

APPENDICES A - F

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Corpus 12/13/2018

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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.

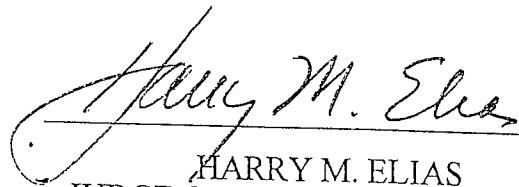
23 As to Petitioner's entry into the second plea agreement on May 3, 2018, Petitioner did not object to the
24 new plea, nor was he prejudiced, as his sentence was not increased from 30 years. While his original sentence
25 was technically improper "Where defendants have pleaded guilty in return for 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.
7

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

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. Ramirez* (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, 10, 11, 12 PC 261(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: ☒ Deft. ☐ 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: DEPT - 24 plea agreement for DEPT waived his right to
 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 Deft. Atty. Pros. Prob. R&R Interp 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].)

On March 3, 2019, Flores filed a request for a certificate of probable cause in the superior court. The court denied the request.

By the present petition, Flores again contends the 30-year prison term to which he stipulated is illegal and counsel provided ineffective assistance by recommending he plead guilty and stipulate to that term. He is "asking for the fourth count be set aside and let the original plea agreement stand" so that his prison term will be reduced to 24 years. Flores claims he has a "right to appeal to have the sentence corrected" and asks this court to issue a certificate of probable cause to allow him to appeal.

Flores is not entitled to habeas corpus relief. The correct way to challenge a superior court's denial of a request for a certificate of probable cause is by petition for writ of mandate, not petition for writ of habeas corpus. (*In re Brown* (1973) 9 Cal.3d 679, 683.) Although this court could treat Flores's petition as one for writ of mandate (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340), that would not help him. His request for a certificate of probable cause was due 60 days after the superior court resentenced him on May 3, 2018 (Pen. Code, § 1237.5, subd. (a); Cal. Rules of Court, rule 8.308(a)), but he did not file the request until 10 months later, on March 3, 2019. The superior court therefore could not have granted the request because the 60-day deadline is mandatory and jurisdictional. (*In re Chavez* (2003) 30 Cal.4th 643, 653.) And, in any event, Flores has no "reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings" that would warrant issuance of a certificate of probable cause. (Pen. Code, § 1237.5, subd. (a).) Flores twice pled guilty and stipulated to the 30-year prison term in exchange for dismissal of multiple charges that could have led to a much longer prison term had he gone to trial and been found guilty. "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 does not allege the superior court lacked subject matter or personal jurisdiction. Thus, he may not challenge his stipulated prison sentence as legally unauthorized.

The petition is denied.

MCCONNELL, P. J.

Copies to: All parties

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APPENDIX E - Supreme Court of California denial of
Writ of Habeas Corpus 9/11/2019`

SUPREME COURT
FILED

SEP 11 2019

Jorge Navarrete Clerk

S256235

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JUAN ISAAC FLORES on Habeas Corpus.

The petition for writ of habeas corpus is denied.

CANTIL-SAKAUYE

Chief Justice

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APPENDIX F - Supreme Court of California denial of
Petition for Rehearing 10/07/2019

APRIL BOELK
AUTOMATIC APPEALS SUPERVISOR



EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

October 7, 2019

Juan Isaac Flores, AR-8824
Centinela State Prison
P.O. Box 731
Imperial, California 92251

Re: S256235 - In re Juan Isaac Flores on Habeas Corpus

Dear Mr. Flores:

Return unfiled is your Petition for Rehearing received on October 4, 2019. The order filed on September 11, 2019 denying your Petition for Writ of Habeas corpus in the above-referenced matter was *final forthwith and may not be reconsidered*. Please rest assured, however, that the petition, and the contentions made therein, were considered by the entire court, and that the denial expresses the decision of the court on this matter.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

A handwritten signature in black ink, appearing to be "C. Wong", is written over the typed name.

By: C. Wong, Deputy Clerk

Enclosure:

cc: Rec.

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APPENDICES G - I

APPENDIX G - Request for Certificate of Probable Cause
3/03/2019

APPENDIX H - Writ of Habeas Corpus - Appellate Court
1/28/2019

APPENDIX I - Writ of Habeas Corpus - Supreme Court
of California 6/10/2019

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APPENDIX G - Request for Certificate of Probable Cause
3/03/2019

1 Juan Isaac Flores AR8824
2 Centinela State Prison
3 P.O. Box 931
4 Imperial, CA 92251

COPY

6 SUPERIOR COURT OF CALIFORNIA

7 COUNTY OF SAN DIEGO

8 NORTH COUNTY BRANCH
9

10
11 Juan Isaac Flores,
12 Petitioner,

13 v.

case no: SCN305999
Request for Certificate
of Probable Cause

14 Superior Court of California,
15 Respondent
16

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19 Request for Certificate of Probable Cause

20 Petitioner, Juan Isaac Flores, pro se, is requesting a
21 Certificate of Probable Cause. "showing reasonable constitutional,
22 jurisdictional or other grounds going to the legality of the
23 proceedings," and obtain from the trial court a certificate of
24 probable cause attesting that at least of of the defendant's
25 stated grounds "is not clearly frivolous and vexatious."
26 (PC §1237.5, Cal Rules of Ct, rule 8.304(b). With Declaration
27 and Reasons in Support.
28

Petition for Writ of Habeas Corpus

1 Declaration and Reasons in Support for Certificate of Probable
2 Cause

3 I, Juan Isaac Flores, Petitioner, am a resident of Centinela
4 State Prison, County of Imperial, State of California, and do
5 hereby, swear or affirm and declare that I am competent to give
6 the following declaration based on my personal knowledge, unless
7 otherwise stated, and that the following facts and things are
8 true and correct to the best of my knowledge.

9 On 10/8/13, I pled guilty to three counts of PC §288(b)(1)
10 for a sentence totalling thirty years. While incarcerated in
11 the California Department of Corrections and Rehabilitation (CDCR)
12 the Bureau of Prisons (BOP) found a sentencing error. The charges
13 pled guilty to, fall under old crimes Sentencing Guidelines.
14 The three counts should have only carried a total of twenty-four
15 years.
16

17 The BOP informed the Court of the sentencing error. I was
18 recalled to court.

19 I was unaware CDCR had written the sentencing court on my
20 behalf. While in Centinela, I was told I had a court appearance
21 on Mar 3, 2018. When I arrived in San Diego Superior Court no
22 one could tell me the reason for the court appearance. On May
23 3rd, minutes before resentencing Atty Karolyn Kovtun arrived
24 at the holding cell. With out a discussion Atty Kovtun advised
25 me to sign a paper rescinding the 10/8/2013 plea agreement. She
26 then presented me another plea agreement to sign. She informed
27 me it was like the plea agreement I signed in 2013, and I was
28 signing for the same amount of time- 30 years. I signed the

1 documents. As we went in front of the judge, Atty kovtun told
2 me to just say yes to all the questions from the judge. After
3 resentencing, I questioned Atty kovtun about the reason for re-
4 sentencing. She told me that since my case was an old case, each
5 count carried less time. She did not notify me of the additional
6 charge to make up the difference between 24 and 30 years. I was
7 unaware the new plea agreement included a fourth count.

8 Nor did Atty Kovtun inform me I was eligible for a sentence
9 reduction if I did not rescind the 10/8/13 plea agreement. A
10 defendant is entitled to a sentence reduction when an illegal
11 sentence has been imposed using US Sentencing Guidelines. "Bound
12 only by Freeman decision's specific result, the D.C. Circuit
13 adopted the plurality opinions's approach, which holds even when
14 a defendant enters into a Fed. R. Crim P. 11(c)(1)(c) agreement,
15 the judge's decision to accept the plea and impose the recom-
16 mended sentence is likely to be based on the U.S. Sentencing
17 Guideline; and when it is, the defendant should be eligible to
18 seek 18 U.S.C.S. §3582(c)(2) relief." United States v. Davis
19 (9th Cir 2015) 825 F.3d 1014.

20
21 The Supreme Court of the United States recently ruled that
22 a criminal defendant who was sentenced pursuant to Rule 11(c)(1)
23 (c) guilty pleas is "generally eligible" for a sentence reduction.
24 Hughes v. United States (2018) 138 S.Ct 1765

25 The Court allowed the original plea agreement to be rescin-
26 ded where it had no right to do so. "Generally a ruling on a
27 motion to withdraw a guilty plea is left to the sound discretion
28

1 of the court. However, where the plea was void from its incep-
2 tion, there was no discretion for the court to exercise." People
3 v. Mancheno (1982) 32 Cal.3d 855

4 Attorney Kovtun misadvised me to rescind a plea agreement.
5 Then sign a new plea agreement with discussing the ramifications
6 of rescinding the plea. Attorney Kovtun failed to challenge
7 the State's breach of contract on May 3, 2018. [187 Cal.Rptr
8 445] (4) the usual remedies for violation of a plea bargain are
9 to allow the defendant to withdraw the plea, and go to trial
10 on the original charges, or to specifically [32 Cal.3d 861]
11 enforce the plea bargain.
12

13 I was eligible for a sentence reduction of six years. Atty
14 Kovtun's ineffectiveness resulted in a loss of a 72 month sent-
15 ence reduction. "a reasonable probability that but for counsel's
16 errors the result of the proceedings would have been different."
17 Strickland v. Washington (1984) 466 US 668, 80 L.ed.2d 674

18 The sentencing court did not have the discretion to rescind
19 the 10/8/13 plea agreement. The 5/13/18 plea agreement should
20 not have been admitted. "Certificate of Probable Cause require-
21 ment is aimed at (and consequently applies to) claims that operate
22 "in substance" [as] a challenge to the validity of the plea.
23 (Panizzon at p.74, see People v. McNight (1985) 171 Cal.App.3d
24 620, 624 [217 Cal.Rptr 393])

25 Ordinarily, a "defendant who agreed to a specified sentence
26 may not challenge PC §654 violation on appeal absent objection
27 in court." People v. Hester (2000) 22 C4th 290, 295. If Atty
28

Kovtun

1 Kovtun had been effective and challenged the State's breach of
2 contract, there would be no reason to appeal the plea agreement.
3 The courts have set aside portions of defendant's conditions
4 on appeal. I am asking for the fourth count be set aside and
5 let the original plea agreement stand. (probation condition
6 banishing defendant from state set aside on appeal at defendant's
7 request despite defendant's agreement to condition. *Alhusainy*
8 *v. Superior Court* (2006) 143 CA4th 385, 391) and (probation
9 condition requiring minor to live in Iran for 2 years invalidated
10 on appeal by minor. *In re Barak S.* (1993) 18 CA4th 1077, 1084)

12 Prior to this request for Certificate of Probable Cause,
13 I did file a Petition for Writ of habeas Corpus in the Superior
14 Court. The a Petition for Writ of Habeas Corpus in the Fourth
15 Appellate District Court of Appeals. The Fourth Appellate opined
16 I could not circumvent the procedure of requesting a Certificate
17 of Probable Cause by filing a Petition for Writ of Habeas Corpus.
18 That it is required to obtain a Certificate of Probable Cause
19 by the sentencing court. I am not a practitioner of law, or
20 skilled in law, or educated in law, and did not know I needed
21 to request a Certificate of Probable Cause. I have filed the
22 previous petitions in the sentencing court and court of appeals
23 in a timely manner. And am filing this request in a timely
24 manner since I received the notice from the Appellate Court.

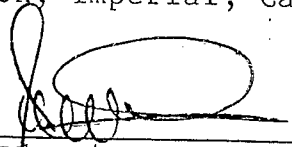
27 CONCLUSION

28 Based on the foregoing Declaration and Reasons in Support,

1 I request this Court to issue a Certificate of Probable Cause
2 because I am eligible for relief. Thank you.
3

4 I declare under penalty of perjury under the laws of the
5 State of California and the United States of America that the
6 foregoing is true and correct to the best of my knowledge and
7 belief, and that this declaration was executed on the date of
8 March 3, 2019, at Centinela State Prison, Imperial, California.
9

10 Juan Isaac Flores
11 name


signature-

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APPENDIX H - Writ of Habeas Corpus - Appellate Court
1/28/2019

Name: Juan Isaac Flores
Address: P.O. Box 931
Imperial, CA 92251
Centinel State Prison

MC-275

CDC or ID Number: AR8824

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
(Court)

Juan Isaac Flores
Petitioner
vs.
R. Madden, Warden
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. _____
(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal in paper form and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of court for electronically filed documents. If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☐ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☒ Other (specify): Plea Agreement

1. Your name: Juan Isaac Flores
2. Where are you incarcerated? Centinela State Prison
3. Why are you in custody? ☒ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Forcible lewd act on a child (4 counts)

- b. Penal or other code sections: PC §288(b)(1)
- c. Name and location of sentencing or committing court: Superior Court of California
Vista, North County Divison, 325 S. Melrose Dr., Vista, CA 92081
- d. Case number: SCN305999
- e. Date convicted or committed: 10/8/13
- f. Date sentenced: resentenced 5/3/18
- g. Length of sentence: 30 years
- h. When do you expect to be released? 2037
- i. Were you represented by counsel in the trial court? ☒ Yes ☐ No If yes, state the attorney's name and address:
Atty Karolyn Kovtun, 600 B St., ste 2020
San Diego, CA 92101

4. What was the LAST plea you entered? (Check one):

☐ Not guilty
 ☒ Guilty
 ☐ Nolo contendere
 ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury
 ☐ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial

STATEMENT OF FACTS

Petitioner, Juan Flores, on 10/8/13 pled guilty to three counts of PC 288(b)(1), for a sentence totalling thirty years. While incarcerated in the California Department of Corrections and Rehabilitation (CDCR) the Bureau of Prison (BOP) found a sentencing error. The charges pled guilty to fall under old crimes sentencing guidelines. The three counts only carry a total of twenty four years.

The BOP informed the Court of the sentencing error. I was recalled to court. Under advisement of Atty Karolyn Kovtun I signed a new plea agreement- four counts of PC 288(b)(1) three from the original plea agreement plus one more to equal thirty years- May 3, 2018

6. GROUNDS FOR RELIEF

MC-275

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel was deficient for allowing Petitioner, Juan Flores, to enter an illegal plea agreement. Failed to argue for a sentence under correct sentencing guidelines

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

The role of defense counsel is to find the best possible result for the defendant.

Criminal defendants rely on the training, experience, knowledge and education of defense attys. We are not educated in Law, and the intricate workings of the legal system.

Defense Attorney Karolyn Kovtun deficient performance violated my Sixth Amendment Right to Counsel.

Ineffective Assistance of Counsel is measured by the standard of *Strickland v. Washington* (1984) 466 US 668, 80 L.ed.2d 674

PLAIN ERROR REVIEW

This is a prima facie case. The State breached the illegal plea agreement between the Petitioner and the State, when it asked

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Ineffective Assistance of Counsel is reviewed by court using a two prong test:

(1) Deficient performance, (2) a reasonable probability that but for counsel's errors the result of the proceedings would have been different.

1 the Court to impose an illegal sentence. (1) Proven by the
2 Bureau of Prisons motioning for sentence modification. (2)
3 Proven by the Petitioner recalled to court for resentencing.
4 (3) Atty Kovtun did not request for a correct sentence.

5 I did not know I was entering an illegal/unlawful plea
6 agreement. If a contract is illegal on its face, it is illegal
7 and cannot be enforced.

8 (plain error is the appropriate standard of review where
9 defendant alleges government breach of plea agreement for first
10 time on appeal). See US v. Puckett (2009) 556 US 129, 133-34

11 The Court allowed the original plea agreement to be re-
12 scinded where it had no right to do so. "Generally a ruling on
13 a motion to withdraw a guilty plea is left to the sound dis-
14 cretion of the court. However, where the plea was void from
15 its inception, there was no discretion for the court to exer-
16 cise." People v. Mancheno (1982) 32 Cal.3d 855

17
18
19 I. Defense Atty Kovtun was Ineffective for allowing an unlawful
20 (or illegal) Plea Agreement

21 Atty Kovtun's deficient performance allowed me to enter an
22 illegal plea agreement; and allowed an illegal sentence to be
23 imposed.

24 Parties may not enter a plea bargain that requires the
25 court to impose an illegal sentence. "A plea bargain that pur-
26 ports to authorize the court to exercise a power it does not
27 have is unlawful and may not be enforced." In re Williams (2000)
28 83CA 4th 936, 944. See People v. harvey (1980) 112Ca3d 132,139.

1 Atty Kovtun was deficient in attaining an illegal plea
2 bargain. Kovtun blindly accepted the terms (amount of years) set
3 forth in the plea agreement by the State. There was almost a two
4 month gap from the acceptance of the plea agreement to sentencing.
5 Plenty of time to research sentencing guidelines to insure the
6 correctness of a plea bargain. Kovtun, simply, did not research
7 sentencing guidelines for the counts pled to.

8 It is not only the duty of defense counsel to obtain the most
9 suitable outcome for a defendant, but to ensure the validity of
10 the sentence. The illegal plea bargain proves Atty Kovtun's per-
11 formance was deficient and ineffective.

12
13
14 II. Defense Attorney Karolyn Kovtun Misadvised Petitioner to
sign a New Plea Agreement

15 Attorney Kovtun misadvised me to rescind a plea agreement,
16 then sign a new plea agreement without discussing alternatives.
17 Refer to attachment 1 (Declaration) for presentencing encounter
18 between Kovtun and Juan Flores, (Petitioner).

19 The appropriate action would have been for Atty Kovtun to
20 motion for the Court to enforce the original plea agreement under
21 correct sentencing guidelines. If Atty Kovtun would have stood
22 her ground and refused to rescind the original plea agreement-
23 the court would have had no option but to resentence me to twenty
24 four years. [187 Cal.Rptr 445] (4) The usual remedies for vio-
25 lation of a plea bargain are to allow defendant to withdraw the
26 plea and go to trial on the original charges, or to specifically
27 [32 Cal.3d 861] enforce the plea bargain.
28

1 Atty Kovtun failed to inform the Court of the sentencing
2 error; Misadvised me to accept another plea agreement for 30yrs
3 when I was entitled to a sentence reduction of six years. "Court
4 may correct unauthorized sentence at any time." See, e.g. People
5 v. Davis (1981) 29 C.3d 814, 827 n5.

6 Atty Kovtun failed to challenge the State's breach of con-
7 tract on May 3, 2018. This resulted in losing a 72 month sentence
8 reduction. "Counsel's failure to challenge prosecution's breach
9 of plea agreement at sentencing was ineffective assistance be-
10 cause error increased defendant's sentence by 40-50 additional
11 months." Us v. Granados (8th Cir 1999) 168 F.3d 343, 346.

12 A defendant is entitled to a sentence reduction when an
13 illegal sentence has been imposed using US Sentencing Guidelines.
14 "Bound only by Freeman decision's specific result, the D.C.
15 Circuit adopted the plurality opinion's approach, which holds even
16 when a defendant enters into a Fed. R. Crim P. 11(c)(1)(c) agree-
17 ment, the judge's decision to accept the plea and impose the
18 recommended sentence is likely to be based on the U.S. Sentencing
19 Guidelines; and when it is, the defendant should be eligible to
20 seek 18 U.S.C.S. §3582(c)(2) relief." United States v. Davis (9th
21 Cir 2015) 825 F.3d 1014.

22 The State, the Court, and Atty Kovtun all made a legal
23 mistake by accepting an illegal plea agreement. When a clear
24 legal mistake is the issue, Petitioner does not lose the right
25 to appeal to have the sentence corrected. Criminal Law §563-
26 an obvious legal error at sentencing that is correctable without
27
28

1 referring to factual findings in the record or remanding for
2 further finding is not subject to forfeiture.

3 The Freeman ruling, and 18 U.S.C.S. §3582(c)(2) entitled me
4 to a sentence reduction. Atty Kovtun's unfamiliarity of sentenc-
5 ing laws and rules is deficient. The Court most likely-following
6 Freeman and 18 U.S.C.S. §3582(c)(2)- would have imposed a sent-
7 ence reduction of 72 months for the original plea agreement.

8 "Counsel's failure to request downward adjustment of sentencing
9 using correct section of Guidelines was ineffective assistance
10 because reasonable probability that, absent error, defendant's
11 sentence would have been reduced by 17 months." US v. Soto (D.C.
12 Cir 1997) 132 F.3d 56, 57-90
13

14 The Supreme Court of the United States recently ruled that
15 a criminal defendant who was sentenced pursuant to Rule 11(c)(1)
16 (c) guilty plea is "generally eligible" for a sentence reduction.
17 Hughes v. United States (2018) 138 S.Ct 1765

18 The record shows Defense Atty Kovtun is not proficient in
19 sentencing guidelines, and how illegal sentences are to be cor-
20 rected.

21
22 18 U.S.C.S. §3582(c)(2)

23 (c) Modification of an imposed term of imprisonment. The court
24 may not modify a term of imprisonment once it has been
imposed except that--

25 (2) in the case of a defendant who has been sentenced to a term
26 of imprisonment based on a sentencing range that has sub-
27 sequently lowered by the Sentencing Commission pursuant
28 to 28 U.S.C. 994(o), upon motion of the defendant or the
Director of the Bureau of Prisons, or on its own motion, the
court may reduce the term of imprisonment, after considering
the factors set forth in section 3553(a)[18 U.S.C.S. §3553

1 (a)] to the extent that they are applicable, if such a
2 reduction is consistent with applicable policy statements
3 issued by the Sentencing Commission.

4 III. Errors by the Prosecution are not Correctable by Right

5 The Courts have ruled if a prosecutor makes a mistake in
6 pleadings, they are to be enforced, not corrected. To example, if
7 a prosecutor agrees to a plea bargain that covers all accusat-
8 ions in a police report, and later discovers accusations that
9 should not have been included or warranted a longer sentence-
10 the Courts have opined the prosecution has to live with the
11 error.

12 This is the case here. The prosecution failed to recognize
13 and follow Sentencing Guidelines. When the mistake was uncover-
14 ed by CDCR, the prosecution worked with Atty Kovtun to correct
15 the error in favor of the State. Defense Atty Kovtun's course of
16 action should have been to motion the Court to honor and enforce
17 the original plea bargain under the correct Sentencing Guidelines.

18 Under 18 U.S.C.S. §3582(c)(2) I was eligible for a sentence
19 reduction. Atty Kovtun failed to follow sentencing guidelines
20 and make a motion for sentence reduction on my behalf.
21

22 CONCLUSION

23 Base on the foregoing reasons, -the ineffectiveness of Atty
24 Kovtun - I request this Court to issue a remand for resentencing
25 because I am entitled to all relief. I request for any and all
26 relief which this Court deems just and proper. Thank you.
27
28

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☒ No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):

No Direct Appeal

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

11. Administrative review:

- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes . If yes, continue with number 13. ☐ No If no, skip to number 15.

Superior Court of California, Vista, CA

13. a. (1) Name of court: _____
- (2) Nature of proceeding (for example, "habeas corpus petition"): Habeas Corpus Petition
- (3) Issues raised: (a) Ineffective Assistance of Counsel
- (b) _____
- (4) Result (attach order or explain why unavailable): Denied
- (5) Date of decision: December 13, 2018
- b. (1) Name of court: _____
- (2) Nature of proceeding: _____
- (3) Issues raised: (a) _____
- (b) _____
- (4) Result (attach order or explain why unavailable): _____
- (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

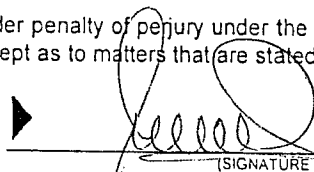
16. Are you presently represented by counsel? ☐ Yes ☒ No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☒ No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 1/23/2019


(SIGNATURE OF PETITIONER)

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APPENDIX I - Writ of Habeas Corpus - Supreme Court
of California 6/10/2019

Name: Juan Isaac Flores
Address: 2302 Brown Road
Imperial, CA 92251
Centinela State Prison

CDC or ID Number: AR8824

SUPREME COURT
FILED

HC-001

JUN 10 2019

Jorge Navarrete Clerk

Deputy

THE SUPREME COURT OF CALIFORNIA

(Court)

Juan Isaac Flores	
Petitioner	
vs.	
Superior Court of California	
Respondent	

PETITION FOR WRIT OF HABEAS CORPUS

No. **S256235**

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
 - If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
-
- Read the entire form *before* answering any questions.
 - This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
 - Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
 - If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
 - If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
 - If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
 - Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2018). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

RECEIVED

Page 1 of 6

JUN 28 2019

This petition concerns:

- ☐ A conviction ☐ Parole
☒ A sentence ☐ Credits
☐ Jail or prison conditions ☐ Prison discipline
☐ Other (specify): plea agreement

1. Your name: Juan Isaac Flores
 2. Where are you incarcerated? Centinela State Prison
 3. Why are you in custody? ☒ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Forcible lewd act on a child (4 counts)

- b. Penal or other code sections: PC §288(b)(1)

- c. Name and location of sentencing or committing court:
Superior Court of California - North County Division
325, S. Melrose Dr., Vista, CA 92081

- d. Case number: SCN305999

- e. Date convicted or committed: 10/8/13

- f. Date sentenced: resentenced 5/3/18

- g. Length of sentence: 30 years

- h. When do you expect to be released? 2037

- i. Were you represented by counsel in the trial court? ☒ Yes ☐ No If yes, state the attorney's name and address:
Attorney Karolyn Kovtun, 600 B St., ste 2020
San Diego, CA 92101

4. What was the LAST plea you entered? (Check one):

☐ Not guilty ☒ Guilty ☐ Nolo contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

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STATEMENT OF FACTS

Petitioner, Juan Flores, on 10/8/2013 pled guilty to three counts of PC 288(b)(1), for a sentence totalling thirty years. While incarcerated in the California Department of Corrections and Rehabilitation (CDCR) the Bureau of Prisons (BOP) found a sentencing discrepancy. The charges pled guilty to fall under old crimes Sentencing Guidelined. The three counts only carry a total of twenty four years.

The BOP informed the Court of the sentencing mistake. I was recalled to court. Under advisement of Atty Kovtun I signed a new plea agreement- four counts of PC 288(b)(1), three from the original plea agreement plus one more to equal thirty years- May 3, 2018.

6. GROUNDS FOR RELIEF

HC-001

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

Ineffective Assistance of Counsel

Atty kovtun failed to attain a sentence reduction when a sentencing error had been discovered

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where).

Statement Of The Case

The Trial Court should have enforced the original plea agreement using correct Sentencing Guidelines.

This petition goes directly to the core of the Sixth Amendment right to having effective counsel. The right to effective counsel extends to guilty pleas. (To ensure that guilty pleas are entered only as a result of informed and conscious choice, accused has his Sixth Amendment right to effective assistance of counsel in deciding upon entering such a plea. *Diaz v. Martin* (1983 CA5 Tex) 718 F.2d 1372)

b. Supporting documents:

Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duvall* (1995) 9 Cal. 4th 464, 474.)

Please see Attachments I and II

c. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Strickland v. Washington (1984) 466 US 668, 80 L.ed.2d 674

(1) Deficient performance. (2) A reasonable probability that but for counsel's errors the result of the proceedings would have been different.

1 When I arrived back in court on May 3, 2018, for resent-
2 encing I was entitled/elgible for a six year sentence reduction.
3 The majority of the work had been done- when CDCR made a motion
4 to the court of the sentencing error. Atty Kovtun should have
5 requested the Court to resentence me to twenty-four years using
6 correct Sentencing Guidelines. Instead; Atty Kovtun went against
7 my best interest and misadvised me to rescind the original plea
8 agreement, then sign a new plea bargain. There was not strat-
9 egic reasoning to sign a new plea agreement, and goes against
10 rationale thinking in securing a reduced sentence. "The right
11 of a defendant to assistance of counsel applies not only during
12 trial but also when defendant is advised to plead guilty, and
13 the competency of counsel is subject to review in both instances."
14 In re Hawley (Cal. Dec. 1 1967) 67 Cal.2d 824, 63 Cal.Rptr 831,
15 433 P.2d 919.

16
17 Talking to a client minutes before resentencing without
18 explaining what is about to occur and why in court, why a plea
19 is rescinded, why to sign a new plea, and not discussing altern-
20 ative possibilities falls well below effective. Is well below
21 the standard set in Strickland v. Washington and warrants a
22 review by this Court.

23
24 I felt I had no choice but to do as Atty Kovtun Advised.
25

26 Overcoming Procedural Bar

27 A petitioner can overcome the procedural bar only by demon-
28 strating either (1) cause for the procedural default and actual

1 prejudice as a result of the alleged violation of federal law or
2 (2) that failure to review the claims will "result in a funda-
3 mental miscarriage of justice."

4 Just as the reviewing courts are stating a petitioner may
5 not trifle with a plea bargain when not happy with the results.
6 The same applies to the State when the outcome is not to their
7 satisfaction. When the State was not happy with the sentencing
8 error- the prosecution and Atty Kovtun decided to void the original
9 plea agreement and enter into a new agreement. A defendant and
10 prosecution cannot decide if a plea is void; "Neither government
11 nor defendant could unilaterally declare plea agreement void,
12 only court has that authority." US v. Cox (8th Cir. 1993) 985
13 F.2d 427, 430.
14

15 The Court did not have the jurisdiction to void the original
16 plea agreement and accept a new one. The Court violated PC §1237.5
17 (a); Cal. Rules of Court, rule 8.308(a)- Request for certificate
18 of probable cause is due 60-days after sentencing. The 60-day
19 deadline is mandatory and jurisdictional. The plea agreement
20 rescinded in May 2018 was almost five years after the plea agree-
21 ment acceptance in October 2013.
22

23 The claim of ineffective assistance of counsel violating my
24 Sixth Amendment right to effective counsel combined with the
25 court not having jurisdiction to rescind a plea agreement is
26 adequate to show a procedural bar will "result in a fundamental
27 miscarriage of justice."
28

1 I have attached (Attachment II) my Request for Certificate
2 of Probable Cause and the argument appealing (argument part only)
3 the Request for Certificate of Probable Cause to the Fourth
4 Appellate Court.
5

6
7 CONCLUSION

8 Based on the foregoing reasons I request this Court to
9 issue a Certificate of Probable Cause, or remand to the Superior
10 Court ordering the enforcement of the October 2013 plea agree-
11 ment, and any other and all relief deemed by this Court,
12 because I am eligible for relief. Respectfully Submitted.
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8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
No Direct Appeal
- b. Result: _____ c. Date of decision: _____
- d. Case number or citation of opinion, if known: _____
- e. Issues raised: (1) _____
 (2) _____
 (3) _____
- f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:
- a. Result: _____ b. Date of decision: _____
- c. Case number or citation of opinion, if known: _____
- d. Issues raised: (1) _____
 (2) _____
 (3) _____
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal (see *In re Dixon* (1953) 41 Cal.2d 756, 759):

11. Administrative review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No
Attach documents that show you have exhausted your administrative remedies. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)
12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767-769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)
☒ Yes If yes, continue with number 13. ☐ No If no, skip to number 15.

- 13 a. (1) Name of court: Please see Attachment I
 (2) Nature of proceeding (for example, "habeas corpus petition"): _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (attach order or explain why unavailable): _____
 (5) Date of decision: _____
- b. (1) Name of court: Please see Attachment I
 (2) Nature of proceeding: _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (attach order or explain why unavailable): _____
 (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780.)

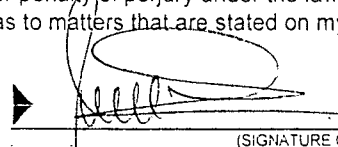
16. Are you presently represented by counsel? ☐ Yes ☒ No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☒ No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: June 6, 2019


 (SIGNATURE OF PETITIONER)

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APPENDIX J - Declaration of Juan Isaac Flores
10/24/2018

1 Juan Isaac Flores Ar8824
2 Centinela State Prison
3 2302 Brown Road
4 Imperial, CA 92251
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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

People of the State of California,
Respondent,

v.

Declaration of
Juan Isaac Flores

Juan Isaac Flores,
Petitioner

DECLARANT OF JUAN ISAAC FLORES

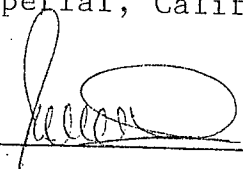
I, Juan Isaac Flores, Declarant, am a resident of Centinela State Prison, County of Imperial, State of California, and do hereby, swear or affirm and declare that I am competent to give the following declaration based on my personal knowledge, unless otherwise stated, and that the following facts and things are true and correct to the best of my knowledge.

1 I do declare:

2 While in Centinela, I was told I had a court appearance on
3 May 3, 2018. When I arrived in San Diego Superior Court no one
4 could tell me the reason for the court appearance. For resent-
5 encing I had no discussion with an attorney prior to signing the
6 new plea agreement. On May 3rd, just before the appointed time,
7 my old attorney, Karolyn Kovtun, showed up at the holding cell.
8 She presented me a plea like the one I signed in 2013, and told
9 me I needed to sign it again. She said it was the same I signed
10 before and that the time I was signing for was the same- 30 years.
11 So, I signed the document. When we went in front of the judge she
12 told me to just say yes to all the questions for everything.
13 After that, when I further questioned her she said that since my
14 case was an old case, each charge had less time. She didn't
15 notify me of the extra charge to make up for the difference
16 between 24 and 30 years, and that there was a possibility of
17 getting less time for the three charges (9, 10, 11) I had pled
18 to in 2013.
19

20
21 I declare under penalty of perjury under the laws of the
22 State of California and the United States of America that the
23 foregoing is true and correct to the best of my knowledge and
24 belief, and that this declaration was executed on the date of
25 October 24, 2018 at Centinela State Prison, Imperial, California.

26
27 Juan Isaac Flores AR8824

Signature 

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APPENDIX K - Letter to Attorney Kovtun
(dated 1/22/2018) 1/22/2019

Juan Isaac Flores AR8824
Centinela State Prison
P.O. Box 931
Imperial, CA 92251

January 22, 2018

Attorney Karolyn Kovtun
600 B Street, suite 2020
San Diego, CA 92101

re: case no. SCN305999

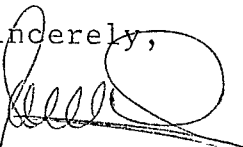
Dear Karen Kovtun:

Hello, you represented me in 2013, and recently on May 3, 2018. In 2013 you secured a plea bargain of thirty years for me. The California Department of Corrections and Rehabilitation discovered a sentencing error and notified the Court. I was recalled to court on May 3, 2018 for resentencing when you appeared to represent me for a second time.

According to 18 U.S.C.S. §3581(c)(2) when a motion for resentencing is made when there is a mistake in sentencing, I am entitled to the correctable sentence under Sentencing Guidelines. My questions for you are - why did you not make a motion to the Court asking for a downward adjustment in sentencing? Is it not your job to find the best possible outcome for a defendant? To me, it seems you were more concerned in maintaining the thirty year sentence than correcting the illegal plea bargain you allowed me to enter.

I would appreciate your answer to these inquiries. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Juan', with a large, stylized circular flourish at the end.

Juan Isaac Flores AR8824