ORIGINAL

No. 19-8185

IN THE

SUPREME COURT OF THE UNITED STATES

Floyd Dewaine Scott — PETITIONER
(Your Name)

vs.

State of California — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI
REHEARING-PER RULE 44

Floyd Dewaine 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
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ORIGINAL

SUPREME COURT OF THE UNITED STATES

Floyd Dewaine Scott	Case no: 19-8185
Petitioner	Petitioner's Petition for
vs.	a Rehearing for Writ of
State of California	Certiorari, Declaration
Respondents	In Souuport Thereof

Petitioner Floyd Dewaine Scott (Petitioner) is a State Held Prisoner and a Pro-SE Litigant who is Filing this Petition for Rehearing for Writ of Certiorari for the Violations of Petitioners Constitutional Rights to Due Process of The Law; Sixth Amendment Rights; Fifth Amendment Rights. For an Unlawful Incarceration from a Federally Granted Writ of Habeas Corpus in Scott v. A.A. Lamarque, case no: 03-2003 GAF (AJW). For which The District Court Stated that The State of California had Ninty Days(90) to Release The Petitioner or to Retry Within 90 days. The State Court Failed to do so.

The Reasons for this Request for a Rehearing on The Writ of Certiorari is to Correct The Constitutional Violations that the Petitioner is Placed Upon with an Incarceration for which the Petitioner is Totally Innocent of any Wrong Doing as Charged With by The State of California.

REASONS FOR GRANTING THE PETITION

1] The reason to Grant a Rehearing at number one 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 no: cv-03-2003 GAF (AJW). 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 Failed to Release The Petitioner [Within] 90 Days, and Failed to Retry The Petitioner [Within] 90 days. This Violates Clearly Established Laws. See: Harvest v. Castro, 531 F3d 737, 2008 U.S. App. Lexis 14462 Reporter, 520 F3d 1055 App. Lexis 6297(9th cir.2008) See Conclusion-We hold that when the State Fails to cure the Constitutional Error, i.e., When it Fails to Comply with the Order's Conditions, and it has not Demonstrated that it Deserves Relief from The Judgment under Rule 60 or the other mechanisms provided for in the Rules, The Conditional Grant of Habeas Corpus Requires the Petitioner's Release from Custody.

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 Occurr. Habeas Corpus Procedure The District Court has "Continued 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(1073); In Re Frederich,149 U.S. 70, 7713 S.ct. 793, 37 L.Ed. 653(1893); Wilkinson v. Dotson, 544 U.S. 74, 89, 125 S.ct.

1242, 161 L.Ed. 2d 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(7th cir.COA).

In this case the State did Violate the District Courts Orders to Release or Retry within the 90 days and even the District Attorney who was Assigned to this matter Filed a Declaration Under Penalty of Perjury that The State Court against "My" The Petitioners Objections went past the 90 days on its own. By Laws the State Court Failed to Follow the District Courts Conditional Granted Writ of Habeas Corpus and There is But One Only Option and that is To Release The Petitioner From State Held Custody.

2] The reason to Grant a Rehearing at number two is that when the State Court Violated the 90 day Release or Retry Order that the District Court Placed in a Written Granted Writ of Habeas Corpus The State Court Lost its Jurisdiction and the State Court acted in Excess of its Jurisdiction when after 594 days and without even seeking Permission from the District Court to Extend the 90 Day Time Limitation. See California Penal Code(PC) 362-Disobedience of Habeas Corpus, Also see In Re Harris, 5 Cal.4th 813, 855 P2d 391 21 Cal. Rptr. 2d 373, 1993 Cal.Lexis 3651, 93 Daily Journal DAR 9723, 93 Cal. Daily Op. Service 5752-Where a Habeas Corpus Petitioner raises a Legitimate Claim that 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 Jurisdiction Defects, i.e. Acts in Excess of Jurisdiction, like Constitutional Defects, Do Not Become Irremediable when a Judment of Conviction becomes Final Even after

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Affirmance on Appeal, Also see Constantelos v. Rice,(1954) 123 Cal. App.2d 765, 766[267 P2 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.Also see In Re Crocket, 159 Cal.App. 4th 751, 71 Cal.Rptr. 3d 632, 2008 Cal.App.Lexis 159...

In this instant case the State Court not only Violated the Granted Writ of Habeas Corpus but it also failed to follow P.C. 1180 of the California which states upon a Retrial its as if the Original Ttial never happened. The State Court Failed to Arraign The Petitioner until the Petitioner informed the State Court as to not knowing why The Petitioner was in Court since the State Court failed to Release or Retry Within the 90 days and also Failed to Arraign the Petitioner. The Jury was Already inpanaled when the State Court did notice that what the Petitioner stated was True that he did not get Arraigned this was on day 594 (1) well past the Required 48 hours Statutory to be taken before a Magistrate to be Arraigned, This day 594 also Violated the Petitioers Rights to a Speedy Trial a Sixth AMendment Violation, and a Due Process Violation for Meaningful Access to the Court. see: Faretta v. California, 95 S.Ct. 2525, 422 U.S. 806, 45L.Ed. 2d 562-"It is Accused, not Counsel, who "MUST BE INFORNED" 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.see also Rogers v. Superior Court of Alameda County,(Cal.1955) 46 Cal. 2d 3, 291 P2d 1955 Cal. Lexis 198- Detention of Defendant beyond 48 hour is Illegal, People v. Parthaly,(Cal. Jan 17, 1985)-Penal Code 858 provides that when a DEfendant is brought before a

(1) The 594 DAYS ARE AFTER The COURT ORdeRed 90 days PAST

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..Ed. 2d 562. The State Court Lost It's Jurisdiction Over The Petitioner when it Violated the 90 day time limit and failed to Arraign the Petitioner.

3] The reason to Grant a Rehearing at number three is that the Prosecutor withheld Exculpatory Evidence which would have both Impeached it's Star Witness and Exonorated 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 Accussed, 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 Government 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" Interchangable.Also see 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

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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. Yet at no time during the Original Trial in 1998 or in the Retrial in 2008 did the State produce the Medical Records that would have shown the Petitioner to be Innocent and would have Impeached the States Star Witness. The Prosecutor Violated the Petitioners right to a Fair Trial which would have been a Verdict of Not Guilty.

4] The reason to Grant a Rehearing at number four is that the the Petitioner's Trial Attorney was Ineffective when he Failed to Fully Investigate and locate the Exculpatory Evidence that the Compton Police Department Report was avaible. This was Evidence that would have both Impeached the Complaining Witness and Proven The Petitioner's Innocence.See Diaz Supra, 3 Cal. 4th at P.574-A Colorable Claim is one that Credibly Establishes the Possibilty 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 absent of Counsels 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 Witness for the Prosecution, Renders Deficient. Also see In Re Jones, 17 Cal.4th 552,566[54 Cal. 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 the 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 Investigations getting done all he did was to read off the Court Transcripts from the First Trial. Had the Petitioners Trial Attorney actually did his job and Investigate then he would have noticed the Missing Medical Reports that the Comptom Police Reports state were avaiable. The Medical Report would have Proven the Petitioers Innocence and Impeached the Prosecutors Key Witness. The Petitioner would not be Incarcerated had his Trial Attorney Just would have Investigated the Evidence in this matter.

5] The reason to Grant a Rehearing at number five The State Courts: The California Superior Court, Compton Branch, and 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 Innocense, Brady Violations Excess of Jurisdiction, Prosecutorial Misconduct, and Ineffective Assistance of Counsel. FRCP Rule 60(b) Allows a Party to seek

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Relief from Judgments or Orders Specially 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. The State Court took from December 19,2006 until August 4, 2008 thats 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. Each State Court DEnied the Petitioner an Evidentiary Hearing with the mention of Brady Violations and Factual Innoncence the State Courts Failed to Grant the Petitioner Meaningful Access to the Courts a Sixth Amendment Violation. the Grounds raised must be heard with an Evidentiary Hearing.

6] The reason for Granting a Rehearing at number six isthat 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 F3d 1055,2008 App. Lexis 6297(9thcir.2008)-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 Innocense, Brady Violation, withholding The Medical Records, Prosecutorial Misconduct, Ineffective Assistance of Counsel.See United States v. Mejia-Mesa, 153 F3d 925, 928(9th cir.1998) 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 at 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 Inadventence but for which, Different Judgment would have been Rendered Error is Cleanical (1) and Judgment may be Corrected but for Inadventence, 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, 433 131 L.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.

(1) Clerical

REASONS FOR GRANTING THE PETITION

The District 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: Mistake, Inadvertence, Suprise, 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 hertofore Domoninated Intrinsic or Extrinsic) Misrepresentation, or other Misconduct of an Adverse Party, (4) The Judgment is Void, (5) The Judgment has been Satisfed, 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 failed to Keep Control of the Granted Writ of Habeas Corpus in Scott v. A.A. Lamarque, Warden, cv-03-2003 GAF(AJW). When the Petitioner sent the Signed Declaration of Martha A. Carrillo A.D.A. Stating that the State Court Violated the 90 day time limitations against the Petitioners Objections. Per The Habeas Corpus Procedure Rules the District Court maintains Jurisdiction over a Granted Writ of Habeas Corpus The District Court failed to do so when Clearly Established Laws state that when the State Disobeys an Order then the Habeas Court must Grant an Unconditional Writ for Release from Custody.

7] The reason for Granting a Rehearing at number ten is that the United States Court of Appeals for the Ninth Circuit Violated Petitioners Due Process Rights, Sixth Amendment Rights Access to the Courts, Eighth Amendment Rights when it Denied The Petititoners Certificate of Appealibity that The United States District Court Central District of California, Los Angeles had already Granted The Petitioner a Certificate of Appealibity. 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 Innocense Claim should have been given an Evidentiary Hearing. The Lower Courts have failed to follow Clearly Established Laws and have a Factually Innocense 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.....

Dated: July 27 2020

Signed: Floyd D. Scott

Petitioner

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Floyd Dewaine Scott

Date: July 27 2020