

Critically, under California law, only a sentence that awards a prisoner all credits to which he is entitled is a legally valid one. That is, a "sentence that fails to award legally mandated custody credit is unauthorized and may be corrected whenever discovered." *People v. Taylor*, 119 Cal. App. 4th 628, 647 (2004). Such an unauthorized sentence "is considered invalid or 'unlawful.'" *People v. Karaman*, 842 P.2d 100, 109 n.15 (Cal.1992).

As a result, a state trial court's alteration of the number of presentence credits to which a prisoner is entitled is a legally significant act: it replaces an invalid sentence with a valid one. Every order correcting a sentencing error is retroactive in this sense: the defendant's sentence still starts from the time of the original sentence's imposition, but for more or less time depending on the amendment. It would make no sense to restart the defendant's sentence as of the date of the amendment when he has already served part or all of the sentence.

In this case, the state trial court failed to recalculate all days of custody of petitioner, from the date of original judgement, and only recalculated his sentence from the date of amendment.

As a consequence, this failure led to a greater number of days than is proper under California law, that petitioner would have to serve in prison.

The reduction of count(s) 1,2,6,7,11,13,14,17, and 21, to

misdemeanors, and the imposition of nine consecutive one-year terms for these offenses , pursuant to Proposition 47, should have led to the state trial court recalculating the presentence custody credits from January 26, 2012 to July 10, 2017, amounting to a grand total of 3,922 days of custody credits (1,961 days of actual credit plus 1,961 days of good time/work time....)

A. UNDER NO CIRCUMSTANCES MAY RESENTENCING UNDER [1170.18, Pen. Code] RESULT IN THE IMPOSITION OF A TERM LONGER THAN THE ORIGINAL SENTENCE.

On July 10, 2017, the trial court pursuant to Proposition 47, reduced count(s) 1 and 14 to misdemeanors, and imposed two consecutive one-year terms for both offense.

However, since Count 1 was the principle charge, the trial court redesignated Count 3 as the principle charge , and imposed a longer term of imprisonment, increasing Count 3 from a one year and four month sentence to a six year sentence.

This imposition of a term longer than the original sentence offsetted the relief granted pursuant to Proposition 47, and instead of petitioner's term of imprisonment being reduced by 6 years, which would have reduced his term of imprisonment to 16 years and 8 months, it was only reduced to 21 years and 8 months.

The mandate in California Penal Code § 1170.18 (e), clearly places the state trial court in violation of California law, and warranted that the California state courts correct this abuse of discretion.

However, this did not occur, and as a result a miscarriage of

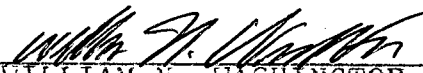
justice has occurred, in which petitioner was deprived of his Fourteenth Amendment Due Process rights, that guarantee him a fair and impartial hearing on the merits of these arguments.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari, vacating the judgment of the California Superior Court, and remanding the case for further proceedings.

Dated: 6/26, 2018

Respectfully submitted,



WILLIAM N. WASHINGTON
IN PRO SE