

No. _____

19-5840

IN THE

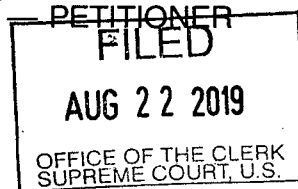
SUPREME COURT OF THE UNITED STATES

ANDRE KENNETH STUCKEY JR.

(Your Name)

vs.

JIM ROBERTSON



— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CALIFORNIA SUPREME COURT

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

PETITION FOR WRIT OF CERTIORARI

ANDRE KENNETH STUCKEY JR

(Your Name)

PELICAN BAY STATE PRISON, P.O. BOX 7500

(Address)

CRESCENT CITY, CALIFORNIA 95532

(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

- 1# WHETHER MR. STUCKEY IS ENTITLED TO HABEAS CORPUS RELIEF WHEN ATTACKING HIS CRIMINAL CONVICTION AND SENTENCING ON TITLE II A.D.A. AND A.D.A.A.A. VIOLATIONS GROUNDS
- 2# DID THE CALIFORNIA SUPREME COURT ERR IN FINDING THAT MR. STUCKEY WAS NOT DENIED HIS RIGHT TO SELF-REPRESENTATION WHEN HE WAS DENIED THE OPPORTUNITY TO PREPARE AND PRESENT A MENTAL STATE DEFENSE AT TRIAL AND SENTENCING
- 3# DID THE CALIFORNIA SUPREME COURT ERR IN FINDING THAT MR. STUCKEY WAS NOT PREJUDICED BY IRREGULARITIES AT HIS PRELIMINARY HEARING WHEN HE WAS NOT ALLOWED THE OPPORTUNITY TO CONFRONT AND CROSS-EXAMINE THE VICTIM OR WITNESSES PRIOR IN-COURT STATEMENTS
- 4# DID THE CALIFORNIA SUPREME COURT ERR IN FINDING THAT MR. STUCKEY WAS NOT PREJUDICED BY HIS APPELLATE COUNSEL'S FAILURE TO RAISE MERITORIOUS CLAIMS ON APPEAL WHEN THERE WERE DEFICIENCIES IN EVERY STAGE OF MR. STUCKEY'S COURT PROCEEDINGS SIGNIFICANT ENOUGH TO WARRANT REVERSAL

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:

TABLE OF CONTENTS

	<u>PAGES</u>
• 1# QUESTIONS PRESENTED	i
• 2# TABLE OF CONTENTS	iii
• 3# TABLE OF AUTHORITIES CITED	iv
• 4# OPINIONS BELOW	1
• 5# JURISDICTION	2
• 6# CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
• 7# STATEMENT OF THE CASE	13
• 8# REASONS FOR GRANTING THE WRIT	

I. THE CALIFORNIA SUPREME COURT DECISION IS IN CONFLICT WITH RELEVANT DECISIONS OF THIS COURT 20

II. THE CALIFORNIA SUPREME COURT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN SETTLED BY THIS COURT 32

• 9# CONCLUSION 40

INDEX OF APPENDICES

• <u>APPENDIX A</u>	—	DECISION OF THE CALIFORNIA SUPREME COURT	2a
• <u>APPENDIX B</u>	—	DECISION OF THE CALIFORNIA COURT OF APPEALS	4a
• <u>APPENDIX C</u>	—	THE PETITIONERS DECLARATION	6a
• <u>APPENDIX D</u>	—	THE PETITIONERS ABSTRACT OF JUDGMENT PRISON COMMITMENT FORM	14a
• <u>APPENDIX E</u>	—	LETTER FROM APPELLATE COUNSEL	16a
• <u>APPENDIX F</u>	—	THE PETITIONERS MENTAL HEALTH DIAGNOSES	18a
• <u>APPENDIX G</u>	—	THE LOS ANGELES COUNTY PROBATION DEPARTMENTS REPORT	27:
• <u>APPENDIX H</u>	—	THE DOCKET SHEET IN THE PETITIONERS CRIMINAL CASE # BA374188	44
• <u>APPENDIX I</u>	—	THE DOCKET SHEET IN THE PETITIONERS DIRECT APPEAL CASE # B236422	8a
• <u>APPENDIX J</u>	—	THE CALIFORNIA COURT OF APPEALS DECISION DATED OCTOBER 30, 2012	88

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

• 1 [#]	BARKER VS. WINGO, 407 U.S. 514 (1972)	22
• 2 [#]	CRAWFORD VS. WASHINGTON, 541 U.S. 36 (2004)	25, 26, 29
• 3 [#]	DELAWARE VS. ARSDALL, 475 U.S. 673	29
• 4 [#]	FARETTA VS. CALIFORNIA, 422 U.S. 806 (1975)	23, 24
• 5 [#]	KLOPPER VS. NORTH CAROLINA, 386 U.S. 213	21
• 6 [#]	SMITH VS. HOOPY, 393 U.S. 374, 377-378	22
• 7 [#]	SMITH VS. ROBBINS, 528 U.S. 259, 285 (2000)	30, 31
• 8 [#]	UNITED STATES VS. OLANO, 507 U.S. 725	28
• 9 [#]	WIGGINS VS. SMITH, 539 U.S. 510, 519 (2003)	20, 22, 21

STATUTES AND RULES

• 1 [#]	28 U.S.C. § 1257(a)	2
• 2 [#]	28 U.S.C. § 2254	4
• 3 [#]	42 U.S.C. § 12102 (A.D.A. AMENDMENTS ACT OF 2008)	12, 32, 39
• 4 [#]	42 U.S.C. § 12132 (THE AMERICANS WITH DISABILITIES ACT)	6-11, 36, 37, 39
• 5 [#]	U.S. CONST. AMEND. VI	3, 26, 27, 29
• 6 [#]	U.S. CONST. AMEND. XIV	3, 26, 28, 30
• 7 [#]	CALIFORNIA PROPOSITION 115	5, 26
• 8 [#]	CALIFORNIA PENAL CODE SECTION 872	5, 25
• 9 [#]	CALIFORNIA PENAL CODE SECTION 995	26, 27
• 10 [#]	CALIFORNIA PENAL CODE SECTION 1204	18, 38
• 11 [#]	CALIFORNIA PENAL CODE SECTION 1382	20, 21, 23, 31

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 CALIFORNIA COURT OF APPEALS 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.

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 AUGUST 14, 2019.
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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FOLLOWING STATUTORY AND CONSTITUTIONAL PROVISIONS ARE INVOLVED IN THIS CASE.

U.S. CONST., AMEND. VI

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 DEFENCE

U.S. CONST., AMEND. XIV

SECTION 1. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE
NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF 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



- (2) THE SUPREME COURT, A JUSTICE THEREOF, A CIRCUIT JUDGE OR A DISTRICT COURT SHALL ENTERTAIN AN APPLICATION FOR A WRIT OF HABEAS CORPUS IN BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGEMENT OF A STATE COURT ONLY ON THE GROUND THAT HE IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES.
- (D) AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGEMENT OF A STATE COURT SHALL NOT BE GRANTED WITH RESPECT TO ANY CLAIM THAT WAS ADJUDICATED ON THE MERITS IN STATE COURT PROCEEDINGS UNLESS THE ADJUDICATION OF THE CLAIM:
RESULTED IN A DECISION THAT WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES
- (F) IF THE APPLICANT BECAUSE OF INDIGENCY OR OTHER REASONS IS UNABLE TO PRODUCE SUCH PART OF THE RECORD THEN THE STATE SHALL PRODUCE SUCH PART OF THE RECORD, THEN THE STATE SHALL PRODUCE SUCH PART OF THE RECORD AND THE FEDERAL COURT SHALL DIRECT THE STATE TO DO SO BY ORDER DIRECTED TO AN APPROPRIATE STATE OFFICIAL
IF THE STATE CANNOT PROVIDE SUCH PERTINENT PART OF THE RECORD, THEN THE COURT SHALL DETERMINE UNDER THE EXISTING FACTS AND CIRCUMSTANCES WHAT WEIGHT SHALL BE GIVEN TO THE STATE COURTS FACTUAL DETERMINATION

PROPOSITION 115

PROPOSITION 115 IS A CALIFORNIA MEASURE, THAT AMENDS CALIFORNIA PENAL CODE SECTION 872(b), PROVIDING THAT AT A PRELIMINARY HEARING THE FINDING OF PROBABLE CAUSE MAY BE BASED IN WHOLE OR IN PART UPON THE SWORN TESTIMONY OF A LAW ENFORCEMENT OFFICER RELATING THE STATEMENTS OF DECLARANTS MADE OUT OF COURT OFFERED FOR THE TRUTH OF THE MATTER ASSERTED

ANY LAW ENFORCEMENT OFFICER TESTIFYING AS TO HEARSAY STATEMENTS SHALL EITHER HAVE FIVE YEARS OF LAW ENFORCEMENT EXPERIENCE OR HAVE COMPLETED A TRAINING COURSE CERTIFIED BY THE COMMISSION ON POLICE OFFICER STANDARDS AND TRAINING WHICH INCLUDED TRAINING IN THE INVESTIGATION AND REPORTING OF CASES AND TESTIFYING AT PRELIMINARY HEARINGS

PROPOSITION 115 DOES NOT AUTHORIZE A FINDING OF PROBABLE CAUSE BASED ON THE TESTIMONY OF A NONINVESTIGATING OFFICER, A "READER" MERELY RECITING THE POLICE REPORT OF AN INVESTIGATING OFFICER, OR A "READER" RECITING THE IN-COURT STATEMENTS OF A DECLARANT. THE TESTIFYING OFFICER MUST NOT BE A READER BUT MUST HAVE SUFFICIENT KNOWLEDGE OF THE CRIME OR THE CIRCUMSTANCES UNDER WHICH THE OUT OF COURT STATEMENTS WAS MADE SO AS TO MEANINGFULLY ASSIST THE COURT IN ASSESSING THE RELIABILITY OF THE STATEMENT

IT IS A SETTLED PRINCIPLE OF STATUTORY INTERPRETATION OF A STATUTE SHOULD NOT BE GIVEN A LITERAL MEANING IF DOING SO WOULD RESULT IN ABSURD CONSEQUENCES WHICH THE LEGISLATURE DID NOT INTEND

PROPOSITION 115 ADDS NEW CONSTITUTIONAL AND STATUTORY LANGUAGE RELATING TO THE USE OF HEARSAY EVIDENCE AT PRELIMINARY HEARINGS BY AMENDING CALIFORNIA PENAL CODE SECTION 872(b), PROVIDING THAT A PROBABLE CAUSE FINDING MAY BE BASED ON THE TESTIMONY OF CERTAIN QUALIFIED LAW ENFORCEMENT OFFICERS RELATING THE OUT OF COURT STATEMENTS OF DECLARANTS... ONLY

42 U.S.C. § 12132

THE AMERICANS WITH DISABILITIES ACT

THE FEDERAL GOVERNMENT ATTEMPT TO ADDRESS DISCRIMINATION AGAINST PERSONS WITH DISABILITIES ENACTED IN 1990, THE AMERICANS WITH DISABILITIES ACT LAW IS PREDICATED ON THE BELIEF THAT "SOCIETY HAS TENDED TO ISOLATE AND SEGREGATE INDIVIDUALS WITH DISABILITIES AND DESPITE SOME IMPROVEMENTS, SUCH FORMS OF DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES CONTINUE TO BE A SERIOUS AND PERVASIVE SOCIAL PROBLEM". 42 U.S.C. § 12101(2)(2)

TITLE II OF THE A.D.A. STATES "SUBJECT TO THE PROVISIONS OF THIS SUBCHAPTER, NO QUALIFIED INDIVIDUAL WITH A DISABILITY SHALL, BY REASON OF THAT SUCH DISABILITY BE EXCLUDED FROM PARTICIPATION IN OR BE DENIED THE BENEFITS OF THE SERVICES, PROGRAMS OR ACTIVITIES OF A PUBLIC ENTITY, OR BE SUBJECTED TO DISCRIMINATION BY ANY SUCH ENTITY". 42 U.S.C. § 12132

WHETHER OR NOT AN INMATE CAN PURSUE FEDERAL HABEAS CORPUS RELIEF FOR TITLE II ADA VIOLATIONS HAS NOT BEEN DECIDED BY THE UNITED STATES SUPREME COURT



TITLE II OF THE AMERICANS WITH DISABILITIES ACT

TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA) PROHIBITS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IN STATE AND LOCAL GOVERNMENT OPERATIONS, INCLUDING COURTS. THE ADA COVERS A WIDE RANGE OF INDIVIDUALS WITH DISABILITIES. AN INDIVIDUAL IS CONSIDERED TO HAVE A "DISABILITY" IF HE HAS A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES, HAS A RECORD OF SUCH AN IMPAIRMENT, OR IS REGARDED AS HAVING SUCH AN IMPAIRMENT. MENTAL IMPAIRMENTS INCLUDE MENTAL OR PSYCHOLOGICAL DISORDERS SUCH AS BI-POLAR AND SCHIZOPHRENIC DISORDERS, AMONG OTHER MENTAL ILLNESSES.

TO CONSTITUTE A DISABILITY, A CONDITION MUST SUBSTANTIALLY LIMIT A MAJOR LIFE ACTIVITY.

MAJOR LIFE ACTIVITIES INCLUDE PERFORMING MANUAL TASKS, CONCENTRATING AMONG OTHER THINGS.

AN IMPAIRMENT SUBSTANTIALLY INTERFERES WITH THE ACCOMPLISHMENT OF A MAJOR LIFE ACTIVITY WHEN THE INDIVIDUAL'S IMPORTANT LIFE ACTIVITIES ARE RESTRICTED AS TO THE CONDITION, MANNER, OR DURATION UNDER WHICH THEY CAN BE PERFORMED IN COMPARISON TO MOST PEOPLE.

THE ADA PROTECTS NOT ONLY THOSE INDIVIDUALS WITH DISABILITIES WHO ACTUALLY HAVE A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY BUT ALSO THOSE WITH A RECORD OF SUCH AN IMPAIRMENT. THIS PROTECTED GROUP INCLUDES

- A PERSON WHO HAS A HISTORY OF AN IMPAIRMENT THAT SUBSTANTIALLY LIMITED A MAJOR LIFE ACTIVITY BUT WHO WAS RECOVERED FROM THE IMPAIRMENT.
EXAMPLES OF INDIVIDUALS WHO HAVE A HISTORY OF AN IMPAIRMENT ARE PERSONS WHO HAVE HISTORIES OF MENTAL ILLNESSES INCLUDING BI-POLAR AND SCHIZOPHRENIC DISORDERS.

THE ADA ALSO PROTECTS CERTAIN PERSONS WHO ARE REGARDED BY A PUBLIC ENTITY, INCLUDING THE COURTS, AS HAVING A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY, WHETHER OR NOT THAT PERSON ACTUALLY HAS AN IMPAIRMENT. THREE TYPICAL SITUATIONS ARE COVERED BY THIS CATEGORY:

- 1st. AN INDIVIDUAL WHO HAS A PHYSICAL OR MENTAL IMPAIRMENT THAT DOES NOT SUBSTANTIALLY LIMIT MAJOR LIFE ACTIVITIES, BUT WHO IS TREATED AS IF THE IMPAIRMENT DOES SUBSTANTIALLY LIMIT A MAJOR LIFE ACTIVITY
- 2nd. AN INDIVIDUAL WHO HAS A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS MAJOR LIFE ACTIVITIES ONLY AS A RESULT OF THE ATTITUDES OF OTHERS TOWARDS THE IMPAIRMENT
- 3rd. AN INDIVIDUAL WHO HAS NO IMPAIRMENTS BUT WHO IS TREATED BY A PUBLIC ENTITY, INCLUDING THE COURTS, AS HAVING AN IMPAIRMENT THAT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY

IN ORDER TO BE AN INDIVIDUAL PROTECTED BY TITLE II, THE INDIVIDUAL MUST BE A "QUALIFIED" INDIVIDUAL WITH A DISABILITY. TO BE QUALIFIED, THE INDIVIDUAL WITH A DISABILITY MUST MEET THE ESSENTIAL ELIGIBILITY REQUIREMENTS FOR RECEIPT OF SERVICE OR PARTICIPATION IN A PUBLIC ENTITY, INCLUDING THE COURTS, PROGRAMS, ACTIVITIES OR SERVICES WITH OR WITHOUT:

- 1st. REASONABLE MODIFICATIONS TO A PUBLIC ENTITY RULES, POLICIES OR PRACTICE

- THE ESSENTIAL ELIGIBILITY REQUIREMENTS. FOR PARTICIPATION IN MANY ACTIVITIES OF PUBLIC ENTITIES, INCLUDING THE COURTS, MAY BE MINIMAL
- FOR EXAMPLE, MOST PUBLIC ENTITIES, INCLUDING THE COURTS, PROVIDE INFORMATION ABOUT THEIR PROGRAMS, ACTIVITIES AND SERVICES UPON REQUEST
- IN SUCH SITUATIONS, THE ONLY ELIGIBILITY REQUIREMENT FOR RECEIPT OF SUCH INFORMATION WOULD BE THE REQUEST FOR IT
- SUCH PROGRAMS MUST BE SPECIFICALLY DESIGNED TO MEET THE NEEDS OF THE INDIVIDUALS WITH DISABILITIES FOR WHOM THEY ARE PROVIDED

A PUBLIC ENTITY, INCLUDING THE COURT, CANNOT DENY A QUALIFIED INDIVIDUAL WITH A DISABILITY PARTICIPATION IN ITS REGULAR PROGRAM

QUALIFIED INDIVIDUALS WITH DISABILITIES ARE ENTITLED TO PARTICIPATE IN REGULAR PROGRAMS, EVEN IF THE PUBLIC ENTITY, INCLUDING THE COURTS, COULD REASONABLY BELIEVE THAT THEY CANNOT BENEFIT FROM THE REGULAR PROGRAM

ALL PUBLIC ENTITIES, INCLUDING THE COURTS, MUST MAKE REASONABLE ACCOMMODATIONS TO THE KNOWN MENTAL LIMITATIONS OF QUALIFIED ADA INDIVIDUALS, UNLESS THE PUBLIC ENTITY, INCLUDING THE COURTS, CAN SHOW THAT THE ACCOMMODATION WOULD IMPOSE AN "UNBARE HARSHSHIP" ON THE OPERATIONS OF ITS PROGRAM

REASONABLE ACCOMMODATIONS MEANS ANY CHANGE OR ADJUSTMENT IN A PROGRAM THAT PERMITS A QUALIFIED "ADA" INDIVIDUAL WITH A DISABILITY TO PARTICIPATE, PERFORM THE ESSENTIAL FUNCTIONS OR TO ENJOY BENEFITS AND PRIVILEGES OF A PROGRAM EQUAL TO THOSE ENJOYED BY PEOPLE WITHOUT DISABILITIES

EXAMPLES INCLUDE:

- 1* PROVIDING AN INDIGENT INMATE, WHO REPRESENTS HIMSELF, WITH AN INVESTIGATOR IN A TIMELY FASHION, WHEN HE HAS INVOKED HIS RIGHT TO A SPEEDY TRIAL
- 2* DELAYING AN, "ADA" QUALIFIED, INMATE'S SENTENCING UNTIL THE COURT HAS A CHANCE TO EVALUATE HIS/HER MENTAL HEALTH RECORDS AND MENTAL STATE FACTORS

- TITLE II REQUIRES THAT PUBLIC ENTITIES TAKE SEVERAL STEPS DESIGNED TO ACHIEVE COMPLIANCE
- THESE INCLUDE THE PREPARATION OF A SELF-EVALUATION
- IN ADDITION, PUBLIC ENTITIES WITH 50 OR MORE EMPLOYEES ARE REQUIRED TO

- 1st. DEVELOP A GRIEVANCE PROCEDURE
- 2nd. DESIGNATE AN INDIVIDUAL TO OVERSEE TITLE II COMPLIANCE
- 3rd. RETAIN THE SELF-EVALUATION FOR THREE YEARS

BECAUSE ALL STATES HAVE AT LEAST 50 EMPLOYEES, ALL STATE DEPARTMENT, AGENCIES, AND COURTS ARE SUBJECT TO TITLE II ADMINISTRATIVE REQUIREMENTS APPLICABLE TO PUBLIC ENTITIES WITH 50 OR MORE EMPLOYEES

A SELF-EVALUATION IS A PUBLIC ENTITY'S ASSESSMENT OF ITS CURRENT POLICIES AND PRACTICES

THE SELF-EVALUATION IDENTIFIES AND CORRECTS THOSE POLICIES AND PRACTICES THAT ARE INCONSISTENT WITH

TITLE II REQUIREMENTS

AS PART OF THE SELF-EVALUATION, A PUBLIC ENTITY SHOULD

- 1st. IDENTIFY ALL OF THE PUBLIC ENTITY'S PROGRAMS, ACTIVITIES AND SERVICES
- 2nd. REVIEW ALL THE POLICIES AND PRACTICES THAT GOVERN THE ADMINISTRATION OF THE PUBLIC ENTITY'S PROGRAMS, ACTIVITIES, AND SERVICES

ONCE A PUBLIC ENTITY HAS IDENTIFIED ITS POLICIES AND PRACTICES IT SHOULD ANALYZE WHETHER THESE POLICIES AND PRACTICES ADVERSELY AFFECT THE FULL PARTICIPATION OF INDIVIDUALS WITH DISABILITIES IN ITS PROGRAMS, ACTIVITIES AND SERVICES

IN THIS REGARD, A PUBLIC ENTITY, INCLUDING THE COURTS, SHOULD BE MINDFUL THAT ALTHOUGH ITS POLICIES AND PRACTICES MAY APPEAR HARMLESS, THEY MAY RESULT IN DENYING INDIVIDUALS WITH DISABILITIES THE FULL PARTICIPATION OF ITS PROGRAMS ACTIVITIES OR SERVICES

AREAS THAT NEED CAREFUL EXAMINATION INCLUDE THE FOLLOWING:

- 1st A PUBLIC ENTITY MUST REVIEW ITS POLICIES AND PRACTICES TO DETERMINE WHETHER ANY EXCLUDE OR LIMIT THE PARTICIPATION OF INDIVIDUALS WITH DISABILITIES IN ITS PROGRAMS, ACTIVITIES OR SERVICES
- 2nd A PUBLIC ENTITY SHOULD REVIEW ITS POLICIES TO ENSURE THAT ITS DECISIONS CONCERNING A FUNDAMENTAL ALTERATION IN THE NATURE OF A PROGRAM, ACTIVITY OR SERVICE, OR A DECISION THAT AN UNDOE FINANCIAL AND ADMINISTRATIVE BURDEN WILL BE IMPOSED BY TITLE II ARE MADE PROPERLY AND EXPEDITIOUSLY

ONCE A PUBLIC ENTITY, INCLUDING THE COURTS, HAVE IDENTIFIED POLICIES AND PRACTICES THAT DENY OR LIMIT THE PARTICIPATION OF INDIVIDUALS WITH DISABILITIES IN ITS PROGRAMS, ACTIVITIES AND SERVICES, IT SHOULD TAKE IMMEDIATE REMEDIAL ACTION TO ELIMINATE THE IMPEDIMENTS TO FULL AND EQUIVALENT PARTICIPATION

A PUBLIC ENTITY MUST PROVIDE INFORMATION ON TITLE II['] REQUIREMENTS TO "ADA" QUALIFIED INDIVIDUALS, BENEFICIARIES, AND OTHER INTERESTED PERSONS

THE NOTICE SHALL EXPLAIN title II['] APPLICABILITY TO THE PUBLIC ENTITY['] SERVICES, PROGRAMS OR ACTIVITIES



42 U.S.C. § 12102

THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008

IN 2008 CONGRESS ENACTED INTO LAW THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008 (ADAAA) THE PURPOSE OF WHICH WAS TO BROADEN THE DEFINITION OF AN A.D.A. DISABILITY

ANY INDIVIDUAL THAT HAS A "PHYSICAL OR MENTAL IMPAIRMENT" THAT "SUBSTANTIALLY LIMITS" ONE OR MORE MAJOR LIFE ACTIVITIES IS DISABLED WITH THE MEANING OF THE A.D.A.A.A.

HOWEVER, SUCH AN IMPAIRMENT DOES NOT HAVE TO BE PERMANENT OR LONG-TERM

IN ADDITION, AN IMPAIRMENT QUALIFIES AS AN A.D.A.A.A. DISABILITY EVEN IF THE EFFECTS MAY BE CORRECTED BY MITIGATING DEVICES SUCH AS MEDICATION

AN INDIVIDUAL WILL ALSO BE CONSIDERED DISABLED IF THERE IS "A RECORD OF SUCH AN IMPAIRMENT," 42 U.S.C. § 12102(1)(B) OR IF THE PERSON IS BEING REGARDED AS HAVING SUCH AN IMPAIRMENT

THUS, EVEN IF AN INDIVIDUAL DOES NOT HAVE A PHYSICALLY OR MENTAL IMPAIRMENT WHICH SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY, HE OR SHE MAY STILL BRING A VIABLE A.D.A.A.A. ACTION/SUIT IF THE STATE OR LOCAL GOVERNMENT AGENCY ENGAGES IN DISCRIMINATORY BEHAVIOR BASED ON A MISTAKEN BELIEF THAT THE INDIVIDUAL HAS AN A.D.A. - QUALIFIED IMPAIRMENT

AMONG THE 2008 AMENDMENTS CONGRESS ALTERED THE DEFINITION OF "DISABILITY" SUCH THAT BEING "REGARDED AS" HAVING AN IMPAIRMENT NO LONGER REQUIRES A SHOWING THAT GOVERNMENT OFFICIALS ACTUALLY PERCEIVED THE INDIVIDUAL TO BE SUBSTANTIALLY LIMITED IN A MAJOR LIFE ACTIVITY

UNDER THE A.D.A.A.A., GOVERNMENT OFFICIALS VIOLATE LAW WHETHER OR NOT THE IMPAIRMENT LIMITS OR IS PERCEIVED TO LIMIT A MAJOR LIFE ACTIVITY."

42 U.S.C. § 12102(3)(A)



STATEMENT OF THE CASE

- THE PETITIONER, ANDRE STUCKEY, REPRESENTED HIMSELF DURING
- MOST OF THE PROCESS OF HIS COURT PROCEEDINGS IN
- CASE # BA374188
- THERE WERE TWO(2) SEPARATE PRELIMINARY HEARINGS IN THIS CASE
THE FIRST PRELIMINARY HEARING TOOK PLACE ON MAY 11, 2010
UNDER CASE NUMBER # BA370659
- THE PEOPLE CHOSE NOT TO PROCEED WITH A HEARSAY "PROP 115"
PRELIMINARY HEARING, AND PRESENTED "LIVE" TESTIMONY FROM
THE VICTIM AND PERCIPIENT WITNESSES
VICTIM EMILY CANAUX, WITNESSES HANNAH GOODMAN AND
VANESSA WIGHREN TESTIFIED IN-COURT
DETECTIVE MARIE GREBINSKI WAS DESIGNATED THE INVESTIGATING
OFFICER, EVEN THOUGH SHE NEVER INTERVIEWED ANY OF THE
WITNESSES OR VICTIM PRIOR TO THE START OF THE PRELIMINARY
HEARING
MS. GREBINSKI WAS NOT PRESENT FOR ANY OF THE WITNESSES
OR VICTIMS TESTIMONY, IN-COURT
- MS. GREBINSKI TESTIFIED IN COURT AT THE END OF THE
PRELIMINARY HEARING AFTER THE VICTIM AND WITNESSES
HAD LEFT THE COURTROOM
CASE # BA370659 WAS LATER DISMISSED ON JULY 30, 2010
AND REFILED UNDER CASE NUMBER # BA374188
- THE SECOND PRELIMINARY HEARING TOOK PLACE ON AUGUST 11, 2010
UNDER CASE NUMBER # BA374188
- MS. GREBINSKI WAS CALLED TO TESTIFY AT THE
SECOND PRELIMINARY HEARING
NONE OF THE WITNESSES OR VICTIM, WHO TESTIFIED
DURING THE FIRST PRELIMINARY HEARING, WERE CALLED TO TESTIFY
AT THE SECOND PRELIMINARY HEARING
MS. GREBINSKI WAS CALLED TO TESTIFY ONLY TO THE
STATEMENTS MADE BY THE WITNESSES AND VICTIM AT THE
EARLIER (FIRST) PRELIMINARY HEARING
MS. GREBINSKI TESTIMONY VIOLATES THE CONSTITUTION BECAUSE
SHE WAS NOT PRESENT, IN-COURT, FOR THE WITNESSES OR VICTIM
PRIOR, IN-COURT, TESTIMONIES AND SHE NEVER PERSONALLY
INTERVIEWED ANY OF THE WITNESSES OR VICTIM PRIOR TO
THE FIRST OR SECOND PRELIMINARY HEARING
DESPITE THIS FACT MR. STUCKEY WAS HELD TO
ANSWER TO THE SUPERIOR COURT ON THIS MULTIPLE HEARSAY
TESTIMONY OF MS. GREBINSKI

ON AUGUST 23, 2010, THE LOS ANGELES COUNTY PROBATION OFFICE ISSUED A REPORT INDICATING MR. STUCKEY'S MENTAL ILLNESSES WHICH INCLUDED HALLUCINATIONS AND PARANOIA. THE REPORT RECOMMENDED THAT SHOULD MR. STUCKEY BE CONVICTED HIS AGGRAVATING AND MITIGATING FACTORS SUPPORTED A MID BASE TERM SENTENCE OF FOUR(4) YEARS. DURING HIS ARRAIGNMENT ON AUGUST 25, 2010, MR. STUCKEY REQUESTED A SPEEDY TRIAL. MR. STUCKEY FILED A MOTION FOR APPOINTMENT OF AN INVESTIGATOR ON OCTOBER 14, 2010, MR. STUCKEY FILED A MOTION TO DISMISS BASED ON THE FACT THAT HE WAS ILLEGALLY COMMITTED TO THE SUPERIOR COURT, WHICH WAS ARGUED, HEARD AND DENIED ON OCTOBER 15, 2010, THE COURT FINALLY APPOINTED MR. STUCKEY AN INVESTIGATOR. MR. STUCKEY WAS APPOINTED AN INVESTIGATOR SIX(6) DAYS BEFORE THE START OF HIS TRIAL. MR. ERICK B. ELVERUM WAS APPOINTED AS MR. STUCKEY'S INVESTIGATOR DURING A FACE TO FACE MEETING ON OCTOBER 15, 2010. MR. STUCKEY NOTIFIED MR. ELVERUM THAT HE NEEDED HIM TO SERVE A SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH CENTER, SO THAT HE COULD INSPECT HIS MENTAL HEALTH RECORDS IN ORDER TO RESEARCH, INVESTIGATE, PREPARE AND PRESENT A MENTAL STATE DEFENSE AT TRIAL. MR. STUCKEY NOTIFIED MR. ELVERUM THAT THE CONTENTS OF HIS MENTAL HEALTH RECORDS CONTAINED EVIDENCE THAT BEFORE AND DURING HIS ARREST, MR. STUCKEY SUFFERED FROM HALLUCINATIONS, PARANOIA, BIPOLAR DISORDERS AND A SCHIZOPHRENIC DISORDER, AND WAS ALSO HOMELESS AT THE TIME OF HIS ARREST, AND WAS ALSO TAKING SEVERAL DIFFERENT ANTI-PSYCHOTIC MEDICATIONS. MR. ELVERUM WAS UNABLE TO SERVE THE SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH CENTER BEFORE MR. STUCKEY'S TRIAL WHICH PREVENTED HIM FROM RESEARCHING, PRESENTING OR PREPARING A MENTAL STATE DEFENSE AT TRIAL. DURING MR. STUCKEY'S JURY TRIAL ON OCTOBER 26, 2010, DETECTIVE MAME GREBINSKI WAS ALLOWED TO SIT DOWN AT THE PROSECUTOR'S TABLE WHILE THE VICTIM EMILY CINDAUX AND THE WITNESSES HANNAH GOODMAN AND VANESSA WOGHIREN TESTIFIED. INVESTIGATOR L.J. JONES WAS ALSO ALLOWED TO SIT AT THE PROSECUTOR'S TABLE WHILE THE VICTIM AND WITNESSES TESTIFIED.

MR. STUCKEY OBJECTED TO DETECTIVES MS. GREBINSKI AND MS. JONE SEATING AT THE PROSECUTORS TABLE WHILE THE WITNESSES AND VICTIM TESTIFIED BECAUSE THEY WERE GIVING HEAD SIGNALS TO THE WITNESSES AND VICTIM.

THE COURT OVERRULED MR. STUCKEY'S OBJECTION

MR. STUCKEY WAS EVENTUALLY FOUND GUILTY OF ONE(1) COUNT OF FIRST DEGREE BURGLARY ON NOVEMBER 2ND, 2010 ON NOVEMBER 3RD, 2010, MR. STUCKEY REQUESTED THAT HIS PRO PER STATUS BE REVOKED

AT THIS POINT, MR. ELVERUM'S INVESTIGATIVE SERVICES ENDED IN MR. STUCKEY'S CASE

ATTORNEY ALAN KESSLER WAS APPOINTED AS MR. STUCKEY'S ATTORNEY FROM NOVEMBER 3RD, 2010 TO MARCH 23RD, 2011, MR. STUCKEY'S CASE WAS CONTINUED AT THE REQUEST OF ATTORNEY ALAN KESSLER IN PREPARATION FOR MR. STUCKEY'S MOTION FOR A NEW TRIAL ON MARCH 23RD, 2011 MR. STUCKEY, ONCE AGAIN, REQUESTED PRO PER STATUS

ON APRIL 13TH, 2011, MR. STUCKEY'S PRO PER STATUS WAS RESTORED AND HE WAS ALLOWED TO REPRESENT HIMSELF AGAIN

THE COURT IMMEDIATELY APPOINTED MR. STUCKEY AN INVESTIGATOR MR. ERICK B. ELVERUM WAS ONCE AGAIN APPOINTED AS MR. STUCKEY'S INVESTIGATOR

FROM APRIL 13TH, 2011 TO MAY 17TH, 2011, MR. ELVERUM DID NOT PROVIDE MR. STUCKEY WITH ANY SERVICES AND FAILED TO SEE HIM

ON MAY 17TH, 2011, THE COURT APPOINTED MR. STUCKEY A NEW INVESTIGATOR NAMED GARY COOPER

DURING A FACE TO FACE MEETING ON MAY 17TH, 2011,

MR. STUCKEY NOTIFIED MR. COOPER THAT HE NEEDED HIM TO SERVE A SUBPOENA DUCES TECUM UPON THE

EXODUS MENTAL HEALTH RECORDS CENTER, SO THAT HE COULD INSPECT HIS MENTAL HEALTH RECORDS IN ORDER TO RESEARCH, INVESTIGATE, PREPARE AND PRESENT A MENTAL STATE DEFENSE AT SENTENCING

From November 3rd, 2010 to April 12th, 2011, MR. STUCKEY'S PRO PER STATUS WAS REVOKED, AT HIS REQUEST DURING THIS TIME PERIOD MR. STUCKEY WAS ASSIGNED COURT-APPOINTED ATTORNEY ALAN KESSLER, WHO FAILED TO OBTAIN HIS MENTAL HEALTH RECORDS IN PREPARATION OF MR. STUCKEY'S SENTENCING PROCEEDINGS ON APRIL 13th, 2011, MR. STUCKEY'S PRO PER STATUS WAS RESTORED, AT HIS REQUEST

THE COURT IMMEDIATELY APPOINTED MR. STUCKEY AN INVESTIGATOR MR. ELVERUM WAS ONCE AGAIN APPOINTED AS MR. STUCKEY'S INVESTIGATOR

From APRIL 13th, 2011 TO MAY 17th, 2011, MR. ELVERUM DID NOT PROVIDE MR. STUCKEY WITH ANY SERVICES AND FAILED TO SEE HI ON MAY 17th, 2011, THE COURT APPOINTED MR. STUCKEY A NEW INVESTIGATOR NAMED GARY COOPER

DURING A FACE TO FACE MEETING ON MAY 17th, 2011 MR. STUCKEY NOTIFIED MR. COOPER THAT HE NEEDED HIM TO SERVE A SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH RECORDS CENTER, SO THAT HE COULD INSPECT HIS MENTAL HEALTH RECORDS IN ORDER TO RESEARCH, INVESTIGATE, PREPARE A PRESENT A. MENTAL STATE DEFENSE AT HIS SENTENCING HEARING MR. STUCKEY NOTIFIED MR. COOPER THAT THE CONTENTS OF HIS MENTAL HEALTH RECORDS CONTAINED EVIDENCE THAT BEFORE AND DURING HIS ARREST, MR. STUCKEY SUFFERED FROM HALLUCINATIONS, PARANOID, BI-POLAR DISORDERS AND A SCHIZOPHRENIC DISORDERS, HOMELESSNESS AND WAS TAKING SEVERAL DIFFERENT ANTI-PSYCHOTIC MEDICATIONS FROM MAY 17th, 2011 TO AUGUST 30th, 2011, MR. COOPER FAILED TO SERVE MR. STUCKEY SUBPOENA DUCES TECUM OR OBTAIN HIS MENTAL HEALTH RECORDS FROM THE EXODUS MENTAL HEALTH CENTER



ON AUGUST 31, 2011, MR. STUCKEY FILED A 800-PAGE MOTION FOR A NEW TRIAL RAISING SEVERAL CLAIMS, INCLUDING THE FACT THAT HE WAS DENIED AN OPPORTUNITY TO PRESENT A MENTAL STATE DEFENSE TO THE JURY AT TRIAL DUE, IN PART, TO THE PRETRIAL COURTS UNREASONABLE DELAY IN PROVIDING HIM WITH AN INVESTIGATOR UNTIL SIX (6) DAYS BEFORE TRIAL, AND IN PART, DUE TO HIS INVESTIGATORS FAILURE TO SERVE HIS SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH CENTER WHICH DENIED HIM ACCESS TO HIS MENTAL HEALTH RECORDS

ON AUGUST 30, 2011, THE SENTENCING COURT READ AND CONSIDERED MR. STUCKEY'S MOTION FOR A NEW TRIAL

MR. STUCKEY ALSO FILED AN EX PARTE MOTION FOR MENTAL HEALTH RECORDS REQUESTING THAT THE COURT STAMP AND ISSUE A SUBPOENA DUCES TECUM, AND THEN SERVE IT UPON THE EXODUS MENTAL HEALTH CENTER, REQUESTING THAT THEY PROVIDE THE COURT AND MR. STUCKEY WITH A CERTIFIED COPY OF HIS MENTAL HEALTH RECORDS

MR. STUCKEY ARGUED THAT SINCE HIS INVESTIGATOR MR. COOPER WAS UNSUCCESSFUL IN SERVING THE SUBPOENA DUCES TECUM OR OBTAINING HIS MENTAL HEALTH RECORDS, HE NEEDED THE COURTS ASSISTANCE, SO THAT HE COULD PROPERLY PRESENT A MENTAL STATE DEFENSE AT HIS SENTENCING HEARING

THE SENTENCING COURT DENIED MR. STUCKEY'S EX PARTE MOTION FOR MENTAL HEALTH RECORDS AND HIS REQUEST TO HAVE THE COURT STAMP/ISSUE AND SERVE A SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH CENTER

MR. STUCKEY OBJECTED TO THE COURTS DENIAL OF HIS EX PARTE MOTION FOR MENTAL HEALTH RECORDS



ON SEPTEMBER 30, 2011, MR. STUCKEY FILED A MOTION FOR A HEARING PURSUANT TO SECTION 1204 (EVIDENCE IN MITIGATION OF PUNISHMENT) WHICH WAS BASED ON THE FACT THAT MR. STUCKEY NEEDED ADDITIONAL TIME, TO OBTAIN HIS MENTAL HEALTH RECORDS AND HAVE THEM SERVED UPON THE COURT. THE COURT DENIED MR. STUCKEY'S MOTION FOR A HEARING PURSUANT TO SECTION 1204 (EVIDENCE IN MITIGATION OF PUNISHMENT) ON SEPTEMBER 30, 2011, DURING HIS SENTENCING HEARING THE PROSECUTION ATTEMPTED TO PORTRAY MR. STUCKEY AS A "SERIAL BURGLAR", MAKING MUCH OF THE FACT THAT HIS PRIOR BURGLARY, LIKE THE INSTANT OFFENSE, OCCURRED ON A COLLEGE CAMPUS. RATHER THAN THE WORK OF A SOPHISTICATED CRIMINAL, THESE SEEM TO BE THE ACTIONS OF A HOMELESS, MENTALLY ILL PERSON WHO FREQUENT COLLEGE CAMPUSES. MR. STUCKEY HAD BEEN SLEEPING INSIDE THE DORMITORY BUILDING WHERE THE CURRENT OFFENSE OCCURRED. ALSO ON SEPTEMBER 30, 2011, MR. STUCKEY VERBALLY ARGUED HIS 800 PAGE MOTION FOR A NEW TRIAL WHICH RAISED SEVERAL CLAIMS INCLUDING THE CLAIM THAT HE WAS DENIED AN OPPORTUNITY TO PRESENT A MENTAL STATE DEFENSE TO THE JURY AT TRIAL DUE IN PART, TO THE PRETRIAL COURTS UNREASONABLE DELAY IN PROVIDING MR. STUCKEY WITH AN INVESTIGATOR UNTIL SIX(6) DAYS BEFORE TRIAL, AND IN PART, DUE TO HIS INVESTIGATOR'S FAILURE TO SERVE HIS SUBPOENA DUCES TECUM UPON THE EXOPUS MENTAL HEALTH CENTER WHICH DENIED HIM ACCESS TO HIS MENTAL HEALTH RECORDS PREVENTING HIM FROM RAISING A MENTAL STATE DEFENSE TO THE JURY AT TRIAL. THE SENTENCING COURT DENIED MR. STUCKEY'S MOTION FOR A NEW TRIAL.

• MR. STUCKEY IMMEDIATELY REQUESTED AN EXTENSION OF TIME SO THAT HIS INVESTIGATOR, GARY COOPER, COULD HAVE ADDITIONAL TIME TO SERVE HIS SUBPOENA DUES TEAM, AND OBTAIN HIS MENTAL HEALTH RECORDS FROM THE EXHIBITS MENTAL HEALTH CENTER. THE SENTENCING COURT DENIED MR. STUCKEY'S EXTENSION OF TIME AND IMMEDIATELY SENTENCED HIM TO SEVENTEEN (17) YEARS IN STATE PRISON WITHOUT EVER EXAMINING MR. STUCKEY'S MENTAL HEALTH RECORDS AND WITHOUT GIVING MR. STUCKEY AN OPPORTUNITY TO PRESENT AND PREPARE AN EFFECTIVE MENTAL STATE DEFENSE OUTLINING HIS MENTAL STATE AT THE TIME OF HIS ARREST AND COMMISSION OF THE CRIME.

DURING MR. STUCKEY'S DIRECT APPEAL PROCESS HE NOTIFIED HIS APPELLATE COUNSEL, RACHEL LEDERMAN, OF ALL HIS CLAIMS AS OUTLINED IN THIS WRIT OF HABEAS CORPUS.

MS. LEDERMAN FAILED TO RAISE MR. STUCKEY'S MERITORIOUS CLAIMS ON APPEAL WHICH PREJUDICES MR. STUCKEY, SINCE THEIR WERE DEFICIENCIES IN HIS PRELIMINARY HEARING, TRIAL, AND SENTENCING PROCEEDINGS, SIGNIFICANT ENOUGH TO WARRANT REVERSAL.

MR. STUCKEY'S DIRECT APPEAL PROCESS TOOK PLACE IN CALIFORNIA'S SECOND DISTRICT COURT OF APPEALS.

MR. STUCKEY FILED A REQUEST FOR PERMISSION TO BE ASSIGNED ANOTHER APPELLATE COUNSEL WHICH WAS DENIED ON SEVEN (7) SEPERATE OCCASIONS.

MR. STUCKEY ALSO FILED A REQUEST FOR PERMISSION TO FILE A SUPPLEMENTAL BRIEF, A PARTY BRIEF AND/OR AMICI CURIAE WITH THE COURT WHICH WAS DENIED, EACH TIME BY THE COURT ON OCTOBER 30, 2012, THE COURT ISSUED ITS DISPOSITION AFFIRMING JUDGMENT. IN MR. STUCKEY'S DIRECT APPEAL MS. LEDERMAN HAD NO TACTICAL REASON TO REFRAIN FROM RAISING MR. STUCKEY'S MERITORIOUS CLAIMS ON DIRECT APPEAL.



REASONS FOR GRANTING THE PETITION

I. THE DECISION OF THE CALIFORNIA SUPREME COURT IS IN CONFLICT WITH RELEVANT DECISIONS OF THIS COURT

IN THE CLOSELY ANALOGOUS CASE OF WIGGINS VS. SMITH, 539 U.S. 510, 519
123 Sct. 2527 (2003) THE COURT CONFRONTED A SITUATION WHERE THE
PUBLIC DEFENDERS FOR THE PETITIONER WIGGINS, LIKE IN
MR. STUCKEY CASE, FAILED TO PRESENT A MITIGATION CASE
DETAILING MR. WIGGINS MENTAL HEALTH, WHICH INCLUDED BORDERLINE
MENTAL RETARDATION AS WELL AS HIS LIFE HISTORY AND FAMILY
BACKGROUND DURING HIS JURY TRIAL

THE JURY SENTENCED WIGGINS TO DEATH, AND THE MARYLAND
COURT OF APPEALS AFFIRMED

REPRESENTED BY NEW COUNSEL, WIGGINS SOUGHT POST-CONVICTION RELIEF
ALLEGING THAT HIS TRIAL COUNSEL HAD RENDERED INEFFECTIVE
ASSISTANCE BY FAILING TO INVESTIGATE AND PRESENT MITIGATING
EVIDENCE OF HIS DYSFUNCTIONAL BACKGROUND, INCLUDING HIS
BORDERLINE MENTAL RETARDATION

THE TRIAL COURT DENIED THE PETITION, AND THE STATE COURT OF
APPEALS AFFIRMED

SUBSEQUENTLY, THE FEDERAL DISTRICT COURT GRANTED WIGGINS RELIEF
ON HIS FEDERAL HABEAS PETITION, HOLDING THAT THE MARYLAND COURT
REJECTION OF HIS INEFFECTIVE ASSISTANCE CLAIM INVOLVED AN
UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW
THE COURT IN WIGGINS FOUND THAT THE PERFORMANCE OF WIGGINS
ATTORNEYS AT TRIAL AND SENTENCING VIOLATED HIS SIXTH AMENDMENT
RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

IN THIS CASE, THE PETITIONER ADAM STUCKEY, REPRESENTED HIMSELF
FOR MOST OF THE PROCESS OF HIS COURT PROCEEDINGS IN
CASE NUMBER * BA374188

DURING MR. STUCKEY ARRAIGNMENT ON AUGUST 25, 2010, HE REQUESTED
A SPEDY TRIAL UNDER CALIFORNIA PENAL CODE SECTION 1382

UNDER CALIFORNIA SPEEDY TRIAL LAW A PERSON HAS A RIGHT TO
A JURY TRIAL WITHIN 60 DAYS AFTER HIS ARRAIGNMENT

• AT HIS ARRAIGNMENT, MR. STUCKEY REQUESTED A COURT-APPOINTED INVESTIGATOR TO ASSIST HIM IN RESEARCHING, INVESTIGATING, PREPARING AND PRESENTING AN OVERALL DEFENSE AT TRIAL. THE PRETRIAL COURT DID NOT APPOINT MR. STUCKEY AN INVESTIGATOR UNTIL OCTOBER 15th, 2010, WHICH WAS SIX(6) DAYS BEFORE THE START OF HIS JURY TRIAL (DAY 54 OF THE 60 DAY SPEEDY TRIAL REQUIREMENT). ERICK B. ELVERUM WAS APPOINTED AS MR. STUCKEY'S INVESTIGATOR UNDER CALIFORNIA'S SPEEDY TRIAL LAW, PENAL CODE 1382. MR. STUCKEY'S TRIAL DATE WAS SCHEDULED TO START ON OCTOBER 21st, 2010.

MR. STUCKEY DID NOT WAIVE HIS RIGHT TO A SPEEDY TRIAL. IN KLOPPER VS. NORTH CAROLINA, 386 U.S. 213, THIS COURT DECLARED THAT THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GIVES THE ACCUSED IN ALL CRIMINAL PROSECUTIONS THE RIGHT TO A SPEEDY TRIAL.

ON OCTOBER 15th, 2010, MR. STUCKEY INFORMED MR. ELVERUM THAT HE NEEDED HIM TO OBTAIN HIS MENTAL HEALTH RECORDS FROM THE EXODUS MENTAL HEALTH CENTER WHERE HE WAS AN OUT-PATIENT AT THE TIME OF HIS ARREST. MR. STUCKEY ALSO INFORMED MR. ELVERUM THAT HE NEEDED HIM TO SERVE A SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH CENTER REQUESTING THAT THEY DISCLOSE HIS MENTAL HEALTH RECORDS TO MR. STUCKEY, AS WELL AS THE COURT FOR INSPECTION.

MR. STUCKEY'S JURY TRIAL STARTED ON OCTOBER 21st, 2010 AND ENDED ON NOVEMBER 2nd, 2010.

MR. ELVERUM FAILED TO OBTAIN MR. STUCKEY'S MENTAL HEALTH RECORDS FROM THE EXODUS MENTAL HEALTH CENTER PRIOR TO AND DURING HIS JURY TRIAL.

AS A RESULT MR. STUCKEY WAS DENIED AN OPPORTUNITY TO RESEARCH, PREPARE AND PRESENT A MENTAL HEALTH DEFENSE AT TRIAL, IN PART, DUE TO THE COURT'S UNREASONABLE DELAY IN PROVIDING MR. STUCKEY WITH AN INVESTIGATOR, UNTIL 51 DAYS AFTER HIS ARRAIGNMENT, AND IN PART, DUE TO HIS INVESTIGATORS FAILURE TO OBTAIN HIS MENTAL HEALTH RECORDS IN SMITH VS. MOOBY, 393 U.S. 374, 377-378, THIS COURT HELD THAT PREJUDICE SHOULD BE ASSESSED IN THE LIGHT OF THE INTEREST OF THE DEFENDANT, WHICH THE SPEEDY TRIAL WAS DESIGNED TO PROTECT IN BARKER VS. WINGO, 407 U.S. 514 (1972), THE COURT IDENTIFIED THREE SUCH INTERESTS

- 1st. TO PREVENT OPPRESSIVE PRE-TRIAL INCARCERATION
- 2nd. TO PREVENT MINIMIZATION OF ANXIETY AND CONCERN OF THE ACCUSED
- 3rd. TO LIMIT THE POSSIBILITY THAT THE DEFENSE WILL BE IMPAIRED

THE CONTENTS OF MR. STUCKEY'S EXHIBIT MENTAL HEALTH RECORDS CONTAINED EVIDENCE THAT BEFORE AND DURING HIS ARREST MR. STUCKEY SUFFERED FROM HALLUCINATIONS, PARANOIA, BIPOLAR AND SCHIZOPHRENIC DISORDERS, WAS HOMELESS AT THE TIME OF HIS ARREST AND HE WAS TAKING SEVERAL DIFFERENT ANTI-PSYCHOTIC MEDICATIONS. MR. STUCKEY'S INVESTIGATORS MR. ELVERUM AND MR. COOPER WERE UNABLE TO OBTAIN HIS MR. STUCKEY'S MENTAL HEALTH RECORDS FROM THE EXHIBIT MENTAL HEALTH CENTER BEFORE, DURING AND AFTER HIS TRIAL AND SENTENCING IN WIGGINS VS. SMITH, 539 U.S. 510, THIS COURT FOUND INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO PRESENT A MENTAL STATE DEFENSE BASED ON AVAILABLE EVIDENCE

MR. STUCKEY'S CASE ILLUSTRATES THE FACT THAT THE CALIFORNIA SUPREME COURT IS OUT OF STEP WITH THIS COURT IN ITS CONSIDERATION OF THE WIGGINS VS. SMITH, 539 U.S. 510 (2003) PREJUDICE PRONG CERTIORARI SHOULD BE GRANTED TO CORRECT THIS ERROR

IN THE CLOSELY ANALOGOUS CASE OF FARETTA VS. CALIFORNIA, 422 U.S. 80 THE SUPREME COURT HELD THAT THE SIXTH AMENDMENT GUARANTEES CRIMINAL DEFENDANTS THE RIGHT TO REPRESENT THEMSELVES. THE COURT ACKNOWLEDGED THAT WHEN AN ACCUSED MANAGES HIS OWN DEFENSE HE MUST BE PERMITTED TO EFFECTIVELY REPRESENT HIMSELF.

IN THIS CASE, THE PETITIONER ANORE STUCKEY, REPRESENTED HIMSELF DURING MOST OF THE PROCESS, OF HIS COURT PROCEEDINGS IN CASE # BA374188

AT HIS ARRAIGNMENT, MR. STUCKEY REQUESTED A SPEDY TRIAL, WHICH UNDER CALIFORNIA LAW, PENAL CODE SECTION 1382, MUST START WITHIN 60 DAYS OF ARRAIGNMENT

THE COURT DELAYED PROVIDING MR. STUCKEY WITH AN INVESTIGATOR, UNTIL 54 DAYS AFTER HIS ARRAIGNMENT

MR. STUCKEY INFORMED HIS INVESTIGATOR THAT HE NEEDED TO OBTAIN HIS MENTAL HEALTH RECORDS FROM THE EXODUS MENTAL HEALTH CENTER, WHICH SHOW THAT, AT THE TIME OF HIS ARREST, MR. STUCKEY WAS SUFFERING FROM HALLUCINATIONS, PARANOIA, BIPOLAR DISORDERS, SCHIZOPHRENIA, WAS HOMELESS, AND WAS TAKING SEVERAL DIFFERENT TYPES OF ANTI-PSYCHOTIC MEDICATIONS

MR. STUCKEY'S INVESTIGATORS FAILED TO OBTAIN HIS MENTAL HEALTH RECORDS BEFORE, DURING OR AFTER HIS TRIAL AND SENTENCING

THE COURT FAILED TO PROVIDE MR. STUCKEY WITH AN COURT APPOINTED INVESTIGATOR UNTIL 54 DAYS AFTER HIS ARRAIGNMENT, WHICH DID NOT GIVE HIS INVESTIGATOR ENOUGH TIME TO SERVE HIS SUBPOENA DUCES TECUM OR OBTAIN HIS MENTAL HEALTH RECORDS BEFORE THE START OF TRIAL

THEREFORE, MR. STUCKEY WAS DENIED AN OPPORTUNITY TO RESEARCH INVESTIGATE, PREPARE AND PRESENT A MENTAL STATE DEFENSE AT TRIAL, THAT COULD HAVE CHANGED THE OUTCOME OF HIS TRIAL

ON APRIL 15, 2019, MR. STUCKEY FILED A WRIT OF HABEAS CORPUS PETITION IN THE CALIFORNIA SUPREME COURT UNDER CASE# S255239

MR. STUCKEY RAISED SEVERAL GROUNDS, INCLUDING THE FACT THAT HE WAS DENIED HIS RIGHT TO SELF-REPRESENTATION WHEN HE WAS DENIED THE OPPORTUNITY TO PREPARE AND PRESENT A MENTAL STATE DEFENSE AT TRIAL DUE TO THE COURTS UNREASONABLE DELAY IN PROVIDING HIM WITH A COURT-APPOINTED INVESTIGATOR

ON _____, THE CALIFORNIA SUPREME COURT DENIED MR. STUCKEY'S WRIT OF HABEAS CORPUS PETITION

MR. STUCKEY'S CASE ILLUSTRATES THE FACT THAT THE CALIFORNIA SUPREME COURT IS OUT OF STEP WITH THIS COURT IN ITS CONSIDERATION OF THE FOLLOWING SUPREME COURT CASES

- 1st FARETTA VS. CALIFORNIA, 422 U.S. 806 (1975)
- 2nd WIGGINS VS. SMITH, 539 U.S. 510 (2003)

PREJUDICE PRONG

CERTIORARI SHOULD BE GRANTED TO CORRECT THIS ERROR

IN THE CLOSELY ANALOGOUS CASE OF CRAWFORD VS. WASHINGTON, 541 U.S. 36
THE SUPREME COURT HELD THAT IF A DEFENDANT DOES NOT HAVE
THE OPPORTUNITY TO CROSS-EXAMINE A WITNESSES STATEMENT AT
A PRELIMINARY HEARING, THE PRELIMINARY HEARING IS NOT ADMISSIBLE
IN MR. STUCKEY CASE, THERE WERE TWO(2) SEPERATE PRELIMINARY HEARINGS
THE FIRST PRELIMINARY HEARING TOOK PLACE ON MAY 11, 2010 UNDER
CASE NUMBER BA370659

THE PEOPLE CHOSE NOT TO PROCEED WITH A. HEARSAY "PROP 115"
PRELIMINARY HEARING, AND PRESENTED "LIVE" TESTIMONY FROM THE
VICTIM AND WITNESSES, IN-COURT
PROPOSITION 115 IS A MEASURE THAT ADDS CALIFORNIA CONSTITUTIONAL
AND STATUTORY LANGUAGE RELATING TO THE USE OF HEARSAY EVIDENCE
AT PRELIMINARY HEARINGS

PROPOSITION 115, AMENDS CALIFORNIA PENAL CODE SECTION 872, TO PROVIDE
THAT A PROBABLE CAUSE FINDING MAY BE BASED ON THE TESTIMONY
OF CERTAIN QUALIFIED LAW ENFORCEMENT OFFICERS RELATING
THE OUT OF COURT STATEMENTS OF DECLARANTS

LOS ANGELES POLICE DEPARTMENT DETECTIVE MARIE GREBINSKI WAS
DESIGNATED THE INVESTIGATING OFFICER EVEN THOUGH SHE NEVER
INTERVIEWED ANY OF THE WITNESSES OR VICTIM PRIOR TO THE
START OF THE PRELIMINARY HEARING

MS. GREBINSKI WAS NOT PRESENT, INSIDE THE COURTROOM,
FOR ANY OF THE WITNESSES OR VICTIM IN-COURT TESTIMONIES
MS. GREBINSKI TESTIFIED IN-COURT AT THE END OF THE
PRELIMINARY HEARING, AFTER THE VICTIM AND WITNESSES HAD
LEFT THE COURTROOM

THE COURT WOULD EVENTUALLY FIND PROBABLE CAUSE AT THE
PRELIMINARY HEARING TO BIND MR STUCKEY OVER TO THE
SUPERIOR COURT FOR PRE-TRIAL PROCEEDINGS

ON JULY 30, 2010, CASE BA370659 WAS DISMISSED DUE TO
A SPEEDY TRIAL VIOLATION, AND IT WAS REFILED UNDER
CASE NUMBER BA374188

THE SECOND PRELIMINARY HEARING TOOK PLACE ON AUGUST 11, 2010
UNDER CASE NUMBER "BA374188"

THE VICTIM AND WITNESSES, WHO TESTIFIED DURING THE FIRST
PRELIMINARY HEARING, WERE NOT AVAILABLE TO TESTIFY DURING THE
SECOND PRELIMINARY HEARING

DETECTIVE MS. GREBINSKI WAS CALLED TO TESTIFY AT THE
SECOND PRELIMINARY HEARING

MS. GREBINSKI WAS CALLED TO TESTIFY, ONLY TO THE STATEMENTS
MADE BY THE VICTIM AND WITNESSES AT THE PRIOR FIRST
PRELIMINARY HEARING

THE "READER" TESTIMONY OF A TESTIFYING OFFICER SHOULD ONLY BE
ALLOWED IF THE TESTIFYING OFFICER HAS SUFFICIENT KNOWLEDGE OF
THE CRIME AND THE CIRCUMSTANCES UNDER WHICH AN
OUT OF COURT STATEMENT WAS MADE, SO AS TO MEANINGFULLY
ASSIST THE MAGISTRATE IN ASSESSING THE RELIABILITY OF THE
STATEMENT

THE "READER" TESTIMONY OF MS. GREBINSKI IS INCONSISTENT
WITH THE PURPOSES UNDERLYING PROPOSITION 11S, BECAUSE
MS. GREBINSKI WAS NOT PRESENT, IN-COURT, WHEN THE VICTIM
AND WITNESSES TESTIFIED, IN-COURT, DURING THE FIRST PRELIMINARY
HEARING

BY PERMITTING MS. GREBINSKI'S "READER" HEARSAY TESTIMONY AT
THE SECOND PRELIMINARY HEARING, THE COURT FAILED TO TAKE INTO
ACCOUNT THAT PROPOSITION 11S DOES NOT AUTHORIZE A
"READER" TESTIFYING OFFICER TO RECITE PRIOR IN-COURT STATEMENTS
OF A DECLARANT
PROPOSITION 11S DOES NOT AUTHORIZE A FINDING OF PROBABLE CAUSE
BASED ON THE TESTIMONY OF A "READER" INVESTIGATING OFFICER
MERELY RECITING PRIOR IN-COURT STATEMENTS OF A DECLARANT
MS. GREBINSKI'S "READER" TESTIMONY DURING THE SECOND PRELIMINARY
HEARING VIOLATES THE FOLLOWING FEDERAL CONSTITUTIONAL RIGHTS
AND LAWS:

- SIXTH AMENDMENT RIGHT TO CONFRONTATION
- FOURTEENTH AMENDMENT DUE PROCESS LAW
- CRAWFORD VS. WASHINGTON, 541 U.S. 36

ON AUGUST 11, 2010, MR. STUCKEY SHOULD NOT HAVE BEEN HELD TO
ANSWER TO THE SUPERIOR COURT FOR PRETRIAL PROCEEDINGS

ON AUGUST 25th, 2010, MR. STUCKEY FILED A DEMURRER TO THE COMPLAINT ON THE GROUND THAT THE EVIDENCE AND THE "READER" TESTIMONY OF MS. GREBINSKI AT THE PRELIMINARY HEARING WAS UNCONSTITUTIONAL, INCOMPETENT AND INSUFFICIENT TO ESTABLISH PROBABLE CAUSE

THE COURT DENIED MR. STUCKEY'S DEMURRER TO THE COMPLAINT MR. STUCKEY ALSO FILED A MOTION TO DISMISS THE INFORMATION UNDER CALIFORNIA PENAL CODE SECTION 995, ON THE GROUND THAT THE EVIDENCE, INCLUDING THE "READER" TESTIMONY OF MS. GREBINSKI AT THE SECOND PRELIMINARY HEARING WAS UNCONSTITUTIONAL, INCOMPETENT AND INSUFFICIENT TO ESTABLISH PROBABLE CAUSE ON SEPTEMBER 17th, 2010, THE COURT DENIED MR. STUCKEY'S MOTION TO DISMISS THE INFORMATION MS. GREBINSKI'S READER TESTIMONY AT THE SECOND PRELIMINARY HEARING IS FUNDAMENTALLY AT ODDS WITH THE RIGHTS OF CONFRONTATION

THE CONFRONTATION CLAUSE ULTIMATE ULTIMATE GOAL IS TO ENSURE RELIABILITY OF EVIDENCE, BUT IT IS A PROCEDURAL RATHER THAN A SUBSTANTIVE GUARANTEE IT COMMANDS, NOT THAT EVIDENCE BE RELIABLE, BUT THAT RELIABILITY BE ASSESSED IN A PARTICULAR MANNER, BY TESTING IN THE CRUCIBLE OF CROSS-EXAMINATION THE CLAUSE THUS REFLECTS A JUDGEMENT, NOT ONLY ABOUT THE DESIRABILITY OF RELIABLE EVIDENCE, BUT ABOUT HOW RELIABILITY CAN BEST BE DETERMINED



DURING THE SECOND PRELIMINARY HEARING MR. STUCKEY WAS NOT ALLOWED THE OPPORTUNITY TO CROSS-EXAMINE THE VICTIM AND WITNESSES WHO HAD TESTIFIED DURING THE FIRST PRELIMINARY HEARING

IN CRAWFORD VS. WASHINGTON, 541 U.S. 36, THIS COURT HELD THAT IF A DEFENDANT DOES NOT HAVE THE OPPORTUNITY TO CROSS-EXAMINE A WITNESSES STATEMENT AT A PRELIMINARY HEARING THE PRELIMINARY HEARING IS NOT ADMISSIBLE

ON APRIL 15, 2019, MR. STUCKEY FILED A WRIT OF HABEAS CORPUS PETITION IN THE CALIFORNIA SUPREME COURT UNDER CASE # S255239

MR. STUCKEY RAISED SEVERAL GROUNDS, INCLUDING THE FACT THAT HE WAS PREJUDICED BY IRREGULARITIES AT HIS PRELIMINARY HEARING WHEN HE WAS NOT ALLOWED THE OPPORTUNITY TO CONFRONT OR CROSS-EXAMINE THE VICTIM OR WITNESSES PRIOR IN-COURT STATEMENTS

ON _____, THE CALIFORNIA SUPREME COURT DENIED MR. STUCKEY'S WRIT OF HABEAS CORPUS PETITION

MR. STUCKEY'S CASE ILLUSTRATES THE FACT THAT THE CALIFORNIA SUPREME COURT IS OUT OF STEP WITH THIS COURT IN ITS CONSIDERATION OF THE CRAWFORD VS. WASHINGTON, 541 U.S. 36, PREJUDICE PRONG.

CERTIORARI SHOULD BE GRANTED TO CORRECT THIS ERROR. MR. STUCKEY DID NOT TIMELY RAISE AN OBJECTION TO MS. GREBINSKY'S "READER" TESTIMONY DURING THE SECOND PRELIMINARY HEARING.

IN UNITED STATES VS. BLAND, 507 U.S. 725, THIS COURT HELD THAT PLAIN ERROR REVIEW PROVIDES THE COURTS THE POWER TO CORRECT ERRORS THAT WERE NOT TIMELY RAISED IN-COURT. MR. STUCKEY DID, HOWEVER, RAISE THIS ISSUE DURING HIS PRETRIAL PROCEEDINGS.

MR. STUCKEY WAS DEPRIVED OF A FAIR TRIAL AS A RESULT OF THE IRREGULARITIES AND ERRORS AT HIS SECOND PRELIMINARY HEARING DURING MR. STUCKEY'S JURY TRIAL ON OCTOBER 26, 2010; MS. GREBINSKI AND ANOTHER INVESTIGATING OFFICER L.J. JONES WERE ALLOWED TO SIT DOWN AT THE PROSECUTORS TABLE WHILE THE VICTIM AND WITNESSES TESTIFIED

MR. STUCKEY OBJECTED TO MS. GREBINSKI AND L.J. JONES SEATING AT THE PROSECUTORS TABLE WHILE THE VICTIM AND WITNESSES WERE TESTIFYING BECAUSE MS. GREBINSKI AND MR. JONES WERE GIVING HEAD SIGNALS TO THE VICTIM AND WITNESSES. THE COURT OVERRULED MR. STUCKEY'S OBJECTION.

MR. STUCKEY WAS EVENTUALLY FOUND GUILTY OF FIRST DEGREE BURGLARY ON NOVEMBER 2, 2010.

THE RIGHT TO CROSS-EXAMINATION, PROTECTED BY THE CONSTITUTION AND CONFRONTATION CLAUSE IS ESSENTIALLY A FUNCTIONAL RIGHT DESIGNED TO PROMOTE RELIABILITY ON THE TRUTH-FINDING FUNCTIONS OF A CRIMINAL TRIAL.

THE CENTRAL CONCERN OF THE CONFRONTATION CLAUSE IS TO ENSURE THE RELIABILITY OF THE EVIDENCE AGAINST A CRIMINAL DEFENDANT BY SUBJECTING IT TO RIGOROUS TESTING IN THE CONTEXT OF AN ADVERSARY PROCEEDING. BEFORE THE TRIER OF FACT DENIAL OF CROSS-EXAMINATION CONCERNING A WITNESS OR VICTIM'S BIAS MAY DEPRIVE THE DEFENDANT OF ITS BEST OPPORTUNITY TO EXPOSE GENUINE FLAWS IN THE PROSECUTION'S CASE - FLAWS THAT THE COLD RECORD WILL NOT REVEAL TO AN APPELLATE COURT.

WHEN THE COURT ALLOWED MS. GREBINSKI AND MR. JONES TO REMAIN AT THE PROSECUTORS TABLE WHILE THE VICTIM AND WITNESSES TESTIFIED, MR. STUCKEY'S SIXTH AMENDMENT RIGHT TO CONFRONTATION WAS VIOLATED.

THE IMPORTANCE OF EFFECTIVE CROSS EXAMINATION TO A CRIMINAL TRIAL IS SO GREAT THAT A COMPLETE DENIAL OF OTHERWISE PROPER CROSS-EXAMINATION CONCERNING THE POTENTIAL BIAS OF A PROSECUTORIAL WITNESS, SIMILAR LEAD TO NO LESS THAN A REVERSAL OF THE CONVICTION.

DELAWARE VS. ARSPAHL, 475 U.S. 673

IN THE CLOSELY ANALOGOUS CASE OF SMITH VS. ROBBINS, 528 U.S. 259, 285
120 S.Ct 746 (2000) THE COURT HELD THAT THE FOURTEENTH (14)
AMENDMENT DUE PROCESS CLAUSE GUARANTEES A CRIMINAL DEFENDANT
EFFECTIVE ASSISTANCE OF COUNSEL DURING HIS OR HER FIRST APPEAL
AS OF RIGHT

WHEN AN APPELLATE COUNSEL'S PERFORMANCE IS CONSTITUTIONALLY
DEFICIENT AND THE DEFENDANT WAS PREJUDICED BY THIS COUNSEL'S
ERRORS, THE DEFENDANT IS DENIED HIS FOURTEENTH AMENDMENT RIGHT
TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
TO PREVAIL, THE DEFENDANT MUST SHOW, FIRST, "THAT COUNSEL"
PERFORMANCE WAS OBJECTIVELY UNREASONABLE, WHICH IN THE
APPELLATE CONTEXT REQUIRES THE PETITIONER TO DEMONSTRATE
THAT COUNSEL ACTED UNREASONABLY IN FAILING TO DISCOVER AND
BRIEF A MERIT-WORTHY ISSUE" AND SECOND, THAT HE WAS
PREJUDICED ON ACCOUNT OF THE DEFICIENT PERFORMANCE, "WHICH
IN THIS CONTEXT MEANS THAT THE PETITIONER MUST
DEMONSTRATE A REASONABLE PROBABILITY THAT, BUT FOR
APPELLATE COUNSEL'S FAILURE TO RAISE THE ISSUE, THE
PETITIONER WOULD HAVE PREVAILED IN HIS APPEAL

IN THIS CASE, THE PETITIONER ANDRE STUCKEY, NOTIFIED HIS
APPELLATE COUNSEL, RACHEL LEDERMAN, OF HIS "WIGGINS", "FARETTA"
AND CRAWFORD CLAIMS
MR. LEDERMAN FAILED TO RAISE MR. STUCKEY'S "WIGGINS", "FARETTA"
AND "CRAWFORD" CLAIMS ON DIRECT APPEAL WHICH PREJUDICED
MR. STUCKEY, SINCE THERE WERE DEFICIENCIES IN MR. STUCKEY'S
PRELIMINARY HEARING, TRIAL AND SENTENCING PROCEEDINGS
SIGNIFICANT ENOUGH TO WARRANT REVERSAL



MR. STUCKEY'S APPELLATE COUNSEL HAD NO TACTICAL REASON TO REFRAIN FROM RAISING HIS MERITORIOUS CLAIMS ON DIRECT APPEAL

MR. STUCKEY FILED A REQUEST FOR PERMISSION TO BE ASSIGNED ANOTHER APPELLATE COUNSEL WHICH WAS DENIED ON SEVEN (7) SEPARATE OCCASIONS, MR. STUCKEY FILED A REQUEST FOR PERMISSION TO FILE A SUPPLEMENTAL BRIEF, A PARTY BRIEF AND/OR AMICI CURIAE, WITH THE COURT, SO THAT HE COULD RAISE HIS "FARETTA", "WIGGINS" AND "CRAWFORD" CLAIMS, WHICH WAS DENIED BY THE COURT

ON OCTOBER 30, 2012, THE COURT ISSUED ITS DISPOSITION AFFIRMING JUDGEMENT IN MR. STUCKEY'S DIRECT APPEAL MS. LEDEMAN'S FAILURE TO RAISE MR. STUCKEY'S WIGGINS, FARETTA AND CRAWFORD CLAIMS ON DIRECT APPEAL PREJUDICED MR. STUCKEY WHERE THERE WERE DEFICIENCIES IN THE PRELIMINARY HEARING, TRIAL AND SENTENCING PROCEEDINGS SIGNIFICANT ENOUGH TO WARRANT REVERSAL

ON APRIL 15, 2019, MR. STUCKEY FILED A WRIT OF HABEAS CORPUS PETITION IN THE CALIFORNIA SUPREME COURT UNDER CASE # S255239

MR. STUCKEY RAISED SEVERAL GROUNDS, INCLUDING THE FACT THAT HIS APPELLATE COUNSEL FAILED TO RAISE MERITORIOUS CLAIM ON APPEAL WHEN THERE WERE DEFICIENCIES IN EVERY STAGE OF MR. STUCKEY'S COURT PROCEEDINGS SIGNIFICANT ENOUGH TO WARRANT REVERSAL

ON _____, THE CALIFORNIA SUPREME COURT DENIED MR. STUCKEY'S WRIT OF HABEAS CORPUS

MR. STUCKEY'S CASE ILLUSTRATES THE FACT THAT THE CALIFORNIA SUPREME COURT IS OUT OF STEP WITH THIS COURT IN ITS CONSIDERATION OF THE

SMITH VS. ROBBINS, 528 U.S. 259, 285 (2000) PREJUDICE PRONG.

CERTIORARI SHOULD BE GRANTED TO CORRECT THIS ERROR

II. THE CALIFORNIA SUPREME COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN SETTLED BY THIS COURT

IN 2008, CONGRESS ENACTED INTO LAW THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008 ("ADAAA") THE PURPOSE OF WHICH WAS TO BROADEN THE DEFINITION OF AN ADA DISABILITY ANY INDIVIDUAL THAT HAS A "PHYSICAL OR MENTAL IMPAIRMENT" THAT "SUBSTANTIALLY LIMITS" ONE OR MORE "MAJOR LIFE ACTIVITIES" IS DISABLED WITHIN THE MEANING OF THE "ADAAA". 42 U.S.C. § 12102(1)(A) HOWEVER, SUCH AN IMPAIRMENT DOES NOT HAVE TO BE PERMANENT OR LONG-TERM

IN ADDITION, AN IMPAIRMENT QUALIFIES AS AN ADA DISABILITY EVEN IF THE EFFECTS MAY BE CORRECTED BY MITIGATING DEVICES SUCH AS MEDICATION

AN INDIVIDUAL WILL ALSO BE CONSIDERED DISABLED IF THERE IS "A RECORD OF SUCH AN IMPAIRMENT". 42 U.S.C. § 12102(1)(B) OR IF THE PERSON IS BEING REGARDED AS HAVING SUCH AN IMPAIRMENT. 42 U.S.C. § 12102(1)(C)

THUS, EVEN IF AN INDIVIDUAL DOES NOT HAVE A PHYSICAL OR MENTAL IMPAIRMENT WHICH SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY, HE OR SHE MAY STILL BRING A VIABLE ADA CLAIM IF THE STATE OR LOCAL GOVERNMENT AGENCY ENGAGES IN DISCRIMINATORY BEHAVIOR BASED ON A MISTAKEN BELIEF THAT THE INDIVIDUAL HAS AN ADA-QUALIFIED IMPAIRMENT AMONG THE 2008 AMENDMENTS, CONGRESS ALTERED THE DEFINITION OF "DISABILITY" SUCH THAT BEING "REGARDED AS" HAVING AN IMPAIRMENT NO LONGER REQUIRES A SHOWING THAT GOVERNMENT OFFICIALS ACTUALLY PERCEIVED THE INDIVIDUAL TO BE SUBSTANTIALLY LIMITED IN A MAJOR LIFE ACTIVITY UNDER THE ADAAA; GOVERNMENT OFFICIALS VIOLATE THE LAW "WHETHER OR NOT THE IMPAIRMENT LIMITS OR IS PERCEIVED TO LIMIT A MAJOR LIFE ACTIVITY". 42 U.S.C. § 12102(3) ADA PROHIBITS STATE OFFICIALS FROM DISCRIMINATING AGAINST HIM OR HER BY REASON OF THAT DISABILITY



IN THIS CASE, THE PETITIONER ANDRE STUCKEY SUFFERED FROM A BI-POLAR AND SCHIZOPHRENIC DISORDER AT THE TIME OF HIS ARREST

MR. STUCKEY WAS HOMELESS, SOMETIMES SLEEPING INSIDE THE DORMITORY BUILDING WHERE THE CURRENT OFFENSE OCCURRED. MR. STUCKEY WAS ALSO TAKING SEVERAL ANTI-PSYCHOTIC MEDICATIONS AT THE TIME OF HIS ARREST WHICH WAS PRESCRIBED BY HIS PRIMARY PHYSICIAN AT THE EXODUS MENTAL HEALTH CENTER, WHERE MR. STUCKEY WAS AN OUT-PATIENT AT THE TIME OF HIS ARREST.

MR. STUCKEY REPRESENTED HIMSELF DURING MOST OF THE PROCESS OF HIS COURT PROCEEDINGS IN CASE # BA374188, FROM HIS PRELIMINARY HEARING TO HIS SENTENCING.

ON AUGUST 23, 2010, THE LOS ANGELES COUNTY PROBATION OFFICE ISSUED A REPORT INDICATING MR. STUCKEY'S MENTAL ILLNESSES WHICH INCLUDED HALLUCINATIONS AND PARANOIDA.

THE REPORT RECOMMENDED THAT SHOULD MR. STUCKEY BE CONVICTED HIS AGGRAVATING AND MITIGATING FACTORS SUPPORTED A MID BASE TERM SENTENCE OF FOUR (4) YEARS.

AT HIS ARRAIGNMENT ON AUGUST 25, 2010, MR. STUCKEY REQUESTED A SPEDY TRIAL, WHICH UNDER CALIFORNIA LAW; PENAL CODE SECTION 1382, REQUIRED MR. STUCKEY'S TRIAL TO START WITHIN 60 DAYS.

THE PRETRIAL COURT PROVIDED MR. STUCKEY WITH A COURT-APPOINTED INVESTIGATOR 54 DAYS AFTER HIS ARRAIGNMENT AND JUST SIX (6) DAYS BEFORE THE START OF HIS JURY TRIAL.

MR. STUCKEY NOTIFIED HIS COURT-APPOINTED INVESTIGATOR ERICK B. ELVERUM THAT HE NEEDED HIM TO SERVE A SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH CENTER SO THAT HE COULD OBTAIN HIS MENTAL HEALTH RECORDS, WHICH WOULD BE USED TO PREPARE AND PRESENT A MENTAL STATE DEFENSE AT TRIAL.

MR. ELVERUM WAS UNABLE TO OBTAIN MR. STUCKEY'S MENTAL HEALTH RECORDS BEFORE OR DURING MR. STUCKEY'S TRIAL.

MR. STUCKEY WAS FOUND GUILTY OF FIRST DEGREE BURGLARY ON NOVEMBER 2, 2010.

AT THIS POINT, MR. ELVERUM'S INVESTIGATIVE SERVICES ENDED IN MR. STUCKEY'S CASE.



ON AUGUST 31st, 2011, MR. STUCKEY FILED A 800-PAGE
MOTION FOR A NEW TRIAL RAISING SEVERAL CLAIMS, INCLUDING
THE FACT THAT HE WAS DENIED AN OPPORTUNITY TO PRESENT
A MENTAL STATE DEFENSE AT TRIAL DUE TO THE PRETRIAL
COURTS UNREASONABLE DELAY IN PROVIDING HIM WITH AN
INVESTIGATOR UNTIL SIX(6) DAYS BEFORE TRIAL, AND IN PART,
DUE TO HIS INVESTIGATORS FAILURE TO SERVE HIS
SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH CENTER
WHICH DENIED HIM ACCESS TO HIS MENTAL HEALTH RECORDS
ON AUGUST 31st, 2011, THE SENTENCING COURT READ AND CONSIDERED
MR. STUCKEY'S MOTION FOR A NEW TRIAL.

MR. STUCKEY ALSO FILED AN EX PARTE MOTION FOR MENTAL HEALTH
RECORDS REQUESTING THAT THE COURT STAMP AND ISSUE
A SUBPOENA DUCES TECUM, AND THEN SERVE IT UPON THE
EXODUS MENTAL HEALTH CENTER, REQUESTING THAT THEY PROVIDE
THE COURT AND MR. STUCKEY WITH A CERTIFIED COPY OF HIS
MENTAL HEALTH RECORDS

MR. STUCKEY ARGUED THAT SINCE HIS INVESTIGATOR MR. COOPER
WAS UNSUCCESSFUL IN SERVING THE SUBPOENA DUCES TECUM
OR OBTAINING HIS MENTAL HEALTH RECORDS, HE NEEDED THE
COURT'S ASSISTANCE, SO THAT HE COULD PROPERLY PRESENT A
MENTAL STATE DEFENSE AT HIS SENTENCING HEARING

THE SENTENCING COURT DENIED MR. STUCKEY'S EX PARTE MOTION
FOR MENTAL HEALTH RECORDS AND HIS REQUEST TO HAVE THE
COURT STAMP/ISSUE AND SERVE A SUBPOENA DUCES TECUM
UPON THE EXODUS MENTAL HEALTH CENTER

MR. STUCKEY OBJECTED TO THE COURT'S DENIAL OF HIS
EX PARTE MOTION FOR A NEW TRIAL



ON SEPTEMBER 30th, 2011, MR. STUCKEY VERBALLY ARGUED HIS 800 PAGE MOTION FOR A NEW TRIAL WHICH RAISED SEVERAL CLAIMS INCLUDING THE CLAIM THAT HE WAS DENIED AN OPPORTUNITY TO PRESENT A MENTAL STATE DEFENSE TO THE JURY AT TRIAL, DUE IN PART, TO THE PRETRIAL COURTS UNREASONABLE DELAY IN PROVIDING MR. STUCKEY WITH AN INVESTIGATOR UNTIL SIX(6) DAYS BEFORE TRIAL, AND IN PART, DUE TO HIS INVESTIGATOR FAILURE TO SERVE HIS SUBPOENA DUCES TECUM UPON THE EXODUS MENTAL HEALTH CENTER WHICH DENIED HIM ACCESS TO HIS MENTAL HEALTH RECORDS PREVENTING HIM FROM RAISING A MENTAL STATE DEFENSE TO THE JURY AT TRIAL. THE SENTENCING COURT DENIED MR. STUCKEY'S MOTION FOR A NEW TRIAL.

MR. STUCKEY IMMEDIATELY REQUESTED AN EXTENSION OF TIME SO THAT HIS INVESTIGATOR MR. COOPER COULD HAVE ADDITIONAL TIME TO SERVE HIS SUBPOENA DUCES TECUM, AND OBTAIN HIS MENTAL HEALTH RECORDS FROM THE EXODUS MENTAL HEALTH CENTER.

THE SENTENCING COURT DENIED MR. STUCKEY EXTENSION OF TIME AND IMMEDIATELY SENTENCED HIM TO SEVENTEEN(17) YEARS IN STATE PRISON WITHOUT EVER EVALUATING MR. STUCKEY'S MENTAL HEALTH RECORDS AND WITHOUT GIVING MR. STUCKEY AN OPPORTUNITY TO PRESENT AND PREPARE AN EFFECTIVE MENTAL STATE DEFENSE OUTLIVING HIS MENTAL STATE AT THE TIME OF HIS ARREST AND COMMISSION OF THE CRIME. MR. STUCKEY'S PRIOR RECORD IS PRIMARILY FOR TRESPASSING AND MINOR PROPERTY CRIMES CONSISTENT WITH HOMELESSNESS POVERTY AND MENTAL ILLNESS.

THE SIMILARITY OF THE PRIOR CRIMES ARE INDICATIVE OF MR. STUCKEY'S UNDISPUTED MENTAL ILLNESS, YET THE COURT OVERLOOKED THIS AS A MITIGATING FACTOR WHEN SENTENCING HIM.



TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA)

PROHIBITS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES IN STATE AND LOCAL GOVERNMENT OPERATIONS, INCLUDING COURTS

THE ADA COVERS A WIDE RANGE OF INDIVIDUALS WITH DISABILITIES. AN INDIVIDUAL IS CONSIDERED TO HAVE A "DISABILITY" IF HE HAS A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES, HAS A RECORD OF SUCH AN IMPAIRMENT, OR IS REGARDED AS HAVING SUCH AN IMPAIRMENT. MENTAL IMPAIRMENTS INCLUDE MENTAL OR PSYCHOLOGICAL DISORDERS SUCH AS BI-POLAR AND SCHIZOPHRENIC DISORDERS, AMONG OTHER MENTAL ILLNESSES.

TO CONSTITUTE A DISABILITY A CONDITION MUST SUBSTANTIALLY LIMIT A MAJOR LIFE ACTIVITY.

MAJOR LIFE ACTIVITIES INCLUDE PERFORMING MANUAL TASKS, CONCENTRATION AMONG OTHER THINGS.

AN IMPAIRMENT SUBSTANTIALLY INTERFERES WITH THE ACCOMPLISHMENT OF A MAJOR LIFE ACTIVITY WHEN THE INDIVIDUAL'S IMPORTANT LIFE ACTIVITIES ARE RESTRICTED AS TO THE CONDITION, MANNER OR DURATION UNDER WHICH THEY CAN BE PERFORMED IN COMPARISON TO MOST PEOPLE.

AT THE TIME OF HIS ARREST, MR. STUCKEY SUFFERED FROM AND WAS DIAGNOSED WITH A BIPOLAR AND SCHIZOPHRENIC DISORDERS, WHOSE SYMPTOMS INCLUDED HALUCINATIONS, DELUSIONS, THOUGHT DISORDERS, A LACK OF ABILITY TO BEGIN AND SUSTAIN PLANNED ACTIVITIES, POOR EXECUTIVE FUNCTIONING (THE ABILITY TO UNDERSTAND INFORMATION, AT TIMES, AND USE IT TO MAKE DECISIONS, AND PROBLEMS WITH WORKING MEMORY (THE ABILITY TO USE INFORMATION IMMEDIATELY AFTER LEARNING IT) AND EXTREME MOODS SWINGS.



THE ADA PROTECTS NOT ONLY THOSE INDIVIDUALS WITH DISABILITIES WHO ACTUALLY HAVE A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY BUT ALSO THOSE WITH A RECORD OF SUCH AN IMPAIRMENT. THIS PROTECTED GROUP INCLUDES

- A PERSON WHO HAS A HISTORY OF AN IMPAIRMENT THAT SUBSTANTIALLY LIMITED A MAJOR LIFE ACTIVITY BUT WHO HAS RECOVERED FROM THE IMPAIRMENT, TEMPORARY OR PERMANENTLY,

PRIOR TO HIS ARREST, MR. STUCKEY WAS AN OUT-PATIENT AT THE EXODUS MENTAL HEALTH CENTER WHERE HE WAS DIAGNOSED WITH A BI-POLAR AND SCHIZOPHRENIC DISORDERS, BY SEVERAL PSYCHOLOGISTS. ON AUGUST 23rd, 2010, THE LOS ANGELES COUNTY PROBATION OFFICE ISSUED A REPORT INDICATING MR. STUCKEY'S MENTAL ILLNESSES WHICH INCLUDED HALLUCINATIONS AND PARANOIA (PAGE 11 OF THE REPORT)

THE REPORT RECOMMENDED THAT SHOULD MR. STUCKEY BE CONVICTED HIS AGGRAVATING AND MITIGATING FACTORS SUPPORTED A MID-BASE TERM SENTENCE OF FOUR(4) YEARS.

A COPY OF THIS REPORT WAS SENT TO THE SUPERIOR COURT AT THAT POINT. THE SUPERIOR COURT WAS PUT ON NOTICE OF MR. STUCKEY'S HISTORY OF MENTAL HEALTH ILLNESSES.

DURING HIS APPEARANCE ON AUGUST 25th, 2010, IN SUPERIOR COURT, MR. STUCKEY REQUESTED A SPEEDY TRIAL.

MR. STUCKEY ALSO FILED AN EX PARTE MOTION FOR AN INVESTIGATOR AND A POST-TRAUMATIC STRESS DISORDER EXPERT WHICH DETAILED HIS MENTAL HEALTH ILLNESS AND HIS NEED FOR ASSISTANCE IN PREPARING AND PRESENTING A MENTAL STATE DEFENSE, DUE TO HIS PRO PER STATUS.

ALL PUBLIC ENTITIES, ITS STATE AND LOCAL GOVERNMENT OPERATIONS INCLUDING THE COURTS, CANNOT DENY A QUALIFIED INDIVIDUAL WITH A DISABILITY PARTICIPATION IN ITS REGULAR PROGRAM, ACTIVITIES OR SERVICES. QUALIFIED INDIVIDUALS WITH DISABILITIES ARE ENTITLED TO PARTICIPATE IN REGULAR PROGRAMS, ACTIVITIES AND SERVICES, EVEN IF THE PUBLIC ENTITY, INCLUDING THE COURTS, COULD REASONABLY BELIEVE THAT THEY CANNOT BENEFIT FROM THE REGULAR PROGRAM, ACTIVITY OR SERVICES, AND SHOULD NOT BE INVOLVED IN THE PROGRAM, ACTIVITY OR SERVICE.



ALL STATE AND LOCAL GOVERNMENT OPERATIONS MUST MAKE REASONABLE ACCOMMODATION TO THE KNOWN MENTAL LIMITATIONS OF QUALIFIED "ADA" INDIVIDUALS. REASONABLE ACCOMMODATIONS MEANS ANY CHANGE OR ADJUSTMENT IN A PROGRAM, ACTIVITY OR SERVICES THAT PERMITS A QUALIFIED "ADA" INDIVIDUAL WITH A DISABILITY TO PARTICIPATE, PERFORM THE ESSENTIAL FUNCTIONS OR TO ENJOY BENEFITS AND PRIVILEGES OF A ACTIVITY OR SERVICE EQUAL TO THOSE ENJOYED BY PEOPLE WITHOUT DISABILITY.

DURING HIS ARRAIGNMENT ON AUGUST 25, 2010, MR. STUCKEY WAS INDIGENT AND REPRESENTING HIMSELF. MR. STUCKEY REQUESTED A SPEEDY TRIAL, WHICH UNDER CALIFORNIA PENAL CODE 1382 REQUIRES HIM TO BE BROUGHT TO TRIAL WITHIN 60 DAYS.

PRIOR TO MR. STUCKEY'S ARRAIGNMENT, THE SUPERIOR COURT HAD A POLICY OF PROVIDING INDIGENT INMATES, WHO WERE REPRESENTING THEMSELVES, WITH THE SERVICES OF A COURT-APPOINTED INVESTIGATOR AND/OR EXPERT, TO ASSIST THEM IN THE PREPARATION OF THEIR DEFENSE.

THE COURT WAS AWARE THAT MR. STUCKEY WAS INDIGENT AND REPRESENTING HIMSELF, THE COURT WAS AWARE THAT MR. STUCKEY WAS INVOKING HIS RIGHT TO A SPEEDY TRIAL, AND THE COURT WAS AWARE THAT MR. STUCKEY WAS REQUESTING THE SERVICES OF AN INVESTIGATOR, AND THEY WERE AWARE OF HIS MENTAL DISABILITIES. HOWEVER, THE COURT FAILED TO PROVIDE MR. STUCKEY WITH A COURT-APPOINTED INVESTIGATOR UNTIL SIX (6) DAYS BEFORE THE START OF HIS TRIAL (DAY 54 OF THE 60 DAY SPEEDY TRIAL LIMIT). THE COURT'S UNREASONABLE DELAY IN PROVIDING MR. STUCKEY WITH A COURT-APPOINTED INVESTIGATOR DENIED MR. STUCKEY AN OPPORTUNITY TO OBTAIN HIS MENTAL HEALTH RECORDS AND PRESENT A MENTAL STATE DEFENSE AT TRIAL, BECAUSE HIS INVESTIGATOR DID NOT HAVE ENOUGH TIME TO OBTAIN HIS MENTAL HEALTH RECORDS. ON SEPTEMBER 30, 2011, MR. STUCKEY FILED A MOTION FOR A HEARING PURSUANT TO SECTION 1204 (EVIDENCE IN MITIGATION OF PUNISHMENT) WHICH WAS BASED ON THE FACT THAT MR. STUCKEY NEEDED ADDITIONAL TIME, TO OBTAIN HIS MENTAL HEALTH RECORDS AND HAVE THEM SERVED UPON THE COURT. THE COURT DENIED MR. STUCKEY'S MOTION FOR A HEARING PURSUANT TO SECTION 1204 (EVIDENCE IN MITIGATION OF PUNISHMENT).

DURING HIS SENTENCING ON SEPTEMBER 30, 2010, MR. STUCKEY IMMEDIATELY REQUESTED AN EXTENSION OF TIME SO THAT HIS COURT-APPOINTED INVESTIGATOR, GARY COOPER, COULD HAVE ADDITIONAL TIME TO SERVE HIS SUBPOENA DUCES TECUM, AND OBTAIN HIS MENTAL HEALTH RECORDS FROM THE EXODUS MENTAL HEALTH CENTER.

THE SENTENCING COURT DENIED MR. STUCKEY'S EXTENSION OF TIME AND IMMEDIATELY SENTENCED HIM TO THE HIGH BASE TERM OF SIX (6) YEARS WHICH WAS DOUBLED UP, UNDER CALIFORNIA'S SECOND STRIKER LAW, AND AN ADDITIONAL FIVE (5) YEAR ENHANCEMENT WAS ADDED TO HIS SENTENCE FOR HAVING A PROB FEROY CONVICTION. MR. STUCKEY WAS SENTENCED TO A TOTAL OF SEVENTEEN (17) YEARS IN STATE PRISON.

THE COURT SENTENCED MR. STUCKEY WITHOUT EVER EVALUATING MR. STUCKEY'S MENTAL HEALTH RECORDS AND WITHOUT GIVING MR. STUCKEY AN OPPORTUNITY TO PRESENT AND PREPARE AN EFFECTIVE MENTAL STATE DEFENSE, OUTLINING HIS MENTAL STATE AT THE TIME OF HIS ARREST AND COMMISSION OF THE CRIME. THE COURT DISCRIMINATED AGAINST MR. STUCKEY AND FAILED TO MAKE REASONABLE ACCOMMODATIONS TO HIM, WHILE HAVING KNOWLEDGE OF THE FACT THAT HE WAS REPRESENTING HIMSELF, HAD MENTAL HEALTH DISABILITIES AND WAS REQUESTING A SPREEDY TRIAL.

THE COURT'S UNREASONABLE DELAY IN PROVIDING MR. STUCKEY WITH A COURT-APPOINTED INVESTIGATOR UNTIL SIX (6) DAYS BEFORE THE START OF HIS TRIAL, DEPRIVED MR. STUCKEY OF A FAIR TRIAL AND PREVENTED HIM FROM RAISING A MENTAL STATE DEFENSE AT TRIAL.

ON APRIL 15, 2019, MR. STUCKEY FILED A WRIT OF HABEAS CORPUS PETITION IN THE CALIFORNIA SUPREME COURT ATTACKING HIS CONVICTION AND SENTENCE, RAISING SEVERAL GROUNDS INCLUDING A.D.A AND A.D.A.A.A. VIOLATIONS GROUNDS.

ON AUGUST 14th, 2019; THE CALIFORNIA SUPREME COURT DECIDED THAT MR. STUCKEY WAS NOT ENTITLED TO HABEAS CORPUS RELIEF WHEN ATTACKING HIS CRIMINAL CONVICTION AND SENTENCE ON TITLE II ADA AND ADAAA VIOLATIONS GROUNDS

THE CALIFORNIA SUPREME COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN SETTLED BY THIS COURT

- WHETHER MR. STUCKEY IS ENTITLED TO HABEAS CORPUS RELIEF WHEN ATTACKING HIS CRIMINAL CONVICTION AND SENTENCE ON TITLE II ADA AND ADAAA VIOLATIONS GROUNDS

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

RESPECTFULLY SUBMITTED



ANDRE KENNETH STUCKEY JR

DATE: AUGUST 17th, 2019

