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APPENDIX A - Superior Court Order denying Writ of Habeas
Corpus 12/13/2018

FILED
Clerk of the Superior Court
DEC 13 2018
By: S. M. Smith

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

IN THE MATTER OF THE APPLICATION OF:

JUAN FLORES,

Petitioner.

HCN 1560
SCN 305999

ORDER DENYING
PETITION FOR WRIT
OF HABEAS
CORPUS

THIS COURT, HAVING READ THE PETITION FOR WRIT OF HABEAS CORPUS,
FINDS AS FOLLOWS:

On August 30, 2013, Petitioner pled guilty to three counts of Penal Code § 288(b)(1), forcible lewd act on a child. The stipulated terms of his plea agreement were to dismiss the balance of the Information and stipulate to a sentence of thirty years. The Information charged 19 counts, including 3 counts of Penal Code § 288.7(a), sexual intercourse with a child 10 years or younger and 3 counts of Penal Code § 269(a), aggravated sexual assault of a child. On October 8, 2013, Petitioner was sentenced to 30 years in custody pursuant to the terms of his plea. The sentence consisted of 10 years for each of his 3 convictions for Penal Code § 288(b)(1).

In January, 2018, this Court received a letter from the California Department of Corrections and Rehabilitation indicating that the sentencing range with the upper term of 10 years was incorrect, based on the date of the commission of the offenses. Based on this letter Petitioner was recalled. Petitioner

1 withdrew his original plea and entered into a second plea agreement in which he pled guilty to 4 counts of
2 Penal Code § 288(b)(1) and again stipulated to a term of 30 years. On May 30, 2018, he was sentenced to
3 30 years in custody pursuant to the terms of the second plea agreement.

4 Petitioner now asserts that his trial counsel, retained attorney Karolyn Kovtun, was ineffective in
5 advising him to take the plea where the stipulated sentence was not authorized by law. He further asserts
6 that his trial attorney misadvised him to sign the new plea agreement, when he was entitled to a lesser
7 sentence under the original plea agreement.

8 To show ineffective assistance of counsel, Petitioner must make a showing that his attorney's actions
9 in advising him to take the plea was not an informed choice among tactical alternatives. People v. Pope
10 (1979) 23 Cal.3d 412, 424. Petitioner must also show that, but for counsel's unprofessional errors, the result
11 of the proceeding would have been different. In re Jackson (1992) 2 C.4th 578. The burden of proving a
12 claim of ineffective assistance of counsel is on the petitioner. He must also show that it is reasonably probable
13 a more favorable result would have been obtained in the absence of counsel's failings. People v. Duncan
14 (1991) 53 Cal. 3d 955, 966.

15 Here Petitioner's trial attorney, as well as the Deputy District Attorney and the Court, failed to take
16 into account the date the fact that the Petitioner's offenses occurred prior to the 2010 change in the sentencing
17 law which increased the maximum term from eight years to ten years. Petitioner asserts that this constituted
18 ineffective assistance of counsel and that, but for his attorney's unprofessional errors, it is reasonably more
19 probable that a more favorable result would have occurred. However, it does not appear that a more favorable
20 result would have been obtained, as Petitioner entered into a plea in which the contemplated punishment was
21 30 years. Further, there were 19 serious sex offense charges pending against him and his probation report
22 indicates that he admitted to committing at least 4 of those acts.

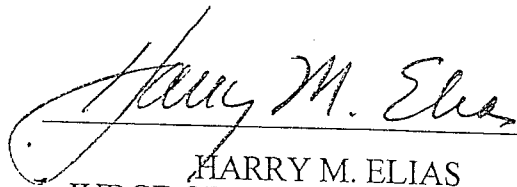
23 As to Petitioner's entry into the second plea agreement on May 3, 2018, Petitioner did not object to the
24 new plea, nor was he prejudiced, as his sentence was not increased from 30 years. While his original sentence
25 was technically improper "Where defendants have pleaded guilty in return for a *specified sentence*, appellate
26 courts are not inclined to find error even though the trial court acts in excess of jurisdiction in reaching that
27 figure, as long as the court does not lack *fundamental jurisdiction*.... The rationale behind this policy is that
28 defendants who have received the benefit of their bargain should not be allowed to 'trifle with the courts' by

1 attempting to better the bargain through the appellate process.” (*People v. Nguyen* (1993) 13 Cal.App.4th 114,
2 122-123 citations omitted, italics added.) “Where a court is merely acting in excess of its jurisdiction, the
3 defendant who agrees to such actions may be estopped later from challenging the court's actions on
4 jurisdictional grounds.” (*People v. Jones* (1989) 210 Cal.App.3d 124, 136.) People v. Couch (1996) 48
5 Cal.App.4th 1053, 1056–1057. By entering the new plea, Petitioner was simply conforming the plea to the
6 sentence which he had already agreed to.
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8 Petitioner failed to meet this burden and has failed to make a prima facie showing of specific facts
9 which would entitle him to habeas corpus relief under existing law. As such, the Petition for Writ of Habeas
10 Corpus is hereby denied.

11 IT IS SO ORDERED.

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13 DATED: 13 Dec 2018

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16 HARRY M. ELIAS
17 JUDGE OF THE SUPERIOR COURT
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APPENDIX B - Fourth Appellate Court Order denying Writ of
Habeas Corpus 2/05/2019

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal
Fourth Appellate District
FILED ELECTRONICALLY
02/05/2019
Kevin J. Lane, Clerk
By: Jonathan Newton

In re JUAN ISAAC FLORES

D075291

on

(San Diego County
Super. Ct. Nos. SCN305999 &
HC1560)

Habeas Corpus.

THE COURT:

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices Huffman and Irion.

Juan Isaac Flores was sentenced to prison in 2013 for the stipulated term of 30 years after he pled guilty to three counts of committing a forcible lewd act on a child. (Pen. Code, § 288, subd. (b)(1).) In exchange, the prosecutor dismissed 16 other charges of various sex crimes against children. Flores did not appeal the judgment of conviction.

In January 2018, the sentencing court received a letter from the Department of Corrections and Rehabilitation questioning the legality of the sentence. It appears Flores committed the forcible lewd acts before the effective date of legislation that changed the punishment from imprisonment for three, six, or eight years to imprisonment for five, eight or 10 years. (Pen. Code, former § 288, subd. (a)(1), as amended by Stats. 2004, ch. 823, § 7, and by Stats. 2010, ch. 219, § 7.) The sentencing court recalled the sentence. Flores, represented by the same attorney who represented him when he pled guilty in 2013, withdrew his 2013 guilty plea and entered a new plea of guilty to four counts of forcible lewd acts and again stipulated to a 30-year prison term. The sentencing court imposed the stipulated term on May 3, 2018. Flores did not appeal the judgment of conviction.

By the present petition, Flores collaterally attacks the judgment on the ground his appointed attorney provided ineffective assistance. He complains his attorney misadvised him in 2013 to plead guilty to three counts of forcible lewd acts and stipulate to a 30-year prison term when she should have discovered the illegality of the sentence by researching the applicable law, and misadvised him again in 2018 to plead guilty to four counts of forcible lewd acts and agree to the same prison term when she should have moved the sentencing court to enforce the original plea bargain based on three counts and reduce the

prison term by six years. Flores asks this court to correct the allegedly unauthorized sentence by reducing it to 24 years.

Flores is not entitled to habeas corpus relief. His petition is procedurally barred. An attack on a stipulated sentence that is part of a plea bargain is an attack on the validity of the plea and therefore requires a certificate of probable cause before a defendant may mount the attack in an appellate court. (Pen. Code, § 1237.5; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.) "A defendant who challenges the validity of such a plea on the ground that trial counsel rendered ineffective assistance in advice regarding the plea may not circumvent the requirements of section 1237.5 by seeking a writ of habeas corpus." (*In re Chavez* (2003) 30 Cal.4th 643, 651.) Flores may not avoid this procedural bar to his petition by claiming the 30-year prison term to which he stipulated is legally unauthorized. The rule that defendants may challenge an unauthorized sentence at any time "is itself subject to an exception: Where the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction. The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process." (*People v. Hester* (2000) 22 Cal.4th 290, 295.) Flores twice pled guilty and stipulated to a 30-year prison term and in exchange the prosecutor dismissed multiple charges that could have led to a much longer prison term had Flores gone to trial and been found guilty. Flores does not allege the trial court had no jurisdiction over the subject matter or his person. Thus, under *Hester*, he may not challenge the sentence as legally unauthorized. (

The petition is denied.

HUFFMAN, Acting P. J.

Copies to: All parties

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APPENDIX C - Superior Court Order denying Request for
Certificate of Probable Cause 3/08/2019

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SUPERIOR COURT OF CALIFORNIA: COUNTY OF SAN DIEGO

☐ Central Division ☐ East County Division ☐ North County Division ☐ South County Division

PEOPLE vs. Flores, Juan T CASE # SD0305999 PROS. # _____ STATUS: _____
 DATE: 3/15/19 AT: _____ DEPT. # 25 JUDGE/COMM. # Harry M Elias COURTROOM CLERK: _____
 CHARGE(S): 9.00.112) PC 281(b)(1)
 FUTURE DATES: _____ ☐ CONFIRMED ☐ VACATED

Attorney for the People (DDA / DCA) _____

Defendant / Attorney for the Defendant (PD / APD / PCC / Retained) _____

☐ Defendant is present by / with / without counsel ☐ at the counter

EX PARTE MINUTES

☐ Amended complaint filed. ☐ Application for Regular Parole, ESP, or Special Parole received, signed, returned to Board and copy filed.
☐ Defendant having been charged with a subsequent violation of _____ in the County of _____, Case # _____

☐ PROOF FILED RE: ☐ Self-help meetings (_____ of _____ completed) ☐ FCP ☐ MCP ☐
☐ MADD ☐ Restitution ☐ _____ hours Volunteer Work in lieu of \$ _____ fine/custody ☐ Next proof due to court by _____

☒ CORRESPONDENCE RECEIVED FROM: ☒ Def. ☐ Prosecutor ☐ Atty ☐ Victim ☐ Probation ☐ Other
 REGARDING: ☐ Motion for continuance ☐ due to military commitment ☐ Fines/Fees ☐ Bond ☒ Defendant
requesting for certificate of probable cause

☐ HEARING requested by ☐ Defendant ☐ Defense counsel ☐ Prosecutor. Case set as noted below.

☐ PROBATION: to expire: _____ ☐ (remains) summarily REVOKED ☐ REINSTATED ☐ TERMINATED ☐ CONTINUED

☐ MODIFIED ☐
☐ Request for FCP/MCP reassignment granted. ☐ Proof of ☐ enrollment ☐ completion due to court by _____
☐ Re-referred to ☐ _____ days PSP ☐ _____ hours Volunteer Work ☐ Proof of completion to the court by _____
☐ Proof of completion of _____ submitted within 180 days from issuance of warrant.

☐ DEFENDANT FAILED TO COMPLY WITH ORDER FOR: ☐ FCP ☐ MCP ☐ Drug Testing ☐ PC1000 ☐ Volunteer Wk _____ hours
☐ Public Service Program _____ days ☐ Restitution \$ _____ ☐ Custody _____ days ☐ DVRP
☐ Self-help meetings (_____ for _____) ☐ Other: _____

☐ DEFENDANT FAILED TO PAY \$ _____ ☐ Fines and fees ☐ balance ☐ including \$ _____ bad check fee ☐ other: _____
 due on _____

☐ Account balance \$ _____ (including fees) transferred to Collection Agency. Civil Assessment added pursuant to PC1214.1.
☐ Declaration in support of the issuance of warrant filed.

☐ TO BE ADDRESSED AT NEXT HEARING.

☒ CASE REFERRED TO JUDGE/COMM. # Harry M. Elias for consideration. By: A. Salazar, Deputy Clerk

JUDICIAL ORDERS

☐ RECALL WARRANT ☐ VACATE FUTURE DATES
☐ PROBATION ☐ summarily revoked ☐ reinstated ☐ terminated ☐ continued, same terms and conditions ☐ modified as follows
☐ EXTENDED TO _____
☐ ARREST ☐ BENCH WARRANT ordered, Bail Amount \$ _____ ☐ Commit ordered, _____ days, _____ day(s) stayed, _____ days credit for time served (_____ actual & _____ PC4019) ☐ Schedule for court
☐ Proceedings pursuant to PC1000 set aside, finding of guilt to charge(s) pled. ☐ Calendar matter for OSC re: Entry of Judgment
☐ Counsel Appointed: ☐ Public Defender ☐

OTHER: Defendant - by plea agreement for next hearing waived his right to
trial

IT IS SO ORDERED: DATE: 3/15/19 JUDGE/COMMISSIONER Harry M. Elias

MISCELLANEOUS / POST JUDICIAL REVIEW MINUTES

DATE: _____ Pursuant to order of the court as noted above:

☐ No action taken. Copy of correspondence received forwarded to the Prosecutor's Office and defense counsel.
☐ Amendment to complaint ☐ filed charging ☐ VC40508(a) ☐ PC853.7 ☐ PC1320(a) ☐ filed as/reduced to an infraction.

☐ CASE SET FOR: ☐ Guaranteed Disposition ☐ Arraignment ☐ Motion for: ☐ Further proceedings re: _____
☐ OSC re ☐ Probation Revocation ☐ DEJ ☐ to trail case(s) _____ ON _____ AT _____ DEPT. _____

☐ Defendant ☐ REMAINS AT LIBERTY ☐ RELEASED on ☐ bail previously posted ☐ probation ☐ OR.
☐ Defendant REMANDED to custody of Sheriff, bail set at \$ _____. ☐ Sheriff ordered to produce defendant at hearing noted above.

☐ CASE DISMISSED in the furtherance of justice:
☐ ARREST ☐ BENCH WARRANT ☐ as previously ordered ☐ to ISSUE ☐ to REMAIN OUTSTANDING ☐ RESCINDED ☐ RECALLED
☐ Bail set at \$ _____ ☐ Cash bail may be forfeited ☐ Mandatory appearance ☐ Night service authorized ☐ No checks
☐ HOLD issuance of warrant to date set above. WARRANT ISSUED: _____ WARRANT RECALLED: _____

OTHER: _____
 By: _____, Deputy Clerk

MY SIGNATURE ACKNOWLEDGES THAT I HAVE RECEIVED A COPY AND UNDERSTAND THIS COURT ORDER. Further, if applicable, I agree to all of the following conditions of a release on my own recognizance: (1) I will appear at all times and places as ordered by the court; (2) I will obey all conditions imposed by the court; (3) I will not depart this state without permission of the court; (4) I waive extradition if I fail to appear as ordered by the court and am apprehended outside of California. I understand that a willful failure to appear in a misdemeanor case is a separate misdemeanor offense punishable by imprisonment in the county jail for up to 6 months, or by a fine of up to \$1,000, or both.

Defendant's Signature _____

Telephone Number _____

Driver License No. & State _____

Home Address _____

City _____

State _____

Zip Code _____

Date: _____ ATTEST A TRUE COPY, Clerk of the Superior Court by _____ Deputy

Distribution by: A. Salazar on 3/15/19 to: Jail Def. Atty. Pros. Prob. R&R Intep Coord. Acct. Assessment Other: _____

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APPENDIX D - Fourth Appellate Court Order denying Request
for Certificate of Probable Cause 5/14/2019

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal
Fourth Appellate District
FILED ELECTRONICALLY
05/14/2019
Kevin J. Lane, Clerk
By: Scott Busskohl

In re JUAN ISAAC FLORES

D075814

on

(San Diego County
Super. Ct. No. SCN305999)

Habeas Corpus.

THE COURT:

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices Nares and Haller. Judicial notice is taken of the petition and order filed in habeas corpus proceeding No. D075291.

Juan Isaac Flores was sentenced to prison in 2013 for the stipulated term of 30 years after he pled guilty to three counts of committing a forcible lewd or lascivious act on a child under the age of 14 years. (Pen. Code, § 288, subd. (b)(1).) In exchange, the prosecutor dismissed 16 other charges of sex crimes against children. In January 2018, the Department of Corrections and Rehabilitation notified the superior court the sentence was erroneous because Flores committed the crimes before the effective date of legislation that changed the punishment from imprisonment for three, six, or eight years to imprisonment for five, eight or 10 years. (Pen. Code, former § 288, subd. (a)(1), as amended by Stats. 2004, ch. 823, § 7, and by Stats. 2010, ch. 219, § 7.) After the superior court recalled the sentence, Flores, represented by the same attorney who negotiated the 2013 plea bargain on his behalf, withdrew his guilty plea to three counts of forcible lewd or lascivious acts, entered a new plea of guilty to four counts, and again stipulated to a 30-year prison term. The court sentenced Flores to the stipulated term on May 3, 2018. Flores did not appeal the new judgment.

In a petition for writ of habeas corpus filed in this court on February 1, 2019, Flores attacked the judgment on the ground his appointed counsel provided ineffective assistance. He alleged counsel misadvised him concerning the length of the prison sentence in 2013 and again in 2018, and asked this court to correct the allegedly unauthorized sentence by reducing it to 24 years. This court denied Flores's petition as procedurally barred because he had not appealed and obtained the certificate of probable cause required to challenge his stipulated prison sentence. (*In re Flores* (Feb. 5, 2019, D075291) [nonpub. order].)