

10-8125 ORIGINAL
No. 10-8125

Supreme Court, U.S.
FILED

MAR 19 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WENDELL RAY THOMAS — PETITIONER
(Your Name)

vs.

LAURA ELDRIDGE, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF CALIFORNIA,
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Wendell Ray Thomas, #F37466
(Your Name)

CHCF P.O. Box 213040-E3A-142-Up
(Address)

Stockton, CA 95213
(City, State, Zip Code)

[None available] (Prison inmate)
(Phone Number)

QUESTION(S) PRESENTED

I

Whether Defense Counsel Craig Wormley's Mental Health Issues Had An Adverse Effect & Influence on the Outcome of the Trial Where the Principle Issue Involved Wendell Thomas' Claim Victim Jerrell Lewis Attempted to Pull a Pistol & Did So Discharging A Bullet Fragment Discovered at the Scene Which Did Not Match the Semiautomatic casings Discharged by Mr. Thomas' Firearm

II

Whether Procedural Sequence of Trial in 2006, Direct Appeal in 2011, & Two Evidentiary Hearings (2016 & (2019) Where Meaningful Adversarial Testing Would Leave the Mind of A Reasonable Jurist with Sufficient Doubt As to the Fairness Of Trial & Level of Effective Representation, such that, In Light of Available Evidence & Witnesses Not Heard, Judicial Relief Warranted Under Fifth & Sixth Amendments

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

Supreme Court of California
Attn: Clerk of the Court
350 McAllister Street
San Francisco, CA 94102

Court of Appeal of the State of California
Second Appellate District, Division One
300 South Spring Street
Los Angeles, CA 90013

Xavier Becerra, Attorney General, State of California
300 South Spring Street, Room #1702
Los Angeles, CA 90013

Jackie Lacey, District Attorney, Los Angeles County
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Hon. Michael A. Cowell, Judge
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Norwalk, CA 90650 (post-trial proceedings)

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Mojgan Aghai, Attorney at Law
*311 North Robertson Boulevard, Suite 756
Beverly Hills, CA 90211 (Evidentiary hearings)

Wendell Ray Thomas, #F-37466
California Health Care Facility [CHCF]
P.O. Box 213040-E3A-141-Up
Stockton, CA 95213 (Petitioner)

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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 _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Division One, Second Appellate Dist 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.

OPINIONS BELOW [Con't]

[X] For cases from state courts: [con't]:

The opinion of the Second District Appellate court appears at Appendix "C" to the petition and is [X] is unpublished.

The opinion of the Superior Court @ Los Angeles court appears at Appendix "D" to the petition and is [X] is unpublished.

The opinion of the Los Angeles Superior court appears at Appendix "E" to the petition and is [X] is unpublished.

The opinion of the L.A. County Superior court appears at Appendix "F" to the petition and is [X] is unpublished.

The opinion of the Second District Appellate court appears at Appendix "G" to the petition and is [X] is unpublished.

The record of the California State bar proceedings and history appears as Appendix "H" to the petition and is [X] public record on line, regarding CRAIG THOMAS WORMLEY.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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

The date on which the highest state court decided my case was January 29, 2020. A copy of that decision appears at Appendix "A".

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offense 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 deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district court shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Fourteenth Amendment

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
[Section 1.]

STATEMENT OF THE CASE

On January 29, 2020, the California Supreme Court denied the December 23, 2019 filed Petition for Review Following December 13, 2019, Order Denying Habeas Corpus Releif by the Second District Court of Appeal, Division One; filed in the Supreme Court under number #S259777. Said summary order denying review cited at Appendix "A".

On December 13, 2019, the Second District Court of Appeal, Division One, filed their order summarily denying the December 4, 2019 filed Petition for Writ of Habeas Corpus after the June 13, 2019 Los Angeles County Superior Court Evidentiary Hearing before the Honorable Michael A. Cowell, Judge; filed in Division One under number #B302720 and said order denying cited at Appendix "B".

On December 2, 2019, the Second District Court of Appeal, Division One, filed their Remittitur upon the September 30, 2019 Order under number #B300032 dismissing the appeal from the June 13, 2019 Superior Court Evidentiary Hearing for want of jurisdiction, endorsed by Administrative Justice Elwood Lui, said orders cited at Appendix "C".

On June 13, 2019, the Superior Court of California, County of Los Angeles, before the Honorable Michael A. Cowell, Department SNE conducted second evidentiary hearing under case number #VA089835, entitled People of the State of California vs. Wendell Ray Thomas who stood convicted June 26, 2006, by jury of violating Penal Code §664/187, Attempted Murder, with allegation of Penal Code §12022.53(d) personally discharging a firearm causing great bodily injury, Count 1;

and Count 2, Penal Code §12021(a)(1) Possession of a firearm by a felon on a previous occasion, from which July 24, 2006, nine years prison term on Count 1 with personal firearm enhancement of 25 years to life, and concurrent 2 years, Count 2, for 34 years to life. Following evidentiary hearing, Judge Cowell denied habeas corpus relief through his written accompanying decision; said hearing and decision cited at Appendix "D".

On July 06, 2015, before the Honorable Michael A. Cowell, Judge, addressing the second habeas lodged by attorney's [Michele H. Kendall and Christina Diedoardo], minutes refelct:

"THE CAPTION ON THE PETITION FOR WRIT OF HABEAS CORPUS FILED ON BEHALF OF WENDELL RAY THOMAS PLACES THIS MATTER BEFORE THE JURISDICTION OF THE SECOND APPELLATE DISTRICT OF THE COURT OF APPEAL. HOWEVER PETITIONER'S ATTORNEY HAS ALSO FILED THIS MATTER WITH THE SUPERIOR COURT ALLEGING DUAL JURISDICTION. ACCORDINGLY, THE COURT WILL ADDRESS THE PETITION.

"PETITIONER ASSERTS THAT BY VIRTUE OF TRIAL COUNSEL'S ALLEGED "MENTAL ILLNESS" THE COURT SHOULD PRESUME PREJUDICE TO THE DEFENDANT AND GRANT THE WRIT. PETITIONER CONCEDES THAT THIS IS A CASE OF FIRST IMPRESSION UNDER CALIFORNIA LAW ALTHOUGH ACKNOWLEDGING THAT THE 9TH CIRCUIT HELD IN SMITH V. YLST 826 F. 2D 872, 876 (1987).

"ALTHOUGH THERE IS MERIT TO THE ARGUMENT THAT A MENTALLY UNSTABLE ATTORNEY MAY MAKE ERRORS OF JUDGMENT THAT ARE ESSENTIALLY UNIDENTIFIABLE BY A REVIEWING COURT, IT IS REASONABLE TO TREAT SUCH CASES UNDER THE GENERAL RULE REQUIRING A SHOWING OF PREJUDICE."

PETITIONER SEEKS TO DISTINGUISH YLST ON THE GROUNDS THAT HIS TRIAL LAWYER'S MENTAL CONDITION WAS ADMITTED BEFORE TRIAL NOT AFTER AS IN THE CASE OF YLST. THE DISTINGUISH IS MEANINGLESS FOR AS THE SAME COURT LATER RULED IN AN APPEAL FROM THE DENIAL OF HABEAS PETITION, "THE MERE EXISTENCE OF A LOOSELY DESCRIBED MENTAL ILLNESS OR CONDITION CANNOT BE ASSUMED TO AFFECT LEGAL PROCEEDINGS UNLESS THE CONDITION MANIFESTS ITSELF IN COURTROOM BEHAVIOR."

YLSY, ID., AT 876

THE WISDOM OF THIS DISTINCTION IS BORNE OUT BY THE FACT THAT IN THE INSTANT CASE, PETITIONER MERELY ASSERTS THAT HIS ATTORNEY, WORMLEY, ADMITTED THAT HE HAD "MENTAL HEALTH

ISSUES." SUCH A VAGUE DESIGNATION WITH NO FURTHER ELABORATION CANNOT PERMIT A PRESUMPTION OF INCOMPETENCE. MENTAL HEALTH ISSUES ARE NOT SYNONYMOUS WITH MENTAL ILLNESS. ALCOHOLISM, KLEPTOMANIA, OBSESSIVE/COMPULSIVE DISORDER, BULIMIA, AGORAPHOBIA AND A HOST OF NEUROSES AND OTHER DISORDERS MAY CONSTITUTE MENTAL HEALTH ISSUES THAT WOULD NOT AUTOMATICALLY AFFECT AN INDIVIDUAL

ATTORNEY'S ABILITY TO COMPETENTLY TRY A CASE. IN ACCORDANCE WITH THE RULING IN YLST, WHETHER OR NOT AN ATTORNEY'S PERFORMANCE AT TRIAL IS DEFICIENT BECAUSE OF MENTAL HEALTH ISSUES MUST DEPEND UPON A REVIEW OF THE RECORD.

IN ANTICIPATING SUCH AN EVENTUALITY, PETITIONER CITES TWO EXAMPLES OF HIS TRIAL LAWYER'S ALLEGED INCOMPETENCE. FIRST, HIS FAILURE TO CROSS-EXAMINE A BALLISTICS EXPERT'S OPINION WHO SAID THAT THE FIVE BULLETS WERE CONCLUSIVELY FIRED FROM A GUN BUT THAT THE 6TH WAS INCONCLUSIVE. "COULD ANOTHER GUN HAVE BEEN RESPONSIBLE FOR THE 6TH BULLET?" THAT IS THE QUESTION PETITIONER INSISTS A COMPETENT ATTORNEY WOULD HAVE ASKED. YET THE OPINION ALREADY GIVEN BY THE WITNESS LEAVES THE DEFENSE ABLE TO ARGUE THAT THE WORD INCONCLUSIVE MEANS THAT ANOTHER GUN MIGHT REASONABLY HAVE BEEN INVOLVED. BUT THE ADDITIONAL QUESTION SUGGESTED MIGHT WELL GIVE RISE TO AN ANSWER SUCH AS, "POSSIBLE BUT UNLIKELY."

[The Court split it's 7/6/2015 decision into two parts:]

"PETITIONER ARGUES A SECOND EXAMPLE OF INCOMPETENCE WAS THE FAILURE TO SEEK A MISTRIAL OR CURATIVE INSTRUCTION IN LIGHT OF THE PROSECUTOR'S REFERENCE TO GANG CULTURE IN A CASE WHERE NO GANG ALLEGATION INVOLVEMENT WAS IRRELEVANT OR IMMATERIAL. JUST AS ONE CANNOT UNRING A BELL, COUNSEL MAY HAVE DEEMED AS A MATTER OF TACTICS, THAT IT WAS PREFERABLE NOT TO underscore THE GANG REFERENCE WITH AN OBJECTION.

THE ONLY TWO INSTANCES OF ALLEGED MISCONDUCT CITED BY PETITIONER MAY WELL HAVE BEEN TACTICAL DECISIONS BY COMPETENT COUNSEL. IN AND OF THEMSELVES THEY CANNOT CAUSE A REVIEWING COURT TO CONCLUDE THAT TRIAL COUNSEL'S REPRESENTATION WAS INEFFECTIVE. PETITIONER'S ATTACHED EXHIBITS PRESENT THE COMPLETE RECORD OF SUBSEQUENT DISCIPLINARY PROCEEDINGS THAT LED UNTIMATELY TO TRIAL COUNSEL'S DISBARMENT. THEY ALL RELATE TO MISCONDUCT IN HIS DEALINGS WITH HIS CLIENTS. THIS COURT COULD NOT

FIND ANYWHERE IN THE VOLUMOUS DOCUMENTS SUBMITTED ANY REFERENCE TO MENTAL HEALTH ISSUES EITHER AS A FACTOR IN MITIGATION OR AGGRAVATION.

THE PETITION IS DENIED SINCE NO GOOD CAUSE HAS BEEN SHOWN WHICH WOULD REQUIRE AN EVIDENTIARY HEARING.

"A COPY OF THIS MINUTE ORDER IS SENT, VIA U.S. MAIL AS ADDRESSED BELOW:" [Service shown upon Attorney General and two attorney's representing petitioner]. Cited and attached as Appendix "E".

Minutes indicate further proceedings in the Superior Court upon the Second District Court of Appeal, Division One, order to show cause made returnable before the Superior Court directing answer and return, and first evidentiary hearing; whereupon September 28, 2015 such proceedings began in Superior Court. Appointing counsel, Mojgan Aghai, several hearings and proceedings occurred up to July 19, 2016, when Judge Cowell entered order denying the writ:

"COURT FINDS THAT THERE IS NO BASIS TO JUSTIFY THE WRIT OR FURTHER HEARING, THAT THERE IS NO EVIDENCE TO SUPPORT SAME AS FULLY STATED ON THE RECORD AND DENIED THE PETITION."
(Cited from Minutes)

The July 19, 2016 formal reporter's record of proceedings appears as Appendix "F".

The Court of Appeal, Second Appellate District, Division One May 11, 2009, unpublished decision affirming judgment on direct appeal, under case number #B205449, is cited as Appendix "G".

STATEMENT OF FACTS

On May 28, 2005, Wendell Ray Thomas [Petitioner], along with Monique Shantee McDowell, Shonte Ltesha Franklin, Jasmine Marlene Samuel, and Michael Johnson, went to the Denny's located at 17320 Lakewood Boulevard. As they entered the restaurant, Jerrell Taron Lewis, with his two cousins, Marion Joseph White and Brian Lavar Jones were within the parking lot listening to music from Jones car radio. As Petitioner and his group, arriving in two vehicles, went past Jerrell Lewis' and his relatives, Lewis made derogatory remarks so as to challenge Petitioner. Petitioner refused to engage and

they entered the establishment proceeding to enjoy their meal.

Within were Hayward Gladney, security guard, waitress Ericka Gomez, two patrons seated at the large bay window booth, Marine Maroquin Ramirez, and her sister-in-law, Mirna Elizabeth Casas,

Ms. McDowell subsequently testified Petitioner and Michael Johnson left to go have a cigarette outside. As they exited, Jerrell Lewis verbally again challenged Petitioner. Exchanging words, Mr. Lewis attempted to retrieve, what Petitioner testified to was a pistol --Mr. Lewis proclaimed being unarmed-- causing Petitioner to panic, and in fear, removed his semiautomatic firearm discharging multiple rounds striking victim lewis. Lewis ran after firing his own pistol, Petitioner testified. RT 269, 272-273.

Petitioner was described by witnesses as wearing camouflage T-shirt, and of all potential witnesses interviewed waitress Ericka Gomez and the two patrons seated at the booth, described Jerrell Lewis as the person they observed welding and discharging a firearm in the contemporaneous police reports:

[By Sheriff's Deputy Roachford:

"I spoke with GOMEZ ERICKA F/H.....SHE TOLD ME SHE WAS STANDING NEAR THE SOUTH FACING WINDOW OF THE LOCATION, TAKING CARE OF CUSTOMERS, WHEN SHE SAW A MALE BLACK 18-21 YRS OLD, 5'10 / 140 WEARING A BLACK CAP (NFD) STANDING OUTSIDE ON THE SIDEWALK NEAR THE FRONT DOOR. SHE SAW THE BLACK MALE POINTING A HANDGUN TOWARDS TO GROUND, WHEN HE SUDDENLY HE SHOT THREE ROUNDS TOWARDS THE GROUND, THE MALE BLACK THEN RAISED THE GUN, POINTING IT WEST BOUND TOWARDS LAKEWOOD BL BEFORE SHOOTING APPROXIMATELY FOUR TO FIVE MORE TIME..." [5/28/2005 Reports].]

[By Deputy Sheriff Bodholdt:

"I contacted witness RAMIREZ, MARINA MAROQUIN (FH/ 08-29-69, and witness CASAS, MIRNA ELIZABETH CASAS (FH/ 08-16-60)...

"W/RAMIREZ STATED SHE WAS SEATED IN THE LARGE BOOTH ON THE S/W CORNER OF THE DENNYS FACING EAST. SHE HEARD APPROXIMATELY 3 GUN SHOTS AND LOOKED SOUTH THROUGH THE

WINDOW TOWARD THE SOUND AND SAW A MALE (MB/18-20, 5"10 / 175 lbs CHECKERED SHIRT AND TAN PANTS) HOLDING A "BIG GUN" IN HIS RIGHT HAND. THE MALE WAS STANDING ON THE SIDEWALK, JUST OUTSIDE THE WINDOW FROM WHERE SHE WAS SITTING. SHE SAW THE MALE SHOOT APPROXIMATELY 3 MORE TIMES IN AN EASTERNLY DIRECTION. W/RAMIREZ HID FROM THE MALE BY POSITIONING HERSELF UNDER THE TABLE AND DID NOT SEE THE MALE AGAIN. W/RAMIREZ SAID SHE DID NOT SEE WHO THE MALE WAS SHOOTING AT, NOR DID SHE HEAR HIM SAY ANYTHING. SHE DID NOT SEE ANYBODY ELSE WITH THE MALE AND DID NOT SEE HIM PRIOR TO THE SHOOTING.

"I CONTACTED W/CASAS WHO SAID THAT SHE WAS SITTING NEXT TO W/RAMIREZ. SHE SAID THAT SHE HEARD APPROXIMATELY 10 GUNSHOTS AND LOOKED SOUTH THROUGH THE WINDOW AND SAW A MALE (MB/18-20, 6'00/185, TAN BUTTON UP, CHECKERED SHIRT, TAN PANTS) HOLDING A BLACK GUN SIDEWAYS IN HIS RIGHT HAND. THE MALE WAS STANDING JUST OUTSIDE THE WINDOW SHE WAS SITTING AT (APPROXIMATELY 10 FEET). SHE SAW THE MALE SHOOT THE GUN APPROXIMATELY 3 TIMES IN AN EASTERNLY DIRECTION. I ASKED W/CASAS WHAT KIND OF GUN THE MALE WAS HOLDING. SHE SAID THAT SHE DID NOT KNOW BUT SAW THE BACK PART OF THE GUN SLIDE BACK EACH TIME THE MALE FIRED. W/CASAS HID FROM THE MALE BY POSITIONING HERSELF UNDER THE TABLE AND DID NOT SEE THE MALE AGAIN. W/CASAS SAID SHE DID NOT SEE WHO THE MALE WAS SHOOTING AT NOR DID SHE HEAR HIM SAY ANYTHING. SHE DID NOT SEE ANYBODY ELSE WITH THE MALE AND DID NOT SEE HIM PRIOR TO THE SHOOTING.

"I DROVE BOTH WITNESSES TO COMPTON WHERE COMPTON UNITS WERE DETAINING A MALE. I ADVISED W/RAMIREZ AND W/CASAS OF THE FIELD SHOW-UP PROCEDURES AND THEY BOTH STATED THAT THE MALE COMPTON UNITS WERE DETAINING, WAS NOT THE MALE THEY SAW SHOOTING." [5/28/2005 Reports; emphasis added.]

[By Sheriff's Deputy Roachford:

"I RESPONDED TO 17230 LAKEWOOD BL, BELLFLOWER (DENNY'S DINER) REGARDING A GUNSHOT VICTIM INCIDENT. I CONTACTED THE FOLLOWING INDIVIDUALS INSIDE THE RESTAURANT WHO TOLD ME THE FOLLOWING:

"HAYWARD GLADNEY M/B, 03-18-74,HE WAS INSIDE THE RESTAURANT, WHEN HE SAW A GROUP OF MALE BLACKS (20-25 YRS OLD) OUTSIDE. THEY APPEARED TO BE ARGUING AMONG THEMSELVES. HAYWARD HEARD ONE OF THE MALE BLACK SAYING HE WAS FROM "PIRU", WHEN SUDDELY HE HEARD FIVE TO SIX GUNSHOTS OUTSIDE. HAYWARD SAW NUMEROUS INDIVIDUALS RUNNING AWAY FROM THE LOCATION OUTSIDE, INCLUDING A MALE BLACK 20-25 YRS OLD, WEARING A LONG SLEEVE ARMY SHIRT (GREEN). CONCERNED FOR HIS SAFETY, HAYWARD DROPPED DOWN TO THE FLOOR INSIDE THE RESTAURANT WHILE NUMEROUS INDIVIDUALS RAN INSIDE." [5/28/2005 Reports].]

[Sheriff's Deputy C. McZeal contemporaneous Report of interview of witness Matthew Adams (MB/A, 06-10-54) W/ADAMS STATED THE FOLLOWING:

"V/ADAMS SAID THAT JUST PRIOR TO THE INCIDENT HE WAS SITTING IN THE LOBBY OF "GRANNY'S DONUTS" 17228 LAKEWOOD BLVD. THE WINDOWS IN THE LOBBY OF THE LOCATION FACE NORTH, DIRECTLY TOWARDS THE PARKING AREA OF "DENNY'S" RESTAURANT. W/ADAMS SAID THAT HE HEARD APPROXIMATELY NINE GUN SHOTS COMING FROM THE "DENNY'S" PARKING LOT. IMMEDIATELY AFTER THE GUNSHOTS HE SAW A MB/A, LATER ID'D AS V/ JARRELL LEWIS, RUNNING S/B ACROSS THE PARKING LOT TOWARDS ARTIESIA BLVD. HE THEN SAW ANOTHER MB/A (S/WENDELL THOMAS) HOLDING A BLACK SEMI-AUTOMATIC HANDGUN IN HIS RIGHT HAND. HE DESCRIBED THE SUSPECT AS 5'7"-5'9", 160-180 LBS, AND SHORT HAIR. HE SAID THE SUSPECT WAS WEARING A MULTI-COLORED STRIPPED SHIRT AND JEANS (NFD). W/ADAMS SAID S/ THOMAS AND THREE FEMALE BLACKS GOT INTO A LIGHT COLORED FULL SIZE PICKUP TRUCK AND DROVE N/B ON LAKEWOOD BL TO THE w/B 91 FWY AND OUT OF VIEW.

"W/ADAMS SAID THAT HE BELIEVES THAT HE WOULD BE ABLE TO IDENTIFY THE SUSPECT GIVEN THE OPPORTUNITY TO SEE HIM AGAIN.

"APPROXIMATELY ONE HOUR LATER I DROVE TO THE LOCATION WHERE THE SUSPECT'S VEHICLE HAD BEEN DETAINED (THORSON AV / ALONDRA BL) IN COMPTON BY UNIT 285 (DEP. CHOI #460696 AND SUMNER #453025). SEE COMPTON UNIT 285 SUPPLEMENTAL REPORT FOR FURTHER." [5/28/2005 Reports.]

Deputy Sheriff Diplock narrative describing hearing the three gunshots and observing victim Jerrell Lewis running across the boulevard, placed him the initial deputy sheriff on the scene and the one initiating the all-points-bulletin for the suspect vehicle resulting in apprehension of Petitioenr and the three females traveling in the SUV:

"I THEN MADE A CRIME BROADCAST VIA SHERIFF'S RADIO ADVISING MY ASSISTING UNITS AND SHERIFF'S STATION OF THE SUSPECT, VEHICLE, AND LAST SEEN DIRECTION." [5/28/2005 Reports.]

When Petitioner stepped outside Michael Johnson was with him and witnessed the initial confrontation, and the ensuing incident when victim Jerrell Lewis appeared at the front entrance welding a pistol; the contemporaneous reports thus describe these multiple

witnesses observing Jerrell Lewis, possessing and firing, his pistol. Contemporaneous records below have defense counsel Craig Thomas Wormley's endorsement as receiving the above reports from the district attorney's office. Petitioner was not aware of these police reports until after his June 2006 trial, and subsequent 2009 appeal.

Petitioner discovered defense counsel Wormley had been disbarred and beginning in 2005 around the time this attorney accepted his case, had declared mental health issues. His practice, then under investigation and subsequently his firm was taken over by the State Bar, based on the ongoing personal and professional issues surrounding this defense attorney and his practice of law, which two legal firms on behalf of Petitioner thoroughly gathered all materials relied on herein, litigated through the state courts beginning 2014 up to 2017 when the California Supreme Court declined interceding.

Significantly, at trial Mr. Wormley presented only, one of the witnesses seated in the booth near the window; she simply stated Petitioner not the person she observed firing a gun. Hearing that and Petitioner's version, jurors rejected the People's urging that this was a deliberate, willful and premeditated attempted murder, finding instead, Wendell Ray Thomas did not willfully, with malice aforethought, deliberately attempt to murder Mr. Lewis and did not, prior to reaching the Denny's entrance observing Lewis brandishing the pistol premeditate shooting him; and but for Mr. Wormley's failure to have sent one of his law firms investigators (who Mr. Wormley admitted having two such in-house investigators) and that but for the firms problems associated with his 'mental health issues' (See: Interrogatories and Interview by District

Attorney's representatives along with post-conviction (evidentiary hearing) counsel, Mojgan Aghai conducted July 7, 2018 and transcribed by the Los Angles County District Attorney office January 2019. Presented during the June 2019 evidentiary hearing together with Mr. Wormley's live testimony, all of these available defense witnesses were discounted and essentially called immaterial inclusive of the ballistics firearm evidence: the recovered five bullet casings collected by Deputy Roachford and "one expended bullet" recovered by deputy Diplock "50 yards from where V/LEWIS collapsed". [5/28/2005 Reports.]

During the initial rounds of post-conviction litigation, the two law firms argued failure of defense counsel Wormley to have challenged testimony from the firearms experts, Donna Reynolds, and the failure to challenge, contest or object against the prosecutor's urging that Petitioner Thomas were a gang member. Admittedly, during trial, the People presented #10, a manila envelope containing the Glock .45 possessed by Petitioner and its 10-round magazine, #11, manile envelope containing "a expended "slug", and #12, manila envelope containing "5 bullet casings". Ms. Reynolds thus testified during direct by the People: [regarding that 'slug']:

"Q. And were you able to or do you have an opinion in regards to whether or not that bullet was fired through that glock .45?

"A. Yes, I do.

"Q. And what is your opinion?

"A. My opinion was inconclusive.
....." RT 244: 11-16.

A copule questions later, the deputy prosecutor ended direct:

MS. SCHOEDER: Okay.

I have noting further.

THE COURT: All right.

Cross.

MR. WORMLEY: Nothing...." RT 245:(13-17.

Hence, post-conviction counsel urged that available was material evidence indicating that a 'slug', thus not coming from the semi-automatic weapon possessed by Petitioner Thomas, supported by contemporaneous witnesses Ramirez, Casas, Gomez who each described Jerrell Lewis holding and discharging a pistol; and Michael Johnson, actually standing beside Mr. Thomas contemporaneously whom defense counsel Craig Thomas Wormley did not even personally speak to, nor, did he have one of the two in-house investigators interview; and but for mental health issues associated with Craig Thomas Wormley, the result of his trial would have been different. It is therefore, reasonably probable, that had jurors heard the testimony of witness Marine Maroquin Ramirez identifying Jerrell Lewis as the person she observed firing a weapon -questions which defense counsel never asked her on the stand as he had not spoke to her other than subpoenaing her to the trial. Counsel did not subpoena Mirna Elizabeth Casas to describe witnessing Jerrell Lewis discharging his firearm, first, initiating the "efforts to kill, injure or harm" Wendell Ray Thomas; Counsel Wormley failed to subpoena Michael Johnson to quall the prosecutor's theory, that victim Jerrell Lewis was unarmed and this was a 'gang-related' incident. And finally, failed to subpoena security guard Hayward Gladney to dissspell the People's urging that Petitioner discharged his weapon at an unarmed individual.

In fact, the testimony of the waitress, Ericka Gomez supported Petitioner's trial testimony that as he exited, Jerrell Lewis was

confronting him, armed, and thus, but for defense counsel Craig Thomas Wormley's failure to have subpoenaed her, it is reasonably probable that jurors would have also rejected the People's urging that Petitioner's 'firing of his semiautomatic' were not thus 'intentional' since he was confronted by an armed assailant, who had previously accosted him, threatening him verbally, and suddenly facing this person brandishing a pistol, without second thought, in fear for his own life and safety, Mr. Thomas did what any reasonably prudent person, facing similar threat of violence.

Jurists of reason would agree, in light of the below cited authority of this Court, consideration of certiorari may be in order:

Crane v. Kentucky (1986) 476 U.S. 683;
Brecht v. Abrahamson (1993) 507 U.S. 619;
Strickland v. Washington (1984) 466 U.S. 668;
United States v. Cronic (1984) 466 U.S. 648;
Galaza v. Powell (2002) 537 U.S. 1016;
Avila v. Galaza (9th Cir 2002) 297 F.2d 911.

With consideration of this Court's announcements and precedent under the Sixth and Fourteenth Amendments, this petition is therefore submitted upon the following reasons to grant the petition:

BASED ON THE Superior Court Judge, Michael A. Cowell reliance on Smith v. Ylst (9th Cir 1987) 826 F.2d 872, cited herein at pp.6-8, infra., which is contrary to precedent of this Court:

REASONS FOR GRANTING THE PETITION

The "slug" fragment evidence demonstrated, to a reasonably professional advocate acting diligently on behalf of his client, coupled with indisputable evidence from witnesses that Jerrell Lewis was armed, was the aggressor, initiated physical contact, pulled out a pistol; and yet, reading the record of the trial, all of the wealth of material evidence available were not placed before the trier of fact. Petitioner Wendell Ray Thomas was harmed and prejudiced by that omission. He has struggled since being sentenced to a 25-to-life on July 24, 2006; finally discovering based on actions filed in 2004 prior to his incident and trial, the license of attorney Craig Thomas Wormley 'was restricted' based on mental health issues. Wormley's license was ordered inactive 9/1/52007, and he wasn't permitted to use his license again until November 6, 2009. His record between then and final disbarment 3/29/2014 based on subsequent events occurring in 2012, demonstrates, for opener's, even when provided reasonable opportunities over decades, counsel could not be counted on to do the socially responsible thing.

During the trial of Petitioner Wendell Ray Thomas, a host of available evidence, witnesses and facts were omitted through the dillatory failures of defense counsel who was struggling under pressures causing him to not perform and concentrate with his best efforts through thorough investigations of both fact and law, and, Petitioner was severely harmed thereby and particularly prejudiced by these cited failures and omissions.

Bewteen 2009 and 2016, two law firms conducted extensive

investigations gathering those material presented here. An Evidentiary hearing went forward thereafter, to no avail, as the post-hearing assigned judicial officer would rather place the burden upon Petitioner for becoming involved with the criminal justice system, than to blame a former member of the bar, albeit, not in good standing, nor under the illusion of grace, the benefit,

Not to denigrate the Honorable Superior Court Justice, the second evidentiary hearing reported herewith, demonstrates that despite the 'slug' evidence, which he never heard, those available witnesses, whom he refused to permit post-conviction counsel a opportunity to present, fairness therefore must be judged in this proceeding based on what occurs here. On June 13, 2019, it did not show up. It has indeed been a mighty struggle for Petitioner. From 2009 through the present; hearing after hearing, judicial petition after petition and now 15 years elapsing since being imprisoned for attempting to not be killed, injured or maimed.

Whatever the price of justice, whatever the color of justice, whatever the scales and balancing involved, however this case is sliced and diced, fundamental fairness presupposes, something a bit more transparent. Based on that, a chance to be heard and opportunity to hear the toll of actual remedies.

Petitioner thanks this Honorable Court for listening. But for the failures of Craig Thomas Wormley, the result of the trial would have been different, in that jurors would have equally found, as they did regarding whether Mr. Thomas committed a willful, deliberate and premeditated act of attempted murder with malice aforethought, shot Mr. Jerrell Lewis, which on the evidence presented, the jury rejected such.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Wendell Ray Thomas, Pro Se

Date: 3-18-2020