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ORDER OF THE SUPREME COURT OF
CALIFORNIA DENYING PETITION FOR REVIEW
AND APPLICATION FOR STAY
(MAY 1, 2019)

IN THE SUPREME COURT OF CALIFORNIA

ARTHUR EDWARD EZOR,

Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

THE PEOPLE,

Real Party in Interest.

S255335

Court of Appeal, Second Appellate District,
Division Five - No. B296721

Before: CANTIL-SAKAUYE, Chief Justice

The petition for review and application for stay
are denied.

/s/ Cantil-Sakauye
Chief Justice

ORDER OF THE COURT OF APPEALS
DENYING PETITION FOR WRIT OF MANDATE
AND STAY OF PROCEEDINGS
(APRIL 12, 2019)

IN THE COURT OF APPEALS OF THE STATE OF
CALIFORNIA, SECOND APPELLATE DISTRICT,
DIVISION FIVE

ARTHUR EDWARD EZOR,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent.

THE PEOPLE,

Real Party in Interest.

B296721

(Super. Ct. No. BA441505) (Craig Veals, Judge)

Before: RUBIN, P.J., MOOR, J., and KIM, J.

THE COURT:

The court has read and considered the petition for writ of mandate filed April 5, 2019. The petition is denied. Petitioner fails to demonstrate the respondent court abused in discretion in denying his motion to

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dismiss and/or disqualify the District Attorney's Office. (*Rochin v. California* (1952) 342 U.S. 165, 172; *People v. Velasco-Palacios* (2015) 235 Cal.App.4th 439, 445; *Boulas v. Superior Court* (1986) 188 Cal.App.3d 422, 429, 435; Pen. Code, § 1424, subd. (a)(1); *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 719.)

/s/ Rubin, P.J.

/s/ Moor, J.

/s/ Kim, J.

**ORDER DENYING IMMEDIATE STAY REQUEST
(APRIL 8, 2019)**

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA, SECOND APPELLATE DISTRICT
DIVISION FIVE

ARTHUR EDWARD EZOR,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent.

THE PEOPLE,

Real Party in Interest.

B296721

(Super. Ct. No. BA441505) (Craig Veals, Judge)

Before: Laurence D. RUBIN, Presiding Justice

The immediate stay request is denied

/s/ Laurence D. Rubin
Presiding Justice

MINUTE ORDER OF THE
SUPERIOR COURT OF CALIFORNIA
(MARCH 18, 2019)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,

v.

ARTHUR EDWARD EZOR.

Case No. BA441505

Information Filed on 06/06/18.

Count 01: 487(A) PC FEL

On 03/18/19 at 830 AM in Central District Dept
122 case called for Jury Trial

- Parties: Craig E Veals (Judge) Donna Cordell (Clerk) Marie Dorling (REP) Kelly S. Howick (DA)

Defendant is present in court, and not represented by counsel Defendant appears in pro per

- Own Recognizance/DDA Kelly Howick/ stand-by Elliott Tiomkin
- Investigator Timmy Lee Gibson

Matter is called for hearing. Defense Motion to Disqualify Prosecuting Attorney is argued and denied.

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Case is continued for jury trial to the date of April 8, 2019 at 8:30 A.M. in Department 122. 0 of 10 Time Waiver.

Court Orders and Findings:

- The Court orders the Defendant to appear on the next court date.

Next scheduled event:

- 04/08/19 830 AM Jury Trial
Dist Central District Dept 122

Custody status: Defendant remains on own recognizance.

**PETITION FOR REVIEW, EMERGENCY WRIT OF
MANDATE, STAY OF PROCEEDINGS AND/OR
OTHER APPROPRIATE RELIEF; MEMORANDUM
OF POINTS AND AUTHORITIES; EXHIBITS—
RELEVANT EXCERPTS**

SUPREME COURT OF CALIFORNIA

ARTHUR EDWARD EZOR,

Petitioner,

v.

**THE SUPERIOR COURT OF
LOS ANGELES COUNTY,**

Respondent.

THE PEOPLE,

Real Party in Interest.

Case No. [Arising from the Denial of Petition for
Emergency Writ of Mandate, Stay of Proceedings
and/or Other Appropriate Relief by Court of Appeal
on April 8, 2019, No. B296721]

Los Angeles Superior Court Case No. BA441505

Honorable Craig Veals, Judges Presiding

Arthur Edward Ezor
Petitioner
305 S. Hudson Avenue
Suite 300
Pasadena, California 91101
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To the Honorable Justices of the Supreme Court of California:

Preliminary and Jurisdictional Statement

1. Petitioner ARTHUR EDWARD EZOR (“EZOR”) hereby seeks an emergency Writ of Mandate directing and ordering the Respondent Superior Court to order dismissal of the criminal case against him due to flagrant, ongoing and egregious violation of his constitutional rights by the People of the State of California. This unfortunate and illegal state of affairs has been created by and through the District Attorney of Los Angeles County, one Jackie Lacey, her deputy D.A., one Kelly Howick, and their entire office. Specifically, that office’s personnel, support staff, paralegals, investigators and likely attorneys have unlawfully and unconstitutionally reviewed and delved into EZOR’s attorney-client file, including looking at and culling therefrom several privileged communications, documents and work product, without his consent, authorization and knowledge! Such outrageous, illegal activity by the People mandate dismissal of the criminal case.

In or about December, 2018, EZOR’s then counsel, Eugene Fu, improvidently and foolishly left EZOR’s complete attorney-client file at the downtown Los Angeles D.A.’s office, for the purpose of the District Attorney’s Office redacting certain discovery documents and writings. During that period, Mr. Fu should have simply met and conferred with deputy D.A. Howick, the primary attorney assigned to the criminal case, and solely provided the discovery documents and writings, as ordered by a Superior Court Judge at an earlier hearing. Instead, impermissibly and shockingly,

the D.A.'s office, upon receipt of the complete attorney-client file delivered by Mr. Fu, unlawfully detained and held onto said file for two months or more, reviewed it thoroughly, and willfully removed certain privileged work product, writings and memos therefrom. The confidential and privileged work product and writings they looked at included and pertained to, without limitation, EZOR's confidential defense strategy and defenses, his former counsel's confidential written advice to him, and confidential bank records, checks and statements involving him and his first former counsel of record, Robert Moore. During this time frame, at no time did deputy D.A. Howick notify EZOR, who was representing himself after Mr. Fu was relieved as counsel, that she and her office had his attorney-client file. There was a duty of disclosure which she and D.A. Lacey unethically violated towards EZOR.

In or about February, 2019, EZOR, now representing himself, inquired of Mr. Fu what had happened to his attorney-client file. Mr. Fu acknowledged to EZOR that he had earlier given EZOR's complete attorney-client file to the prosecution. EZOR apprised the Superior Court of the situation at a hearing. Thereafter, Ms. Howick and the D.A.'s Office was ordered by Judge Veals to deliver the attorney-client file to his Courtroom Department. There were a number of subsequent hearings concerning what had transpired with respect to the D.A.'s Office's detaining and looking at EZOR's attorney-client file without his knowledge and approval. At one hearing, Mr. Robert Moore, who was summoned by the Court as a material witness and former counsel, acknowledged that the attorney-client file was not organized in the manner he had left it with subsequent counsel Fu and that certain

documents looked at by the D.A.'s Office were definitely privileged and confidential. EZOR found that certain documents were flat out missing from the file and were converted by the D.A.'s Office, such as a confidential 12-page defense strategy memo previously faxed to Mr. Moore's Beverly Hills facsimile number by EZOR.

The gravamen of this Writ is the unquestionable tampering with and illegal intrusion by the prosecution into EZOR's attorney-client file. Due process has been violated; EZOR has been deprived of a fair, constitutional process by such tampering and intrusion. His 5th Amendment right against self-incrimination has been violated by the prosecution. His 6th and 14th Amendment rights to effective counsel have been violated by the prosecution in their illegal handling of his attorney-client file.

2. The criminal case is presently set for 0-10 on the trial calendar on April 22, 2019, before Judge Craig Veals of the Los Angeles Superior Court. Emergency relief is necessary and a stay of the proceedings should be ordered FORTHWITH. This Honorable Supreme Court needs sufficient time to review and consider the matters and serious constitutional violations before it on the merits. Such a stay and relief will also allow the opposing or interested parties sufficient time to submit pleadings and briefing, if they so elect, pertaining to issues and relief sought by the present Writ of Mandate. Once said Court reviews the record, evidence and issues presented with regard to this Writ, EZOR is confident that the Justices will find that ordering Respondent Superior Court to dismiss the criminal case with prejudice is

the appropriate and fair remedy. The interests of justice and equity dictate no less.

3. In the alternative, if this Honorable Supreme Court is of the view and ruling to not order the Respondent Superior Court to dismiss the criminal case, Ms. Lacey, Ms. Howick and the entire Los Angeles District Attorney's Office, at a . . .

[. . .]

5. This Court, pursuant to its inherent and statutory powers, has jurisdiction to act given that the lower courts have recently rejected, without cause, Petitioner mandamus relief.

C.C.P. Section 1085 states in pertinent part: "A writ of mandate may be issued by any court to any inferior tribunal . . . to compel the performance of an act which the law specifically enjoins . . . or to compel the . . . enjoyment of a right or office to which the party is entitled, and for which the party is unlawfully precluded by such inferior tribunal . . ."

Furthermore, C.C.P. Section 1085 recites that a Writ of Mandate may be issued, upon verified petition of the party beneficially interested, where there is not a plain, speedy and adequate remedy in the ordinary course of law. The Writ can be either alternative or peremptory (C.C.P. Section 1087).

Petitioner, and other criminal defendants similarly situated, have no adequate remedy at law. No other proceeding is available to them to obtain a speedy and final resolution of the constitutional issues and matters presented by this Petition.

Facts

6. On March 15, 2019, EZOR filed in the Los Angeles Superior Court a Motion to Dismiss the Criminal Case in View of Recent Developments and Ongoing Prosecutorial Misconduct and Violation of his Constitutional, Criminal and Civil Rights; In the Alternative, Defendant's Motion to Disqualify D.A. Lacey, Deputy D.A. Howick and Entire Los Angeles County District Attorney's Office, Etc. (Exhibit 1 to Appendix of Exhibits in Appeal No. B296721). EZOR filed said Motion promptly upon discovering the illegal actions of the District Attorney and her office reviewing and delving into his attorney-client file without his permission and knowledge. EZOR found that many privileged written communications of the attorney-client file had disappeared, gone missing, after prosecution personnel went through the file.

7. On March 18, 2019, the Los Angeles Superior Court, the Honorable Craig Veals, Judge, presiding, denied the Motion. EZOR indicated on the record that he would exercise appropriate appellate remedies, and verbally moved for a continuance of pretrial proceedings. Judge Veals continued the criminal case to Monday, April 8, 2019, 0-10 for jury trial, and EZOR waived time as to his right to a speedy trial.

8. On April 5, 2018, EZOR filed a Petition for Emergency Writ of Mandate, Stay of Proceedings and/or Other Appropriate Relief in the Court of Appeal of the Second Appellate District, of the State of California. The appeal was assigned to Division Five thereof (Appeal No. B296721). That Petition requested, *inter alia*, immediate stay of proceedings in the lower court and issuance of a Writ of Mandate ordering Respondent

Superior Court to dismiss the criminal case, or, in the alternative, to disqualify the District Attorney prosecutors and their office *en toto* and replace them with and refer the case to the Attorney General of California.

9. On April 8, 2019, Court of Appeal Presiding Justice in Division 5, Laurence D. Rubin, issued an Order Denying Immediate Stay Request. A true and correct copy of that Order is marked and attached hereto as Exhibit "A" and made a part hereof by reference.

10. The issue of whether or not a Writ of Mandate should issue on the merits remained outstanding. In fact, the Scheduled Actions section of the appellate docket indicated that interested parties (*i.e.*, the District Attorney or the Attorney General of California or the Respondent Superior Court) could file briefing on or before April 15, 2019, if they so elected.

11. On Friday, April 12, 2019, late in the afternoon, three Justices of the Court of Appeal (Rubin, Moor and Kim) denied the Petition for Writ of Mandate. A true and correct copy of the Order pertaining thereto is marked and attached hereto as Exhibit "B" and made a part hereof by reference.

12. It is interesting to note that the Clerk of the Court, at or about the same time that Exhibit "B" was issued, conveniently deleted the entry re: Scheduled Actions, concerning the deadline of April 15, 2019, for the opposing or interested parties to file elective briefing. It was a due process violation by the aforesaid three-judge Division Panel to give the opposing or interested parties a "free pass" on filing opposition or responsive papers to the bonafide Writ of Mandate:

In particular, the District Attorney's Office and Respondent Superior Court did not have any persuasive and justifiable legal and factual grounds upon which to challenge and oppose the relief requested in the Writ of Mandate. Given the important constitutional, civil and criminal rights at stake for EZOR, one would have assumed that the Court of Appeal would want to hear in writing the position of the "other side."

A true and correct copy of the docket sheet of the Court of Appeal regarding this Writ of Mandate is marked and attached hereto as Exhibit "C" and made a part hereof by reference. The Appendix contains not only the Motion challenged, but transcripts of pertinent recent hearings in the Superior Court involving the issue of the People's unlawful prying into EZOR's attorney-client file without his consent and knowledge.

13. So without the rightful intervention of this Honorable Supreme Court via this Writ, as matters now stand, a Los Angeles Superior Court Judge and three Justices of the Court of Appeal are holding, in effect, it is alright in the California legal system for prosecutors and their support staff, paralegals and investigators to improperly and unethically look at a criminal defendant's attorney-client file, remove privileged and confidential writings therefrom, and even have the audacity to return that file to the Court with tampered with or even certain missing writings. As Hamlet famously proclaimed, "Something stinks in the State of Denmark." Similarly, in the criminal case at bar, something is terribly awry constitutionally. The District Attorney of Los Angeles County, an experienced deputy D.A. under her supervision, and members of her support staff are violating the California

and U.S. Constitutions. Regrettably, the lower tribunals in this most serious matter are acquiescing in such misconduct, constitutional transgressions of the highest order.

The Parties

ARTHUR EDWARD EZOR: Defendant

[. . .]

... through it for an extensive period of time without his knowledge and permission. Since this appeal involves mixed questions of law and fact, they are generally reviewed *de novo*. See, for example, *Mathews v. Chevron Corp.*, 362 F.3d 1172, 1180 (9th Cir. 2004). The Supreme Court of California should look at the entire record below and review the matters and issues before it *de novo*.

17.

Memorandum of Points and Authorities

I. The District Attorney and Her Office Violated the Sixth Amendment Right to Counsel by Intruding into Ezor's Attorney-Client File; Their Actions Also Violated Due Process and Ezor's Right Against Self-Incrimination Under the Fifth and Fourteenth Amendments

A prosecutor's intentional intrusion into the attorney-client relationship constitutes a direct interference with the Sixth Amendment rights of a defendant. It is a *per se* violation of the Sixth Amendment. Also the fundamental and due process right to a fair adversary proceeding is violated by such illicit actions. See *Schillinger v. Hayworth*, 70 F.3d 1132, 1142 (10th

Cir. 1996). Improper review and interference with EZOR's attorney-client file created a strong presumption of "incurable prejudice" to EZOR. *See United States v. Orman*, 417 F.Supp. 1126, 1133 (D.Colo. 1976); *State v. Lenarz*, 22 A.3d 536, 544 (Conn. 2011).

II. The *Rochin*, *Velasco-Palacios*, *Boulas* and *Haraguchi* Cases Cited by the Court of Appeal in Exhibit "B" Actually Support Ezor's Legal Position That His Constitutional and Criminal Rights Were Violated

The cases cited by the Appellate Justices actually support EZOR's valid position that his criminal case should be dismissed, or, in the alternative, that disqualification of D.A. Lacey and her office is warranted. There was outrageous, unconstitutional conduct by Ms. Lacey and her office. She and deputy Kelly Howick, with their support staff, violated EZOR's rights to a fair and impartial process. D.A. Lacey and her deputy counsel, Kelly Howick, are not allowed to prosecute by devious, illegal and dishonest means. They hold a public trust not only to EZOR, but to the government of California and its people. In this case, they have violated that sacred trust.

D.A. Lacey and her prosecutorial colleagues could not violate the spirit and provisions of the California and U.S. Constitutions, as they have done with EZOR. Prosecutorial misconduct includes and refers to the use of deceptive or reprehensible methods. *People v. Wiley* (1976) 57 Ca.3d 149, 162, 129 CR 13, 21.

A federal case demonstrates that courts will not tolerate prosecutorial misconduct. But that case, while referring to unscrupulous U.S. Attorneys in a

major criminal case, has application to state prosecutors as well.

In *U.S. v. Wilson*, 289 F.Supp.2d 801 (S.D.Tex. 2003), a wrongful conviction was overturned due to government attorneys presenting false evidence and lying to a court. A District Federal Judge noted: "Honesty comes hard to the government." "... while the government may choose to prosecute, it may not prosecute without telling the whole truth."

III. Conclusion

The Writ of Mandate should issue as prayed. If this Court wishes the adversary parties to brief the issues and questions of law and fact presented by the Writ, a stay of proceedings should be ordered in the interim. The Appendix of Exhibits submitted to the Court of Appeal, incorporated by reference herein, contains ample evidence, authority, and argument why Petitioner is entitled to mandamus relief.

Respectfully Submitted,

By: /s/ Arthur Edward Ezor
Petitioner

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