18-_____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

JESUS L. ARNETT,

Petitioner,

v.

ROBERT FOX, as Warden,

Respondent.

Case No.: 9th Cir. 17-56820
(U. S. D. C., C. D. Cal. No. 5:16-cv-1169-FMO (JPR) (C. D. Cal. 2017))

PETITION FOR WRIT OF CERTIORARI.

On Petition for Writ of Certiorari from the Denial
Of the Application for Certificate of Appealability
Of the United States Court of Appeals,
For the Ninth Circuit.

JESUS L. ARNETT
CDCR AP6311
California Medical Facility
H-1-121L
PO Box 2000
Vacaville, CA 95696
Petitioner in Pro Se

QUESTIONS PRESENTED.

Should Petitioner be granted a Certificate of Appealability when Petitioner was obviously and falsely convicted of possessing forged bills, and then get tacked with a 28-year to life sentence?

CORPORATE DISCLOSURE STATEMENT.

No Parties hold any stock or interest in any corporation, and they are listed on the caption.

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APPENDIX.

TABLE OF CASES.

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CITATIONS.

The Certificate of Appealabilty was denied in the case of *Arnett v. Paramo* (2018), dated June 25, 2018.

STATEMENT OF JURISDICTION.

The Certificate of Appealabilty was denied in the case of *Arnett v. Paramo* (2018), dated June 25, 2018. This Court has jurisdiction pursuant to 28 U. S. C., §1254(1).

STATUTORY PROVISIONS.

28 U. S. C., § 2253 (Apx. 59a).

STATEMENT OF THE CASE.

On June 3, 2016, Petitioner filed his Petition for Writ of Habeas Corpus in the District Court (Dist. Ct. Dock No. 1).

On August 7, 2017, the District Court issued its Report and Recommendation in favor of dismissal (Apx. 1b-53a).

On August 24, 2017, Petitioner filed his Objections to the Report and Recommendation (Dist. Ct. Dock No. 39).

On September 25, 2017, the District Court issued its Order Adopting the Report and Recommendation (Apx. 54a), Judgment (Apx. 55a), and Order Denying the Certificate of Appealability (Apx. 56a-57a).

On December 44, 2017, Petitioner filed his Notice of Appeal (Dist. Ct. Dock No. 17).

On June 25, 2018, the Ninth Circuit denied the Certificate of Appealability (Apx. 1a).

On August 30, 2018, the Ninth Circuit denied Petitioner's Motion for Reconsideration (Apx. 58a).

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ARGUMENT.

A CERTIFICATE OF APPEALABILITY SHOULD ISSUE IF APPELLANT CAN SUBSTANTIALLY SHOW DENIAL OF HIS CONSTITUTIONAL RIGHTS.

The case of *Slack v. McDaniel* (2000) 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542, states that:

> "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. This construction gives meaning to Congress' requirement that a prisoner demonstrate substantial underlying constitutional claims and is in conformity with the meaning of the 'substantial showing' standard provided in *Barefoot,* 463 U.S. at 893, and n. 4, and adopted by Congress in AEDPA. Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted."

Here, Appellant suffered many constitutional errors in his conviction and sentence.

For reasons Appellant alleged in all of his papers filed in the District Court, a Petition should have been granted vacating his convictions. For these reasons, the District Court unjustly denied the Petition based on timeliness. Appellant's issues as set forth below are issues that he would like to present to this Court. The issues are based on Appellant's previous objections made before the District Court, including:

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OBJECTION NO. 1

San Bernardino Police did not have probable cause to search Petitioner's pockets.

OBJECTION NO. 2

Petitioner was forced to talk while handcuffed in a hot police car.

OBJECTION NO. 3

This Court should have accepted the Declaration of Kimberly Arnett as evidence, and it was included in Petitioner's State Habeas Petition, filed on November 27, 2013.

OBJECTION NO. 4

Petitioner suffered ineffective assistance of counsel when his Deputy Public Defender, Dave McClave, failed and refused to timely file a Motion to Suppress Evidence.

OBJECTION NO. 5

There was no proof that Petitioner intended to defraud.

OBJECTION NO. 6

There was no probable cause to bind Petitioner for Trial at his Preliminary Hearing.

OBJECTION NO. 7

Petitioner suffered ineffective assistance of counsel when his Deputy Public Defender, Dave McClave, failed and refused to timely file a Motion to Dismiss under Penal Code §995.

OBJECTION NO. 8

Petitioner's *Marsden* Motion should have been granted, since McClave was racist towards Petitioner.

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OBJECTION NO. 9

Petitioner submitted several State Habeas Petitions, and this Petition, all verified. These Petitions should be taken into consideration.

OBJECTION NO. 10

Petitioner's New Trial Motion should had been granted.

OBJECTION NO. 11

It was unconstitutional for Petitioner to be shackled in the public hallways for Jurors and Members of the public to see.

OBJECTION NO. 12

To avoid carrying Petitioner shackled in a public hallway, Petitioner's case should have been heard in another Courthouse.

OBJECTION NO. 13

Petitioner was prejudiced by the lack of his speedy trial rights.

OBJECTION NO. 14

Petitioner's 28 years to life sentence violates the Eight Amendment as cruel and unusual punishment.

OBJECTION NO. 15

Petitioner's 28 years to life sentence violates the Ex Post Facto clause; he should have sentenced to nothing more than six months.

OBJECTION NO. 16

Petitioner's 28 years to life sentence violates Proposition 36.

OBJECTION NO. 17

Petitioner's 28 years to life sentence violates Proposition 47.

OBJECTION NO. 18

Because of the multiple cumulative errors, Petitioner's sentence and conviction should be reversed.

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ISSUE ONE.

I. THE VOLUNTARILINESS OF PETITIONER'S STATEMENT ON THE WAY TO COUNTY JAIL SHOULD HAVE BEEN SUPPRESSED.

Petitioner was convicted based on statements made to Dec. Haynes and Off. Martinez on the way to the West Valley Detention Center in Rancho Cucamonga. Petitioner was in the Police Station to complete Sex Registration. There was no probable cause to interrogate Petitioner over his play money. The police report was based on those statements later destroyed by Dec. Haynes and Off. Martinez.

This arrest of Petitioner was based on his race, disability, and fighting for his rights. This is case that clearly McClave should have filed a Motion to Suppress on. The case of *People v. Neal* (2003) 31 Cal.4th 63, 79, -- Cal.Rptr.2d --; -- P.3d --, states that:

> "It long has been held that the due process clause of the Fourteenth Amendment to the United States Constitution makes inadmissible any involuntary statement obtained by a law enforcement officer from a criminal suspect by coercion. (E.g., *Jackson v. Denno* (1964) 378 U.S. 368, 385-386 [12 L. Ed. 2d 908, 84 S. Ct. 1774]; see, e.g., *Brown v. Mississippi, supra,* 297 U.S. at pp. 285-286; *People v. Weaver* (2001) 26 Cal.4th 876, 920 [111 Cal. Rptr. 2d 2, 29 P.3d 103]; *People v. Benson* (1990) 52 Cal.3d 754, 778 [276 Cal. Rptr. 827, 802 P.2d 330]; see generally 2 LaFave et al., Criminal Procedure (2d ed. 1999) § 6.2, pp. 441-467.) A statement is involuntary (e.g., *Malloy v. Hogan* (1964) 378 U.S. 1, 7 [12 L. Ed. 2d 653, 84 S. Ct. 1489]) when, among other circumstances, it 'was "'extracted by any sort of threats ..., [or] obtained by any direct or implied promises, however slight ... .'"' (*Hutto v. Ross* (1976) 429 U.S. 28, 30 [50 L. Ed. 2d 194, 97 S. Ct. 202] (by the court); accord, e.g., *Malloy v. Hogan, supra,* 378 U.S. at p. 7; *People v. Benson, supra,* 52 Cal.3d at p. 778.) Voluntariness does not turn on any one fact, no matter how apparently significant, but rather on the 'totality of [the] circumstances.' (*Withrow v. Williams* (1993) 507 U.S. 680, 688-689 [123 L. Ed. 2d 407, 113 S. Ct. 1745]; accord, e.g., *Haynes v. Washington* (1963) 373 U.S. 503, 514 [10 L. Ed. 2d 513, 83 S. Ct. 1336]; *People v. Weaver, supra,* 26 Cal.4th at p. 920; *People v. Williams* (1997) 16 Cal.4th 635, 660 [66 Cal. Rptr. 2d 573, 941 P.2d 752]; see generally 2 LaFave et al., Criminal Procedure, supra, § 6.2, pp. 441-467.)"

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Here, Petitioner was charged with Penal Code §§475(a) and 476 based on later destroyed statements by Dec. Haynes and Off. Martinez. The problem is that there was no probable cause to arrest Petitioner solely by his presence at the Police Station. You can't make facts out of whole cloth.

ISSUE TWO

II. THERE WAS NO INTENT TO DEFRAUD BY PETITIONER'S NON-USE OF PLAY MONEY, AND IN WHICH PETITIONER SHOULD HAVE BEEN GRANTED A NEW TRIAL ON THIS BASIS.

Petitioner was at the Police Station. He was not using the play money to pay any fees, bail, or fines. Penal Code §475(a) states that:

> "(a) Every person who possesses or receives, with the intent to pass or facilitate the passage or utterance of any forged, altered, or counterfeit items, or completed items contained in subdivision (d) of Section 470 ***with intent to defraud,*** knowing the same to be forged, altered, or counterfeit, is guilty of forgery." (Emphasis added.)

Penal Code §476 also states that:

> "Every person who makes, passes, utters, or publishes, ***with intent to defraud*** any other person, or who, with the like intent, attempts to pass, utter, or publish, or who has in his or her possession, with like intent to utter, pass, or publish, any fictitious or altered bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of any real or fictitious financial institution as defined in Section 186.9 is guilty of forgery." (Emphasis added.)

To have a conviction under either Section, there must be an intent. Nobody shouldn't be convicted of simply holding "novelty" money. ***That would make every kid a serious criminal for simply holding play money.***

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For Petitioner to be convicted, that has to be an "intent to defraud". There is no evidence that he intended to defraud. He was at the Police Station to complete Sex Registration. The case of *People v. Pugh* (Cal. App. 4 Dist. 2002) 104 Cal.App.4th 66, 72, 127 Cal.Rptr.2d 770, explains that:

> "Among other elements, a conviction of forgery requires the person utter, publish or pass, in this case, the purchase agreement with the specific intent to defraud another person. (Pen. Code, § 470, subd. (d); CALJIC No. 15.01.) An intent to defraud is an intent to deceive another person for the purpose of gaining a material advantage over that person or to induce that person to part with property or alter that person's position by some false statement or false representation of fact, wrongful concealment or suppression of the truth or by any artifice or act designed to deceive. (*People v. Booth* (1996) 48 Cal.App.4th 1247, 1253 [56 Cal.Rptr.2d 202].)"

Here, Petitioner was at the Police Station to complete his Sex Registration. He wasn't going to give the Police any of that play money, or use it for payment of anything.

Furthermore, under a sufficiency of the evidence standard of review, we review the entire record in the light most favorable to the judgment to decide whether it discloses substantial evidence that is, evidence which is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 496.) We draw all reasonable inferences in support of the judgment. (*People v. Wader* (1993) 5 Cal.4th 610, 640.) Reversal is not warranted unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) The Court of Appeal applies the same standard to convictions based largely on circumstantial evidence. (*People v. Ferraez* (2003) 112 Cal.App.4th 925, 930.)

Here, Petitioner simply held the play money. He was not going to use it at the Police Station as real money. There was no "intent to defraud" or use the play money as currency at the Police Station.

To attempt to convict Petitioner on the basis of holding play money in his pocket, absent its use as counterfeit currency, would and could send a signal to every Police Officer or Sheriff's Deputy to haul every child into Juvenile Hall simply because the child had play money. This is a rank violation of the First Amendment. This case, the way it was handled in the Trial Court, would render McClave's actions in not defending Petitioner as, what Demi Moore called "a slick-a** Persian bazaar manner" ("A Few Good Men"). Petitioner needed a ***REAL*** attorney in the Trial Court, which also requires knowledge of First Amendment law.

The case of *Smith v. Silvey* (Cal. App. 2 Dist. 1983) 149 Cal.App.3d 400, 406, 197 Cal.Rptr. 15, explains that:

> "Our fact situation is far removed from the example cited, involving as it does Silvey's complaints to governmental agencies and his contacts with Park residents. Silvey alleged that by curtailing these activities, the injunction infringes on both his right to free speech and his right to petition for redress of grievances.
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> "These rights are 'fundamental' under the First Amendment of the United States Constitution and the Constitution of the State of California. (Art. I, §§ 2, 3.) In California, the right to petition for redress of grievances protects attempts to obtain redress through all three branches of government. (*City of Long Beach v. Bozek* (1982) 31 Cal.3d 527, 533-534, fn. 4 [183 Cal.Rptr. 86, 645 P.2d 137], vacated and remanded on issue of independent state grounds in 459 U.S. 1095 [74 L.Ed.2d 943, 103 S.Ct. 712], and affirmed on state constitutional grounds in (1983) 33 Cal.3d 727 [190 Cal.Rptr. 918, 661 P.2d 1072].)
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> "Silvey's past conduct has consisted of admittedly persistent attempts to bring alleged facts about Smith's mobile home Park to the attention of various governmental agencies. Smith's petition placed in issue Silvey's motives. The California Supreme Court in *City of Long Beach v. Bozek, supra,* 31 Cal.3d at pages 532-533 indicated that a proper motive in bringing such action is irrelevant. As exasperating as Silvey's conduct must have been to Smith, Silvey was constitutionally protected in exercising his right of petition to administrative agencies, or the executive branch of government, irrespective of the

considerations that prompted his actions. His filing of the mandamus action against the board of supervisors was likewise an exercise of this same right to petition the judicial branch of the government. Such activity cannot be classified as a harassing 'course of conduct' within the definition of section 527.6, subdivision (b).

"We in no way mean to imply that Silvey necessarily has standing to bring enforcement actions through these agencies. The sole issue here dealt with is whether he can be enjoined from contacting these agencies under the authority of section 527.6."

Here, Petitioner simply held the "novelty" money. He was not using or planning to use it at the Police Station. If simply holding the play money is a crime the Juvenile Halls would be severely overcrowded. It would resurrect instances of children in 19th Century England where the orphan asked if he "could have some more" porridge, only to be chided by the server.

ISSUE THREE

III. THERE WAS NO PROBABLE CAUSE THAT COULD BE FOUND AT PETITIONER'S PRELIMINARY HEARING.

The Information in the case below should never been filed. All that Petitioner had was play money and he had plans to use it at the San Bernardino Police Station. If the Magistrate did not find probable cause, or if found, if McClave filed a Motion to Dismiss under Penal Code §995, no Information would be filed, even though the People had the right to file a Misdemeanor Complaint in this case.

The case of *People v. Superior Court (Jurado)* (Cal. App. 4 Dist. 1992) 4 Cal.App.4th 1217, 1226, 6 Cal.Rptr.2d 242, explains that:

"In determining if charges in an information can withstand a motion under section 995, neither the superior court nor the appellate court may reweigh the evidence or determine the credibility of the witnesses. (*People v. Block* (1971) 6 Cal.3d 239 [103 Cal.Rptr. 281, 499 P.2d 961]; *People v. Hall* (1971) 3 Cal.3d 992, 996 [92 Cal.Rptr. 304, 479 P.2d 664].) Ordinarily, if there is some evidence in support of the information, the reviewing court will not inquire into its sufficiency. (*People v. Block, supra*, 6 Cal.3d 239; *Rideout v. Superior Court* (1967) 67 Cal.2d 471, 4741 [62 Cal.Rptr. 581, 432 P.2d 197].)

> Thus, an indictment or information should be set aside only when there is a total absence of evidence to support a necessary element of the offense charged. (*Somers v. Superior Court* (1973) 32 Cal.App.3d 961, 963 [108 Cal.Rptr. 630]; *People v. Massengale* (1968) 261 Cal.App.2d 758, 763 [68 Cal.Rptr. 415].)"

Here, there was no intent to use the "novelty" or play money at the Police Station. It was nothing more than harassment by Police Officers based on the fact that Petitioner was Black, disabled and fighting for his rights.

ISSUE FOUR

IV. PETITIONER'S PUBLIC DEFENDER COMMITTED INEFFECTIVE ASSISTANCE OF COUNSEL 1) GENERALLY, 2) FOR FAILING TO FILE A TIMELY MOTION TO DISMISS UNDER PENAL CODE §995, 3) FOR FAILING TO FILE A TIMELY MOTION TO SUPPRESS, 4) FOR FAILING TO FILE A *ROMERO* MOTION EARLY ON, 5) FOR FAILING TO TIMELY RECUSE THE TRIAL JUDGE UNDER CODE OF CIVIL PROCEDURE §§170.3 OR 170.6, AND 6) FOR FAILING TO FILE A *PITCHESS* MOTION.

Petitioner had Dave McClave as Public Defender. Obviously, he did not do any defending of Petitioner. Instead of raising pertinent Motions and other Objections, Petitioner met a hostile McClave who was narcissistic, and outright prejudiced. Petitioner heard McClave say under his breath "Black people are so ignorant." Actually, McClave did not investigate whether Petitioner was guilty, and did not investigate any defenses that would have cleared Petitioner or reduced his sentence. It is noted that Petitioner was charged with violating Penal Code §§475(a) and 476. Neither section is a serious and violent felony. His charges also could have been charged as misdemeanors. McClave's conduct was excessively deficient, and instead of facing Probation, Petitioner is serving a grossly excessive 28 years to life sentence.

The case of *People v. Brown* (Cal. App. 2 Dist. 2013) http://www.courts.ca.gov/opinions/documents/B245677.PDF, at pp. 7-8, explains that:

> "Criminal defense counsel has the duty to investigate carefully all defenses of fact and of law that may be available to the defendant." (*In re Hill* (2011) 198 Cal.App.4th 1008, 1016; see also *Ledesma, supra,* 43 Cal.3d at p. 222 ['[c]ounsel's first duty is to investigate the facts of his client's case and to research the law applicable to those facts'].) 'Before entering his plea, [a defendant is] "entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings and laws involved and then to offer his informed opinion as to what plea should be entered." [Citation.] The attorney's role in investigating the facts and researching the applicable law prior to advising the petitioner to plead becomes particularly important because of the serious consequences of a guilty plea[, which] . . . is itself a conviction.' (*In re Williams* (1969) 1 Cal.3d 168, 175.) 'If counsel's ***"failure [] to undertake such careful inquiries and investigations [[results in withdrawing a crucial defense from the case, the defendant has not had the assistance to which he is entitled.***" [Citation.]' (*In re Saunders* (1970) 2 Cal.3d 1033, 1042; *People v. Pope* (1979) 23 Cal.3d 412, 422.) The adequacy of a counsel's investigation is 'assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.' (*Strickland v. Washington* (1984) 466 U.S. 668, 691; *In re Thomas* (2006) 37 Cal.4th 1249, 1257-1258.)
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> "Defense counsel's duty to investigate extends to prior conviction allegations that, if proven, may increase the defendant's sentence. Thus, '[w]henever a sentence is enhanced . . . due to a prior conviction, it is counsel's obligation to examine the validity of the prior or underlying conviction.' (See *People v. Cotton* (1991) 230 Cal.App.3d 1072, 1084.) In *Plager, supra,* 196 Cal.App.3d 1537, the court applied these principles in holding that defense counsel provided ineffective assistance by failing to advise his client that the prosecution would be unable to establish two prior strike allegations for 'residential burglary.' The defendant had agreed to admit both strike allegations after 'consulting with his attorney' (*id.* at p. 1542), which resulted in a 10-year sentence enhancement. The records of the prior convictions, however, demonstrated that both offenses were actually for 'second degree burglary, which did not qualify as a strike. At the time the attorney advised the defendant to admit the strike allegations, the law was clear that a conviction for second degree burglary was insufficient to prove residential burglary (which would qualify as a strike) 'even if the pleadings included superfluous allegations to that effect.' (*Ibid.*)
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> "After summarizing defense counsel's duty to investigate, the court found that the attorney's conduct constituted ineffective assistance: 'Inasmuch as [defendant's] admissions were not part of a sentence understanding, or part of a plea bargain, . . . [t]here could have been no valid reason, tactical or otherwise, for trial counsel to have advised defendant to admit the prior felony allegations which

would and did subject him to 10 additional years of imprisonment. ***If, knowing the law, he advised or even permitted defendant to admit the truth of the allegations, there can be no satisfactory explanation for his conduct; if he was unaware of the applicable law . . . he breached his duty to investigate all defenses of fact and law available to his client.'*** (*Plager, supra,* 196 Cal.App.3d at p. 1543.) The court further concluded that the defendant had established prejudice, explaining 'it cannot be reasonably argued that had defendant been aware the People could not prove the allegations, he would have voluntarily accepted the 10-year enhancement.' (Ibid.)" (Emphasis added.)

Here, McClave abandoned Petitioner. McClave was more interested in doing his own thing instead of taking a thorough investigation of Petitioner's case. Petitioner was arrested for Penal Code §§475(a) and 476 without probable cause. There was no probable cause at the Preliminary Hearing to support the filing of the Information. The evidence itself is insufficient to support Petitioner's conviction. At Trial, Petitioner was shackled in the hallway outside the Courtroom in front of Jurors. It is assumed that McClave did not bother to object during the Trial. McClave also serially requested continuances of the Trial and Sentencing; Petitioner's Sentencing was continued by McClave for way over a year, violating Petitioner's right to be sentenced within 90 days.

The case of *People v. Pope* (1979) 23 Cal.3d 412, 424-425, also explains that:

"To render reasonably competent assistance, an attorney in a criminal case must perform certain basic duties. [Footnote omitted.] (See generally, ABA Project on Standards for Criminal Justice, Stds. Relating to the Prosecution Function and the Defense Function, supra, p. 141 et seq.) Generally, the Sixth Amendment and article I, section 15 require counsel's 'diligence and active participation in the full and effective preparation of his client's case.' (*People v. Vest* (1974) 43 Cal.App.3d 728, 736 [118 Cal.Rptr. 84].) Criminal defense attorneys have a '"***duty to investigate carefully all defenses of fact and of law that may be available to the defendant***...."' (*In re Williams, supra,* 1 Cal.3d at p. 175.) This obligation includes conferring with the client 'without undue delay and as often as necessary ... to elicit matters of defense ....' (*Coles v. Peyton* (4th Cir. 1968) 389 F.2d 224, 226.) 'Counsel should promptly advise his client of his rights and take all actions necessary to preserve them. ... Counsel should also be concerned with the accused's right to be released from custody pending trial, and be prepared, where

> appropriate, to make motions for a pretrial psychiatric examination or for the suppression of evidence. [Fns. omitted.]' (*United States v. DeCoster, supra,* 487 F.2d at p. 1203; *People v. Whittington* (1977) 74 Cal.App.3d 806, 818-819, fn. 6 [141 Cal.Rptr. 742].) If counsel's failure to perform these obligations results in the withdrawal of a crucial or potentially meritorious defense, [Footnote omitted.] '"the defendant has not had the assistance to which he is entitled."' (*In re Saunders, supra,* 2 Cal.3d at p. 1042.)" (Emphasis added.)

Here, no investigation was done. It was only McClave's narcissism that hurt Petitioner's defense, and instead of an immediate dismissal of the charges, Petitioner received a 28-year-to-life sentence because of McClave's prejudice, his failure to do anything other than accommodate McClave. In light of the fact that Petitioner is seeking Habeas Corpus, the Ninth Circuit has recently thrown out convictions for ineffective assistance. *Cannedy v. Adams,* http://cdn.ca9.uscourts.gov/datastore/opinions/2013/02/07/09-56902.pdf (9th Cir. 2013); *Griffin v. Harrington,* http://cdn.ca9.uscourts.gov/datastore/opinions/2013/08/16/12-57162.pdf (9th Cir. 2013); *United States v. Liu,* http://cdn.ca9.uscourts.gov/datastore/opinions/2013/10/01/10-10613.pdf (9th Cir. 2013); and *Vega v. Ryan,* http://cdn.ca9.uscourts.gov/datastore/opinions/2013/11/13/12-15631.pdf (9th Cir. 2013); Petitioner's conviction and sentence should be reversed.

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ISSUE FIVE

V. PETITIONER WAS NOT ONLY SHACKLED AT TRIAL, BUT WAS PARADED IN THE HALLWAY AT THE SAN BERNARDINO COURTHOUSE, SHACKLED AND IN HIS WHEELCHAIR, IN FRONT OF JURORS AND SPECTATORS JEOPARDIZING HIS RIGHT TO A FAIR TRIAL.

Petitioner was shackled everyday at Trial in his wheelchair. Instead of sending Petitioner through a back entrance via the Chambers, Sheriff's Deputies paraded Petitioner in front of Jurors and spectators. Sorry, but the original San Bernardino Courthouse, built in 1923, is a courthouse, ***NOT A ZOO!*** Petitioner's presence in his County Jail jumpsuit and restrained in his wheelchair made him look like a "vicious criminal" while he was tried for offenses that should have been charged as misdemeanors.

The case of *Deck v. Missouri,* 544 U.S. 622 (2005), explains that:

> "First, the criminal process presumes that the defendant is innocent until proved guilty. *Coffin v. United States,* 156 U. S. 432, 453 (1895) (presumption of innocence 'lies at the foundation of the administration of our criminal law'). Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process. Cf. *Estelle, supra,* at 503. It suggests to the jury that the justice system itself sees a 'need to separate a defendant from the community at large.' *Holbrook, supra,* at 569; cf. *State v. Roberts,* 86 N. J. Super., at 162, 206 A. 2d, at 202 ('[A] defendant "ought not be brought to the Bar in a contumelious Manner; as with his Hands tied together, or any other Mark of Ignominy and Reproach . . . unless there be some Danger of a Rescous [rescue] or Escape"' (quoting 2 W. Hawkins, Pleas of the Crown, ch. 28, § 1, p. 308 (1716-1721) (section on arraignments))).
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> "Second, the Constitution, in order to help the accused secure a meaningful defense, provides him with a right to counsel. See, e. g., Amdt. 6; *Gideon v. Wainwright,* 372 U. S. 335, 340-341 (1963). The use of physical restraints diminishes that right. Shackles can interfere with the accused's 'ability to communicate' with his lawyer. *Allen,* 397 U. S., at 344. Indeed, they can interfere with a defendant's ability to participate in his own defense, say, by freely choosing whether to take the witness stand on his own behalf. Cf. *Cranburne's Case,* 13 How. St. Tr. 222 (K. B. 1696) ('Look you, keeper, you should take off the prisoners irons when they are at the

> bar, for they should stand at their ease when they are tried' (footnote omitted)); *People v. Harrington,* 42 Cal., at 168 (shackles 'impos[e] physical burdens, pains, and restraints . . ., . . . ten[d] to confuse and embarrass' defendants' 'mental faculties,' and thereby tend 'materially to abridge and prejudicially affect his constitutional rights').
>
> "Third, judges must seek to maintain a judicial process that is a dignified process. The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve. The routine use of shackles in the presence of juries would undermine these symbolic yet concrete objectives. As this Court has said, the use of shackles at trial 'affront[s]' the 'dignity and decorum of judicial proceedings that the judge is seeking to uphold.' *Allen, supra,* at 344; see also *Trial of Christopher Layer,* 16 How. St. Tr., at 99 (statement of Mr. Hungerford) ('[T]o have a man plead for his life' in shackles before 'a court of justice, the highest in the kingdom for criminal matters, where the king himself is supposed to be personally present,' undermines the 'dignity of the Court').

Petitioner was humiliated because he was Black, disabled, and spoke for his rights. McClave was b***ess for not objecting to Petitioner's treatment at Trial. Petitioner should had not been paraded in the hallways of the San Bernardino Courthouse, and if the San Bernardino Courthouse could not get Petitioner through a backway, Petitioner should have been transferred to another Courthouse in San Bernardino County or venue should have been changed to another County. This case is akin to making a jaywalking case into a major Federal felony case. Petitioner was prejudiced at Trial because of his inhumane treatment at the San Bernardino Courthouse.

The case of *United States v. Sanchez-Gomez,* 859 F.3d 649, 660 (9th Cir. 2017), *cert. filed Aug. 29, 2017,* also explains that:

> "The Supreme Court held in *Deck v. Missouri* that 'the Constitution forbids the use of visible shackles during the penalty phase, as it forbids their use during the guilt phase, unless that use is "justified by an essential state interest" — such as the interest in courtroom security — specific to the defendant on trial.' Id. at 624, 125 S.Ct. 2007 (quoting *Holbrook v. Flynn,* 475 U.S. 560, 568-69, 106 S.Ct. 1340, 89 L.Ed.2d 525 (1986)). In evaluating the government's

justification, a court may 'take into account the factors that courts have traditionally relied on in gauging potential security problems and the risk of escape at trial.' *Id.* at 629, 125 S.Ct. 2007. While the decision whether to shackle is entrusted to the court's discretion, routine shackling isn't permitted. *Id.* at 629, 633, 125 S.Ct. 2007. Instead, courts must make specific determinations of necessity in individual cases. *Id.* at 633, 125 S.Ct. 2007.

"The Supreme Court identified three constitutional anchors for the right: (1) the presumption that a defendant is innocent until proven guilty; (2) the Sixth Amendment right to counsel and participation in one's own defense; and (3) the dignity and decorum of the judicial process, including 'the respectful treatment of defendants.' *Id.* at 630-31, 125 S.Ct. 2007. In jury proceedings, an additional concern is that the sight of a defendant in shackles would prejudice the jury against him. Because prejudice is difficult to discern from a cold record, shackles visible to the jury are considered 'inherently prejudicial.' *Id.* at 635, 125 S.Ct. 2007 (quoting *Holbrook,* 475 U.S. at 568, 106 S.Ct. 1340). But when security needs outweigh these other concerns, even visible restraints may be used. *Id.* at 632, 125 S.Ct. 2007."

Here, Petitioner is physically challenged. How can he be a danger to society, let alone in a public hallway at the old San Bernardino Courthouse? The Superior Court treated Petitioner as though he was a White colonial zoo exhibit! Petitioner could have had his case transferred to the Rancho Cucamonga Courthouse where he could have been wheeled in the Courtroom without the use of a public hallway for a Courthouse built in 1923. Because of this inhumane treatment, Petitioner requests that his conviction be reversed.

ISSUE SIX

VI. THERE WAS STRUCTURAL ERROR IN PETITIONER'S TRIAL THAT WARRANT REVERSAL.

United States v. Gonzales-Lopez (2006) 548 U.S. 140, 148-149; *Arizona v. Fulminante* (1991) 499 U.S. 279; *People v. Kronemyer* (1987) 189 Cal.App.3d 314, 349; *Darden v. Wainwright* (1986) 477 U.S. 168, 181; *Berger v. U. S.,* 295 U.S. 78 (1935); *Estelle v. McGuire,* 502 U.S. 62 (1992); *Parle v. Runnels,* 505 F.3d 922 (9th Cir. 2007); *People v. Fosselman* (1983) 33 Cal.3d 572, 584 [189 Cal.Rptr. 855, 659 P.2d 1144].

ISSUE SEVEN

VII. PETITIONER'S SPEEDY TRIAL RIGHTS WERE VIOLATED.

People v. Bolton (2008) 166 Cal.App.4th 343; *People v. Martinez* (2000) 22 Cal.4th 750, 94 Cal.Rptr.2d 381, 996 P.2d 32; *People v. Anderson* (2001) 25 Cal.4th 543, 106 Cal.Rptr.2d 575, 22 P.3d 347.

ISSUE EIGHT

VIII. PETITIONER WAS SENTENCED AFTER PROPOSITION 36 (2012) WAS PASSED, THE SENTENCE WAS NOT FINAL, AND WAS SENTENCED TO 25 YEARS TO LIFE FOR A CRIME THAT WAS NOT A SERIOUS OR VIOLENT FELONY.

On May 29, 2012, Petitioner was convicted of violating Penal Code §§475(a) and 476, a crime that is ***NOT*** a "serious" or "violent" felony.

On November 7, 2012, Proposition 36, the Three Strikes Reform Act, took effect. The summary of Proposition 36 states in part (http://vig.cdn.sos.ca.gov/2012/general/pdf/36-title-summ-analysis.pdf, at p. 49):

> ***"Shorter Sentences for Some Third Strikers.*** The measure requires that an offender who has two or more prior serious or violent felony convictions and whose new offense is a non-serious, non-violent felony receive a prison sentence that is twice the usual term for the new offense, rather than a minimum sentence of 25-years-to-life as is currently required. For example, a third striker who is convicted of a crime in which the usual sentence is two to four years would instead receive a sentence of between four to eight years—twice the term that would otherwise apply—rather than a 25-years-to-life term."

Both Steve Cooley, then-District Attorney of Los Angeles County, and George Gascon, District Attorney of the City and County of San Francisco stated in their arguments in favor of Proposition 36 (http://vig.cdn.sos.ca.gov/2012/general/pdf/36-arg-rebuttals.pdf, at p. 52) in part that:

> "The Three Strikes Reform Act, Proposition 36, is supported by a broad bipartisan coalition of law enforcement leaders, civil rights organizations and taxpayer advocates because it will:

"• *MAKE THE PUNISHMENT FIT THE CRIME*
"Precious financial and law enforcement resources should not be improperly diverted to impose life sentences for some non-violent offenses. Prop. 36 will assure that violent repeat offenders are punished and not released early

"...

"• *MAKE ROOM IN PRISON FOR DANGEROUS FELONS*
"Prop. 36 will help stop clogging overcrowded prisons with non-violent offenders, so we have room to keep violent felons off the streets."

Despite the voters' intent, on May 21, 2013, Petitioner was sentenced to a total of 28 years to life, 25-to-life for violating Penal Code §§475(a) and 476, and three one year enhancements for three prior felonies.

The Courts are currently hearing the cases of (*People v. Lewis* (2013) 216 Cal.App.4th 468, review granted Aug. 14, 2013, S211494 [holding the Reform Act applies retroactively]; and *People v. Conley* (2013) 215 Cal.App.4th 1482, review granted Aug. 14, 2013, S211275 [holding the Reform Act is not retroactive]. What is motivating the Courts of Appeal, including the Court of Appeal below in *People v. Lester* (Cal. App. 4 Dist. 2013) 220 Cal.App.4th 291, 304, is that instead of applying *stare decisis,* there is a wholesale political effort to rewrite the Initiative and the intent of the voters in applying Proposition 36.

The voters clearly intended to have persons like Petitioner sentenced to no more than double the sentence for non-serious and non-violent felonies. The case of *People v. Contreras* (Cal. App. 4 Dist. 2013) www.courts.ca.gov/opinions/documents/G047603.PDF, at pp. 3-5, explains that:

"All agree the starting point in the analysis is *Estrada,* which is where we begin. In *Estrada* the defendant pleaded guilty to escape from a prison without force or violence in violation of section 4530. (*Estrada, supra,* 63 Cal.2d at pp. 742-743.) At the time he committed the crime, the applicable sentencing guideline provided for a minimum two-year sentence. After he committed the crime, but before he was sentenced, the guideline was amended to reduce the applicable minimum to six months. (*Id.* at p. 743.) The court framed the issue as follows: 'A criminal statute is amended after the

prohibited act is committed, but before final judgment, by mitigating the punishment. What statute prevails as to the punishment — the one in effect when the act was committed or the amendatory act?' (*Id.* at p. 742.) Answer: the amendatory act. 'If the amendatory statute lessening punishment becomes effective prior to the date the judgment of conviction becomes final then, in our opinion, it, and not the old statute in effect when the prohibited act was committed, applies.' (*Id.* at p. 744.) The court analyzed the issue as follows:

"'The problem, of course, is one of trying to ascertain the legislative intent — did the Legislature intend the old or new statute to apply? Had the Legislature expressly stated which statute should apply, its determination, either way, would have been legal and constitutional. It has not done so. We must, therefore, attempt to determine the legislative intent from other factors.

"'There is one consideration of paramount importance. It leads inevitably to the conclusion that the Legislature must have intended, and by necessary implication provided, that the amendatory statute should prevail. When the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. ***It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply.*** The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final. This intent seems obvious, because to hold otherwise would be to conclude that the Legislature was motivated by a desire for vengeance, a conclusion not permitted in view of modern theories of penology.' (*Id.* at pp. 744-745.)

"The exception to this rule is 'where the Legislature clearly signals its intent to make the amendment prospective, by the inclusion of either an express saving clause or its equivalent.' (*People v. Nasalga* (1996) 12 Cal.4th 784, 793.)" (Emphasis added.)

Here, there was no "express savings clause". The Courts in *People v. Conley* (2013) 215 Cal.App.4th 1482, review granted Aug. 14, 2013; *People v. Lester* (Cal. App. 4 Dist. 2013) 220 Cal.App.4th 291, 304; and *People v. Yearwood* (2013) 213 Cal.App.4th 161, 167; stretched the meaning of Penal Code §1170.126 as a savings clause, and went further by stating that a Petition to Recall Sentence is the "Sole" remedy to vacate a 25 years to life sentence, not an Appeal or a Petition for Writ of Habeas Corpus. Sorry, but Penal Code §1170.126(k) allows other

remedies, including Habeas Corpus, and Habeas Corpus can only be suspended in cases of invasion and rebellion (California Constitution, Art. I, §11). The case of *People v. Contreras* (Cal. App. 4 Dist. 2013) www.courts.ca.gov/opinions/documents/G047603.PDF, at pp. 7-8, also states that:

> "The *Yearwood* court also reasoned that application of *Estrada* would pose an unreasonable public safety risk: 'If amended sections 667 and 1170.12 are given retroactive application, prisoners in appellant's procedural posture would be entitled to automatic resentencing as second strike offenders without any judicial review to ensure they do not currently pose an unreasonable risk of danger to public safety. . . . It would be inconsistent with the public safety purpose of the [Reform] Act to create a loophole whereby prisoners who were sentenced years before the [Reform] Act's effective date are now entitled to automatic sentencing reduction even if they are currently dangerous and pose an unreasonable public safety risk.' (*Yearwood, supra,* 213 Cal.App.4th at p. 176.)
>
> "But the *Yearwood* court's argument goes too far; it is an argument against the Reform Act itself. What *Yearwood* describes as a 'loophole' is precisely how the Reform Act works. At least in its prospective application, the Reform Act reduces sentences without any judicial discretion to lengthen the sentence based on a judge's determination of dangerousness, even though the defendant has often spent significant presentence time in prison, and potentially developed a record of misbehavior there. Whatever the merits of the *Yearwood* court's concerns, therefore, the electorate was not persuaded. Further, to the extent *Yearwood* was concerned a defendant may have committed additional criminal conduct after sentencing but before the judgment has become final, the defendant can be tried and punished accordingly. There is no need to impose a 25-year-to-life sentence."

Here, Petitioner allegedly committed a crime that was a "wobbler", and subject to County Jail time under A. B. 109. Nothing in Penal Code §§667.5 or 1192.7 mentions Penal Code §§475(a) and 476. The sentence that was imposed by the Trial Court was racist, and was motivated by the fact that Petitioner was Black, disabled and fighting for his rights. Both *People v. Contreras* (Cal. App. 4 Dist. 2013) www.courts.ca.gov/opinions/documents/G047603.PDF, and *In re Estrada* (1965) 63 Cal.2d 740, require that the Trial Court resentence Petitioner to a sentence that is a lot less than 28 years to life.

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ISSUE NINE

IX. PETITIONER'S SENTENCE OF 28 YEARS TO LIFE IS CRUEL AND UNUSUAL PUNISHMENT.

Penal Code §§475(a) and 476 make the offenses as "forgeries". Penal Code §473 states that "Forgery is punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170." Penal Code §1170(h) further states that the "offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years." How can a jail term of at least one year become a 28 years to life sentence? If Proposition 36 (2012) didn't exist, the current sentence is wholly excessive and thus cruel and unusual punishment.

The case of *People v. Carmony* (Cal. App. 3 Dist. 2005) 127 Cal.App.4th 1066, 1080, 26 Cal.Rptr.3d 365, explains that:

> "When the purpose of a penalty is to punish recidivism and not the current offense, the penalty is for past crimes and as stated, is proscribed. (*Ex parte Lange, supra,* 85 U.S. at p. 173 [21 L.Ed. at p. 878]; *Witte v. United States, supra,* 515 U.S. at pp. 395-396 [132 L.Ed.2d at p. 361].) A sentence of 25 years to life in prison serves the penological purpose of protecting society from career criminals by incapacitating and isolating them with long prison terms. (*Ewing, supra,* 538 U.S. at pp. 26-27 [155 L.Ed.2d at p. 121].) Imposing such a sentence on a defendant who is 40 years old at the time of the offense, will effectively incapacitate him for the rest of his active years. That sentence does not, however, serve to protect the public when the current offense bears little indication he has recidivist tendencies to commit offenses that pose a risk of harm to the public."

The case of *In re Lynch* (1972) 8 Cal.3d 410, 422, also explains that:

> "The principle was recently reaffirmed in *Furman v. Georgia* (1972) supra, 408 U.S. 238, the United States Supreme Court decision holding the death penalty unconstitutional as applied. In the course of his separate opinion in support of the majority, Justice Brennan gave as his view that 'Although the determination that a severe punishment is excessive may be grounded in a judgment that it is disproportionate to the crime, the more significant basis is that the punishment serves no penal purpose more effectively than a less severe punishment.' (Fn. omitted; *id.* at p. 280 [33 L.Ed.2d at pp. 372-373].) In turn, Justice Marshall recognized that 'a penalty may be cruel and unusual because it is excessive and serves no valid legislative purpose. [Citation.] The

> decisions [of the United States Supreme Court] are replete with assertions that one of the primary functions of the cruel and unusual punishments clause is to prevent excessive or unnecessary penalties [citations]; these punishments are unconstitutional even though popular sentiment may favor them.' (*Id.* at p. 331 [33 L.Ed.2d at p. 402].)"

Petitioner's past felonies have no relation to whether Petitioner possessed or used what was nothing more than ***PLAY MONEY!*** Petitioner was only in the Police Station to complete Sex Registration. ***THAT'S IT!*** He was not using the play money for anything at the Police Station. How can that be relevant to his past felonies? It wasn't. It was motivated by the racial, anti-handicap, and anti-assertive natures of the arresting officers involved.

CONCLUSION.

Petitioner requests that a Certificate of Appealability be granted forthwith.[1]

Dated this 22nd day of September, 2018

By: J. J. Arnett

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[1] If Judge Kavanaugh becomes Justice Kavanaugh, Petitioner wants him recused from hearing this case. If a "p****-graber" can become a Fake President, and child molestor Roy Moore can run for U. S. Senate, then Petitioner should be freed immediately, since they got a free pass, when Petitioner's sex offenses were already adjudicated ***YEARS BEFORE*** Petitioner was arrested at the San Bernardino Police Station.