

No. _____

19-8185

IN THE

SUPREME COURT OF THE UNITED STATES

FLOYD Scott - PETITIONER
(Your Name)

ORIGINAL

vs.

State of California - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

MAR 09 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

PETITION FOR WRIT OF CERTIORARI

Floyd Scott
(Your Name)

California State Prison-Los Angeles County
A-4-112L; P.O.Box 4430
44750 60th Street West,
(Address)

Lancaster, California-93536-7620
(City, State, Zip Code)

(661) 729-2000
(Phone Number)

QUESTION(S) PRESENTED

- 1] Did the California State Superior Court, Los Angeles County, Compton Branch violate the Petitioner's Due Process, Sixth Amendment Rights, and Eighth Amendment Rights when it violated a Federally Granted Writ of Habeas Corpus in which it was given in writing ninety days to release or retry within ninety days but took six hundred and eighty four days to retry the Petitioner with five hundred ninety four days after the ninety days time limit expired.....
- 2] Did The California State Superior Court, Los Angeles County, Compton Branch violate the Petitioner's Due Process, Sixth Amendment Rights, and Eighth Amendment Rights when it Acted in Excess of its Jurisdiction, Once it violated the ninety day time limit of The Federally Granted Writ of Habeas Corpus.....
- 3] Did the State of California's, County of Los Angeles Prosecutor violate the Petitioner's Due Process, Sixth Amendment Rights and Eighth Amendment Rights when she withheld Exculpatory and Impeaching Evidence, Medical Records of the Alleged Victim.....
- 4] Was the Petitioner's Trial Attorney Ineffective in Assistance of Counsel when he failed to fully investigate the Exculpatory and Impeaching Evidence, Medical Records of the Alleged Victim which would have Exonerated the Petitioner and Shown Factual Innocence.....
- 5] Did The California State Superior Court, Compton Branch, The Second Appellant District Court of Appeals, and The California State Supreme Court violate The Petitioner's Due Process Rights, Sixth Amendment Rights and Eighth Amendment Rights when they denied the Petitioner an Evidentiary Hearing on his Writ of Mandate for F.R.C.P. Rule 60(b) Motion for Brady Violations, Excess of Jurisdiction, Factual Innocent Claim, Prosecutorial Misconduct, and Ineffective Assistance of Counsel Claims.....
- 6] Did The United States District Court, Central District, California, Los Angeles violate the Petitioner's Due Process, Sixth Amendment Rights, and Eighth Amendment Rights when it failed to Maintain Jurisdiction over The Granted Writ of Habeas Corpus that The State Court Violated and Failed to Grant The Petitioner an Evidentiary Hearing for his F.R.C.P. Rule 60(b) Motion on Factual Innocence, Brady Violations, Excess of Jurisdiction, Prosecutorial Misconduct, and Ineffective Assistance of Counsel.....
- 7] Did The United States Court of Appeals for The Ninth Circuit Violate The Petitioner's Due Process Rights, Sixth Amendment Rights, and Eighth Amendment Rights when it denied The Petitioner a Certificate of Appealability for an already Granted Certificate of Appealability from the District Court, Denying The Petitioner an Evidentiary Hearing on the Brady Violations, Factual Innocent Claim, Excess of Jurisdiction, Prosecutorial Misconduct, and Ineffective Assistance of Counsel Claims.....

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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

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

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

☒ For cases from **state courts**:

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

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

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

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

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was January 10, 2020.

☐ 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: February 12, 2020, and a copy of the order denying rehearing appears at Appendix C.

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

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

☒ For cases from state courts:

The date on which the highest state court decided my case was December 12, 2018.
A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was thereafter denied on the following date: Can not Locate, 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

Due Process Rights

Eighth Amendment Rights

Equal Protection of Law Rights

Sixth Amendments Rights

California Constitution Article 1 section 7(a)

Federal Rules of Civil Procedure Rule 59(b)(3)

Federal Rules of Civil Procedure Rule 60

Federal Rule of Civil Procedure Rule 60(b)

Federal Rule of Civil Procedure Rule 60(b)(1)

California Penal Code 362

California Penal Code 825

California Penal Code 858

California Penal Code 977(b)(1)

California Penal Code 977.2(a)(1)

California Penal Code 1054.1(e)

California Penal Code 1180

STATEMENT OF THE CASE

The Petitioner on December 19, 2006, Received a Federally Granted Writ of Habeas Corpus in Scott v. A.A. Lamarque, Warden, case number: cv-03-2003 G.A.F.(A.J.W.)(see exhibit (A)) in which the State was Ordered to Release The Petitioner "Within Ninety Days (90)" unless the State of California Retries the Petitioner "Within 90 Days" prescribed in The Federally Granted Writ of Habeas Corpus. The State of California failed to "Release" or "Retry" The Petitioner :Within the 90 days". This against the Petitioners(Objections)"see exhibit(b) Declaration of Martha A. Carrillo, County of Los Angeles Assistant District Attorney(ADA) in which The ADA states that The State Court went past the "90" days against The Petitioners Objections.

When The State Court violated the "90 days" prescribed time limitations to Release or Retry the Petitioner, the State Court acted in Excess of its Jurisdiction when it took "Five Hundred and Ninety Four Days(594) To Retry the Petitioner after the "90 day" time limitation expired on March 18, 2007. The Retrial began on August 4, 2008 and after The Jury was Impanled the Petitioner asked The State Court why was he here since the State Court violated the Federally Granted Writ of Habeas Corpus in Scott v. A.A.Lamarque, Warden, case no: cv-03-3003 GAF(AJW), and that The Petitioner was never Arraigned for the Retrial per California Penal Code 1180[The Granting of a New Trial places the parties in the same postition as if no Trial had been had, all the Testimony must be produced anew, and the verdict or finding can not be used or referred to. Either in evidence or argument, or be pleaded in bar of any conviction which might have been made under the accusatory pleading] In short the State Court had to start over by Law and Rearrest, Rearraign the Petitioner which was not done until after the Petitioner's Jury was Sworn in and Impanled. This is a Due Process Violation and a Sixth Amendment Violation at Speedy Trial and Meaningful Access to the Courts. The State Court at no time asked the District Court for any type of extension to go past the "90 day" time limitations prescribed in The Federally Granted Writ of Habeas Corpus in Scott v. A.A. Lamarque, Warden, cv-03-3003 GAF(AJW).

The State of Californias Prosecutors Office withheld The Medical Records of the Alleged Victim which would have shown the Petitioner to be Factual and Actual Innocense, This is a Brady Violation and The Prosecutor and thier Actors knew of This Exclupatrory Evidence 'see exhibit (c) The Compton Police Departments Arrest Report showing that they took the Alledged Victim to the Hospital to be examined.

The Petitoner in a Writ of Mandate raised these grounds in the California State Superior Court, Compton Branch, The Second Appellate District Court of Appeals and The California State Supreme Court on the Brady Violations of the Medical Records that would Exonerate The Petitioner and Impeach the States Star Witness. The Excess of Jurisdiction, Prosecutorial Misconduct ~~Ineffective Assistance of Counsel~~. All three State Courts denied The Petitioner for an Evidentiary Hearing.

STATEMENT OF THE CASE

The Petitioner then went to The United States District Court, Central District of California, Los Angeles with a FRCPRule 60 (b) Motion with the stated facts of Excess of Jurisdiction, Brady Violations of withholding the Medical Records, Prosecutorial Misconduct, Ineffective Assistance of Counsel. The District Court misconstrued The FRCPRule 60(b) Motion as a Second or Successive Writ and Denied the Rule 60(b) Motion without an evidentiary Hearing. The District Court denied the Rule 60(b) Motion and Granted a Certificate of Appealability.....

The United States Court of Appeals for the Ninth Circuit Denied The Petitioners FRCPRule 60(b) Motion upon Appeal Denying a Certificate of Appealability after the District Court Granted the Petitioner a C.O.A. and Denied the Petitioner an Evidentiary Hearing on the Brady Violations, Factual Innocence Claim, Prosecutorial Misconduct and Ineffective Assistance of Counsel Claims.....

The Petitioner now brings this matter to The United States Supreme Court to correct This Miscarriage of Justice and The Illegal Holding of The Petitioner in State Prison against Clearly Established State and Federal Laws.....

REASONS FOR GRANTING THE PETITION

1] Reason for Granting the Petition at number one(1) is that on December 19,2006 The United States District Court,Central District, California, Los Angeles(District Court) granted the Petitioners Federal Writ of Habeas Corpus in Scott v. A.A. Lamarque, Warden, case number:cv-03-2003 GAF (AJW)(see exhibit (A)) In which the District Court in a [Written],Order stated That the State of California is to Release the Petitioner [Within] Ninety(90) Days unless the State Retries the Petitioner [Within] 90 Days.

The State Court of California, Los Angeles County,Compton Branch (State Court) violated The Granted Writ of Habeas Corpus and "Against" the Petitioners "Objections" The State Court went past the 90 Day Prescribed Time Limitation (see exhibit(B)). The signed Declaration of Assistant District Attorney(ADA) Martha A. Carillo in which she states on page four(4) of The Declaration "Although the Petitioner Objected to the ~~Continuance~~ The Trial Court found good cause to continue the Jury Trial date. This is in direct violation of Clearly Established State and Federal Laws. The State Court did not seek permission from the District Court to go past the Prescribed 90 Day Time Limitation and the Petitioner did not waive the 90 Day Time Limitation. See California Penal Code(PC) 362- Disobedience of Habeas Corpus- Every Officer or Person to whom a Writ of Habeas Corpus may be Directed who after service thereof,Neglects or Refuses to Obey The Command thereof is guilty of a misdemeanor-(Leg H.1872) and The California Constitution Article 1 section 7(a) A person may not be Deprived of LIFE, Liberty or Property without Due Process of Law or Denied Equal Protection of the Law. Also see In Re Clark, (1993) 5 Cal 4th 750,764[21 Cal.Rptr.2d 509,855 P2d 729] The Writ has been available to secure Release from Unlawful Restraint since the founding of this State; Also see Harvest v. Castro, 531 F3d 737,2008 U.S.App.Lexis 14462 Reporter,520 F3d 1055 App. Lexis 6297(9th cir 2008)When a Court issues a Writ of Habeas Corpus it declares in essence that the Petitioner is being held in Custody in Violation of his Constitutional or(Federal) Rights Habeas Corpus Procedure with regard to the Conditional Grant of Petition for a Writ of Habeas Corpus, in modern practice Courts employ The State to Release the Petitioner unless the State takes some remedial action such as to Retry the Petitioner.

Orders are essentially accommodations accorded to the State,In that Conditional Writs enable Habeas Courts to give States time to Replace an Invalid Judgment with a Valid One,[The consequence when The State fails to Replace an Invalid Judgment with a Valid One is "Always Release"];If the "State Fails" to "Act Within" the "Time Set" for Retrial to occur.Habeas Corpus Procedure The District Court has "Coninued Jurisdiction over such matters as the Modification of Injunctive Relief. Also see Presser v. Rodriquez, 411 U.S. 475,484,93S.ct.1827,36 L.Ed.2d 439(1973) In Re Frederich,149 U.S. 70,7713S.ct. 793,37L.Ed. 653(1893) Wilkinson, v. Dotson, 544 U.S.74, 89, 125S.ct.1242, 161L.Ed. 2d

REASONS FOR GRANTING THE PETITION

253(2005), Satterlee v. Wolfenbaryer, 453 F3d 369(6th cir.2006); Fisher v. Rose, 757 F.2d 789, 791(6th cir.1985); Lopez v. Miller, 915 F.Supp 2d 373(2nd cir COA), Smiley v. Thurman, 2009 U.S.Dist.Lexis 41714(7thcir.COA).....

2] The reason for granting the Ptition at number two(2) is that the State Court once it went past the 90 day prescribed time limitation without the Petitioners permission to waive the 90 day time limitation, Nor did the State Court seek permission from the District Court to extend the 90 day time limitation Acted in Excess of its Jurisdiction, See California Penal Code(PC) 362- Disobedience of Habeas Corpus-Every Officer or Person to whom a Writ of Habeas Corpus may be Directed who after service thereof Neglects or Refuses to Obey the Command thereof is Guilty of a Misdemeanor-At California Constitution-Article 1 section 7(a)- A Person may not be Deprived of Life, Liberty, or Property without Due Process of Law or Denied Equal Protection of The Law. See In Re Harris, 5 Cal.4th 813, 855P2d 391, 21Cal.Rptr.2d 373, 1993 Cal.Lexis 3651, 93 Daily Journal DAR 9723, 93.Cal.Daily Op.Service 5752-Where a Heabeas Corpus Petitioner raises a Legitimate Claim theat Trial Court Acted in Excess of its Jurisdiction, The Waltreus Rule, will not operate as a bar to a full airing of the grievance in a Collateral Proceeding. Fundamental Jurisdictional Defects, i.e. Acts in Excess of Jurisdiction, Like Constitutional Defects, do not become Irremediable when a Judgment of Conviction becomes Final even after Affirmance on Appeal, Also see Constantelos v. Rice, (1954) 123Cal.App.2d 765, 766[267P2 2375] By contrast, one seeking Relief on Habeas Corpus need only file a Petition for the Writ Alleging Facts which if true would entitle Petitioner to Relief.

And at In Re Crockett, 159 Cal.App.4th 751, 71Cal.Rptr 3d 632, 2008 Cal.App.Lexis 159-The Concept of Fundamental Jurisdictional Error for the purpose of a Writ of Habeas Corpus, is no longer strickly limited to cases in which the Trial Court wholly lacks Jurisdiction over the Person of the Defendant on the Subject Matter of the Proceeding; The Concept Emcompasses any Error of Sufficent Magnitude that the Trial Court may be said to have Acted in Excess of Jurisdiction. Thus, Habeas Corpus is available in cases where the Court has Acted in Excess of Jurisdiction.

In this instant case once the State Court violated The Federally Granted Writ of Habeas Corpus(see ex.A) and put in a Written Order to Release or Retry "Within 90Days" and the State Court against the Petitioners objections(see ex.B) went past the 90 days some 594 days after the 90 day time limitation period past and without even Arraigning The Petitioner until August 4, 2008 after the Jury was Impanled and Seated The State Court Acted in Excess of its Jurisdiction and the Petitioner was denied a Fair and Impartial Trial in violations of his Due Process, and Sixth Amendment Rights to a Speedy Trial and Meaningful Acess to the Court; see Faretta v. California, 95S.ct.2525, 422 U.S.806, 45L.Ed. 2d 562- "It is Accussed, not Counsel, who "Must be Informed" of Nature and Cause of Accusation, who must be Confronted with Witness against him", and at California P.C.977(b)(1) and 977.2(a)(1), and 1180. Also see Rogers v. Superior Court of Alameda County, (Cal.1955)

REASONS FOR GRANTING THE PETITION

46 Cal 2d 3,291 P2d 1955 Cal.Lexis 198-Detention of Defendant beyond 48 hour statutory maximum being taken before Magistrate is Illegal, People v. Parthaly, (Cal. Jan 17, 1985)-Penal Code 858 provides that when a Defendant is brought before a Magistrate under arrest, The Magistrate must at once inform of charge against him and his Right to Counsel, Superior Court of California, County of Los Angeles Rule 8.5(b) An Arraignment will not be continued except upon showing of Good Cause and should not be continued longer than 14 days. At Faretta v. California, 95 S.ct. 2525, 422 U.S. 806, 45 L.Ed 2d 562.....

3] The reason for granting this Petition at number three(3) is that the Prosecutor withheld Exculpatory Evidence which would have both Impeached its Star Witness and Exonerated the Petitioner of any wrong doing. See Mullen v. City of L.A., 2016 U.S.Lexis 181438- A Criminal Defendants Due Process Rights are Violated if the Government fails to disclose evidence that is Materially Favorable to the Accused, Youngblood v. W.VA. 547 U.S. 867, 869, 126 S.ct. 1194, 10 L.Ed. 2d 215 (1963) as delineated in Milke v. Ryan, 711 F3d 998, 1012 (9th cir. 2013) A Brady Violation has three elements Strickler v. Greene, 527 U.S. 263 at 281-82 119 S.ct 1936, 144 L.Ed. 2d 286 (1999) First there must be evidence that is favorable to the Defense, either because it is Exculpatory or Impeaching, Id at 281-82, Second, The Govt must have willfully or Inadvertently failed to produce the Evidence I.d. at 282. Third the suppression must have prejudiced the Defendant I.d. As to the third element the Ninth Circuit has used the terms "Prejudicial" and "Material" Interchangeable. See Bailey v. Rae, 339 F3d 1107, 1116 n6 (9th cir. 2003) (The terms "Material" and "Prejudicial" are frequently used interchangeably to describe the final requirement of a Brady Violation. Evidence is not "Material" unless it is "Prejudicial" and not "Prejudicial" unless it is "Material", Benn v. Lambert, 283 F3d 1040, 1053 n9 (9th cir. 2002) Evidence is Material "If there is a reasonable probability that, proceedings would have been different, Although a showing of Materiality (2016 U.S. Dist. Lexis 42) does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the Defendants acquittal." Youngblood, 547 U.S. at 870-The question is not whether the Defendant would more likely than not have received a different verdict with the evidence but whether in its absence he received a Fair Trial understood as a Trial resulting in a verdict worthy of confidence. Kyles v. Whitley, 514 U.S. 419, 434, 115 S.ct. 1555, 131 L.Ed. 2d 490 (1995).

In the instant case the Compton Police Department took the Complaining Witness to the Hospital to be examined. See (exhibit (C)) Yet at no time during the Original Trial in 1998 or in 2008 in the Retrial did the Medical Records appear and the Petitioner wrote to the Prosecutors Office for the Medical Records and was denied access to them see (exhibit (D)) The Medical Records would show no DNA of the Petitioner was either on or inside of the Complaining Witness which would have both Impeached the Witness and Exonerated the Petitioner to show his Factual Innocence. By withholding the "Material" Evidence which turned out to be

REASONS FOR GRANTING THE PETITION

"Prejudicial" to the Petitioner from showing his Factual Innocence and Impeaching the States Star Witness. The Petitioner maintains his Innocence as even the States Witness states in Exhibit(E) that she was paid(\$50) Fifty Dollars so there was no Intent of any crime outside of solicitation nor did any paid for actions take place because of the Witnesses withdrawal symptoms and getting sick and blacking outs. The Prosecutor violated the Petitioners Due Process and Sixth Amendment Rights to a Fair and Impartial Trial. Also see Marsala v. Lackner(9thcir2016) U.S.Lexis 121803, Brown v. Grounds, 2015 U.S.Dist. Lexis 54123, United States v. Bagley, 473 U.S.667, 105S.ct.3375, 87L.Ed2d 481, 1985 U.S.Lexis 130, State v. Edwards, 49 Ohio St.2d 31, 358N.E. 2d 1051, 1055, Gonzales v. Wong, 667 F3d 965, Tatim v. Moody, 768 F3d 806(9thcir: 2012) and California P.C. 1054.1(e)-Requires Disclosure of Exculpatory Evidence.....

4] The reason for granting this Petition at number Four(4) is that the Petitioners Trial Attorney was Ineffective when he failed to fully investigate and locate the Exculpatory Evidence(see ex.C) The Compton Police Report. Evidence which would have proven that the Petitioner was Innocent of the actual charged crimes and impeach the States Star Witness. Had the Petitioners Attorney looked at the Police Arrest Report Record and noticed that the Alleged Victim was taken to the Hospital immediately on the night in question. Then he should have sought out that Medical Report to use as evidence to impeach the States Star Witness and prove the Petitioners Innocence, see Diaz Supra, 3Cal.4th at P.574- A Colorable claim is one that credibly establishes the possibility that his Trial Counsel failed to perform with reasonable competence and that as a result a determination more favorable to the Defendant might have resulted in the absence of Counsel's failings 198 Cal.App.4th 1008 In Re Hill-Tactical matters failure to investigate potentially exculpatory evidence, including evidence that might be used to impeach key Prosecution witness renders deficient. Also see In Re Jones, 17 Cal.4th 552, 566[54Cal.Rptr 2d.52, 917 P2d 1175]; In Re Sanders, 88 Cal.Rptr.633 and First Circuit Court of Appeals at 2001 D.NH 65 Reid v. Simmons, March 30, 2001.

In this instant case the Petitioners Trial Attorney failed to investigate the exculpatory evidence, failed to even visit with the Petitioner except for a few moments prior to entering The Court Room for the Hearings and Trial. The Petitioners Trial Attorney rendered a useless Defense with no real investigation being done at any time. All he did was to go off of the Old Trial Transcripts which violates California Penal Code(s) 1180- which states all testimony "must" be produced anew and the former verdict or finding can not be used or referred to, either in Evidence or in Argument, or be pleaded in bar or of any Conviction which might have been had under the Accusatory Pleading. The Petitioners Attorney also failed to Object when the Trial Court went past the 90 day time limitation of The Granted Writ of Habeas Corpus and Federally Written Orders to "Release" or "Retry" Within 90 Days. The Petitioners Trial Attorney[Failed to the State Court allowing The Prosecutor to Arraign The Petitioner

REASONS FOR GRANTING THE PETITION

594 days after the 90 day time limitations expired and after the Jury was Impanled and Sworn In and Seated. See Faretta v. California, 95S.ct. 2525, 422 U.S. 806, 45 L.Ed 2d 562-The Petitioners Granted Writ of Habeas Corpus was December 19, 2006 The Arraignment was on August 4, 2008 some (684) Six Hundred and Eighty Four Days later. See California Penal Code 825-Time Limit for Appearance and P.C. 977(b)(1), P.C. 858 and California Superior Court, Los Angeles County Rule 8.5(b)-An Arraignment will not be continued longer than 14 days. This case must be Reversed and The Petitioner Set Free as the Petitioner did not receive a Fair Trial in Violation(s) of Due Process Rights, Sixth Amendment Rights meaningful access to the Courts and the Clearly Established State, and Federal Laws that apply.....

5] The reason for granting the Petition at number five(5) is that The California Superior Court, Compton Branch, The Second Appellant Court of Appeals, and The California State Supreme Court all Denied The Petitioner's Writ of Mandate for a FRCP Rule 60(b) Hearing for an Evidentiary Hearing. In the Writ of Mandate The Petitioner raised Factual Innocence, Brady Violations, Excess of Jurisdiction, Prosecutorial Misconduct, and Ineffective Assistance of Counsel. FRCP Rule 60 governs relief from Judgments or Orders specially Rule 60(b) Allows a party to seek relief from a Final Judgment and request Reopening of his case under a limited set of circumstances including Fraud, Mistake, and Newly Discovered Evidence Rule 60(b) has unquestionable valid role to play in Habeas Cases; FRCP Rule 60(b)(1) Grants the power to correct Judgments which issued due to inadvertence or mistake Rule 60(b) Empowers Courts to relieve the oppressed from the burden of Judgments Unfairly, Fraudulently or Mistakenly Entered.

In this instant case when the State Court violated the Federally Granted Writ of Habeas Corpus in Scott v. A.A. Lamarque, Warden, case no: cv-03-2003 GAF(AJW) in which the Written Order states to "Release" or "Retry" "Within 90 Days"(see ex.A) The State Court then took from December 19, 2006 until August 4, 2008 that's 684 days all against The Petitioners objections, When the State Court took 684 days to Arraign the Petitioner it violated the Petitioners Due Process Rights. When the State Court(s) Each denied the Petitioners Writ of Habeas Corpus and Writ of Mandate without an Evidentiary Hearing they each violated the Petitioner's Due Process Rights, and Sixth Amendment Rights subjecting the Petitioner to Eighth Amendment Rights Violations to be free from cruel and unusual punishment. Each Court The Superior Court, The Appellant Court, Second District and The State Supreme Court each had an opportunity to Correct the Mistakes, But failed to do so. The Petitioner deserved an Evidentiary Hearing on The Brady Violations, of the Complaining Witnesses Medical Records and for his Factual Innocence Claim. The Petitioner should be Released Immediately from State Custody with Prejudice with no new Trials as there is no real Evidence of The Actual Charged Crime. See California P.C. 362-Disobedience of Habeas Corpus-Every Person or Officer to whom a Writ of Habeas Corpus may be directed who after service thereof neglects or refuses to obey the Command thereof is guilty of a Misdemeanor (leg H.1872) and California Constitution Article 1

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section 7(a) A person may not be Deprived of Life, Liberty, or Property without Due Process of Law or Denied Equal Protection of The Law.....

6] The reason for granting this Petition at number six(6) is that The United States District Court, Central District California Los Angeles failed to Maintain its Jurisdiction over the December 19, 2006 Granted Federal Writ of Habeas Corpus; see Harvest v. Castro, 531 F.3d 737, 2008 U.S.App.Lexis 14462-Reporter, 520 F3d 1055, 2008 App.Lexis 6297(9thcir2008)-If The State fails to act within the time set for retrial to occur, The Petitioner "Must" be Released from Custody Immediately at Habeas Corpus Procedure, The District Court has "Continued Jurisdiction" over such matters the Modification of Injuntive Relief. The District Court also failed to hold an Evidentiary Hearing in The Petitioners FRCP Rule 60(b) Hearing Motion-The Petitioner raised in the Motion for a FRCP Rule 60(b); Excess of Jurisdiction, Factual Innocence, Brady Violation, withholding Medical Records, Prosecutorial Misconduct, Ineffective Assistance of Counsel. See United States v. Mejia-Mesa, 153 F3d 925, 928(9thcir1998) holding that the District Court had abused its discretion in denying an Evidentiary Hearing on Habeas Petition Brady Claim at Giglio v. United States, 405 U.S. 150, 154, B1 L.Ed 104, 92 S.ct. 763(1972)(holding that Impeaching Evidence as well as Exculpatory Evidence falls under The Brady Rule and Makovosky v. Makovosky, (1958 Cal.App. 1st Dist.) 158 Cal.App.2d 738, 823 P2d 562, 1958 Cal.App.Lexis 2428-If Error, Mistake or Omission is Result of Inadvertence but for which, different Judgment would have been Rendered Error is Cleaical and Judgment may be Corrected but for Inadvertence, at 200 U.S.Dist. Lexis 12741 Benn v. Wood, June 30, 2000- A State violates a Defendants Due Process Rights when it fails to Disclose to the Defendant Evidence Favorably to an Accused where the Evidence is Material either to Guilt or to Punishment, Irrespective of the Good Faith or Bad Faith of the Prosecution. The Law compel the disclosure of Material Evidence whether it has Impeachment value or is directly Exculpatory- The suppression of Material Impeachment Evidence particurly of Key Witness, can require Reversal of a Conviction or the Vacating of Sentence, Kyles v. Whitley, 514 U.S. 419, 433, 131L.Ed.2d 490.115 S.ct. 1555(1995); United States v. Bagley, 473 U.S. 667, 676, 87 L.Ed 2d 481, 105 S.ct.3375

The District Court also failed to hear the Petitioners FRCP Rule 60(b) Motion which allows the Petitioner to Reopen a Void Judgment see FRCP Rule 60(b) Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, etc. On Motion and upon such terms as are just, The Court may relieve a party or a party's legal respresentative from a Final Judgment, Order, or Proceeding for the following reasons: (1) Mistake, Inadvertence, Surprise, or Excusuable Neglect. (2) Newly Discovered Evidence which by due diligence could not have been discovered in time to move for a New Trial under rule 59(b). (3) Fraud (Whether heretofore Domoninated Intrinsic or Extrinsic) Misrepresentation, or other Misconduct of an Adverse Party, (4) The Judgment is Void, (5) The Judgment has

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been Satisfied, Released, or Discharged, or a Prior Judgment upon which it is based has been Reversed or Otherwise Vacated, or it is no longer Equitable that the Judgment should have Prospective Application.(6) Any other Reason Justifying Relief from the Operation of the Judgment.

In the instant case The District Court still holds Jurisdiction over The Granted Writ of Habeas Corpus in Scott v. A.A.Lamarque, Warden, case no: cv-03-2003 GAF (AJW) and can Modify the Conditional Writ for Release. The record shows that The State Court did Violate The Writ of Habeas Corpus, and did not "Seek" permission from The District Court to go past the prescribed 90 day time limitation. The Prosecutor withheld the Medical Records stated in the Police Arrest Report(see ex C). The District Court should have Modified The Writ from Conditional to Unconditional Writ and at Lopez v. Miller, 915 F.Supp.2d 373-(1) Immediately and Unconditionally Released from Custody (2) The Indictment against him is dismissed(3) The State is barred from Retrying him--and (4) The State shall Expunge Lopez's conviction from its records and all references to him in the Public Record. Also see Smiley v. Thurman, 2009 U.S.Dist. Lexis 41714 May 5, 2006.

The District Court failed to follow Clearly Established Laws and Violated Petitioners Due Process Rights, Sixth Amendment Rights and Eighth Amendment Rights-The Petitioner Floyd Scott must be Released Immediately with no New Trial and All Records removed from any and all Listings.....

7] The reason to grant the Petition at number Seven(7) is that the United States Court of Appeal for the Ninth Circuit Violated the Petitioners Due Process Rights, Sixth Amendment Rights Access to the Courts, Eighth Amendment Rights when it Denied The Petitioners Certificate of appealability that The United States District Court, Central District of California, Los Angeles had already Granted to The Petitioner a Certificate of Appealability. When the District Court incorrectly considered Petitioners FRCP Rule 60(b) Motion as a Second or Successive Writ of Habeas Corpus. The Constitutional Violations, The Brady Violation, The Prosecutorial Misconduct, The Ineffective Assistance of Counsel and The Factual Innocence Claim should have had an Evidence Hearing. The Lower Courts have failed to follow Clearly Established Laws and have a Factually Innocent U.S. Citizen Incarcerated for a Crime that never took Place- The Petitioner must be Released by The Laws of This State of California And The United States of America IMMEDIATELY.....