SUPREME COURT OF THE

UNITED STATES

MICHAEL ANTHONY VICTORY,

Plaintiff-Appellant,

V.

BOARD OF PAROLE HEARINGS and JENNIFER SHAFFER, Director of Board of Parole Hearings,

Defendants-Appellees.

CASE NO. 18-8397

D.C. No. 2:16-cv-00997-WBS-CKD
Eastern District of California, Sacramento.
USCA No. 17-15953
For the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI

WITH MEMORANDUM OF POINTS AND AUTHORITIES

WITH EXHIBITS IN SUPPORT THEREOF.

MICHAEL VICTORY P-07048
CSP-SOLANO
Fac.-C, Bldg.# 14-13-4-Low
P.O. BOX 4000
VACAVILLE, CA 95696
In Pro Per

QUESTIONS PRESENTED FOR REVIEW

(1) DID DEFENDANTS ENGAGE IN A SUB-ROSA POLICY THAT SYSTEMICALLY AND/OR INDIVIDUALLY IMPOSE PRE-DETERMINED & PRO FORMA DECISIONS DENYING PAROLE BY A QUASI-JUDICIAL PANEL THAT IS NOT AN IMPARTIAL NEUTRAL DECISION-MAKER TOWARDS 99.6% OF A CLASS OF PLAINTIFFS APPEARING AT THEIR INITIAL PAROLE HEARINGS IN CONFLICT WITH MURCHISON (1955, USSC), LARKIN (1975, USSC), McCLURE (1982, USSC), BALISOK (1997, USSC), PURSUANT TO THE CALIFORNIA CONST. ARTICLE 1. §§ 7, 15, 24 AND THE UNITED STATES CONST. 5TH, 6TH AND 14TH AMENDMENTS?

(2) DOES CALIFORNIA'S PENAL STATUTE §5011(b) AND CALIFORNIA CODE OF REGS. §2236 CREATE STATE AND FEDERAL CONSTITUTIONAL RIGHTS THAT PROHIBIT COMPELLING A LIFE TERM PAROLEE TO ADMIT GUILT AND BE A WITNESS AGAINST HIMSELF CONFLICT WITH GRIFFIN (1965, USSC), GREENHOLTZ (1979, USSC), MURPHY (1984, USSC), SWARTHOUT (2011, USSC) AND THE CALIFORNIA CONST. ARTICLE 1. §§ 7, 15, 24 AND THE UNITED STATES CONST. 5TH, 6TH AND 14TH AMENDMENTS?

(3) DID THE USCA DECISION ERRONEOUSLY BAR PLAINTIFF'S CLAIMS THAT RAISED BOTH STATE AND FEDERAL CONSTITUTIONAL VIOLATIONS AS BEING BARRED UNDER A "SOME EVIDENCE" OR "AS APPLIED ANALYSIS" PURSUANT TO HECK (1994, USSC) AND BUTTERFIELD (1997, 9TH CIR.); CONFLICT WITH WILKINSON (2005, USSC), SKINNER (2011, USSC), SWARTHOUT (2011, USSC) AND NETTLES (2016, 9TH CIR.), WHEN PLAINTIFF'S CLAIMS DID NOT RELY ON "SOME EVIDENCE" OR A REMEDY THAT WOULD RESULT IN AN ORDER FOR "IMMEDIATE OR SPEEDIER RELEASE INTO THE COMMUNITY."?

(4) DID THE USCA PANEL'S RELIANCE ON THE ROOKER-FELDMAN DOCTRINE ERRONEOUSLY BAR PLAINTIFF'S CLAIMS RAISED UNDER THE DOCTRINES OF: (1) mootness; (2) capable of repetition yet evading review; (3) res judicata; (4) collateral estoppel; (5) law of the trial; and (6) harmless error; CONFLICT WITH BROWN (1953, USSC), SIBRON (1968, USSC), CHAPMAN (1967, USSC), CHAMBERS (1973, USSC) AND

QUESTIONS PRESENTED (Cont.)

BRECHT (1993, USSC) PURSUANT TO BOTH THE CALIFORNIA CONST. ART. 1. §§ 7, 15, 24, 28(d) AND THE UNITED STATES CONST. 5TH AND 14TH AMENDMENTS?

(5) DID THE USCA PANEL'S RELIANCE ON "ABSOLUTE QUASI-JUDICIAL IMMUNITY" AND THE ROOKER-FELDMAN DOCTRINE ERRONEOUSLY BAR PLAINTIFF'S CLAIMS OF HIS STATE AND FEDERAL RIGHT TO EXERCISE A "PEREMPTORY CHALLENGE" AGAINST A STATE TRIAL JUDGE WHO IS PREJUDICED CONFLICT WITH: CCP §170.6 AND 28 USC §§ 144, 455; MURCHISON (1955, USSC), TAYLOR (1974, USSC), LARKIN (1975, USSC), McCLURE (1982, USSC), CANTON (1989, USSC), BALISOK (1997, USSC) AND THE CALIFORNIA CONST. ART. 1. §7 AND THE UNITED STATES CONST. 14TH AMENDMENT?

(6) DID THE USCA PANEL'S RELIANCE ON HYUNDAI (2018, 9TH CIR.) ERRONEOUSLY BAR PLAINTIFF'S ABILITY TO APPLY FOR CLASS CERTIFICATION WITHIN THE 42 USC §1983 CIVIL COMPLAINT; CONFLICT WITH THE PROVISIONS UNDER FRCP 23, EISEN (1974, USSC), PITTS (2011, 9TH CIR.) AND THE CALIFORNIA CONST. ART. 1. §7 AND THE UNITED STATES CONST. 14TH AMENDMENT?

(7) DID THE USCA PANEL'S DECISION ERRONEOUSLY BAR PLAINTIFF "LEAVE TO AMEND" THE 42 USC §1983 CIVIL COMPLAINT WHEN THE CLAIM(S) ALLEGED SUFFICIENT FACTS TO SHOW THERE REMAINED "GENUINE ISSUES OF MATERIAL FACT THAT REMAIN IN DISPUTE AND ARE TRIABLE"; CONFLICT WITH ESTELLE (1976, USSC), ERICKSON (2007, USSC), CALDWELL (2018, 9TH CIR.) AND THE UNITED STATES CONST. 14TH AMENDMENT?

TABLE OF CONTENTS

TABLE OF CONTENTS (Cont.)

TABLE OF CONTENTS (Cont.)

TABLE OF AUTHORITIES

FEDERAL CASES — **PAGE**

TABLE OF AUTHORITIES (Cont.)

TABLE OF AUTHORITIES (Cont.)

TABLE OF AUTHORITIES (Cont.)

TABLE OF AUTHORITIES (Cont.)

TABLE OF EXHIBITS

TABLE OF EXHIBITS (Cont.)

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SUPREME COURT OF THE

UNITED STATES

MICHAEL VICTORY,
Plaintiff-Appellant,

V.

BOARD OF PAROLE HEARINGS,
Defendants-Appellees.

CASE NO. _____
Case No. 2:16-cv-00997-WBS-CKD
Eastern Dist. Calif. Sacramento
Case No. 17-15953
U.S. Court of Appeal 9th Cir.
PETITION FOR WRIT OF CERTORARI W/MEMO. OF P&A W/EXHIBITS IN SUPPORT THEREOF.

STATEMENT OF JURISDICTION

I, Michael Victory, Plaintiff in the above entitled action seeks Petition for Writ of Certiorari in this Court pursuant to USSC Rule 12. Plaintiff is proceeding in forma pauperis and in pro per as plaintiff is currently confined in a California institution. (Rule 12(2)). Plaintiff's claims received a judgement before the Eastern District Court of California (Sacramento) on 4-13-2017 (See Exhibit-5, Case No. 2:16-cv-00997-WBS-CKD). Plaintiff filed an appeal to the Court of Appeals for the Ninth Circuit and received a judgement on 6-20-2018 affirming the district court's Order (Exhibit-6, case No. 17-15953). Plaintiff filed a petition for rehearing en banc in the Court of Appeal and was denied a rehearing on 11-2-2018 (Exh.-7, Case No. 17-15953).

This Court has jurisdiction over the federal District Courts and the Court of Appeals which are inferior courts under the U.S. Supreme Court to review the adjudications of said courts that raise a violation of the U.S. Constitution. i.e. Fifth and Fourteenth Amendments. (Rule 14(1)(e)(iv)). All federal questions have been exhausted through both the state and federal courts pursuant to PLRA. (See Tables of: "Exhibits" and "Attachments"), (42 USC §1983; Rule 10(c))). Both the State Supreme Court of California and the Court of Appeals for the

Ninth Circuit have decided an important federal question in a way that conflicts with relevant decisions by this Court; and federal questions that have not been, but should be settled by this Court. (28 USC §1254(1); Hiat-v-Brown (1950) 399 US 103, 94 L Ed 691).

CONSTITUTIONAL PROVISIONS

U.S. Const. 5th Amend.:

"No person shall be...compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;"

U.S. Const. 6th Amend.:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

U.S. Const. 14th Amend.:

"...No state shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Calif. Const. Art. 1. §7:

"(a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th

Amendment to the United States Constitution..."

Calif. Const. Art. 1. §15:

"The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy of the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law."

Calif. Const. Art. 1. §24:

"Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.

In criminal cases the rights of a defendant to equal protection of the laws, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront witnesses against him or her,...to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel and unusual punishment, shall be construed by the courts of this State in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States,..."

Calif. Const. Art. 1. §28(d):

"(d) Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the legislature, relevant evidence shall not be excluded in any criminal proceeding, including

pretrial and post conviction motions and hearings,...Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103..."

Calif. Penal Statute:

PC §5011(b): "The Board of Prison Terms shall not require, when setting parole dates, an admission of guilt to any crime for which an inmate was committed."

Calif. Code of Regulations:

CCR §2236: Prisoner's Version. "...The board shall not require an admission of guilt to any crime for which the prisoner was committed. A prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available and the refusal shall not be held against the prisoner..."

CCR §2250: Impartial Hearing Panel. "A prisoner is entitled to a hearing by an impartial panel. A prisoner may request the disqualification of a hearing panel member or a hearing panel member may disqualify himself.

(a) Grounds for disqualification. A hearing panel member shall disqualify himself in the following circumstances:...(3) The hearing panel member is actually prejudiced against or biased in favor of the prisoner to the extent that he cannot make an objective decision."

Calif. Code of Civil Procedure:

CCP §1170.6(a)(1): "A judge,...of a superior court of the State of California shall not try a civil or criminal action or special proceeding of any kind of character nor hear any matter therein that involves a contested issue of law or fact when it is established as provided in this section that the judge... is prejudiced against a party or attorney or the interest of a party or attorney appearing in the action or proceeding."

CCP §1170.6(a)(4): "If the motion is duly presented, and the affidavit or

declaration under penalty of perjury is duly filed or an oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge,...to try the cause or hear the matter...no party..shall..make more than one such motion."

United States Code:

42 USC §144: Bias or Prejudice of Judge: "The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than 10 days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith."

Federal Rules of Civil Procedure:

FRCP Rule 23(1) Determination: "Within such time as the court may direct pursuant to order issued under FRCP 16(d), the plaintiff shall move for a determination under FRCP 23 whether the action is to be maintained as a class action. In ruling on the motion, the court may allow or conditionally allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery of such other preliminary procedures as appear appropriate and necessary."

FRCP Rule 23(g)(3) Class Counsel: "Interim Counsel. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action."

STATEMENT OF CASE

Plaintiff appeared before the California State Board of Parole Hearings on 2-5-2013 for his Initial Hearing as a life term prisoner. The parole panel denied plaintiff parole and scheduled his next hearing in 5-years. (See Attch. BPH Trans. at pp. 182-196.). Plaintiff was represented by Marc E. Norton, Esq.

Plaintiff filed a petition for writ of habeas corpus in the Santa Clara County Superior Court in 2014 raising ALL of the claims asserted within this Petition for Writ of Certioari. On 11-14-2014, the trial court issued its ruling without an Order to Show Cause (OSC) and denying ALL of plaintiff's claims. (Exh.-1, Case No. 198955).

Plaintiff filed another petition in the state Court of Appeals for the 6th District raising ALL of the claims asserted in the trial court. The Court of Appeals provided a summary denial on ALL of plaintiff's claims. (Exh.-2, Case No. H042450).

Plaintiff filed another petition in the State Supreme Court raising ALL of the claims asserted in the trial court. Throughout all filings in the state courts, plaintiff's claims cited state and federal constitutional authorities. On 4-20-2016 the State Supreme Court provided a summary denial on ALL of plaintiff's claims. (Exh.-3, Case No. S231215).

On 5-11-2016, plaintiff filed a 42 USC §1983 Civil Complaint in the USDC Eastern District of California (Sacramento) raising only **six** of the orginal twelve claims raised in the state courts. Plaintiff withdrew **six** claims that solely relied on state constitutional grounds pursuant to Swarthout-v-Cook (2011) 562 US 216 [Per Curiam]. On 11-4-2016, the magistrate judge issued a Findings & Recommendations to dismiss ALL claims. (Exh.-4, Case No. 2:16-cv-00997-WBS-CKD).

On 4-4-2017, plaintiff filed his Objections to the F&R regarding ALL claims with reliance of the Federal Constitution and federal authorities. On 4-13-2017, the District Judge issued an order adopting ALL of the magistrate judge's F&R. (Exh.-5, Case No. 2:16-cv-00997-WBS-CKD).

On 5-9-2017, plaintiff filed a timely Notice of Appeal in the District Court. The U.S. Court of Appeals for the 9th Circuit granted plaintiff permission to proceed with in forma pauperis status. On 1-16-2018, plaintiff

filed his Opening Brief raising ALL of the six claims raised in the District Court. On 6-20-2018, the Court of Appeals panel issued an Order Affirming the District Court's Order regarding ALL six claims. (Exh.-6, Case No. 17-15953).

On 7-5-2018, plaintiff filed a Petition for Rehearing in the Court of Appeals regarding ALL six claims raised within his Opening Brief. On 11-2-2018, the Court of Appeals Circuit Judges denied plaintiff's petition for rehearing. (Exh.-7, Case No. 17-15953).

CLAIM #1:

The panel's decision relies on Swarthout-v-Cooke (2011) 562 U.S. 216 at 220 as precedence and Stare Decisis that plaintiff's due process rights were NOT violated on the basis plaintiff "failed to allege facts sufficient to show that the parole hearing denied him due process, including: [1] "an opportunity to be heard; [2] a statement of the reasons why parole was denied." (Exh.-6 at p.2).

Firstly, Swarthout was a per curiam decision with reliance on Greenholtz-v-Inmates of Nebraska Penal & Corr. Complex (1979) 442 U.S. 1, 16. The gravamen of the claims raised in Swarthout stemmed from a "some evidence rule of judicial review". A procedure BEYOND what the Constitution demands. Plaintiff's claim(s) NEVER raised a claim under the "some evidence" standard protected under the California Constitution's Due Process Clause (Art. I. §7). Both Swarthout and Greenholtz's rulings or dicta, did not bar a plaintiff from asserting other types of violations that are still protected under the U.S. Constitution, i.e. Forced to admit guilt or compelled to be a witness against oneself (5th Amend.); Cruel and unusual punishment (8th Amend.); Ex post facto clause, Equal protection or Discrimination, Appear before a neutral decision-maker (14th Amend.). Any one of which carries with it questions of exceptional importance and rules of national application and/or uniformity in states that adopt legislation that permits prisoners to engage in parole process.

Secondly, the panel's decision makes no concise statement that plaintiff HAS or DOES NOT HAVE 5th Amend. protections during a parole hearing, whether those protections are dependent on a particular state's adopting specific legislation, as the case here under Penal Code §5011(b) and Calif. Code of Regs. §2236 (Opening Brief (O.B.) at pp. 4-7, 16, 19-59). The panel's decision ambiguously defines plaintiff's claims as "as-applied challenges" with no reference to or argument against plaintiff's citations to Minnesota-v-Murphy (1984) 465 U.S. 420, 426, 435; Miranda-v-Arizona (1967) 384 U.S. 436; Griffin-v-

California (1965) 380 U.S. 609, 615; U.S.-v-Antelope 395 F.3d 1128, 1133, 1138-1139 (9th Cir. 2004); Jones-v-Mendoza-Powers 443 Fed. Appx. 253 (9th Cir. 2011). Plaintiff asserts these cases & their progeny have been overlooked. (Exh.-6).

Thirdly, assuming the panel DID consider the ruling in Murphy, the circumstances in plaintiff's claims varies widely from those circumstances set forth in Murphy. Murphy was not incarcerated and serving out the remaining of his term as a probationer when he voluntarily attended an interview with his probation officer. A meeting in which he was free to leave and/or refuse to answer questions without his attorney present. For all intents and purpose, the USSC ruled Murphy did not invoke a protection under the 5th Amend. In plaintiff's case, he was incarcerated and therefore his liberty was at stake during the 2013 parole hearing. Plaintiff retained counsel in advance and was advised by counsel to NOT TO ADMIT GUILT per PC §5011(b); and not to be compelled to be a WITNESS AGAINST HIMSELF by talking about the commitment offense per CCR §2236. California legislature mandates that the exercise of these rights during a parole hearing does not infringe on being found suitable for parole and CANNOT be held against the inmate. (Murphy, supra. at 424-427, fn.3). There is a vast difference in a probationer who elects to utter incriminating statements about compliance with probation conditions, than an inmate being re-tried and deprived of his liberty by a quasi-judicial panel. (See recent case of U.S.-v-Misraje 2018 DJDAR 3831 (9th Cir. 5-1-18); also People-v-Flint 2018 DJDAR 3964 (C.A.1/4, 5-2-18) ["Under both the U.S. and Calif. Constitutions, a person has the right to refuse to answer potentially incriminating questions put to him or her in any proceeding; in addition, the defendant in a criminal proceeding enjoys the right to refuse to testify at all." citing PC §1026.5(b)(7)]). The panel's decision completely overlooks the critical difference that plaintiff was advised by counsel at his Trial by Jury in 1998 to exercise his rights under the 5th Amend. NOT TO TESTIFY or admit guilt to any particular felony. (Exhs.-8 thru 11).

Fourthly, the panel's decision is not concise and/or in conformity to the recent case of Nettles-v-Grounds 830 F.3d 922 (9th Cir. 2016 (en banc). A ruling that supports plaintiff's claims WILL NOT result in "immediate or speedier release" if granted the remedy of a new parole hearing. (Id. at 930). It may appear as though the panel's decision relied on the District Court citation to Heck-v-Humphrey (1994) 512 US 477 and Butterfield-v-Bail 120 F.3d 1023, 1024 (9th Cir. 1997), despite the panel's reliance on Wilkinson-v-Dotson 544 US 74, 81-82. If there was such clearity with no conflicts on filing under §1983 and immediate or speedier release (as applied to plaintiff), there would have been no need for the initial ruling and/or the en banc ruling in this court. Nor did the panel's decision reflect the supporting facts that plaintiff's new parole hearing could still be denied on similar factors as in 2013, i.e. lack of insight, lack of remorse, lack of responsibility, severity of offense. (Id. omitted). (See Exhibit-6 at p.2). In such a circumstance, if plaintiff were successful it would NOT "necessarily demonstrate the invalidity or confinement or its duration." (Wilkinson, supra. at 81-82).

Fifthly, the panel's decision does not concisely address with ANY clarity if plaintiff has a protected constitutional right to an impartial neutral decision-maker that has NOT engaged in a pre-determined decision that directly impacts plaintiff's liberty. (Exh.-A at p.2). This federally protected right properly falls under the preview of the 14th amend. The panel's decision appears to encompass the adjudication of this right by citation to the per curiam decision of Swarthout. Thus overlooking and not addressing the stare decisis set forth by the USSC decades in the past. None of which has been overturned due to the 2011 Swarthout ruling. (See In Re Murchin (1955) 349 US 133, 136; Withrow-v-Larkin (1975) 421 US 35; Schweiker-v-McClure (1982) 456 US 188, 195; O'Bremski -v-Maas 915 F.2d 418, 422-423 (9th Cir. 1990); Stivers-v-Pierce 71 F.3d 732, 741 (9th Cir. 1995); Edwards-v-Balisok (1997) 520 US 641, 648).

Sixthly, since the panel's decision elected not to allow plaintiff to provide credible factual support [deemed to be true until contested], the panel DID NOT review the declarations, transcripts or documents that directly support the 2013 parole panel engaged in a pre-determined decision. (Exh.-6 at p.3; O.B. at pp. iv.-vii., 5-7, 19-38, citing, Gibson-v-Berryhill (1973) 411 US 564, 578; Taylor-v-Hayes (1974) 418 US 488, 501-504; Exxon Corp.-v-Heinz 32 F.3d 1399, 1403 (9th Cir. 1994); Stivers-v-Pierce 71 F.3d 732, 741 (9th Cir. 1995)). This question has exceptional national importance in seeing that quasi-judicial tribunals [i.e. parole panels], are not permitted to engage in such pro forma decisions by withholding a plaintiff's right to liberty. A right not addressed within the Swarthout or Greenholtz USSC rulings. (Exh.-12).

Seventhly, the panel's decision completely omits a concise ruling and citations regarding plaintiff's claim the 2013 parole panel violated the 5th amendment by relying on unanswered questions by plaintiff that implicated guilt and/or compelled to be a witness against himself. Questions that only plaintiff would be able to answer under the conditions of waiving his 5th amendment rights ["Griffin error"] as is precedent in Griffin-v-California (1965) 380 US 609, 615. (Exh.-6 at p.2; O.B. at pp. 56-59, citing, Chambers-v-Mississippi (1973) 410 US 284; Hewitt-v-Helms (1983) 459 US 460, 472; Pratt-v-Rowland 65 F.3d 802, 807 (9th Cir. 1995). In plaintiff's case, the 2013 parole panel engaged in retaliatory behavior for plaintiff exercising the rights encompassed under BOTH the 5th and 14th amendment. In the least, the 2013 parole panel's arbitrary decision was to force plaintiff into a "Hobson's Choice", defined as: "A choice without an alternative." (Ballentine's Dict. 3d ed. (2002); See Pictorial Review Co.-v-Helvering 68 F.2d 766, 769 (D.C. Cir. 1934) [An election by compulsion or without freedom of choice is, as it is sometimes called, "Hobson's Choice"]. Also, People-v-Rubulloza (2015) 234 Cal. App. 4th 1065, 1073 (C.A.6), citing USSC Murphy. (Attch. BPH Trans. at pp. 12-14, 187-194).

CLAIM #2:

The panel's decision relied on the Rooker-Feldman doctrine that bars "de facto" appeal of a state court decision regarding several claims that are related to both the 2013 parole panel's decision and the state court's ONLY opinion by the Santa Clara County Superior Court on habeas corpus. The panel's decision classified these claims as "legal errors". (Exh.-6 at p.2; see O.B. at pp. 7-11, 60-86; Exhs. 11, 13 thru 16, Attch. BPH Trans. at pp. 14-16).

Firstly, the district court did not classify plaintiff's Res Judicata & Collateral Estoppel claim regarding the 2013 parole panel's violation of a previous Trial Court Order as being barred by the Rooker-Feldman doctrine. Instead, denying this claim under a Swarthout bar. (Exh.-4 at p.3, O.B. at pp. 60-66). Plaintiff's claim also asserted violations of "Double Jeoupardy" and "Capable of Repetition Yet Evading Review" doctrine. These claims were also raised in the state Trial Court under habeas corpus WITHOUT issuance of an Order to Showe Cause (OSC). The Panel's decision not only fails to be concise to these federally protected "legal errors", but omits recognizing the conflicting citation to Hubbart-Knapp 379 F.3d 773, 777-778 (9th Cir. 2004). An example of a plaintiff's §1983 complaint prevailing on such legal claims received an injunction to prevent "capable of repetition" of "deleterious" material when the USDC Eastern Dist. issued an injunction. (Ricchio-v-BPH Case No. 12-1318-LJO-DLB (9-11-2012). The "Capable of Repetition" doctrine brings with it several protections to limit the irreparable harm from being repeated at foreseeable future proceedings. (Biodiversity Legal Foundation-v-Badgley 309 F.3d 1166, 1173 (9th Cir. 2002); Sibron-v-New York (1968) 392 US 40, 52-53. The Rooker-Feldman doctrine is not absolute and conflicts with Brown-v-Allen (1953) 344 US 443, 463-465 [Holding that habeas litigation filed by state prisoners INCLUDE review by federal judges]. These conflicts were not addressed within the panel's decision and this claim involves questions of exceptional importance.

Secondly, the panel's decision brings no legal clarity as to why the "Mootness" doctrine is not a federally protected right when a violation occurs by the state Trial Court under habeas corpus. (Exh. 6 at p.2; O.B. at pp. 67-90). The Trail Court issued an Order (without OSC) asserting eleven out of the twelve claims raised under habeas corpus were "moot" without any articulated analysis or citation to state or federal points & authorities. The panel's decision left plaintiff with the same effect and in conflict with Cantrel-v-City of Long Beach 241 F.3d 674, 678 (9th Cir. 2001); Burnett-v-Lampert 432 F.3d 996, 1000-1001 (9th Cir. 2005). Here, plaintiff's claims can receive redress by a proper favorable court decision and/or an evidentiary hearing to present existing evidence and preserve critical testimony in a timely manner. Taylor-v-Terhune 366 F.3d 992, 1007-1008 (9th Cir. 2004). The Trial Court and panel's decision are in conflict with these decisions and not addressed in the opinion. These eleven claims involve questions of exceptional importance and involve genuine issues of a material facts that remain in dispute. Thus, substantially affecting the outcome of the claims raised and any resulting decision. (See the recent case of Caldwell-v-City of San Francisco, et al. 2018 DJDAR 4363 (9th Cir. 5-14-18)).

Thirdly, the panel's decision fails to address the "harmless error" analysis citations raised within plaintiff's claims. (Exh. 6 at p.2; O.B. at pp. 71-74). Plaintiff cited Brecht-v-Abraham (1993) 507 US 619, 637-639; Bains-v-Cambra 204 F.3d 964, 977 (9th Cir. 2000); Taylor, supra. at 1007-08 addressing the injurous effect or influence on the 2013 parole panel and/or lower court's decisions. When a quasi-agency [BPH] is acting under the confines of a judicial tribunal, it did not give deference to the "law of the trial". This is a cognizable claim pursuant to Hydrick-v-Hunter 449 F.3d 978, 989 (9th Cir. 2005). Both Chapman and Chambers (USSC) tests "must be based on our own reading of the record" (Chapman-v-Calif. (1967) 386 US 18, 24), and fair procedures transcends a specific type of adjudicatory proceeding (Chambers-v-Miss. (1973) 410 US 284).

CLAIM #3:

The panel's decision relied on "absolute quasi-judicial immunity" for the defendants (court clerks) named in plaintiff's §1983 complaint for a failure to promptly inform plaintiff of the identity of the "all purpose" judge assigned to rule on his state habeas petition. (Exh.-6 at pp. 2-3; O.B. at pp. 11-12, 91-102). Plaintiff being a layman at law was unaware of any other legally permissible defendant or state agency were not protected by immunity. Plaintiff was acting in pro per and both the Dist. Court and this Panel denied any "further leave to amend" (Exh-6 at p.3; O.B. at p.17). The crux of plaintiff's claim involved whether the federal right to a "peremptory challenge" is also recognized within a state court proceeding to insure plaintiff's claims are adjudicated before an impartial neutral decision-maker. (CCP §170.6; 28 USC §§ 144, 455).

Firstly, the panel's decision omits any concise analysis or citation that addresses the merits of a federally protected right to be adjudicated before an impartial decision-maker within a state court. Plaintiff provided citations to Murchison, Larkin, McClure, Balisok, Taylor (USSC); and O'Bremski, Stivers, Heinz, (9th Cir.), supra. in support of this critical constitutional right. The panel's reliance on an immunity defense or Swarthout bar does not usurp these protections. (see also Waggoner-v-Dallaire 649 F.2d 1362, 1370 (9th Cir. 1980)).

Secondly, the panel's decision omits any concise analysis or citations to both the state procedures that address the right to "peremptory challenge" (CCP §170.6); and those provided within the federal courts (28 USC §§ 144, 455). A proper analysis and briefings would reasonably reveal the state adopted a less onerous constitutional standard for reassignment of a judge, than the standards set forth in federal courts. Regardless, plaintiff asserts the panel's decision deprived plaintiff of a reasonable opportunity to assert and appeal that right. (Liteky-v-U.S. (1994) 510 US 540; See Brooks-v-Soto 2014 U.S. Dist. LEXIS 16814 (E.D. Cal. 2014); Barker-v-Fleming 423 F.3d 1085, 1091 (9th Cir. 2005)). (Exhs.-17 thru 19).

CLAIM #4:

The panel's decision relied solely on the Dist. Court's discretion to deny class certification based on citation to the "standard of review". (In Re Hyundai & Kia Fuel Econ. Litig. 881 F.3d 679, 690 (9th Cir. 2018); Exh.-6 at p.3; O.B. at pp. 1-3, 13-14, 19-37). The Dist. Court's F&R stated "Plaintiff seeks to litigate this claim as a class action; however, he has made no motion pursuant to FRCP 23 seeking to have the court certify this matter as a class action." (Exh.4, p.3). The panel's decision makes no concise statements regarding the legal and factual circumstances that are integral to plaintiff's layman pursuit of "seeking" class certification, i.e. proper notification, timely filing, interim counsel, etc.

Firstly, the panel's reliance on Hyundai, supra. is not on point to the circumstances plaintiff outlined within his claim from the start of filing his §1983 complaint application form. An application that prohibits citations and exhibits. Plaintiff had no notice he was to file a separate motion for class certification OR at what time to file AND under what FRCP. (Pitts-v-Terrible Herbst, Inc. 653 F.3d 1081 (9th Cir. 2011)).

Secondly, despite plaintiff's filing a Motion for Class Certification to the Dist. Court on 4-4-2017, subsequent to the issuance of the F&R on 11-4-2016, the Dist. Court Order on 4-13-2017 only stated: "Plaintiff's Motion for Class Certification (ECF No. 23) is denied" (Exh.-4, p.2). The Dist. Court's Order failed to provide any articulated reasoning for the basis on which to deny the motion and request for appointment of "interim counsel". The panel's decision merely adopted this inept ruling. Plaintiff cited Eisen-v-Carlisle & Jacquelin (1974) 417 US 156 that articulates FRCP 23 does not authorize the Magistrate Judge a preliminary assessment on the merits in determining the suit can be maintained as class action. Plaintiff was not permitted to submit exhibits in support of class certification until filing Objections to the F&R (4-4-17). The Dist. Ct. omits ANY ruling to plaintiff's Mot. to Supp. Exhibits (Exh.-4, p.2).

The panel's decision conflicts with Mantolete-v-Bolger 767 F.2d 1416 (9th Cir. 1985) that permits additional discovery that is likely to produce substantiation of class allegations and will promote the goals of judicial economy. (Lopez-v-Smith 203 F.3d 1122, 1130-1131 (9th Cir. 2000); Fed. R. Evid. 803(8); FRCP 23 (d)(1)(A); (d)(2); (g)(3)). The panel here elected to deny plaintiff's motion to present this court with exhibits in support of his claims and preliminary evidence to support the class is not too vague. (Exh.-*6* at p.3). There is USSC precedence for decades that states. "The granting of parole is an essential part of our criminal justice system." (Morrissey-v-Brewer (1972) 408 US 471, 477; also In Re Lawrence 44 Cal. 4th 1181, 1204 (2008, Calif. Supreme Court) ["parole is the rule, rather than the exception"]). Therefore, class certification involves questions of exceptional importance and substantially affects a rule of national application and uniformity, since over HALF of the states in the United States have adopted parole statutes. Many of which may have modeled their parole statutes to California. (Exh.-12).

CLAIM #5:

The panel's decision did not: (1) permit plaintiff for "leave to amend" (2) permit ANY exhibits to filed with plaintiff's Opening Brief; and (3) permit an analysis for class certification based on the evidence and/or interim counsel to correct/amend/discover further evidence in support. (Exh.-*6* at p.3). The panel's decision has resulted in leaving genuine issues of a material fact that remain in dispute and are triable. Thus, affecting the outcome of the claims raised and the resulting decision. (See Caldwell-v-City of San Francisco, et al 2018 DJDAR 4363 (9th Cir. 5-14-18) ___ F.3d ___ [Reversed & Remanded]).

Firstly, the panel's decision [or the dist. ct] NEVER provided a concise ruling regarding a critical allegation by plaintiff [and plaintiff's attorney], via declarations, that Deputy Comm. James S. Martin engaged in a "predetermined and pro forma decision" to deny parole in 2009 and 2013. (O.B., pp. 4-7, 19-38).

The panel's decision and reliance on Swartout "because Victory failed to allege facts sufficient to show that the parole hearing denied him due process..." (Exh.- 6 at p.2), CONFLICTS with Jackson-v-Arizona 885 F.2d 639, 640 (9th Cir. 1989) [plaintiff's pro se allegations are to be liberally construed]; Bell Atlantic Corp.-v-Twombly (2007) 550 US 544, 555-556 and Erickson-v-Pardus (2007) 551 US 89, 94 [a judge must accept as true ALL of the factual allegations contained in the complaint (FRCP 8(a)(2)]; also Estelle-v-Gamble (1976) 429 US 97, 106; FRCP 8(e). (Exhs.-8 thru 11).

Secondly, the panel's decision regarding "faile to allege sufficient facts" rests on a "he said he said" allegation sworn under penalty of perjury via declarations submitted within plaintiff's exhibts that were denied by this panel. An allegation, if proved out, implicates a predetermined decision by a decision-maker who is NOT neutral or impartial. In fact, once the evidence is properly and fully compiled, has a reasonable conclusion pointing toward a "no-parole policy" of a systemic and/or individual impact on the plaintiff(s). These type of facts lead to a serious constitutional epidemic by the defendants in not providing "neutral decision-makers". A legal claim that this panel's decision is completely void in addressing IS a protected right to plaintiff(s). (See Claims #1, #2 & #3, herein. Citations omitted). There exist apparent conflicts with other decisions by this court and the USSC that were not addressed in the opinion. This claims involves questions of exceptional importance that substantially affects a rule of national application: DOES THE USSC SWARTHOUT PER CURIAM DECISION THAT OMITS A CLAIM OF "NEUTRAL DECISION-MAKERS", TAKE AWAY THIS VERY RIGHT UNDER DUE PROCESS?

CLAIM #6:

The panel's decision regarding "absolute quasi-judicial immunity" conflicts with Canton-v-Harris (1989) 489 US 378, 396; Streit-v-County of Los Angeles 236 F.3d 552, 559 (9th Cir. 2001); Starr-v-Baca 652 F.3d 1202, 1207 (9th Cir. 2011); also Demaree-v-Pederson 2018 DJDAR 790 (9th Cir. 1-24-18). (Exhs.-17 thru 19).

CONCLUSION

Plaintiff is a layman at law acting in pro per throughout the prosecution of his §1983 complaint that was originally identified as Class Action. Since Swarthout (USSC) the doors to the federal courthouse have mainly been closed. Since Nettles (9th Cir.) inmates have been forced to utilize the more onerous §1983 complaints, as long as the claims & remedy don't result in the "likelihood of immediate or speedier release". That is certainly not the case here for this plaintiff(s). There will ALAWAY be several obstacles to overcome with the parole board even with a favorable court order. Despite the 100's of previous state & federal court orders that were intended to alter the systemic arbitrary decisions that violated both state and federal constitutional protections. Plaintiff's §1983 class action complaint was filed in hopes of having additional clarity as to what constitutional rights still remain post the per curiam Swarthout decision in 2011:

(1) Does plaintiff have a right to the 5th Amend. at his parole hearing?

(2) Did the California Legislature incorporated the 5th Amend. by codifying the Penal Code statue §5011(b) and subsequent Code of Regs. §2236?

(3) Does plaintiff have a right to an impartial neutral decision-maker at his parole hearing?

(4) Does plaintiff have a right to peremptory challenge a trial judge who is assigned to rule on the merits of his habeas claims?

(5) Does the "Capable of Repetition Yet Evading Review" doctrine apply at plaintiff's parole hearing and/or in state court under habeas corpus?

(6) Does the doctrines of Res Judicata and Collateral Estoppel apply at plaintiff's parole hearing and/or in state court under habeas corpus?

(7) Does the "Mootness" doctrine apply in state court when plaintiff files parole claims under habeas corpus?

(8) Are any or all of the above rights barred from being presented and adjudicated within the federal courts due to Swarthout?

The District Court and the USCA panel's decisions are a far cry from articulating direct answers that provide clarity to ALL of the questions raised within this petition. These claims raise ligitament concerns of liberty and Due Process that have exceptional importance for a large class of inmates within the state of California and through out the nation post the 2011 USSC per curiam decision in Swarthout-v-Cooke. Plaintiff prays for the relief that remains elusive.

Respectfully submitted,

Michael Victory
In Pro Per

Dated: 1-17-2019