

No. 19-7004

ORIGINAL

Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

Mario Torres — PETITIONER
(Your Name)

vs.

Shawn Hutton — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mario Torres
(Your Name)

4058 Treat Blvd.
(Address)

Concord, Ca. 94518
(City, State, Zip Code)

(925)429-3266
(Phone Number)

QUESTIONS PRESENTED

Whether Contra Costa County California's blanket policy of depriving a criminal defendant, the facts and the evidence (exculpatory or otherwise), surrounding their arrest and incarceration is an unreasonable application of clearly established federal law – and if so whether the policy violates a defendant's right to counsel. This is a policy that has been practiced and enforced by and/or, with the knowledge of the officers of the court, representing the Office of the District Attorney, Office of the Public Defenders & the Superior Court. The policy is said to stem from an unspecified California Supreme Court ruling claiming that it is unsafe for a criminal defendant to obtain facts or knowledge of his case exculpatory or otherwise.

Whether petitioner received the Ineffective Assistance of Counsel, when counsel refused to thoroughly investigate the existence of video evidence showing petitioner being beat without cause of justification by Concord California police officers; refused to investigate incorrect preliminary transcripts that are missing vital testimony needed for impeachment purposes; ignored, refused to obtain, or was not aware of police reports, showing that Petitioners either did not commit a crime, or it was impossible for the crime to have been committed, and counsels flat out refusal to produce discovery, all the while giving Petitioner a presumption of guilt, and recommending Petitioner sign the plea being offered.

Whether Petitioners plea-agreement was fulfilled. After Petitioner received an Order to Show Cause in both State and Federal Courts, the district attorney and public defender involved in his case, went into court and had Petitioner resentenced for a fourth time, never matching the original plea agreement.

Whether Petitioner is a victim of Brady violations. District attorney Scott Cunnane, in this case was present when alleged victim Betty Zierke admitted to being drunk while making her preliminary testimony, and black out drunk on a regular basis. Zierkes admissions are not in the preliminary transcripts. Cunnane had stated that he would investigate Zierkes admissions through court recordings, never doing so. Cunnane charged Petitioner with crimes regardless.

LIST OF ALL PROCEEDINGS

United States District Court Northern District of California

Torres v. Hatton (Habeas), case # 17-cv-06607-PJH, denied on 3-8-19

Supreme Court of the State of California

Torres v. Kernan on Habeas Corpus, case # S259093, filed on 11-8-19, undecided

In re Mario Torres on Habeas Corpus, case # S246875, denied on 5-9-2018

Torres v. Contra Costa County Superior Court, case #, transferred to appellate ct. on 6-9-17

In re Mario Torres on Habeas Corpus, case # S236859, ruled En Banc on 4-19-17

California Court of Appeals

People v. Torres, case # A151181, dismissed on 6-8-17

In re Mario Torre, case # A150980, denied, 4-13-17

In re Mario Torres, case # A148979, denied, 8-11-19

Torres v. Contra Costa County, case # A148495, denied 6-9-16

In re Mario Torres, case # a146598, denied 10-29-15

Superior Court of the State of California, County of Contra Costa

In re Mario Torres on Habeas Corpus, case #05-190325-1, denied on 4-10-19

In re Mario Torres on Habeas Corpus, case # 5-181767-5, ruled moot on 10-31-18

In re Mario Torres on Habeas Corpus, case # 05-170756-1, denied on 6-1-17

In re Mario Torres on Habeas Corpus, case # 05-170047-7, denied on 2-7-17

In re Mario Torres on Habeas Corpus, case # 05-160428-9, denied on 5-20-11

In re Mario Torres on Habeas Corpus, case # 05-152098-0, denied on 1-27-16

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:

RELATED CASES

See next page

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In re Mario Torres, case # 2146598, denied 10/29/15

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In re Mario Torres on Habeas Corpus, case # 05-170047-7, denied on 2-7-17

In re Mario Torres on Habeas Corpus, case # 05-160428-9, denied on 5-20-11

In re Maria Torres ex Habeas Corpus, case # 05-152008-0, denied on 1-27-16

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APPENDIX D *Decision of the California Supreme Ct.*

APPENDIX E *Decision of the California Supreme Ct.*

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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 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 United States district 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.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D 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 _____ court appears at Appendix E 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 9-13-19.

[] 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: 11-8-19, and a copy of the order denying rehearing appears at Appendix C.

[] 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 5-9-18. A copy of that decision appears at Appendix D.

[] 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 Fourteenth Amendment to the U.S. Constitution provides relevant in part:

“No State shall...deprive any person of life, liberty, or property without due process of law; nor... the equal protection of law.”

The Eighth Amendment to the U.S. Constitution provides:

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.”

The Sixth Amendment to the U.S. Constitution provides relevant in part:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...and 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.”

The Fifth Amendment to the U.S. Constitution provides relevant in part:

“No person shall be held... nor shall any person be subject for the same offenses to be twice put in jeopardy of life or limb; nor 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.”

The Fourth Amendment to the U.S. Constitution provides:

“The right of the people to be secure in their persons, house, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

STATEMENT OF THE CASE

Due to a Contra Costa County California policy of discovery deprivation, pre and post-trial, I am unable to obtain many of the dates and most facts concerning the incidents at issue. To this day I am unable to obtain the facts and evidence of my arrest and incarceration.

On the evening (still daylight) of 7-4-12, I had a verbal argument with my then girlfriend Betty Zierke.

After the argument (I was later told by Zierke), Zierke contacted her friend Keagan Mize about the argument.

For reasons unknown to me (I was later told by Zierke), Mize contacted the police.

Two Concord police officers knocked on my door.

I answered the door to Concord police officers Mike Hansen and Daniel Smith.

Hansen stated that he and Smith needed to enter my residence.

I asked Hansen for a warrant.

Hansen became very angry and told me in a threatening manner that I had to let he in Smith into my home because "It's the Law!"

Having nothing to hide and being under threat by to armed officers, I agreed, under duress, to let the officers into the residence.

I motioned for Hansen and Smith to follow me into my home.

As soon as Hansen and Smith are in my residence, while my back is to them, they start to beat me with their police batons.

I am tackled to the floor.

I land on my stomach and state “You fucked up now” (I am very aware that the actions of the officers are unlawful)

I am lying on my stomach, Hansen is straddled on top of me, jabbing the back of my head with his police baton.

I am unsure of how many times I was hit by Hansen with his police baton, but it was long enough for me to time the strikes, and while still laying on my stomach, I snatch the baton out of Hansen's hands.

1 Hansen then grabs his baton from my hand, cuffs my hands behind my back, then rolls me on to my
2 back continuing to straddle me.

3 By this time, I can hear Zierke trying to come down the stairs.

4 Smith will not let Zierke come down the Stairs.

5 I can hear Smith continually asking Zierke if I assaulted her, and Zierke continually answers no.

6 It appears to me that Smith is trying very hard to get Zierke to state that I assaulted her.

7 After a minute or so of listening to Smith, I yell to Smith that Zierke is uninjured, I tell Smith he is not
8 a detective, and I call Smith a nigger (Smith is a black male).

9 Hansen looks down at me, punches me in the face and says "don't call my partner a nigger" (I am still
10 lying on my back, my hands are still handcuffed behind my back, and Hansen is still straddled on top of
11 me).

12 After Hansen punches me in the face, I state to Hansen "Fuck you! You're a nigger too, I'm not calling
13 you two niggers because I am racist, Fuck you! (Hansen is a white male).

14 I am brought to my feet and sat in a chair.

15 Hansen runs a background check on me through his police radio.

16 My background is clean, I have no criminal history.

17 Hansen and Smiths demeanor changes. Zierke is uninjured, I am a law-abiding citizen.

18 Hansen attempts to down play the actions of he and Smith. Hansen's states that he is going to uncuff
19 me to release me. Hansen is acting like he is doing me a favor.

20 I am furious about what just happened. I tell Hansen if he uncuffs me I am going to stick my foot in
21 his ass.

22 Hansen becomes angry. and I am arrested. While in the squad car, Hansen asks me what I do for a
23 living. I inform Hansen that I am a lineman for PG&E. Hansen states, "Not anymore you're not."

24 I am taking to the Concord police station and placed into a small holding area.

25 Hansen sits directly across from me behind a glass partition, attempting to smooth things over.

26 I look at Hansen and say "Fuck you."

1 Hansen becomes angry and walks around the jail and opens my cell door.

2 Hansen states "why don't you say that to my face."

3 Refusing to be baited by Hansen, I don't say anything. After about 10 seconds, Hansen states "that's
4 what I thought pussy" and leaves.

5 Hansen returns with an unknown officer and removes me from my cell to take photographs of my
6 injuries sustained thus far. A photo of Plaintiffs left hand is taken. It was Plaintiffs belief that it may have
7 been broken.

8 The photographing finishes and I am placed back into the holding cell.

9 A short time later, I was taken into a separate room to be finger printed, and stopped before the printer.

10 A blonde female officer was standing to my left, Smith was standing to my right, and Hansen was at
11 the door way at my far left.

12 The female officer takes my left hand and proceeds to take my fingerprints and in doing so, pushes
13 down on my hand.

14 Out of reaction, I pull my hand away because of the severe pain.

15 The female officer looks at me.

16 I put both my hands up in a very submissive manner, arms out to the sides, elbows bent, palms open,
17 facing out, and one hand on each side of my head.

18 With my hands still raised in a submissive manner, I state to the female officer "Sorry, I am not trying
19 to give you a hard time but I think that my hand might be broken. Can you please be easy with it?"

20 Smith who is still at my right side, becomes very angry. Smith grabs my right arm and starts twisting it
21 (Smiths clockwise) causing me to lean forward, bending at the waist.

22 The female officer who is at my left grabs my left hand and slams it on the finger printer.

23 Because of the severe pain, I pull my left hand off of the finger printer away from the female officer.

24 I turn my head to see Smith twisting me right arm with both hands, it's very painful.

25 I remember thinking to myself "why are these people doing this to me, I have not done anything
26 wrong."

1 Out of reaction and pain, I untwist my arm.

2 I get hit from behind by Hansen, end up on my stomach, getting beat by Hansen, Smith, and the
3 female officer.

4 There is a video camera, in the finger printing room that will show that I am being truthful.

5 After the beating I am placed into a holding cell directly across the finger print room, by Hansen.

6 Through the holding cell doors, I state to Hansen "I'm gonna sue your asses"

7 Hansen replies "Wait in line."

8 I state to Hansen "I'm not some crack head off the street, I'm a working stiff. I'm gonna see this
9 matter through and sue your ass."

10 Hansen becomes angry, kicks the garbage can next to him and storms off.

11 After the incident concerning the officers that occurred on 7-4-12, I was arrested every few weeks for
12 various alleged crimes.

13 On or about 4-3-13 I am arrested for various alleged crimes amounting to 15 felonies and 5 strikes,
14 with a bail of approximately \$460,000.00

15 Public defenders Natalie Saba and Robin Lipetzky are assigned to represent me in my criminal
16 proceedings.

17 I am offered a plea bargain of 45 days in jail, if I admit to resisting arrest for the actions of Concord
18 police officers Hansen and Smith for the night of 7-4-12.

19 Due to my innocence, concerning all allegations, and the fact that I have no criminal history, I refused
20 to plead guilty to any crime.

21 I inform Saba of the actions of Hansen and Smith that occurred on the evening of 7-4-12. I state to
22 Saba that I want to sue Hansen and Smith.

23 Saba states "I not helping you with that!"

24 I am aware that Saba cannot act as a civil attorney, but Saba has a legal obligation to investigate my
25 claims of innocence, officer fraud, and excessive force for impeachment purposes.

26 Saba continually pressures me to take the plea bargain being offered, but I continue to refuse.

1 I inform Saba that the criminal charges against me are impossible, because I have not committed any
2 crimes.

3 Due to my innocence, and being aware that it is impossible for either the district attorney Cunnane or
4 Saba to have any evidence of me committing any crimes, I state tthat I am in need of my discovery, to
5 enable me to make a proper defense with the assistance of counsel. I am in need of the facts of my case.
6

7 Saba states "It's against Contra Costa County policy to allow inmates their discovery."

8 I inform Saba that a criminal defendant has a right to the cause and nature of their alleged crime, the
9 probable cause and justification of their arrest and incarceration, etc.

10 Saba states "Its unsafe for you to have your discovery."

11 I again inform Saba of my right to the facts surrounding my arrest and incarceration, and my need for
12 the discovery.

13 Saba states "I'm not giving it to you."

14 I cannot stress enough how many times I demanded my discovery. I demanded it from every attorney
15 assigned to represent me, every time I saw them. I would request discovery in open court at just about
16 every court proceeding. The court would order me not to speak, but I would speak up on the matter
17 anyways. I did this over and over again. I wanted to make sure that It was clearly established on record
18 that I was being deprived of the facts and evidence surrounding my arrest and incarceration and that I had
19 made all officers of the court aware of this. I am lumping this fact into one paragraph because a writ of
20 cert is to be 40 pages in length and my declaration for the facts of my case alone is approximately 100
21 pages.
22

23 A Marden hearing is held and I attempt to dismiss Saba, for depriving me the facts of my case, in the
24 courtroom of John Doe judge.

25 Saba informs the court that it is unsafe for me to obtain discovery, and stated that the California
26 Supreme Court has ruled that it is unsafe for a criminal defendant to obtain any discovery.
27

28 It was the opinion of John Doe judge that Saba was a good attorney because he knew her very well and
that Doe judge did not see why I would have a right to discovery in my case.

1 Preliminary hearings are held on two separate occasions, signs were posted stating that I was not
2 allowed to speak in court.

3 Throughout all of my court proceedings I was informed by the court that I was not allowed to address
4 the court because I had representation. Taking into account the fact that Contra Costa Counties public
5 defenders are practicing and enforcing a county policy of discovery deprivation, the fact that I am not
6 allowed to address the court, and the fact that there is a cap on the amount of legal information a criminal
7 defendant is allowed to obtain (one request for legal information a month), I was unable to educate myself
8 in a way that would allow me to defend myself in any competent manner.
9

10 On or about 5-21-13, a preliminary hearing was held for Contra Costa County Superior Court case
11 # 5-131090-3 concerning a fist fight that had occurred around November of 2012. (I was attacked by a
12 man named Rick Hendricks (Zierkes step father), Hendricks had lost the fight, and was taken to the
13 hospital, where he tested positive for methamphetamine).

14 I recall neither the testimony of Hendricks or any alleged witness matched anything that was in the
15 police reports concerning the incident an issue (I was "allowed" to quickly view police reports). I have
16 been unable to obtain the police reports surrounding this issue, per county policy, making it impossible to
17 present any type of argument in any court.
18

19 On or about 6-25-13, a preliminary hearing was held in the courtroom of Judge Stark concerning
20 Contra Costa County Superior Court Case # 5-131416-0, for various alleged crimes ranging from
21 domestic violence to felony assault on a police officer for matters concerning the incident of 7-4-12.
22 District attorney Scott Cunnane was prosecuting, I was defended by Natalie Saba.

23 During the preliminary hearing:

24 • Alleged victim Betty Zierke arrived at court intoxicated, admitted on record, to being
25 intoxicated while making her preliminary testimony as well as being black out drunk on a
26 regular basis. I attempted to address the court about Zierkes admission of intoxication as
27 the hearing was coming to a close but I was told by judge Stark that I was not able to speak
28

1 because I was "appalling" (Zierkes admissions of intoxication are not in the preliminary
2 transcripts, nor is Starks comment that I am appalling).

3

- 4 • Alleged victim Christina Torres, admitted for the record on numerous occasions, that she
5 was in fact the party that assaulted me concerning the incident(s) at issue. (most of Ms.
6 Torres' admissions of assaulting me are not in the preliminary transcripts).
- 7 • Alleged victim, Concord police officer Daniel Smith testified that he and his partner Mike
8 Hansen entered my home on the evening of 7-4-12, because I appeared to be reaching for a
9 weapon behind my front door, which is a clear contradiction of what is described in the
10 police reports, I obtained in 2018 (Smiths weapon allegations are not in the preliminary
11 transcripts; no "weapon" was ever taken into evidence).
- 12 • For reasons unknown to me at this time, Concord police officer Mike Hansen was not
13 brought in to make a preliminary testimony, nor was ever part of any court hearing.

14 On or about 8-5-13, a pretrial hearing is held concerning my trial the following day, for Contra Costa
15 County Superior Court case # 5-131090-3, In the courtroom of judge Bruce Mills. District attorney Scott
16 Cunnane was prosecuting, I was defended by Natalie Saba.

17 During pretrial, I inform Mills that I would like to dismiss Saba, due to the fact that I have no access to
18 discovery, the facts or evidence of my own criminal case.

19 Saba informs Mills that I have already had Marsden hearings in the courtroom of judge Clare Maier
20 and Maier had already ruled that I am not allowed to have any discovery.

21 Mills denies my request stating that he is not going against another judge.

22 I question Mills about the legality of putting me on a criminal trial, depriving me of the facts and
23 evidence, surrounding my arrest and incarceration.

24 An argument ensues, between Mills and I.

25 Mills stands up and walks out of the courtroom.

1 I then try to give Saba, a discovery motion that I had written, and instruct Saba to give it to Mills. Saba
2 refuses to take it. I then instruct Saba to give the motion to her Supervisor Robin Lipetzky. Saba takes the
3 motion and storms out of the courtroom.

4 District attorney Scott Cunnane is sitting in his chair with his head down, witnessing the entire
5 exchange.

6 A sheriffs deputy removes me from the courtroom, and I am brought back to my jail cell.

7 Unknown to me until approximately April of 2016, when I was able to obtain the pre-trial transcripts,
8 after I was removed from the courtroom, the pretrial continued without my knowledge and statements
9 made by me on record, are not in the court transcripts. The transcripts read “inaudible conversation.”

10 On or about 8-6-13, trial is held for Contra Costa County Superior Court case # 5-131090-3,
11 concerning an alleged assault on Rick Hendricks, in the court room of judge Bruce Mills. I am being
12 prosecuted by district attorney Scott Cunnane, and defended by Natalie Saba.

13 In my trial, Hendricks takes the stand to testify against me.

14 Hendricks appears to be intoxicated, he is slurring his words, he is difficult to understand.

15 While being questioned, Hendricks is asked if he is alright (I recall the district attorney asking this
16 question, regardless it is not in the trial transcripts).

17 Hendricks slurs his way through his testimony.

18 I get called upon to testify, in my criminal trial.

19 Before I am able to testify, Mills takes Cunnane and Saba into his chambers for a meeting.

20 All parties return from the judges chambers at which time I take the stand.

21 Saba asks me if I have ever assaulted my ex-girlfriend Betty Zierke, at which time I state “no.”

22 Mills immediately, calls a recess and the jury is dismissed.

23 After the jury leaves Mills states that Saba and I have “opened the door” because I claimed innocence
24 for all alleged assaults against my ex-girlfriend Betty Zierke. The theory behind this, was something to
25 the affect of, Mills and Cunnane know that I was guilty of the alleged assaults on my ex-girlfriend Betty
26 Zierke, though I had never been convicted of anything, and because I was not admitting guilt to my
27
28

1 alleged crimes, then I had "opened the door." Claims that I had committed perjury was also suggested by
2 Cunnane.

3 Cunnane informs Mills that he had sent a police vehicle to pick up Zierke so she can testify against me
4 in my criminal trial.

5 Zierke cannot be found so it is decided by Mills and Cunnane that photos of Zierke with a couple of
6 bruises on her legs were to be brought into my trial as proof that I beat Zierke. Zierkes mother Marilyn
7 Casey was brought in to testify against me in the place of Zierke.

8 I am eventually cross examined by district attorney Cunnane, at which time Cunnane tells the jury that
9 I beat pregnant women. At this time, I do not have any knowledge of where this accusation stems.

10 At this point I am very angry, I become very abrasive and my testimony tanks.

11 At jury instruction, Mills tells the Jury "We already know what the verdict is going to be, this should
12 not take long. It's a Friday and a holiday weekend, lets get this wrapped up" (Mills remark is not in the
13 trial transcripts).

14 I am convicted within an hour.

15 After I am convicted, and the jury is dismissed, Mills, Saba, and Cunnane go back into Mills chambers
16 for another meeting.

17 Saba returns to the courtroom and informs me that Mills wants me to take a plea bargain for three
18 years for all cases against me, at which time I refuse. I tell Saba that "I will sit in jail for 20 years before I
19 take a deal under these circumstances."

20 A couple of days later, Saba visits me in my county jail cell and informs me that I am scheduled for
21 trial on the charges of felony assault on a police officer with a strike enhancement for matters that
22 occurred on 7-4-12, when Hansen and Smith assaulted me in my home. Trial is scheduled in the next
23 couple of weeks.

24 On or about 8-16-19, probation officer Battles pays me a visit in county jail.

1 I am looking for help, Battles is an officer of the law. I explain to Battles, all matters described above.

2 I inform Battles that I am scheduled for a second trial for felony assault on a police officer, with a strike
3 enhancement and I never did anything to harm an officer.

4 Battles is indifferent to my plight. Battles informs me that police officers are good people who are just
5 misunderstood.

6 I sit back into my seat, and referring to my upcoming trial of assaulting police officers, I state to
7 Battles "Felony assault on a police officer with a strike enhancement is a very serious assault."

8 Battles responds "Yes, it is Mr. Torres."

9 I state "I have been denied my case file since my arrest, but I guarantee you that there is no medical
10 report in there. Wouldn't there be some sort of medical report, if I felony assaulted a police officer with a
11 strike enhancement? You know why that medical report isn't in there? Because none of this ever
12 happened."

13 Battles looks at me for a long moment and states "You're pretty smart Mr. Torres." and leaves.

14 Battles comes back a short time later to finish up the interview, at which time I thank him for his time.

15 Battles responds in a very snide way "Don't thank me."

16 On or about 9-3-13, I am brought into the courtroom of Bruce Mills for sentencing. District attorney
17 Scott Cunnane is present, I am represented by Natalie Saba.

18 I inform Natalie Saba that my family has agreed to hire an attorney and I would like to stay the
19 proceeding so paid counsel can represent me.

20 Mills denies my request for a stay.

21 I state to Mills "You're telling me that I have no right to a paid attorney?"

22 Mills responds "No" (you don't have that right).

23 The whole courtroom stops what they are doing, and look at Mills for a long moment.

24 Mills then states that he believes that I am just stalling for time.

25 I again attempt to dismiss Saba, at which time Cunnane laughs and states "He's been on six Marsdens
26 in judge Clare Maier's courtroom alone" (I had been on many Marsdens leading up to this point

1 approximately 8-10 total. Most had been in the courtroom of judge Clare Maier. Maier continually gave
2 me a presumption of guilt, in my case. For example when I would inform Maier of my right to my
3 evidence in my case, Maier would state "What about the rights of the victims," etc., and refuse to allow
4 me to dismiss Saba for failing to give me any knowledge or the facts surrounding my arrest and
5 incarceration). The sentencing transcripts now read "I believe there has been three."

6 A Marsden hearing is granted and denied.

7 I am sentenced to serve six years in a California State Prison.

8 A week or so later, I am woken up and transported to San Quentin State prison. I never hear another
9 word about my upcoming trial of felony assault on a police officer with a strike enhancement.

10 While in prison, my family writes me and informs me that they are being proactive in questioning my
11 public defender and their supervisors about the legality of my criminal proceedings.

12 On or about 12-2-13, I am returned to Martinez County Jail, for new criminal charges. Saba informs
13 me that I am being charged with felony resisting arrest and obstruction of justice for matter that occurred
14 on 7-4-12, concerning Concord police officers Mike Hansen and Daniel Smith. Saba also informs me that
15 I am being charged with various counts of domestic violence against my ex-wife Christina Torres and my
16 ex-girlfriend Betty Zierke.

17 On or about 12-28-13, after refusing to speak with Natalie Saba, I am visited by Kira Murray who
18 informs me that she has been assigned to represent me. Murray gives me a copy of my preliminary
19 transcripts for Contra Costa County Superior Court case # 05-131416-0 (pertaining to testimony's made
20 by Betty Zierke, Christina Torres, and Daniel Smith on or about 6-25-13).

21 After Murray leaves I immediately, start going over the preliminary transcripts provided. I
22 immediately notice that Zierkes admissions of intoxication are not in the preliminary transcripts, nor are
23 most of Ms. Torres' admissions of assaulting me. After reading the testimony of Officer Smith, I notice
24 that the transcripts do not reflect Smiths claims that he believed that I had been reaching for a weapon,
25 which was the reasoning he gave, for he and Hansen entering my home.

1 The next time Murray visits me in county jail I inform her of the incorrect transcripts. Murray is
2 indifferent to the issue.

3 As the months go on, I continue to demand discovery, and instruct Murray to provide it. I instruct
4 Murray to pull up the video recordings of Concord police officers beating me without cause or,
5 justification, on the 7-4-12. I instruct Murray to investigate the incorrectness of the preliminary transcripts
6 that she had provided me, going as far as to request any court recordings that are needed. My appellate
7 attorney Steven Brody had informed me that he had only received three Marsdens out of the 8-10 that had
8 been heard, and those were the only Marsdens that are on record. I instructed Murray to investigate the
9 matter of missing Marsdens. Murray refused.

10 I ask Murray why she refuses to investigate any matters surrounding my case, Murray informs me that
11 her supervisors Robin Lipetzky and Liz Harrigan had instructed her not to conduct any investigation into
12 my claims/case. Murray goes on to state that in order to obtain the facts and evidence surrounding my
13 arrest and incarceration, I would have to represent myself pro-per.

14 On or about 4-5-14, a Marsden Motion hearing is held in the courtroom of judge Terry Mockler.

15 I state to Mockler that I cannot have Kira Murray representing me because her supervisors have
16 instructed her not to investigate matters in my case. I go on to inform Mockler of my lack of discovery,
17 and Murrays refusal to provide it. I go on to state that I am being denied my 6th Amendment right to the
18 “Assistance of Counsel” and the ability to competently exercise my right to a Speedy trial. My 14th
19 Amendment (Due Process) right is also addressed.

20 Mockler decides that Murray is performing her duties in an adequate manner.

21 On or about 4-16-14, a 995 hearing is held in the courtroom of Judge Baskin, who I was told by
22 Murray, was my “motion judge.” In the courtroom of Baskin was district attorney Scott Cunnane and
23 public defender Kira Murray.

24 When my case is called, I immediately ask to address to court, at which time Basking states that I have
25 a public defender appointed to me, if I need to address the court.

26 I state “Your honor, it’s important, my constitutional rights have been violated.”

1 Again, Basking instructs me that I am represented by a public defender and need to go through
2 Murray. I recall this going back and forth a few times.

3 Murray stands up and approached the window acting like she couldn't possibly understand what my
4 problem could be.

5 I look at Murray when she gets to the window and state "You're fired!"

6 No longer having an attorney to go through, when I want to address the court, I immediately start
7 filling in judge Baskin, on all matters described in this Statement of the Case.

8 I am trying to get all matters in the record quickly because the sheriff's deputies have entered the
9 holding area and are standing about a foot to the right of me.

10 I finish what I have to say and am taken to a holding cell.

11 A short time later a deputy comes to my cell and asks if I want to pro-per my case, at which time I
12 respond "I am being forced to pro-per my case, so yes I will pro-per my case."

13 I am brought the Feretta documents, which I fill out and write many notes on.

14 I am returned to the courtroom, my 995 motion is denied, and the Feretta hearing starts.

15 For the record, Baskin reads the notes that I had written on the Feretta document. Baskin notices that I
16 had written that I am being forced to pro-per my case and informs me that the court could not allow me to
17 pro-per my case, if I am claiming to being forced to do so. I just want my discovery; I inform the court
18 that I withdraw that statement and that I am willingly requesting to pro-per my case.

19 On the Feretta document I also wrote something to the affect that I my civil rights were being violated
20 in an attempt to coverup wrong doing of Concord police officers. Baskin says something along the lines
21 of me having 'mixed delusions" about my claims as written on the Feretta document.

22 I state "I know there are recording devices in courtrooms that will prove my claims."

23 Baskin looks at Cunnane and Murray and states "You better fix this" at which time Cunnane and
24 Murray state that they will.

25 Baskin asks who I would like to get the discovery from?

1 Having already been convicted unlawfully by Cunnane, in a recent criminal trial, I chose to obtain the
2 discovery in the possession of Kira Murray.

3 Kira Murray leaves the courtroom.

4 Cunnane asks for permission to go through my case file before it is given to me.

5 Baskin denies Cunnane's request.

6 On or about 4-28-14, & 5-12-14, I am brought into the courtroom of Judge Terry Mockler to pick up
7 my discovery from Kira Murray. Kira Murray does not show up to either hearing.

8 On or about, 5-23-14, I am again brought into the courtroom of Terry Mockler, to pick up discovery,
9 and again Kira Murray is not present. Mockler decides that Murray needs more time. At this point I am
10 getting very annoyed with Contra Costa Counties judicial process. I had been incarcerated since 4-3-13,
11 deprived the facts and evidence surrounding my arrest and incarceration. I was put on jury trial deprived
12 of facts of my case, and the situation has not changed. I understand that some sort of allegations have
13 been made, but allegations are not facts. I do not have a clear understanding of what exactly I am being
14 charged with, and I do not have any understanding of what I have already been convicted of.

15 I state to Terry Mockler in a courtroom full of lawyers that she needs to stop protecting the lawyers
16 involved in my case. I state that I have been denied discovery since my arrest on 4-3-13, I went pro-per
17 over a month ago and I still do not have a discovery.

18 I was quickly escorted out of the courtroom.

19 Later that day I am brought into the empty courtroom of Mockler and Murray is present. Murray has
20 my discovery in her hands. Murray appears to be very angry with me.

21 Murray hands Mockler my discovery that is approximately five inches thick along with five DVD's.

22 Mockler notices that the discovery is not redacted, and states that she will redact the discovery herself,
23 and give it to me when she is finished. From this point on, While I am pro-per, I am brought into Terry
24 Mocklers courtroom while empty, on the courts lunch hour, for most court proceedings.

25 On or about 5-29-19, I received my discovery and most of it is missing. My discovery is now
26 approximately 3/4 inch to 1 inch thick. I was given 1 CD, as opposed to the 5 DVD's that Murray had

1 given Mockler. The discovery did not contain anything useful, regardless I cannot make any type of
2 appropriate defense with an incomplete discovery.

3 On or about 6-3-13, I am brought into the courtroom of Terry Mockler. I inform Mockler that I had not
4 been able to view the CD that was provided by her, but it was my understanding that there is a laptop
5 floating around the prison to be used by pro-per inmates.

6 Mockler snickers at me and states "the courts are not going to buy you a computer."

7 I am continually brought into Mocklers courtroom on the courts lunch break so that Mockler can see
8 how my case is coming along. Mockler is continually cutting me off never letting me explain to her the
9 progress of my case.

10 On or about 10-15-14, In one of the Mocklers court proceedings, involving district attorney Cunnane,
11 Zierkes admissions of intoxication while making her preliminary testimony is addressed (Cunnane had
12 agreed to look into the recordings of Betty Zierkes testimony and her admissions of intoxication during a
13 previous court proceeding, that occurred on or about 9-17-14).

14 Concerning Zierkes recorded testimony Mockler states "There are no recording devices in a
15 courtroom," at which time I reply "You're telling me that those video cameras and microphones in the
16 courtrooms work?" Mockler does not respond, instead scheduling me for criminal trial on 10-27-14.

17 I am not sure how the issue came up but around this time frame, In the courtroom of Mockler district
18 attorney Scott Cunnane had informed the court that the reason he was not getting the results he wanted
19 from alleged victims Christina Torres and Betty Zierke was because that the women were suffering from
20 Battered Woman Syndrome (BWS). It is my understanding that Cunnane had self-diagnosed these
21 women with BWS and Mockler was very excepting of Cunnane's medical/mental health diagnosis.

22 On or about 10-27-14, I am brought into the courtroom of judge Diane Becton for trial, and an
23 argument ensues between Cunnane and I, because I do not have the discovery that should be in my
24 possession.

25 It is decided by Becton that Murray will be reinstated as my attorney, at which time I inform the court
26 that I am going to fire her on the spot.

1 On or about, 11-7-14, I am brought into the courtroom of a John Doe judge. Attorney Christopher
2 Martin is appointed to represent me.

3 Doe judge instructs me to give the discovery in my possession to Martin.

4 I inform the judge that I only have a small portion of my discovery because it has been kept from me
5 since my arrest.

6 Doe judge becomes very irritated and instructs me to give Martin what I have in my possession.

7 Doe judge then asks Martin how long it will take to go over my case, at which time Martin responds
8 that he will need a couple of weeks.

9 Doe judge states "You have one week!"

10 As Martin is leaving, I give him a letter giving him a run down of all matters concerning my case.

11 On or about 11-14-14, I am brought into the courtroom of judge Bruce Mills, My trial judge in my
12 previous criminal trial. I am confused because Baskin was my motion judge, and I informed Martin of
13 Mills actions, at my previous trial, in the letter I had wrote.

14 Martin schedules trial for January of 2015. I request Martin pay me a visit in county jail.

15 On or about 11-8-14 to 12-10-14, Martin visits me in county jail. During the visit Martin and I verbally
16 go over my case. Martin stated that the police lie in court more than the criminals do and I get the feeling
17 that Martin wanted to feel me out more than anything.

18 Shortly afterwards (a different day), Martin arrived with my discovery because he wanted to go over a
19 few things. I told Martin that going over my discovery at that moment was not important, because I
20 wanted to go over some matters that were very important to my case.

21 I instructed Martin to obtain the videos of Concord police officers Mike Hansen and Daniel Smith
22 beating me at the police station on the night of 7-4-12, for the beating was without cause or justification.

23 I instructed Martin to pull up all recordings concerning the preliminary testimony's of Betty Zierke,
24 Christina Torres, and Daniel Smith, that took place on or about 6-25-13, for the court transcripts did not
25 reflect what was actually said during their testimony's. I made it very clear that the transcripts were
26 missing the following:

1 • Zierke had, in my opinion, impeached herself by admitting to being intoxicated while
2 making her preliminary testimony. Zierke also admitted to being black out drunk on a
3 regular basis which could be used for impeachment purposes.
4 • Christina Torres had admitted many times during her testimony that she had assaulted me.
5 • Smith had claimed that I was reaching for a weapon behind my front door on the evening
6 of 7-4-12, giving he and Hansen justification to enter my home.
7

8 Martin states that he does not believe that there is voice in the courts video recordings, at which time I
9 instruct Martin to pull both voice and video recordings.

10 Martin never investigates any matters as instructed.

11 During one of Martins visits, he informs me that he had sent an investigator, to speak with Zierke as
12 opposed to requesting the evidence that would impeach her. Martin informed me that Zierke could not be
13 found, at which time I respond “isn’t that something that could help the defense? Don’t I have a right to
14 confront my accuser during trial?”

15 Martin informs me that it will not help because the prosecution will just use the evidence in its
16 possession.

17 I state to Martin “you better pull up those court recordings because those (preliminary) transcripts are
18 incorrect.” Martin never investigated the matter.

20 On or about 12-17-14, I receive a full reversal on appeal for the criminal conviction I received in 2013.
21 First Appellate District, Division Three. Appellate Ct. case # A139734; Contra Costa County Superior Ct.
22 case # 05-131090-3.

23 Shortly after the reversal Martin visits me in county jail and informs me that he would be representing
24 me in all cases.

25 I state to Martin “that perjury charges were in order,” pertaining to the victims and witnesses involved
26 in my criminal conviction. I understand Martin is not a district attorney but he has an obligation to
27 thoroughly investigate the criminal conviction against his client, that was reversed on appeal (Due to the
28

1 40-page limit of this Writ of Cert, I did not get into all matters surrounding my criminal trial or the friends
2 of Hendricks that were involved in getting me convicted).

3 Martin does not respond, instead telling me that he had spoke to my appellate attorney Steven Brody.
4 Martin states to me that the officers of the court involved in my case “Fucked off your rights.” Martin
5 goes on to state “That judge (Bruce Mills) did everything he could to fuck you , and did everything in his
6 power to make sure you lost that trial. You never opened your case, that’s a load of shit.”

7 Martin then starts beating around the bush and states “The important thing now is to get you home.”

8 I respond “you want me to take a deal?”

9 Martin answers “Yes if you ever want to go home, you need to take this deal.”

10 I state to Martin “You just got done telling me this place fucked off my rights, and now you want me
11 to take a deal!?”

12 Martin Responds “Look Mr. Torres, there is the way the law is supposed to work and the way the law
13 really works and you need to take this deal.”

14 I state to Martin “I like the way the law is supposed to work better.”

15 Martin responds “would you take this deal if you were in another country?”

16 I state to Martin “In this country we have something called the U.S. Constitution, we send our kids to
17 die for that piece of paper every day, and then we throw it in the faces of all the other countries and say
18 LOOK! We are better than you because of this piece of paper. I don’t appreciate Contra Costa County
19 wiping their asses with it.”

20 Martin asks “What do you want Mr. Torres? You won your appeal” (Martin had stated he considers
21 everything “a wash,” and I am sounding like a “broken record” and am “beating a dead horse” because I
22 continue to demand discovery and that Martin perform his duties by conducting a thorough investigation
23 in my case. Martin also refused to produce any information surrounding my reversal).

24 I respond to Martin “I didn’t just get arrested yesterday or last week, I have been in jail for over a year.
25 You can’t put a man in jail for a year, and put him on trial, while denying him the evidence against him.

1 This isn't China, this isn't Iraq. I am an American citizen and I am smart enough to know that this is
2 illegal, its common sense. File for a dismissal and get me out of here"

3 Martin informs me that the new plea bargain is for eight years, he is suggesting that I take it.

4 I respond to Martin "After my illegal conviction, I was offered a plea-bargain for three years (all
5 charges and all case numbers), you can't just take a deal away like this (retaliation, etc.), you yourself told
6 me that. You want me to take the three-year deal? Fine, I will take the three-year deal. I will be out soon
7 enough and I am going to sue their fucking asses off for what they did to me!"

8 Martin eventually storms off.

9 On or about 1-14-15, I am to attend a readiness hearing in the courtroom of Mockler.

10 Before the hearing Martin visits me and states "Look, you are right, this is all vindictive, you need to
11 take this deal." At which time I refuse.

12 Martin storms off and soon after, I am brought into the courtroom of judge Terry Mockler.

13 Martin, in a very snide way states to Terry Mockler "Well I guess Mr. Torres wants to go to trial."

14 I look at Mockler and state "Although my attorney may be ready for trial, I am not."

15 Mockler responds "Well you attorney is ready for trial, so you're going to trial."

16 I state to Mockler "Fine, I would like to schedule a Marsden hearing to dismiss attorney Christopher
17 Martin."

18 After a long pause, Mockler responds "Fine we will schedule one."

19 On or about 1-15-14 a Marsden hearing is held in the courtroom of judge Terry Mockler.

20 I inform the court that Martin appeared to have a problem representing me and I politely asked Martin
21 to step down, as my defense counsel.

22 Martin does not acknowledge my request.

23 I inform Mockler that I had been deprived discovery since my arrest, and I had been put on an
24 unlawful trial. I stated that I wanted the issues investigated.

25 Martin stated that he felt the situation had been rectified because I had won my appeal.

26 Mockler states "What else." (It was not even formulated as a question; it was more of a statement.)

1 I respond "Martin wants me to take a deal for six years (Martin was never consistent about the plea).

2 I told Martin that I was offered three years for all charges and case numbers or 45 days for these
3 current charges, Martin refuses to investigate these matters." (I was scheduled to go to trial for charges
4 that pertain to Betty Zierke, Christina Torres, and Daniel Smith, stemming from their deposition that
5 occurred on 6-25-13. Their deposition transcripts are the only evidence I had in my possession at that
6 time. As stated above, they were incorrect.)

7 Martin states to Mockler "I called Natalie Saba and Natalie said, apparently some pages got stuck
8 together while they were being scanned into the data base, so we no longer have any record of that deal."

9 Mockler states "What else."

10 I respond "Concord police officers beat me unprovoked in front of video cameras at the Concord
11 Police Station on 7-4-12, and Martin is refusing to investigate the matter."

12 Martin responds "I contacted Concord P.D. and I was informed that the video cameras at the Concord
13 Police Station were broken that day."

14 I look at Martin and state "Get that put in writing." At which point Martin shakes his head "no."

15 Mockler states "What else."

16 I state that "My preliminary transcripts pertaining to Betty Zierke are incorrect. While on the stand
17 making her preliminary testimony, Betty admitted to being drunk as well as being black out drunk on a
18 regular basis. This is not in the preliminary transcripts and Martin refuses to pull up any type of recording
19 so I can prove my claim."

20 Martin does not deny my claim, instead responding that he had sent an investigator out to interview
21 Zierke and she could not be found.

22 I ask Martin "why don't you send an investigator to go talk to Natalie Saba or anyone else who was in
23 the courtroom at the time (of Zierkes preliminary testimony)?"

24 Martin shakes his head "no."

25 Mockler states that my previous public defenders had already filed multiple motions on my behalf and
26 she felt it was sufficient.

1 I respond that my lawyers filed a bunch of useless garbage, when all they needed to do was pull up
2 some videos and voice recordings.

3 Around this time, I get choked up. I state to Mockler "I want my case investigated properly. I have a
4 legal right to go home."

5 Mockler smugly states "Mr. Torres, you're contradicting yourself. First you say that you want your
6 case investigated properly, then you say you want to go home. Mr. Torres, you need to take responsibility
7 for your actions and if you want to go home you need to win your case at trial."

8 I respond "That's the pot calling the kettle black!"

9 The Marsden is denied.

10 On or about 1-21-15, Martin comes to county jail for a visit.

11 The Sheriff's deputy informed me that Martin was making a scene about wanting to have extra security
12 in place to protect him. The deputy goes on to state that he does not understand why Martin is acting the
13 way he is, because I had never been a problem.

14 I enter the visiting room to talk to Martin behind the glass partition.

15 The first thing I state to Martin is that it has just been brought to my attention that Zierke has a severe
16 case of schizophrenia, and Zierke's mother had just confided in my family, that she was unaware that
17 Zierke was such a violent drunk.

18 Martin informed me that he was very aware of Zierke's Schizophrenia.

19 I asked Martin "Why didn't you tell me?"

20 Martin responds "I didn't think it was a big deal, and look what you did"

21 Martin goes on to state "How do you plan on fighting your case because you're gonna lose"

22 In short, I tell Martin to do his job, I demand the facts and evidence surrounding my arrest and
23 incarceration, and I instruct Martin to schedule a Marsden hearing because as long as he is refusing to do
24 his job, I can continue to fire him.

25 Martin storms off. The scenario described above repeated over and over again every time I would see
26 Martin all the way to my conviction. Martin stated that he refused to address matters concerning my claims.

1 On or about 1-23-15, I am taken into the courtroom, of judge Bruce Mills, for what appears to be a
2 motion of separation. In the court room are Cunnane and Martin.

3 I am surprised to be in the courtroom of Mills, for Martin had stated that Mills "did everything he
4 could to fuck you and did everything in his power to make sure" I lost my previous criminal trial.

5 The motion appeared to be whether to separate matters that occurred on 7-4-12. Martin wanted to
6 separate the alleged domestic violence charge and some sort of criminal charges, concerning officers both
7 said to have occurred on the evening of 7-4-12. I did not have a clear understanding of the situation
8 because I do not have any of the facts surrounding my case. The allegations against me keep changing.
9 For instance, I was set for trial for felony assault on a police officer with a strike enhancement until I
10 addressed the fact that there are no medical reports stipulating an injury. Now, I have different unknown
11 charges against me for matters concerning police officers that occurred on 7-4-12. The same thing
12 happened with the domestic violence charges. It is a very confusing situation.

14 The motion was Denied.

15 On or about 2-5-15, I am brought into the courtroom of Judge Diane Becton for pre-trial and jury
16 selection. The district attorney in the case is Scott Cunnane, and defense counsel is Christopher Martin.

18 Martin enters the court room acting in fear of his life, additional officers are brought in to stand next to
19 me, the officers were trying to intimidate me on my way to the courtroom.

20 Martin starts off by telling Becton that I am going to lose my trial and that he does not want to be held
21 responsible.

22 I request Martin to be dismissed.

23 Becton informs me that the Marsden I am requesting, had to be of different grounds then the Marsden
24 held in the courtroom of Terry Mockler on or about 1-16-15, because Mockler had already ruled on those
25 grounds.

26 I go forward regardless, not in just one Marsden, but approximately three of four.

27 All Marsdens are denied.

28 I am getting all matters I can on the court record, for I may need it for appellate/habeas purposes.

1 I requested a pencil so I could start writing notes, to allow me to remember all that is being said in the
2 hearing. My request for a pencil was denied by Becton.

3 After arguing with the court for what seemed like hours, I realized that I was not going to get any of
4 the facts or the evidence surrounding my arrest and incarceration. Taking into account all matters
5 described in this Statement of the Case, it was my belief that I could never win a trial in Contra Costa
6 County Superior Court, nor could I defend myself in any kind of meaningful way.

7 Under duress, I agree to take the plea.

8 As the plea is given to me, Martin informs me that he has added another case number to my plea,
9 giving me an additional six months of incarceration.

10 The plea is put in front of me and I attempt to understand it to the best of my ability, Martin is not
11 assisting me in any way.

12 Martin is angry with me at this point, for notifying the court of his actions. Martin looks at Cunnane,
13 and Becton, and states "Apparently Mr. Torres wants to read his deal?!?"

14 As I am reading the plea-bargain, I notice a mistake, I notice that I have been shorted a year of
15 incarceration. I quickly calculate the numbers in my head to make sure that it has nothing to do with my
16 reversal, affecting future filings (it did not). I calculate the time from my arrest to my reversal, my arrest
17 to my conviction, my sentencing to my reversal, etc. its not adding up. I informed Martin that there is a
18 mistake in my plea-bargain, because it was showing that I had been incarcerated for one year, when in
19 fact I had been incarcerated for two.

20 Martin becomes angrier and argues that I had only been incarcerated for one year, attempting to get me
21 to sign the plea.

22 After a long argument between Martin and myself, the bailiff speaks up and informs Martin that I had
23 been incarcerated for two years, at which time Martin submits.

24 Under duress, I sign the plea-bargain.

25 Becton, instructs Martin to give the plea-bargain, to the Bailiff, at which time Martin grabs my plea-
26 bargain, walks past the bailiff and slaps it in front of Becton.

1 Becton appears to visibly agitated and calls a recess, stating that she wanted to calculate my time.

2 I am brought back into court a short time later. Martin is acting a lot nicer. The facts of the case have
3 not changed, being nicer does not make what is being to me, any better.

4 I am informed by Martin (and Cunnane states for the record), that my plea is to consist of four case
5 numbers. It is my understanding that I am being sentenced to six years, six months in prison with
6 approximately two years credit. See **Appendix F**

7 I am forced to admit I am guilty of various crimes that I am unaware of and am sentenced to prison.

8 I wait for Martin to release my discovery to me, so that I may present an appropriate appeal; My
9 discovery never arrives. To this day Martin will not release my discovery.

10 Soon after entering prison, I am given a Legal Status Summary, summarizing my prison sentence.

11 What I was forced to sign in the plea-bargain was not what was showing up in my prison file.

12 My Legal Status Summary showed me being, sentenced to three case numbers and a detainer was now
13 in place. See **Appendix G**

14 On or about April 2016, I am able to receive the appellate record surrounding my reversal, giving me
15 knowledge of the extent of the incorrectness, of Contra Costas legal documents. At that point it is the only
16 discovery in my possession, besides the preliminary transcripts of Zierke, Ms. Torres and Smith.

17 On or about 6-14-17, my district attorney Mark Peterson (Scott Cunnane was deputy D.A.), resigned
18 from office before pleading no contest to felony perjury (The California attorney general had charged
19 Peterson with 12 counts of felony perjury and one count of felony grand theft. I attempt to address this
20 matter with the court, to no avail. It is my belief, if Peterson was willing to commit perjury to embezzle
21 political funds, what would keep Peterson from unlawfully incarcerating inmates for a paycheck, bonuses,
22 etc. The court has not addressed this issue.

23 On or about January of 2018, my abstract of judgement(s) is reworked, changing my release date from
24 1-23-19, to 5-20-18.

25 On 4-2-18, the US Dist. Ct., Northern Dist. Of Ca., case # 17-cv-06587-SI, ruled that my lawsuit
26 would proceed against Contra Costa County, court reporters, public defenders etc. for my reversal.

1 On 4-3-18, my abstract of judgement(s) is changed for a third time, changing my release date from
2 5-20-18 to 1-15-19.

3 On or about 7-1-18, after approximately 22 habeas corpus petitions & writs of mandates, I received an
4 “Order to Show Cause,” for my habeas, by the U.S. Dist. Ct, giving the Attorney General 60 days to
5 respond with their “Answer” (District Ct. case # 17-cv-04332-PJH).

6 The Attorney General requested and received a 60-day extension. (Around this time, I also received an
7 order to show cause from Contra Costa County Superior Ct. case # 05-181767-5).

8 On or about 7-15-18, I received the police reports concerning my arrest on 7-4-12. As part of my
9 discovery for U.S. District Court, Northern Dist. Of California, case # 16-cv-06607-SI. In those police
10 reports, arresting officers Hansen and Smith do not mention anything about any domestic violence, being
11 committed as the officers of the court involved in my criminal proceedings, had claimed. According to
12 those police reports I was not even arrested for domestic violence. I was arrested and charged with PC
13 148(b) and PC 243(b). The only claim of domestic violence that was made, was by Betty Zierke on 10-3-
14 12, when she changed her statement, in a new police report, claiming that I severely beat her, on 7-4-12,
15 which is a clear contradiction of the police reports, made by the arresting officers, Hansen and Smith.

16 On or about 10-3-18, the district attorney (Scott Cunnane) and public defender (Christopher Martin)
17 involved in my case, had me resentenced (for a fourth time), without my knowledge, “allowing” me to
18 parole a couple of months early. See **Appendix H**

19 On or about 11-9-18, prison counselor Creamer, offered me parole papers to sign. I refused

20 On or about 11-14-18, I was taken to R&R of Correctional Training Facility (CTF). I was told that the
21 door to go home is right next to me, all I needed to do was to sign the parole papers being offered. I
22 refused to sign any parole papers for it was my belief that the resentencing by Cunnane and Martin
23 violated my federal civil rights, and the signing of the parole papers could be construed as a settlement
24 after years of unlawful incarceration.

25 I informed CTF staff, that they needed to either release me, or take me back to my prison cell, because
26 I am not signing anything.

1 A couple of hours later I was released, never giving authority or jurisdiction to the office of parole
2 I immediately notified the federal courts of the situation.

3 Unknown to me at that time, shortly after I notified the federal courts, of matters surrounding my
4 release, Contra Costa Counties office of parole had a warrant issued for my arrest.

5 On or about 12-1-18, I receive the answer to my order to show cause (District Ct. case # 17-cv-04332-
6 PJH). In that answer I am able to obtain the alleged facts surrounding the accusations that I beat pregnant
7 women, made by Scott Cunnane. Respondents claim that on the night of 9-25-12 "petitioner threw his
8 girlfriend, Betty Zierke, who was five months pregnant with petitioners child down a flight of stairs."
9 Respondents claims, are the first time that I have been able to obtain any type of information, concerning
10 this charge, of an alleged crime of domestic violence, said to have occurred on 9-25-12. This alleged
11 assault concerning my very pregnant girlfriend is impossible, for my daughter was born in June of 2013,
12 approximately 9 months after this alleged assault.

14 1-17-19, I was arrested by U.S. Federal Marshalls for a parole violation.

15 On or about 1-28-19, I was brought into the courtroom of judge Scanlon for what I later learned was a
16 parole revocation hearing.

17 Upon entering the courtroom, Scanlon offers me a 90 day plea-bargain for an AB-109 violation.

19 John Doe defense counsel, standing next to me was a stand in.

20 At that time, no one had yet spoken to me, about the cause and justification of my arrest and
21 incarceration. I did not have an understanding of the situation.

22 I attempt to address the court but was quickly silenced by Scanlon.

23 It is the typical Contra Costa County proceeding that I have been subjected to since 2013. I have no
24 discovery, I am not given the probable cause and justification of my arrest and incarceration, I am not
25 allowed to address the court because a public defender is standing next to me, and I am instructed to stay
26 mute, while I am offered a guilty plea and/or a county judge, gives me a presumption of guilt.

1 I address the court anyway. I state that I am not on any type of parole and I had never signed any type
2 of parole papers. I fire my public defender on the spot, and inform the court that its continued actions are
3 "bullshit."

4 I was removed from the courtroom

5 At approximately 5:00 P.M. I was brought back into the courtroom of Scanlon.

6 A Marsden is held and my request to dismiss my public defender was denied. It appeared that my
7 public defender was given my case on short notice. I have no problem with the decision.

8 It was stated for the record, by defense counsel, I was discharged from prison, without the signing of
9 any parole papers.

11 It was further stated for the record that that neither Contra Costa Counties courts nor its Office of
12 Probation/Parole appear to have any jurisdiction or authority over me. The public defender went on to
13 state, something to the effect of "As unusual as Mr. Torres' argument is, it's a legitimate one."

14 Judge Scanlon becomes noticeably agitated by what my public defender has stated.

15 My public defender schedules a demurrer.

16 Scanlon decides to keep me incarcerated. Around this time Scanlon continually tells me something to
17 the effect of "I am only doing this to you because of the resisting arrest and child endangerment." A
18 presumption of guilt for matters surrounding my arrest on 1-17-19, stemming from a fraudulent peace
19 officer report, that was easily debunked by eye witnesses.

21 A very long drawn out process later, Scanlon states something about neither party having any evidence
22 and immediately sentences me to 180 of jail time, ruling that I violated parole.

23 I was instructed to check into parole once I am released, at which time I refused.

REASONS FOR GRANTING THE PETITION

This case presents an ideal vehicle for resolving recurring legal issues of unquestionable importance to the fair and uniform enforcement of clearly established federal laws.

I received the Ineffective Assistance of Counsel at every stage of the criminal process, defendants have a “right to the assistance of counsel, that is acting reasonably within the range of competence demanded of attorneys in criminal cases” Strickland v. Washington, (1984) 466 U.S. 668, 687; “The U.S. Supreme Court recognizes that the Sixth Amendment right to counsel extends to the plea-bargain stage” Miles v. Martel, (2012) 696 F.3d 889; As described in the Statement of the case, the actions of public defender Christopher Martin fell well below the standard norm of Strickland. Martin’s advice to sign the guilty plea was not within the range of competence demanded of attorneys in criminal cases.

- Martin refused to thoroughly investigate my claims of being a victim of excessive force, illegal search and seizure, etc. at the hands Concord police officers. Instead deciding a mere phone call to the Concord Police Department and being told that the video cameras at the department were “broken” During a Marsden hearing in the courtroom of Terry Mockler, I did instruct Martin to get the alleged claim that the video cameras in the Concord Police Department were “broken” but Martin refused.
- The alleged domestic violence charges concerning Betty Zierke were forever changing. I was told that I was being charged with domestic violence for matters that occurred on July 4th 2013, and an unknown allegation that district attorney Cunnane brought into my criminal trial, stating to a jury, that I beat pregnant women (Zierke). On or about 7-15-18, I was able to obtain the police reports surrounding my arrest and incarceration that occurred on 7-4-12, written by the arresting officers, and there is no mention of domestic violence being committed. I was not arrested for domestic violence. The said photo evidence clearly shows that there was no injury to Zierke, and why there was any photos taken of Zierke when I was not even charged with domestic violence is unknown to me at this time. On or

1 about 12-1-18, I received the alleged facts concerning the alleged beating of "pregnant
2 women." The attorney general claims "petitioner threw his girlfriend, Betty Zierke, who
3 was five months pregnant with petitioners child down a flight of stairs." Respondents
4 claims are the first time that I have been able to obtain any type of information concerning
5 this fabricated charge of an alleged crime of domestic violence, said to have occurred on 9-
6 25-12. This alleged assault concerning my very pregnant girlfriend is impossible, for my
7 daughter was born in June of 2013, approximately 9 months after this alleged assault.
8

- 9 • See attached FBI complaint in its entirety, concerning all matters in this writ, which
10 contains police reports, birth certificate, etc. See **Appendix I**
- 11 • Martin told me that I was guilty of the crimes charged, when I questioned him about not
12 making me aware of the facts in the case.
- 13 • Th this day I do not have a clear understanding of my case or the charges against me.

14 Concerning matters stated above, Martin knew, or it should have been known by him that there were
15 clear contradictions in concerning the police reports, legal documents, etc. I told Martin that I was
16 innocent and did not want to sign a guilty plea, throughout my criminal proceedings. Martin performed
17 his duties with incompetence, and was in error to recommend that that I sign the plea-bargain, it is
18 "reasonable probability that, but for counsels error, he would not have pleaded guilty and would have
19 insisted on going to trial." U.S.C.A. Const. Amend. 6" Hill v. Lockhart, (1985) 474 U.S. 52; "Where
20 defendant enters guilty plea upon counsels advice, voluntariness of plea depends on whether advice was
21 within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, (1985) 474
22 U.S. 52; As stated in West v. Gastelo, 2016 U.S. Dist. Lexis 133896, "It is settled principle of federal
23 constitutional law that a guilty plea violates due process and is therefore invalid if not entered voluntarily
24 and intelligently. Brady v. United States, 397 U.S. 742...A plea may be not knowing and voluntary if it
25 is if it is for instance the product of ignorance, incomprehension, coercion, terror, inducements, or subtle
26 or blatant threats. Curtis v. United States, 511 U.S. 485; See Bennett v. Cate, (2007) 407 Fed. Appx.
27 213, where "counsels failure to notice blood evidence in several police reports was unreasonable."
28

1 On or about 6-25-13, while making her preliminary testimony, alleged victim Betty Zierke admitted to
2 being drunk, while making her preliminary testimony, and black out drunk on a regular basis. While
3 being crossed examined by public defender Natalie Saba. Saba quickly ended her questioning and Zierke
4 was removed from the stand. Zierkes admissions of intoxication are not in my preliminary transcripts but
5 were stated in front of Cunnane. Concerning matters of alleged domestic violence pertaining to Zierke.
6 Cunnane knew or it should have been known by him that Zierke admitted to being intoxicated while
7 making her preliminary testimony, and that the transcripts did not reflect it. I did receive two copies of the
8 incorrect preliminary transcripts, and they were the transcripts in the possession of defense counsel
9 Martin. I know this fact because I provided Martin with one of my copies, per court instruction, shortly
10 after Martin was appointed to represent me.
11

12 The due process clauses contained in the Fifth and Fourteenth Amendments require the prosecution in
13 a criminal case disclose any evidence in the governments possession that is favorable to the accused and
14 that is material to either guilt or punishment. Brady v. Maryland, (1963) 373 U.S. 83. To establish a
15 constitutional violation under Brady, three elements must be met.
16

- 17 • The evidence at issue must be favorable to the accused, either because it is exculpatory, or
because it is impeaching.
- 18 • The evidence must have been suppressed by the prosecution, either willingly or
inadvertently
- 19 • Prejudice must have ensued

22 Strickler v. Greene, 527 U.S. 263 281-82. To establish prejudice under the third prong, the
23 suppressed evidence must be material. United States v. Bagley, 437 U.S. 667. Evidence is material "if
24 there is reasonable probability that had the evidence been disclosed to the defense, the result of the
25 proceeding would have been different." Id. At 682; In Brady v. Maryland, (1963) 373 U.S. 83, the
26 Supreme Court recognized a prosecutors obligation to disclose exculpatory evidence when such evidence
27 is "material" to the defense.
28

1 Shortly after an order to show cause was granted in both State and Federal court District attorney Scott
2 Cunnane and Public Defender Christopher Martin went into court, without my knowledge, and I was
3 resentenced for a fourth time. Parole papers were presented to me, at which time I refused to sign. I have
4 requested to withdraw my plea in the lower courts, but my requests have fallen on deaf ears. "HN26,
5 Under Buckley, where the State has already received benefit it bargained for, a plea of guilty and a
6 conviction, specific performance is the best remedy, unless the defendant whose choice it becomes, elects
7 instead to rescind the agreement and take his chances from there (Buckley, 441 F.3d at 699 n.11)" Cuero
8
9 v. Cate, 827 F.3d 879; "When a plea rests in any significant degree on a promise or agreement of the
10 prosecutor, so that it can be said to be part of the inducement or consideration, such a promise must be
11 fulfilled." Santobello v. New York, 404 U.S. 257; Failure to abide by plea-agreement is a violation of
12 defendants due process rights U.S.C.A. 14" People v. Campbell, 26 Cal. Rptr. 2d 433, 21 Cal App 4th 825.
13
14

15 A criminal defendant is to be represented by competent counsel acting as a diligent advocate, free from
16 state control. see Strickland v. Washington, (1984) 466 U.S. 668, 687. Under Polk County et al. v.
17 Dodson, (1981) 454 U.S. 312. A public defender is protected from a section 1983 suit because they do
18 not act under color of State law. The court has ruled that the job of a public defender is to oppose the
19 State, therefore under normal circumstances you cannot sue a public defender under section 1983 for they
20 do not act under States authority. If a criminal defendant is being appointed a public defender who is
21 practicing and enforcing a county/State policy of discovery deprivation, then technically, the said criminal
22 defendant, would be appointed defense counsel working under authority of the State, as opposed to
23 counsel opposing the State, thus depriving a criminal defendant of counsel period, pursuant the guidelines
24 and guarantees of the Sixth amendment of the U.S. Constitution. At a minimum, there can be no fair court
25 proceeding because the accused had not received the services of an effective independent advocate.
26 "HN2, When the government interferes in a defendants relationship with his attorney to the degree that
27 counsels assistance is rendered ineffective, the governments misconduct may violate the defendants Fifth
28 Amendment right to due process as well as his Sixth Amendment right to counsel." U.S. v. Marshank

1 (1991) 777 F. Supp. 1507; "HN15, It is the constitutional obligation of the State to respect the
2 professional independence of the public defenders whom it engages. The court has established the right of
3 state criminal defendants to the guiding hand of counsel at every step of the proceeding against them.
4 Their can be no fair trial unless the accused receives the services of an effective and independent
5 advocate." **Polk County et al. v. Dodson**, (1981) 454 U.S. 312.
6

7 In **Brady v. Maryland**, (1963) 373 U.S. 83, the courts have held that the prosecution violates due
8 process where it fails to disclose to the defense evidence favorable to the accused that is material either to
9 guilt or punishment. The Brady doctrine, has been refined by a number of subsequent cases that limit its
10 application to evidence that is "material" in that the evidence would have made a different result in the
11 trial "reasonably probable" had it been disclosed. The general position adopted by most courts and
12 commentators is that pretrial disclosure is required if advance disclosure is necessary for the evidence to
13 be used effectively. Thus, if the exculpatory material requires defense development before it can be
14 introduced, a constitutionally based discovery requirement is thereby created. The right of defendants
15 under most rules to obtain discovery of information material to the preparation of the defense involves a
16 statutory right to discovery of evidence that is substantially broader than the constitutional right.
17

18 It is the policy of Contra Costa County to deprive a criminal defendant all discovery; any and all
19 pretrial knowledge of any and all unprivileged information; the cause and nature of your alleged crimes;
20 the charges and evidence that would enable a criminal defendant to make a proper defense with the
21 "Assistance of Counsel." I was told on many occasions that the California Supreme Court had ruled, in an
22 unspecified case, that it was unsafe for a criminal defendant to obtain any and all discovery period,
23 exculpatory or otherwise, The blanket policy deprives a criminal defendant his Fifth & Fourteenth
24 Amendment right to the due process of law under Brady and further deprives a criminal defendant of the
25 due process of law under the Fifth Amendment because it interferes in a defendants relationship with his
26 attorney to the degree that counsels assistance is rendered ineffective, as well as a criminal defendants
27 Sixth Amendment right to counsel. The due process clauses contained in the Fifth and Fourteenth
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1 Amendments require the prosecution in a criminal case disclose any evidence in the governments
2 possession that is favorable to the accused and that is material to either guilt or punishment. Brady v.
3 Maryland, (1963) 373 U.S. 83; “HN2, When the government interferes in a defendants relationship with
4 his attorney to the degree that counsels assistance is rendered ineffective, the governments misconduct
5 may violate the defendants Fifth Amendment right to due process as well as his Sixth Amendment right to
6 counsel.” U.S. v. Marshank.

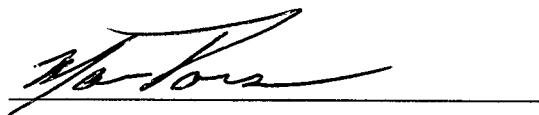
7 Taking into account all the facts this case, it is my belief that I was not wrongfully convicted, but
8 instead purposefully convicted. I believe that I was punished for questioning Contra Costa Counties
9 policy of discovery deprivation. “To punish a person because he has done what the law plainly allows him
10 to do is a due process violation of the most basic sort” United States v. Goodwin, 457 U.S. 368 (1982)

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12-11-19