

No. 18-7278

ORIGINAL
PG. ONE

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

In Re

Supreme Court, U.S.
FILED

DEC 20 2018

OFFICE OF THE CLERK

BRIAND WILLIAMS — PETITIONER
(Your Name)

vs.

California & Edmund G. Brown, Jr. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT FOR THE STATE OF CALIFORNIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRIAND WILLIAMS

(Your Name)

c/o BRB WMS-LOGAN-ESQ; 9025 Wilshire Blvd 5th Flr

(Address)

Beverly Hills 90211-1867

(City, State, Zip Code)

None As of Yet but Eventually

(Phone Number)

ORIGINAL

P.G. TWO

QUESTION(S) PRESENTED

- 1) When the Appointed Counsel on Direct appeal is a thorn to the perfection of that appeal and falls below the standard of *Strickland vs. Washington* (1984) 466 U 668, 692, Was the Defendant herein *Prejudice* by counsel's Failure to raise the Appellant's Plethora of Arguable Issues that the Appellant himself had written out and filed on his "**NOTICE OF APPEAL**" Form CR-120 to which his "unknown appointed counsel" had received during those critical stages of the appeal process to bring to the attention of the court which counsel did not!!! Was the defendant prejudice by counsel's failure to do so??? Because it's as if, counsel was absent from the most critical stages of the appellate proceedings for the defendant in not arguing those issues in his defense. See *U.S. vs. Cronin* (1984) 466 US 648, was the appellant denied more than just his Due Process & Equal Protection as guaranteed under the 6th and 14th Amendment???
- 2) Once a defendant files a **1382 PC Motion to Dismiss** while in custody after Not getting any response back from the District Attorney's Office to the prior filed **1381 PC Motion Demand for Trial** and since the Prison officials signed & dated the back of the 1382 Motion envelope for mailing and the motion is received by both the District Attorney's office & the Master Calendar Supervising Judge of the Courthouse where the case is pending out of as well, "*Is the Defendant entitled to the relief sought from the 1382 Motion even after the District Attorney's Office pulls the Defendant out to court from Prison to answer to the pending charges, but after the 90days has lapse and completely after the time had long expired for the State Officials to respond???*"
- 3) Was the Defendant Prejudice by the fact that the State of California Denied the Defendant his rights under the Equal Protection and Due Process Laws of both the Federal and State Constitutions when *Judge Jeffrey G. Bennett* refused to dismiss the case against the defendant when the District Attorney admitted on the record that they ["did not"] get the defendant out of custody & into court in time to prosecute the case prior to receiving the timely filed §1382 Motion & long after receiving the §1381
- 4) Did the State of California Violate the Federal and State Rights of the defendant when it re-filed the very same criminal charge §532(a) for a second (2nd) time on *August 26th, 2016* after it had already been dismissed two (2) yrs subsequent to the time of expiration for the Statute of Limitations had already ran out on **December 19th, 2007** even though the alleged crime was on *December 19th, 2004* and where the defendant has never been absence from the State of California pending his trial any dates??? Was this re-filed action a **Violation of Due Process and Prejudicial**???
- 5) Is a Plea Bargain Agreement in essence a contract between the defendant and the prosecutor on behalf of the State??? (2) And if so, can the defendant be relieved from the restraints of the agreement when the Statute of Limitations is Jurisdictional in nature, and where the court had lacked jurisdiction to prosecute the matter??? And,

- (3) Can a defendant be forced and bound to the plea agreement where the Statute of Limitation is/was No! Longer in existence after **three** (3) years?? **See Cal. Pen. Code §§800-802 and §804; Statute of Limitations (1935) 23 Cal. L. Rev. at pp 525-527; In re Harris** (1993) 5 C. 4th 813, HN 11; **People vs. Chapman** (1975) 47 CA 3d 597; **People vs. Hoffman** (1933) 132 CA 60; **People vs. Lynch** (2010) 182 CA 4th 1262; **People vs. Sup. Ct. (Meeks)** (1991) 1 C. 4th 56, 66 HN 5; **United States vs. Williams** (1951) 341 US 58, 68; **In re Albert B. Demillo** (1975) 14 C. 3d 598; **People vs. Miller** (1859) 12 Cal. 291; **People vs. Picetti** (1899) 124 Cal. 361; **Ex parte Vice** (1901) 5 Cal. 153; **People vs. McGee** (1934) 1 Cal. 2d 611; **People vs. Rose** (1972) 28 CA 3d 414; **People vs. Morgan** (1977) 75 CA 3d 32; **People vs. Chadd** (1981) 28 3d 739; **People vs. Brice** (1988) 206 CA 3d 111; **People vs. Angel** (1999) 70 Cal. 4th 1141; **People vs. Williams** (1999) 21 C. 4th 335; **Sanders vs. Sup. Ct.** (1999) 76 CA 4th 609; **Kellett vs. Sup. Ct.** (1966) 63 C. 2d 822; **In re Davis** (1936) 13 CA 2d 109; **In re McVickers** (1946) 29 C. 2d 264, 274, 280; **In re Carmen** (1957) 48 C. 2d 851, 854; **People vs. Crosby** (1962) 58 C. 2d 713, 724-725; **But, If [not] (4) Under the Color of Law** Is the Defendant entitled under the Equal Protection Analysis and Due Process Clause of our United States Constitution; entitled to an **Evidentiary Hearing** to make a conclusive finding to determine whether the plea bargain between the defendant and the People for the State of California can be enforced even after the State of Calif. Statute of Limitations has long ran out?????
- 6) Was the defendant entitled under the United States Constitutions' **VI and XIV** Amendment to a competent appellate attorney and a record that would permit a meaningful presentation of appellate claims, and that by the attorney's failure to appreciate or correct the shortcomings of the record constituted the inadequate assistance of counsel on appeal????? (**Hewitt vs. Helms** (1983) 459 US 460 at p.466; **In re Freeman** (2006) 38 C. 4th 630; **Delzell vs. Day** (1950) 36 C. 2d 349, HN 3.)
- 7) When a defendant on appeal has multiple layer of ill will help from various court appointed ineffective assistant of counsel claims by both the court appointed and private counsel over a twelve year period in his/her judicial proceedings (including with a current unknown appointed appellate counsel) and the record on appeal is Silent to the events on appeal because the transcripts were not augmented Was the Defendant Prejudice by the appointed counsel on appeal refusal to not Augment the Record and was it a Fundamental Miscarriage of Justice in violation of defendant's Due Process Rights & Equal Protection of both the **6th and 14th** Amendment when the appellate court Justices' abuse their discretion when they all [a]greed to dismiss the defendant's request for a Petition for a Habeas Corpus without Ordering the Trial Records to be Augmented????? (See, **People v. Mendoza-Tello** (1997) 15 C. 4th 264; **Rojas v. Unknown** (2017) 2017 US Dist. Lexis 75138; **Trevino v. Thaler** (2013) 569 US 413; **Martinez v. Ryan** (2012) 566 US 1; **Delgado v. Lewis** (2000) 223 F.3d 976; **In re Hochberg** (1970) 2 Cal. 3d 870; **Ramirez v. US** (9th Cir. 2015) 799 F.3d 845.)

- 8) Was the defendant denied under the Fourteenth Amendment by the State to full-fill its duty to provide appellant with a complete and effective appellant record???
- 9) Was the defendant put in any unfavorable appellate proceedings that were fundamentally unfair in contravention of the Due Process Clause of the Federal Const.
- 10) Was the defendant deprived of adequate competent active advocate assistance by the appointed appellate counsel by right under the 6th Amendment in any fashion especially when the appellate court did not hold or make the Unknown Appointed counsel to answer to the merits of the defendant's Habeas Corpus Petition????
- 11) Was the defendant deprived and denied any right(s) under California's Independent Constitution??? (*Johnson vs. Zerbst* (1938) 304 US 458 at pg. 464; *People vs. West* (1970) 3 Cal. 3d 595, 604-608; *People v. Griggs* (1941) 17 Cal. 2d 621; and *People vs. Schwartz* (1927) 201 Cal. 309, 314.)
- 12) Was the defendant denied by both the Court of Appeal and the *Judge Jeffrey G. Bennett* of the Ventura County Superior Court the Due Process Rights and a rightful Equal Protection of the same State of California Independent Constitutional Rights afforded to [all] other defendants to have an explanation into Why??? The §1382 Motion to Dismiss was [D]enied without any factual basis when the Prosecution had clearly admitted on the record that they failed to respond to the §1381 Demand for Trial Motion filed by the defendant within the 90days??? Does this Court of Appeal's Decision with [no!] Trial Court transcripts conflict with the Court of Appeal's Decision in *In re Birch* (1973) 10 Cal. 3d 314, 319-320, 322; *People v. Willard* (2007) 145 CA 4th 1329; *Blackledge v. Allison* (1977) 431 US 63, 71-83 *People v. West* (1970) 3 C. 3d 595, 604-608; *People v. Levey* (1973) 8 C. 3d 648, 653 Was the denial Prejudicial to the Defendant's 14th Amendment and Equal Protection under both Federal & State.
- 13) When a defendant objects to the error and miscalculation in the presentence investigation report under the govern statute code section §1203PC and immediately files a Motion to Recalculate the Presentence Custody Credits before the sentencing takes place but the courtroom Judge still use the older version of the PC §4019 instead of the newer revised §4019 pursuant to *People v. Delgado* (2012) 210 CA 4th 761 is the defendant entitled to all of his presentence actual credits??? (2) And, if so was it Prejudicial to the Defendant by the court' action and failure to award and apply the correct amount of custody presentence custody credits deprived the Defendant of his Liberty interest for his immediate release rather than having him do far more jail time where a defendant is entitled to day for day credit under the newer revised version for §4019 the defendant herein was deprived of One Thousand Five Hundred and Thirty-Eight (1,538) Days of actual presentence custody credits also known as one for one which can double an inmate's amount of presentence credit for a non-violent offense. Did the Court of Appeal's decision to uphold appellant's conviction conflict with the decisions in *People v. Valdiva* (1960) 182 CA 2d 145,148 where a defendant is

entitled to an opportunity to respond to adverse sentencing information; *People v. Clavel* (2002) 103 CA 4th 516; *People v. Welch* (1993) 5 Cal. 4th 228, 234; *People v. Duran* (1998) 67 CA 4th 267; *People v. Williams* (2002) 83 CA 4th 936 and Penal Code §1237.1

- 14) Was the defendant denied an Equal Opportunity Protection under both the State and Federal Constitution when he filed a Writ Petition for Review to the States' high court **Re: Ineffective Assistance of Appellate Counsel for Counsel's Failure to raise the Plethora of Arguable Issues by Habeas Corpus due to missing court transcripts** (see *CRC – Rule 12 or by Rule 10 (c); People vs. Gaston* (1978) 20 C. 3d 476, 481-484 fn.1, 4) that were not provided on Direct Appeal^{???} (2) **And, if so** was it **Prejudicial to the Defendant** when the “Supreme Court of California cause further Prejudicial Miscarriage of Justice when it failed to address this core issue raised by the defendant **Re: Ineffective Assistance of Appellate Counsel on Direct Appeal by way of Habeas Corpus Petition^{???}**” for counsel failure to Augment the Trial Court Record.
- 15) Was the defendant entitled under the U.S. Const. 6th and 14th Amendment to a competent appellant attorney and a record that would permit a meaning presentation of the appellate claims and by the attorneys failure to appreciate or correct the shortcomings of the record constituted the inadequate assistance of counsel on appeal^{???} (2) **And, did this Court of Appeals' Decision** conflict with the Court of Appeal's Decision in *People v. Barton* (1978) 21 Cal. 3d 513; *In re Newborn* (1959) 168 CA 2d 472,476; *People v. Shambatuyer* (1996) 50 CA 4th 267 HN 4; *In re Johnson* (1965) 62 Cal. 2d 325,335; *In re Smiley* (1967) 66 Cal 2d 606; *McMann v. Richardson* (1970) 397 US 759 N.14; *People vs. Green* (2000) 81 CA 4th 463; *Johnson v US* (1966) 360 F.2d 844,847.
- 16) Is a Defendant denied the Guaranteed Federal and State Constitutional Rights of Due Process when the California Appellate Project who appoints the Appellate Counsel on Appeal **Denies** the Appellate Attorney(s) the access to file a Habeas Corpus Petition for any Defendant without getting permission to do so by their office first^{???} (2) **And, [If So]**, by [d]enying a Writ Petition to be filed [d]oes it foreclose all **or** any opportunity for a defendant to put forth an adequate presentation of his **[extrinsic four corner issues]** from the trial court into the appellate district court, and the Supreme Court of California to determine and make a conclusive determination of factual issues outside of the record already **not presented on a direct appeal for a layman?** (*Blackledge vs. Allison*, (1977) 431 US 63, 71-83; *Harris vs. Nelson*, (1969) 394 US 286; *Townsend vs. Sain* (1963) 372 US 293, 295-322; *US vs. Carter* (4th Cir 1972) 454 F.2d 426, 428; *People vs. Sumstine* (1984) 36 C. 3d 909, 920 HN 10. Cal. Const. Art. I, Sec. 7, subd (a) (b); *People vs. Trujillo* (2016) 244 CA 4th 106; *People vs. Barton* (1978) 21 C. 3d 513, 517-518; *Entsminger vs. Iowa* (1967) 386 US 748, HN 1; *People vs. Monaghan* (1894) 102 C. 229; *People vs. Goldman* (2014) 225 CA 4th 950; **CRC-Rules 8.860-8.861 subds (2)(3)(8)(12)(A) and CRC-Rules 8.865 - 8.867**

- 17) When Ninety-Eight Point Nine Percent (98.9%) of the defendant's appeal deals with matters that are "*Extrinsic*" to the current Record on appeal and unless the record is Augmented to obtain the **Factual Missing Arguable Issues** from the court transcripts that are missing because the Appoint Appellate Counsel fails to make the matter an Arguable Appellate Issue by making no reference to that part of the Silent devoid record, Is the defendant's **6th and 14th Amendments** Violated by the Appointed Counsel for his failure to Request that the missing records be augmented so that the defendant would have been able to present [all] each and every issue that was raised and filed in the **CR-120 Notice of Appeal Form**?? **Is this Prejudicial to an Appellant.**
- 18) In the most recent United States Supreme Court Case No. 16-8255 **McCoy vs. Louisiana** (5-14-2018) Does the very same principles apply to a defendant on a direct appeal where counsel for the appellant does not follow the appellant's desires and **deviates** from what the Defendant is appealing from and from what he has written out on his court filed **[Notice of Appeal Form]** that outlines the issues to be brought forth before the Court of Appeals??? (See *U.S. vs. Cronin* (1984) 466 US 648; *Davis vs. State Bar* (1983) 33 C. 3d 231; *Strickland vs. Washington* (1984) 466 U 668, 692 issue against appointed appellate counsel; *People vs. Gzikowski* (1982) 32 C. 3d 580, 586; *People vs. Ramirez* (2006) 39 Cal. 4th 398, 423; *Rojas v. Unknown* (2017) 2017 US Dist. Lexis 75138, **Section-C**; *Trevino v. Thaler* (2013) 569 US 413; *Martinez v. Ryan* (2012) 566 US 1; *Buck vs. Davis* (2017) 137 S. Ct. 759; *U.S. vs. Griffy* (9th Cir. 1990) 895 F.2d 561 *Cuyler v. Sullivan* (1980) 466 US 335; *In re Smith* (1970) 3 Cal. 3d 192, 196; *People v. Pena* (1972) 25 CA 3d 414; *People v. Mendoza-Tello* (1997) 15 C. 4th 264; *In re Hochberg* (1970) 2 C. 3d 870; *In re Andrew B.* (1995) 40 CA 4th 825 **fn.14**; *People vs. Corona* (1978) 80 CA 3d 684; *In re Banks* (1971) 4 C. 3d 377; *Delgado v. Lewis* (9th Cir. 1988) 223 F.3d 976; *Carter vs. Illinois* (1946) 329 US 173; *Turner vs. Duncan* (9th Cir. 1988) 158 F.3d 449; *Davis vs. Kramer* (9th Cir. 1999) 1999 US App. Lexis 918; *United States vs. Gonzalez-Lopez* (2006) 547 US 140.)
- 19) Does the fact that when an appointed counsel writes and files a **[Wende] Brief** but **does not notify the defendant of this fact nor does counsel send the defendant any parts of the records on appeal** which is a **MANDATORY MUST** that the files completely be sent to the defendant so that s/he can file their own brief; Was this **Abandonment Prejudicial** to the Defendant??? by the Appointed Counsel on Appeal that **deprived** the defendant of his Federal & State Due Process Rights and Equal Protection to be able to put forth an affirmative appellate defense??? {especially after **Petitioner had provided both the Appellate Project and the Appellate Court Div 6 Presiding Justice Arthur L. Gilbert** of this information by a direct letter to the Judge himself regarding the Defendant {**never being notified**} about **who was** Petitioner's counsel **and when** was a counsel going to be appointed to him in his direct appeal so that the record could be perfected for proper appellate review!!!} (See, *Ramirez v. US* (9th Cir. 2005) 2015 US App. Lexis 15005; *Haines v. Kerner* (1972) 404 US 519, **HN** 1,2; *In re Banks* (1971) 4 Cal. 3d 227, **HN** 1,2,3; *Miller v. Pate* (1967) 386 US 1, **HN2**; *Entsminger v. Iowa* (1967) 386 US 748, **HN1**; *Lane v. Brown* (1963) 372 US

477; *Carter vs. Illinois* (1946) 329 US 173. 174-175; *People v. Corona* (1978) 80 CA 3d 684, HN 1,2,5; and *People v. Gaston* (1978) 20 Cal. 3d 476.)

- 20) Is a Defendant denied a substantial right when he files a Habeas Writ Petition to be argued concurrently with regards to the Extrinsic Merits of the Four Corners of a completely devoid record after the defendant finds out that some unknown appointed counsel files a **[Wende Brief]** and even further abandoned the defendant during the direct appeal process by never providing the appellant with **[no!]** Parts of the record on appeal which does not satisfy the Federal Constitutional Standards. (See, i.e. *Anders v. Calif.* (1967) 386 US 738; *Penon v. Ohio* (1988) 488 US 75; *Davis v. Kramer* (9th Cir. 1999) 167 F.3d 494; *US v. Griffy* (9th Cir. 1990) 895 F.2d 561; *In re Smith* (1970) 3 cal. 3d 192; *People vs. Hackett* (1995) 36 CA 4th 1297; *People v. Pena* (1972) 25 CA 3d 414 423, HN5; *Turner v. Duncan* (9th Cir. 1988) 158 F.3d 449 and *Davis vs. State Bar* (1983) 33 Cal. 3d 231.) **Was this Prejudicial on a Direct Appeal.**
- 21) Was the defendant Prejudice by the totality of events when the Court of Appeal **[Refused]** to address every element of issues raised in appellant's Direct Appeal and by way of two consolidated Petitions which did encompass all of the "Extrinsic Issues" from a Silent Court record and Did the Court of Appeal's Decision Conflict with the Court of Appeal's Decision in *People v. Mendoza-Tello* (1997) 15 C. 4th 26 **Was this action Prejudicial to the Appellant???**
- 22) Was the defendant denied an Equal Opportunity Protection under the Federal and State Due Process Clause to have his three (3) missing court trial dated transcripts produced as he had requested to have them Augmentation for a appellate record that would permit a clear meaningful, effective presentation of his Indigent's Claims, like all other Indigent Appellant's but with a Competent Appointed Appellate Counsel acting as an advocate on behalf of the Indigent^{???} (See, i.e. *People v. Feggans* (1967) 67 Cal. 444; *People v. Hyde* (1958) 51 Cal. 2d 152 and *Douglas v. California* (1963) 372 US 353, 355.) **Was this Prejudicial to the Appellant Defense.**
- 23) Was the defendant Prejudice by the totality of events when the Justices in Div. 6 decision Denied the Habeas Writ Petitions without comment conflict with the Court of Appeal's decision in *People v. Pena* (1972) 25 CA 3d 414; *People v. Mendoza-Tello* (1997) 15 Cal. 4th 264; *In re Smith* (1970) 3 C 3d 192, 196; *In re Andrew B.* (1995) 40 CA 4th 825 fn.14 and *Delgado v. Lewis* (9th Cir. 1988) 223 F.3d 976.)
- 24) Was the defendant **[Prejudiced]** when the appellate court Justices in Div. 6 **[refused]** to request the mystery unknown appointed appellate counsel to answer to the complaint by the defendant in the Petition for Writ of Habeas Corpus regarding his refusal to address the denial of Appellant's **§1382 PC Oral Motion to Dismiss** by Private Trial Counsel **and the** Re-filing of the Original Dismissed prior charge of **§532(a) PC** after the Statute of Limitations had already expired and all other issues that were raised by the appellant that were also never raised up by this unknown

mystery appointed appellate counsel on appellant's direct appeal??? But were listed and outlined on the face of the defendant's Notice of Appeal Form. (See, *Cuyler v. Sullivan* (1980) 466 US 335.) Was this action Prejudicial to the Appellant's defense?

- 25) Was it **Prejudicial** to Deny the Defendant his Equal Protection & Due Process Rights to a Speedy Trial Dismissal Pursuant to **PC §1382** under the Color of Law from the Federal & State Constitution; Article I, §13 & 15 and **CCP §1858???** Did the Court of Appeal's decision to uphold appellant's conviction conflict with the decisions of *People v. Wagner* (2009) 45 Cal. 4th 1039; *People v. Brown* (1968) 260 CA 2d 745,751; *Gonzalez v. Sup. Ct.* (2008) 166 CA 4th 922; *People v. Hughes* (1974) 38 CA 3d 670; *Smith v. Sup. Ct.* (1984) 159 CA 3d 1172; *Chavez v. Sup. Ct.* (1984) 153 CA 3d 130; *People v. Cave* (1978) 81 CA 3d 957; *People v. Radil* (1977) 76 CA 3d 702; *In re Gray* (2009) 179 CA 4th 1189, 1200; *People v. Rapp* (1966) 64 Cal. 2d 643; *Houston v. Lack* (1988) 487 US 266; *Miles v. Prunty* (9th Cir. 1999) 187 F.3d 1104; *Huizar v. Carey* (9th Cir. 2001) 273 F. 3d 1220, 1220; *Moore v. Twomey* (2004) 120 CA 4th 910 & *Silverbrand v. County of Los Angeles* (2009) 46 C. 4th 106.
- 26) Was it **Prejudicial** against the Defendant for the Court to allow the District Attorney to re-file an Original Dismissed Charge **§532(a) PC** after the **Statute of Limitations** (PC §§800, 801, 802, §804 and The Law Revision Commission's Reference to the Model Pen. Code §1.06 subd (5)) had already expired when the District Attorney [failed to Amend the Information] within the Statutory time of **PC §802 "Time Period for Commencement of Prosecution"** to recharge a defendant within the statutory time of [three (3) years] after the Original Arresting Charge Dismissal took place after the alleged crime pursuant to Pen C §15 and §683 which allegedly occurred between November 28th, 2009 **and** December 12th, 2009??? The court and the District Attorney had no jurisdiction to come back after nine (9) subsequent years to the expiration of the period of Limitations, and re-file the same Original dismissed charge **§532(a) on August 26th, 2016** for an alleged crime that allegedly happened back on December 19th, 2004 once the Three (3) year Statute had ran out on December 19th, 2007. Was this Prejudicial to the Defrndant??? Did the Court of Appeal's decision to uphold appellant's conviction conflict with the decisions in *People v. Brice* (1988) 206 CA3d 111, "Thus, at the time of trial, the prosecution could no longer amend the information to allege a violation of PC §32." "More than three years thereafter expired before the commencement of trial or any event which could be considered [***10] as subjecting defendants to a charge of accessory to murder in violation of section 32" of the Pen C.; (See further *People v. McGee* (1934) 1 Cal. 2d 611,613; *In re Davis* (1936) 13 CA 2d 109,111; *People v. Crosby* (1962) 58 Cal. 2d 713,724-725; *People v. Rose* (1972) 28 CA 3d 415 417; *In re Demillo* (1975) 14 Cal. 3d 598; *Kellett v. Sup. Ct.* (1966) 63 Cal. 2d 822; *Sanders v. Sup. Ct.* (1999) 76 CA 4th 609,617; *People v Chapman* (1975) 47 CA 3d 597; *People v. Angel* (1999) 70 CA 4th 1141 & *People v. Lynch* (2010) 182 CA 4th 1262.)

27) Was it **Prejudicial** against the Defendant when the Trial Court **Judge Patricia M. Murphy** [failed to honor] the plea agreement (a contract) between the defendant and the prosecutor to which the court consents to be bound under “**People v. Sheppard** (1985) 169 CA 3d 580, 586”??? (2) And, If so, did Judge Murphy, further [failed to impose] a sentence within the limits of that bargain as outlined in “**People v. Green** (1982) 142 CA 3d 207, 215” Once the court had accepted the terms of the negotiated plea ({[made on **August 26th, 2016**]}) [it] lacked Jurisdiction to alter the terms of that plea from time served in the county jail. **People v. Tang** (1997) 54 CA 4th 669, 677. Did the Court of Appeal’s decision to uphold appellant’s conviction conflict with the decisions in **People v. Cardoza** (1984) 161 CA 3d 40 [N*4; **People v. Orin** (1975) 13 Cal. 3d 937, 942-943; **People v. Morris** (1979) 97 CA3d 358; **People v. Olea** (1997) 59 CA 4th 1289, 1292,1297-1298; **People v. Daugherty** (1981) 123 CA 3d 314; **People v. Calloway** (1981) 29 Cal.3d 666; **People v. Johnson** (1974) 10 Cal. 3d 868; **People v. Mancheno** (1982) 32 Cal. 3d 855, 865-866; **People v. Walker** (1991) 54 Cal. 3d 1013,1024, [N*7,8; **People v. Kaanehe** (1977) 19 Cal. 3d 1,13-15; **Santobello v. NY** (1971) 404 US 257,262,267-269; **US v. Brown** (1974) 500 F.2d 375; **US v. Carter** (4th Cir. 1972) 454 F.2d 426, 428; **US v. Hammer** (1975) 528 F.2d 326; **Harris v. Superintendent** (1975) 518 F.2d 1173; **US v. Paiva** (1969) 294 F. Supp. 742; **US v. Lester** (2nd Cir. 1957) 247 F.2d 496; **Cooper v. US** (4th Cir. 1979) 594 F.2d 12; **Gomez v. Montgomery** (2016) 2016 US Dist. Lexis 119398; **Machibroda v. US** (1962) 368 US 487 **Martinez v. Sup. Ct.**(1973) 36 CA 3d 683; **Kercheval v. US** (1927) 274 US 220 and **Cal.CC §1635-36,§1638.**

28) Was the defendant **Prejudiced** when the mystery unknown appointed appellate counsel [N]ever sent the defendant a copy of any opening [W]ende Brief or any [R]ecords of the case file itself as told and directed to by the Second Appellate District Court, Division Six per/ a **March 27th, 2018** [***NOTICE***] which is in the case file?? (See, **Anders v. California** (1967) 386 US 738; **Penson v. Ohio** (1988) 488 US 75; **Davis v. Kramer** (9th Cir. 1999) 167 F.3d 494; **Turner v. Duncan** (9th Cir. 1988) 158 F.3d 449 **US v. Griffy** (9th Cir. 1990) 895 F.2d 561; **People vs. Hackett** (1995) 36 CA 4th 1297; **In re Smith** (1970) 3 cal. 3d 192; **People v. Pena** (1972) 25 CA 3d 414 423, [HN5; **Davis vs. State Bar** (1983) 33 Cal. 3d 231; **Griffin v. Illinois** (1956) 351 US 12; **Douglas v. California** (1963) 372 US 353,355; **People v. Hyde** (1958) 51 Cal. 2d 152; and **Powell v. Alabama** (1932) 287 US 45.)

29) Is there **Prejudice** to deny a Defendant **an Evidentiary Hearing** whenever trial transcripts are missing from a direct appeal that are the core element to any reliance thereof by a defendant on prior promises made by the State Government Official??? (2) And, If so, [**Must a Evidentiary**] hearing be held to resolve any substantial chain of events in a court proceeding when a question of breach is made from the agreed upon Plea Agreement comes up **or** the validity of any promises made by any state official(s) **or** officer(s) of the court to a defendant becomes questionable and the transcripts from the proceeding are not made available “**SHALL**” a Evidentiary Hearing be held pursuant to **People v. Gaston** (1978) 20 Cal. 3d 476,481-484, **fn1, 4;**

CRC-Rules 10(c), 12(a), 8.860, 8.865 thru 8.867; *Blackledge v. Allison* (1977) 431 US 63; *People vs. Schwartz* (1927) 201 Cal. 309, 314; *People v. Griggs* (1941) 17 Cal. 2d 621; *People v. Delles* (1968) 69 Cal. 2d 906, 910; *People v. Wadkins* (1965) 63 Cal. 2d 110, 113, **N*2,3,4**; *People vs. West*, (1970) 3 Cal. 3d 595, 604-608; *In re Armstrong* (1981) 126 CA 3d 565, 570; *Roberts v. LaVelle* (1967) 389 US 40; *People v. Smith* (1949) 34 Cal. 2d 449; *Eyrich v. Muni. Ct.* (1985) 165 CA 3d 1138, 1140; *March v. Muni. Ct.* (1972) 7 Cal. 3d 422; *Griffin v. Illinois* (1956) 351 US 12; *Eskridge v. Wash.* (1958) 357 US 214; *Burn v. Ohio* (1959) 360 US 252; *Smith v. Bennett*, (1961) 365 US 708; *Draper v. Wash.* (1963) 372 US 487; *Rinaldi v. Yeager* (1966) 384 US 305; *Mayer v. City of Chicago* (1971) 404 US 189; *People v. Preslie* (1977) 70 CA 3d 486; *People v. Brooks* (1980) 26 Cal. 3d 471; *People v. Hyde* (1958) 51 Cal. 2d 152; *Penson v. Ohio* (1988) 488 US 75 and *People v. Barton* (1978) 21 Cal. 3d 513 at pp 517-518.

Any Denial for an Evidentiary hearing by any Court of Review will always be Prejudice and have a negative **Prejudicial Miscarriage of Justice Chill Effect** and where no effort to grant one can [n]ever be deemed a harmless error. This position is very correct and tantamount/Akin to a Review for a DNA Request for a defendant to prove his innocence position that where there is reason to doubt or believe a matter at issue, there [MUST] be a sound mind of peace for the prejudice party, the defendant. Where the Judgment is Invalid it must be voided and Reversed.

- 30) When a defendant is seeking relief as a “**class of one**” under traditional Equal Protection Analysis and when the appeal record [is both] Silent and Devoid of post historical facts, Is it still a “**Fundamental Miscarriage of Justice**” and a Violation of a defendant’s Federal and State Constitutional Due Process Rights for the state appellate court Justices to not address the Equal Protection issues raised by the defendant by & through a Habeas Corpus or Mandate Petition??? (*Willowbrook vs. Olech* (2000) 528 US 562, 564; and *SeaRiver Maritime vs. Mineta* (9th Cir. 2002) 309 F. 3d 662.)
- 31) When a defendant raises his long standing claim of his “**Actual and Factual Innocence**” and offers proof that he can demonstrably prove his Factual Innocence without the help from the [Devoid Silent Record] on Direct Appeal, was it **Prejudicial** and another “**Fundamental Miscarriage of Justice**” and a Violation of the defendant’s Federal and State Constitutional Due Process Rights for the state court Justices’ to refused to “**Take a Second Look**” as required in *McQuiggin vs. Perkins* (2013) 133 S. Ct

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- 1) **Governor Edmund Gerald Brown, Jr.** State of California Capital Building
Room 1173, Sacramento, California 95814
- 2) **Attn. Xavier Becerra** – Atty. General's Office, 300 S. Spring St. 1st. Floor
Los Angeles, California 90013
- 3) **Supreme Court of California**, 350 McAllister Street, Room 1295,
San Francisco, California 94102-4797
- 4) **Second Appellate District Court**, Ronald Reagan Building, 300 S. Spring
Street, 2nd Floor – North Tower, Los Angeles, California 90013-1204
- 5) **Ventura County Superior Court**, 800 S. Victoria Ave., Government Ctr.
Ventura, California 93006
- 6) **Ventura County District Attorney's Office**, 800 South Victoria Ave.,
Ventura, California 93006
- 7) **Briand Williams, c/o BRB WMS-LOGAN-ESQ.**, 9025 Wilshire Blvd.
Penthouse Suite 500, 5th Floor, Beverly Hills, California 90211-1867

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OTHER

ORIGINAL
PL. '98

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the SECOND APPELLATE DISTRICT COURT court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

ORIGINAL
PG. "9"

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was September 26th 2018
A copy of that decision appears at Appendix A _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

ORIGINAL
PC 28

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statute of Limitations (1935) 23 Cal. L. Rev. at pp 525-527;

United States Constitutions' **VI Amendment**

United States Constitutions' **XIV Amendment**

Cal. Const. Art. I, Sec. 7, subd (a) (b)

California Constitution Article I, §13 & §15

STATEMENT OF THE CASE

Back on **December 19th, 2004** in Simi Valley Petitioner made a single purchased transaction for a "2005 Kia Sedona Van-Ex Model" using the Cash Rebate Check and his Insurance Coverage Check as a down payment.

In **January 2005** and unbeknown to Petitioner herein a Judge out in the Ventura County Superior Court (VCSC) had issued a warrant for the Petitioner's arrest for one (1) count each of the following three (3) charges: **Count (1)** §532(a) PC; **Count (2)** §487(d) (1) PC; and **Count (3)** §530.5(a) PC.

On or about and sometime between **November 8th, 2008 and December 12th, 2008** the Prosecution pursuant to **PC §1009** had Dismissed the charge "**§532(a) PC**" against the Petitioner one year after the **Statute of Limitations** had already expired the prior year on **December 19th, 2007** for an alleged crime allegedly committed on **December 19th, 2004**.

Upon this Dismissal the new charges became **Count (1)** §530.5(a) PC and **Count (2)** §487(d)(1) with no other further counts being added, But after eight (8) subsequent years to the expiration of the Statute of Limitation Period (See **Cal. Penal Code §801, §804(c) (d)** and **The Law Revision Commission's Reference to the Model Pen. Code §1.06 subd (5)**) and the **Statute of Limitations** (1935) 23 Cal. L. Rev. at pp 525-527).

On **August 26th, 2016** the District Attorney re-files the prior dismissed charge **§532(a) PC** by forcing the VCSC Computer System to re-accept this prior dismissed charge that was already dismissed eight (8) years prior and was now being reinstated [way] outside of the **Statute of Limitations Timeline**.

On **August 31st, 2016** in the Santa Monica Courthouse in Dept. "R" Petitioner was appearing for his own Unlawful Detainer Hearing that went well into the afternoon hours in the Case of **Hillcrest Manor, LLC vs. Williams Case No 16R0356**. Petitioner herein was also ordered to return back to this court on the following Tuesday, the day after Labor Day on **September 6th, 2016**.

After becoming homeless and without transportation the courts in both Los Angeles and Ventura County had issued bench warrants for the following Case Nos. **BA443387** and Case No **#2005043349**; for **FTA** while Petitioner had been roaming the streets on through the end of 2016 and thereafter the New Year in 2017 was arrested after becoming homeless due to the constant revoking of his bail for no logical reasons by the Los Angeles Superior Court Judge in Case No. BA443387.

After twelve (12) very long exasperating turmoil experience years of experiencing firsthand of a Pervasive Judicial System out in Ventura County, On **April 17th, 2017** while in the LASD custody and using the (in) Jail Mailbox Rule, Petitioner filed his first (1st) and Original **§1381 PC Demand** for Trial Motion and had hand delivered his signed and dated document over to a Deputy Jail Sheriff to sign

and mail on Petitioner's behalf. (See, *Houston v. Lack* (1988) 487 US 266; *Miles v. Prunty* (9th Cir. 1999) 187 F.3d 1104; *Huizar v. Carey* (9th Cir. 2001) 273 F. 3d 1220, 1220; *Moore v. Twomey* (2004) 120 CA 4th 910 and *Silverbrand v. County of Los Angeles* (2009) 46 C. 4th 106.)

This was done to give Ventura County a head start to come and get Petitioner. Filing the **§1381**, that early is only considered "A Premature Notice" Akin and Tantamount to a Premature Appeal under **CRC-Rules** 8.104 subd (d)(1)(2) and **CRC-Rule** 8.308(c) until the Immediate Entry of Judgment is entered in the Permanent Minutes under **CRC-Rule** 8.104 subd (c)(2) (See, *In re Gray* (2009) 179 CA 4th 1189, 1200; *People v. Rapp* (1966) 64 Cal. 2d 643.)

Then approx forty-five (45) days from April 11th, 2017 Petitioner had sent both the VCSC DA's Office and the Master Calendar courtroom Judge another courteous 2nd **§1381**. There is No! Case law saying that Petitioner's first (1st) one was considered No! Good under the Local CRC-Rules.

On *June 21st, 2017* Petitioner was transferred to Wasco State Prison and once Petitioner's ninety (90) days was up from *May 8th, 2017* (or longer from *April 11th, 2017* relatively speaking) but by the time Petitioner was in Department 14 on August 10th, 2017 Petitioner's §1382 Dismissal Motion had already been received by the District Attorney and a copy was already filed stamped within the Master Calendar Courtroom Judge earlier in that very same week before the Petitioner, herein had to be wheelchair lifted and transferred out to Ventura County. Petitioner had made it on the bus but the VCSC D.A.'s office missed their own.

On *August 10th, 2017* Petitioner had immediately moved for Dismissal of the Ventura County Charge(s) from *August 26th, 2016*, but the Presiding Judge kept trying to play word games with the Petitioner to continue the matter, or waive time, but the Petitioner dept refusing. Petitioner even told the Judge that he had a Private Attorney on Record and that Petitioner's Attorney has to be here to represent Petitioner and that's when the DA said that he would get "Mr. Casselman" on the phone to appear for the *August 14th, 2017* **§1382** Motion to Dismiss Hearing.

On *August 14th, 2017* Petitioner's Attorney Mr. Casselman had argued with the very same Judge in Dept 14 to discuss the case and expressed why the record before the Judge had put the matter on second cal, and two (2) hours later it was sent out to be argued again for the third time, where it ended up in Judge Jeffrey G. Bennett's courtroom, who himself had once before ["**RECUSED**"] himself before in this case but on a different issue that had came before him. It was illegal for this Judge to hear the issue.

Now during the three (3) different court hearings regarding the following **§§1381 and 1382** Motions; during the on the record colloquy, the District Attorney never denies receiving the three (3) separate motions. The District Attorney's Office just did not act on them plus the Court had copies as well.

This Court needs a Copy of the Sixteen Pages (approx) Plea-Agreement that the Petitioner had signed for a **"Time Served" Deal for Twelve (12) months not a two year prison sentence at One-Third (1/3) time with parole.** Penal Code §1192.5 subds (1)(2)(3) and §1192.6 subds (a)(b)(c) were all (both) Violations of Petitioner's Due Process and Equal Protection. (See, *People v. Tang* (1997) 54 CA 4th 669, 677; *People v. Cardoza* (1984) 161 CA 3d 40 [N*4]; (PC§§1192.1 and 1192.2) *People vs. Calloway* (1981) 29 Cal.3d 666; *Santobello vs. N.Y.* (1971) 404 US 257 at p. 262; US vs. Brown (1974) 500f. 2d 375. The trial court breach the written **8/26/2016 Plea Agreement** and the sentence was totally *disproportionate* to the signed plea bargain. (*People vs. Buttram* (2003) 30 Cal. 4th 773; *People vs. Panizzon* (1996) 13 Cal. 4th 68, 73, 78; and *Cunningham vs. California* (2007) 549 US 270.

Petitioner has a right to appeal the denial of one thousand five hundred and thirty-eight days of presentence credit owed and due to him. (*People vs. Delgado* (2012) 210 Cal. App. 4th 76) and the Illegal Imposed Restitution, Fee, Fines, etc... (*People vs. Crandell* (2007) 40 Cal. 4th 1301, 1308-09) as well as to appeal the denial of Petitioner the Right to a Guaranteed Right of a Adequate Competent Active Advocate under the United States Constitution 6th and 14th Amendments and the Petitioner was further deprived by Mr. Casselman.

Petitioner, would not and should not have been sentenced or serving anytime with 1,538 actual days of presentence credit and doubled up to be 3,076 pre-sentenced credits pursuant to §4019 PC, If Mr. Gary S. Casselman had been Focus, Ferocious and Zealous in his client's (petitioner's defense) Petitioner would not have been jailed. What type of an Attorney would have their client plead to an expired charge?

The trial court was immediately without Jurisdiction to prosecute at all any new, additional, revised or amended charges after the clock to prosecute began to run back in January 2005 pursuant to PC §804(d) when the arrest warrant had been issued. Further, See **The Law Revision Commission's Reference to the Model Pen. Code §1.06 subd (5);** The *Statute of Limitations* (1935) 23 Cal. L. Rev. at pp 525-527; and see, *People v. McGee* (1934) 1 Cal. 2d 611,613; *In re Davis* (1936) 13 CA 2d 109,111; *People v. Crosby* (1962) 58 Cal. 2d 713,724-725; *People v. Rose* (1972) 28 CA 3d 415 417; *In re Demillo* (1975) 14 Cal. 3d 598; *Kellett v. Sup. Ct.* (1966) 63 Cal. 2d 822; *Sanders v. Sup. Ct.* (1999) 76 CA 4th 609,617; *People v Chapman* (1975) 47 CA 3d 597; *People v. Angel* (1999) 70 CA 4th 114; *In re Harris* (1993) 5 Cal. 4th 813; *People v. Brice* (1988) 206 Cal. App. 3d 111 & *People v. Lynch* (2010) 182 CA 4th 1262. Once the District Attorney **dropped** the original count (1) PC §532(a) in November 2008, **they lost that Jurisdiction and the ship sailed.**

As **CRC-Rule 8.304 subd (a)(4) states:** The NOA **"MUST BE LIBERALLY CONSTRUED."** Petitioner had written down very clearly what he was appealing when the CR-120 Felony Form was filed back in **October 2017**. "As will be seen, the duty of an appointed appellate counsel is not to argue against the client is "Pivotal" ..." (*In re Andrew B.* (1995) 40 Cal. App. 4th 825, [m14]) See **"ABA Model Rules of Professional Conduct Rule 1.16."**

REASONS FOR GRANTING THE PETITION

Because it would be the right concise act to do in light of the information presented herein, and Pursuant to Rule 20.4(a); *Picard vs. Connor* (1971) 404 US 270, 275; *Taylor vs. Lewis* (9th Cir 2006) 460 F.3d 1093, 1097 **HN4** and *Hovey vs. Ayers* (9th Cir. 2006) 458 F.3d 892, 901-902.

“A denial by a State Court of a Writ of Habeas Corpus to one who claims that the judgment under which he is imprisoned was rendered in violation of his Constitutional Rights is review by the Supreme Court of the United States as necessarily involving a Federal Question. State Court’s, equally with Federal Courts, are under an obligation to guard and enforce every right secured by the Federal Question.” *Smith vs. O’Grady* (1941) 312 US 329, 334.

“An accused may have been denied the assistance of counsel under circumstances which constitute an infringement of the United States Constitution. If the State affords No! Mode for redressing that wrong, he may come to the Federal Courts for relief...” *Carter vs. Illinois* (1946) 329 US 173, 174-175 **HN6**.

In *Bowen vs. Johnson* (1939) 306 US 19-30 **HN9, 10** citing: “*Ex parte Nielsen* (1889) 131 US 176, 183 [33 L. Ed 118, 120, 9 S. Ct. 672] and the remedy of Habeas Corpus may be needed to release the prisoner from a punishment imposed by a court manifestly without Jurisdiction to pass judgment. It **[MUST]** **[n]**ever be forgotten that the Writ of Habeas Corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired. (See, also *In re Bonner* (1894) 151 US 242, 26.)”

Ex parte Lange (1874) 85 US 163, “The rule requiring resort to appellate procedure when the trial court has determined its own jurisdiction of an offense is not a rule denying the power to issue a Writ of Habeas Corpus when it appears that never the less the trial court was without jurisdiction. The rule is not one defining power but one which relates to the appropriate exercise power.” “Throughout the Centuries the Great Writ has been the shield of personal freedom insuring liberty to persons illegally detained. Respecting the state’s grant of a right to test their detention, the Fourteenth Amendment weighs the interest of rich or poor criminals in equal scale, and its hand extends as far to each.” *Smith vs. Bennett* (1961) 365 US 708, 713 **HN9**.

Miller vs. Pate (1967) 386 US 1 **N2**, “More than 30 years ago this court held that the Fourteenth Amendment cannot tolerate a State Criminal Conviction obtained by the knowing use of false evidence. *Mooney vs. Holohan* (1935) 294 US 103. There has been **No!** Deviation from that established principle. *Napue vs. Illinois* (1959) 360 US 264; *Pyle vs. Kansas* (1942) 317 US 213; cf. *Alcorta vs. Texas* (1957) 355 US 28. There can be no retreat from that principle here.”

“The United States Supreme Court holds allegation of a pro se complaint to less stringent standards than formal pleadings drafted by lawyers. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove No! Set of facts in support of his claim which would entitle him to relief.” “We conclude that he is entitled to an opportunity to offer proof.” *Haines vs. Kerner* (1942) 404 US 519 **HN 1, 2, 3**.

As Chief Justice Burger has written: “[Under] our adversary system an Appellate Court cannot function efficiently without lawyers to present whatever there is to be said on behalf of an appellant, however meager his claims may be, So that the court can make an informal appraisal.” (*Johnson vs. United States* (1966) 360 F. 2d 844, 847 [124 App. D.C. 29] concurring opinion.) Cited In *People vs. Smith*, (1970) 3 Cal. 3d 192.

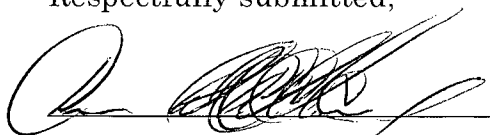
“The Sixth Amendment Right to Counsel is the right to the effective assistance of counsel.” *McMann vs. Richardson* (1970) 397 US 759, 771 **N*14**, 90 S. Ct. 1441, 25 L. Ed. 2d 763

ORIGINAL
PG. 25

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "C. R. Smith", is written over a horizontal line.

Date: December 20th, 2018