

APPENDIX A

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
01/16/2018 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

01/11/2018

HONORABLE CHRISTOPHER COURY

CLERK OF THE COURT

Y. Zych
Deputy

STATE OF ARIZONA

GERALD R GRANT

v.

FRANK SILVA ROQUE (A)

MATTHEW O BROWN

COURT ADMIN-CRIMINAL-PCR

RULE 32 PETITION DISMISSED

Pending before the Court are (1) Defendant's Notice of Post-Conviction Relief, and Petition for Post-Conviction Relief, both filed on June 16, 2017 (collectively, the "Petition"), (2) the State's Response to Notice of Post-Conviction Relief and Petition for Post-Conviction Relief, filed September 15, 2017 (the "Response"), and (3) Defendant's Reply to State's Response to Notice of Post-Conviction Relief and Petition for Post-Conviction Relief, filed January 5, 2018 (the "Reply"). Defendant has initiated at least fourteen prior proceedings pursuant to Rule 32, *Arizona Rules of Criminal Procedure*. The Court is also in receipt of Defendant's letter filed on June 14, 2017.

A jury convicted Defendant of: (1) one count of first-degree murder, a class 1 dangerous felony; (2) three counts of drive-by shooting, all class 2 dangerous felonies; (3) one count of attempted first-degree murder, a class 2 dangerous felony; and (4) one count of reckless endangerment, a class 6 felony. The Court sentenced Defendant to death for the murder conviction, but the Arizona Supreme Court modified his sentence to natural life imprisonment and otherwise affirmed the convictions and sentences. *State v. Roque*, 213 Ariz. 193, 231, ¶ 171, 141 P.3d 368, 406 (2006). The Court entered judgment and imposed concurrent and consecutive sentences for Defendant's other crimes.

In his current submission, Defendant contends that his conviction and sentence violated his constitutional rights and he is entitled to relief pursuant to Rules 32.1(a) and 32.1(c), *Arizona Rules of Criminal Procedure*. According to Defendant, a 1983 California conviction that used to enhance his sentence had been set aside and dismissed on January 2, 1985. He contends that the State engaged in misconduct by using that conviction to impeach a defense expert and also

Docket Code 167

Form R000A

Page 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

01/11/2018

engaged in the unconstitutional suppression of evidence. Likewise, Defendant claims he received ineffective assistance of counsel and his due process rights were violated with respect to this issue.

THE COURT FINDS that Defendant has failed to state a colorable claim for relief pursuant to Rule 32, *Arizona Rules of Criminal Procedure* for two separate and independent reasons:

1. Defendant's Claim is precluded.

Defendant has filed a direct appeal, and over 14 prior petitions pursuant to Rule 32. Never before has this issue been raised. The fact that Defendant's 1983 conviction was set aside in January 2015 is something that occurred long before the present case commenced in 2001, and over 30 years before the present Rule 32 Petition was filed. Defendant's knowledge of this fact is essentially admitted in the Reply when Defendant admits that "he may have had some secondary source information" that his conviction had been set aside. [Reply at p. 4] Defendant's present arguments have been waived and are precluded. Rule 32.2(a)(3), *Arizona Rules of Criminal Procedure*.

2. Defendant's Evidence Is Not "Newly Discovered".

The records provided indicate that Defendant pled guilty to attempted robbery in California Municipal Court in Los Angeles Case No. A 804688. On January 2, 1985, the conviction was set aside and dismissed pursuant to California Penal Code § 1203.4.

The Court has considered the five factors set forth in *State v. Amaral*, 239 Ariz. 217 (2016) and with respect to each factor, finds as follows:

(i) The fact that Defendant's 1983 California conviction had been set aside is a fact that was in existence at the time of trial. No showing has been made as to whether this fact was discovered after trial (although documents / court records may have been discovered after trial).

(ii) Although it does not appear that there is any dispute that Defendant obtained certain documents in March 2017, Defendant has made no showing of diligence as to why the fact that his 1983 conviction had been set aside was not raised earlier, particularly where "he may have had some secondary source information" in his possession already, as Defendant admits in his Reply.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

01/11/2018

(iii) The new evidence – a document obtained from a court in Los Angeles – is cumulative. The fact that his 1983 conviction was set aside is a fact that could have been asserted earlier based on other secondary source documents.

(iv) The fact that the California conviction had been set aside has minimal relevance. The Arizona Supreme Court already found that Defendant's California prior conviction had "minimal probative value." See Response, footnote no. 1 (citing *State v. Roque*, 213 Ariz. 193, at ¶57 (2006)). If the conviction was minimally probative, this necessarily means that facts about this conviction – such as the fact that it had been set aside – have minimal relevance, at most.

(v) The fact that Defendant's 1983 California conviction had been set aside would not likely have altered the verdict, finding or sentence if known at the time of the trial. There are two independent reasons why this is the case. First, as the State notes on page 8 of its Response, the acts associated with Defendant's 1983 conviction would have been admissible given Defendant's insanity defense. Such acts constituted "previous trouble" that the jury was permitted to hear to assist in understanding Defendant's mental condition at the time of the crime. Second, even though it was set aside, use of Defendant's 1983 conviction was proper. At that time, California Penal Code, Section 1203.4(a) provided in relevant part: "in any subsequent prosecution of the defendant *for any other offense*, the prior conviction may be pledged and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed." (Emphasis added.) On its face, this statute allowed the use of Defendant's 1983 conviction in a subsequent prosecution, including for purposes of enhancing a sentence. Thus, the use of Defendant's 1983 conviction was proper. Moreover, given that the Arizona Supreme Court previously concluded Defendant's 1983 attempted robbery conviction was of minimal probative value and had minimal prejudicial effect in the guilt phase, *Roque*, 213 Ariz. at 212, ¶ 59, Defendant has failed to show that the result likely would have been altered by evidence that his conviction had been set aside.

3. Defendant Has Failed to Demonstrate Ineffective Assistance Of Counsel.

To the extent that Defendant is claiming that trial counsel provided ineffective assistance as it relates to the 1983 California conviction, Defendant fails to assert a colorable claim. Again, California law at the time provided that, even after a conviction was set aside, the conviction had the same effect and was allowed to be used in subsequent prosecutions for any other offense. California Penal Code, Section 1203.4(a). Consequently, the State was allowed to use Defendant's 1983 conviction during the trial in this case. And, as stated and concluded by the Arizona Supreme Court, the use of Defendant's prior conviction was minimally relevant. Nothing about the failure to present that the 1983 conviction had been set aside at trial

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

01/11/2018

constitutes either deficient performance by Defendant's trial counsel, nor establishes that Defendant suffered prejudice such that the result of the trial probably would have been different.

In sum, Defendant has failed to state a colorable claim for relief pursuant to Rule 32, *Arizona Rules of Criminal Procedure*. The Court finds that no purpose would be served by further proceedings.

Good cause appearing,

IT IS ORDERED dismissing Defendant's Notice of Post-Conviction Relief pursuant to Arizona Rule of Criminal Procedure 32.2(b).

APPENDIX C

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
03/26/2018 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

03/21/2018

HONORABLE CHRISTOPHER COURY

CLERK OF THE COURT

Y. Zych
Deputy

STATE OF ARIZONA

GERALD R GRANT

v.

FRANK SILVA ROQUE (A)

FRANK SILVA ROQUE
#180333 ASPC LEWIS/RAST UNIT
P O BOX 3600
BUCKEYE AZ 85326

COURT ADMIN-CRIMINAL-PCR

ORDER

The Court has reviewed and considered Defendant's *Motion to Submit Supplemental Case Citations and Facts In The Record*, dated January 31, 2018, the State's *Response to Motion to Submit Supplemental Case Citations and Facts In The Record*, filed January 31, 2018, Defendant's *Amendment to Rule 32 Petition filed Pursuant to Rule 32.6(d)*, filed February 7, 2018, Defendant's *Reply to State's Response to Submit Supplemental Case Citations, and also Amendment to Rule 32 Petition*, filed February 21, 2018, and Defendant's *Motion for Reconsideration of Dismissal Order, Pursuant to Rule 32.9*, filed February 15, 2018.

THE COURT FINDS that, after consideration of the facts and legal authorities presented in the various filings, Defendant still has failed to present a colorable claim for relief. No good cause has been presented to support an amendment of Defendant's Rule 32 Petition, as Defendant's amended claims still lack merit.

Good cause appearing,

IT IS ORDERED supplementing and amending the record as requested by Defendant.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

03/21/2018

IT IS FURTHER ORDERED dismissing Defendant's Petition, as supplemented and amended, pursuant to Arizona Rule of Criminal Procedure 32.2(b). Defendant has failed to demonstrate a colorable claim for relief. No purpose would be served by any further proceedings in this matter.

IT IS FURTHER ORDERED denying Defendant's Motion for Reconsideration.

APPENDIX D

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

08/01/2017

Rules of Criminal Procedure. According to Defendant, a 1983 conviction used to enhance his sentence was set aside and dismissed on January 2, 1985. He contends that the State engaged in misconduct by using that conviction to impeach a defense expert and also engaged in the unconstitutional suppression of evidence. Likewise, Defendant claims he received ineffective assistance of counsel and his due process rights were violated with respect to this issue.

The records provided indicate that Defendant pled guilty to attempted robbery in California Municipal Court in Los Angeles Case No. A 804688. On January 2, 1985, the conviction was set aside and dismissed pursuant to California Penal Code § 1203.4. At that time, Section 1203.4(a) provided in relevant part:

"In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of probation, ... the defendant shall, at any time after the termination of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty ... and enter a plea of not guilty, ... the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted."

Assuming that this section applies to Defendant's attempted armed robbery conviction, it still may not provide the relief he requests. According to the statute: "in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed." This language appears, on its face, to allow the use of the prior conviction to enhance a sentence in a subsequent prosecution. The Arizona Supreme Court previously concluded Defendant's 1983 attempted robbery conviction was of minimal probative value and had minimal prejudicial effect in the guilt phase. *See Roque*, 213 Ariz. at 212, ¶ 59, 141 P.3d at 387.

In evaluating this record, the Court assumes that Defendant's representations are accurate. The Court finds that a Response from the State may resolve the issue or at least bring clarity to what is at issue.

Good cause appearing,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

08/01/2017

IT IS ORDERED the State shall file a Response to the Notice of Post-Conviction Relief and Petition for Post-Conviction Relief no later than **September 22, 2017**. Upon receipt of the Response, the Court will provide further direction as to whether to appoint counsel for Defendant and whether a Reply is necessary. At a minimum, the State's Response should discuss (a) the applicability of California Penal Code § 1203.4, (b) whether Defendant's arguments are precluded, and (c) what, if any, difference the information Defendant provides would have made in his convictions and sentences.

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
08/02/2017 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 2001-095385

08/01/2017

HONORABLE CHRISTOPHER COURY

CLERK OF THE COURT
Y. Zych
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

FRANK SILVA ROQUE (A)

FRANK SILVA ROQUE
#180333 ASPC LEWIS COMPLEX
BUCKLEY UNIT
P O BOX 3400
BUCKEYE AZ 85326

COURT ADMIN-CRIMINAL-PCR

**RULE 32 PROCEEDING
ORDER TO STATE TO FILE A RESPONSE**

Pending before the Court are (1) Defendant's Notice of Post-Conviction Relief, and (2) Petition for Post-Conviction Relief, both filed on June 16, 2017. Defendant has initiated at least fourteen prior proceedings pursuant to Rule 32, *Arizona Rules of Criminal Procedure*. The Court is also in receipt of Defendant's letter filed on June 14, 2017.

A jury convicted Defendant of: (1) one count of first-degree murder, a class 1 dangerous felony; (2) three counts of drive-by shooting, all class 2 dangerous felonies; (3) one count of attempted first-degree murder, a class 2 dangerous felony; and (4) one count of reckless endangerment, a class 6 felony. The Court sentenced Defendant to death for the murder conviction, but the Arizona Supreme Court modified his sentence to natural life imprisonment and otherwise affirmed the convictions and sentences. *State v. Roque*, 213 Ariz. 193, 231, ¶ 171, 141 P.3d 368, 406 (2006). As punishment for the other crimes, the Court entered judgment and imposed concurrent and consecutive sentences.

In his current submission, Defendant contends that his conviction and sentence violated his constitutional rights and he is entitled to relief pursuant to Rules 32.1(a) and 32.1(c), *Arizona* Docket Code 197

APPENDIX E

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

GERALD R. GRANT
Deputy County Attorney
State Bar ID No. 004978
State Bar Firm No. 00032000
301 West Jefferson, Second Floor
Phoenix, AZ 85003
Telephone: (602) 506-7422
mcaoexec@mcao.maricopa.gov
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,

No. CR 2001-095385

Plaintiff,

vs.

FRANK SILVA ROQUE,

Defendant.

RESPONSE TO NOTICE OF POST-CONVICTION RELIEF AND PETITION FOR POST-CONVICTION RELIEF

(Assigned to the Honorable
Christopher Coury)

The State of Arizona opposes Defendant's Petition for Post-Conviction Relief and asks the Court to summarily dismiss it pursuant to Rule 32.6(c) of the Arizona Rules of Criminal Procedure, for the reasons set forth in the following memorandum.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL HISTORY

Roque's response to the terrorist attacks that occurred on September 11, 2001, was to fatally shoot one person and shoot at others whom he apparently thought were of Arab descent. As a result, the State charged him with first degree murder, attempted first degree murder, reckless endangerment, and several counts of drive-by shootings. A jury found him guilty of the charges and imposed a death sentence. The court imposed 12-year sentences for the attempted first degree murder and drive-by shooting convictions and 1.25 years for the reckless endangerment convictions.

On appeal, the Arizona Supreme Court reduced the death sentence to natural life imprisonment and affirmed the convictions and the remaining sentences. *State v. Roque*, 213 Ariz. 193, 141 P.3d 368 (2006). Roque then pursued a series of post-conviction relief proceedings, none of which were successful.

On June 16, 2017, Roque filed a notice of post-conviction relief and a petition for post-conviction relief. By minute entry filed August 2, 2017, this Court ordered the State to file a response to the notice and petition.

II. STANDARD/SCOPE OF POST-CONVICTION REVIEW

Arizona's constitution guarantees the right to appeal. Ariz. Const., Art. 2, § 24. Therefore, the direct appeal is the post-conviction proceeding

of primary importance and is the preferred method for presenting claims of reversible error. *State v. Carriger*, 143 Ariz. 142, 145, 692 P.2d 991, 994 (1984). Once a conviction is affirmed on appeal, there is a presumption that the conviction was regularly obtained and is valid, and the defendant bears the burden of overcoming that presumption. *Canion v. Cole*, 210 Ariz. 598, ¶ 13, 115 P.3d 1261, 1263 (2005). By contrast, the procedure established by Rule 32 is not guaranteed by the Arizona Constitution and is not intended to be a primary method of review. *State v. Carriger*, 143 Ariz. at 146, 692 P.2d at 995.

If a petition for post-conviction relief does not present a “material issue of fact or law which would entitle the defendant to relief” on any one of the grounds set out in Rule 32.1, this Court must summarily dismiss the petition. See Rule 32.6(c), Ariz. R. Crim. P. The Arizona Supreme Court has defined a colorable claim as one that has the “*appearance of validity*,” such that “if the allegations are true, would they change the verdict?” *State v. Adamson*, 136 Ariz. 250, 265, 665 P.2d 972, 987 (1983), quoting *State v. Richmond*, 114 Ariz. 186, 194, 560 P.2d 41, 49 (1976); see also *State v. Krum*, 183 Ariz. 288, 294–95, 903 P.2d 596, 602–03 (1995) (holding no abuse of discretion for refusing to hold an evidentiary hearing where the defendant included affidavits that “lack[ed] any reliable factual foundation” and where defendant failed to come forward “with some substantial evidence” in support of his claim). To state a colorable claim, a defendant

must do more than contradict what the record plainly shows. See *State v. Jenkins*, 193 Ariz. 115, ¶ 15, 970 P.2d 947, 952 (App. 1998). Also, speculation of error does not amount to a colorable claim. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980). In other words, a trial court may deny evidentiary hearings if the allegations presented in the PCR petition “itself are vague and conclusory [or] wholly incredible.” *Krum*, 183 Ariz. at 295, 903 P.2d at 603.

III. ARGUMENTS

A. The preclusion doctrine bars relief.

According to Roque’s notice of post-conviction relief, he is seeking relief pursuant to Rule 32.1(a), Ariz. R. Crim. P. He denies that he is raising a claim pursuant to Rule 32.1(d), (e), (f), (g) or (h). His claim is that his due process rights were violated because a prior conviction that was used against him at trial “was set-aside and dismissed on January 2, 1985.” (Petition for Post-Conviction Relief at 5.)

A defendant must strictly comply with Rule 32 or be denied relief, and it is the defendant’s burden to assert grounds that bring him within the provisions of the Rule in order to obtain relief. *State v. Carriger*, 143 Ariz. 142, 146, 692 P.2d 991, 995 (1984). One of those provisions is that a defendant cannot obtain post-conviction relief based on any claim not raised at trial, on appeal, or in a previous post-conviction relief proceeding;

such claims will be presumed waived. Rule 32.2(a)(3), Ariz. R. Crim. P.; *State v. Alford*, 157 Ariz. 101, 103, 754 P.2d 1376, 1378 (App. 1988).

Roque states that the prior conviction "was set-aside and dismissed on January 2, 1985." Yet he offers no excuse for failing to raise his claim on appeal or in any of his many previous post-conviction relief proceedings. Roque can't avoid preclusion by contending that his claim is one of newly discovered material facts pursuant to Rule 32.1(e). Evidence supporting a colorable claim under that subsection must have, among other requirements, existed at the time of trial but be discovered after trial and the defendant must also allege facts from which the court can conclude the defendant was diligent in discovering the new evidence and bringing it to the court's attention. *State v. Amaral*, 239 Ariz. 217, ¶ 9, 368 P.3d 925, 927 (2016). Evidence regarding the prior conviction certainly existed at the time of trial but Roque can't credibly claim he didn't discover it until after trial. But even if he could, he can't show that he was diligent in bringing the evidence to this Court's attention. Therefore, Rule 32.2(a)(3) bars relief.

B. The use of Roque's prior conviction was lawful.

In any event, Roque's claim is meritless. He complains that a mental health expert who testified for the State relied on the prior in forming his

opinion,¹ that the State cross-examined a defense mental health expert about the prior during trial, and that the State cross-examined another defense mental health expert about the prior during sentencing proceedings. He concludes that because the prior "was set-aside and dismissed", *Johnson v. Mississippi*, 486 U.S. 578 (1988) requires that he be granted a new trial.

The *Johnson* decision doesn't apply here. In that case, a prior conviction from New York was one of three aggravating circumstances supporting Johnson's death sentence. That conviction was later reversed by the New York Court of Appeals.² *Johnson*, 486 U.S. at 582. Johnson then filed a motion in the Mississippi Supreme Court seeking post-conviction relief from his death sentence on the ground that the New York conviction was invalid and could not be used as an aggravating circumstance. The Mississippi Court denied the motion and the United States Supreme Court reversed. Noting that the only evidence introduced at Johnson's sentencing hearing relating to the New York offense was a

¹ The Arizona Supreme Court has already found that the prior "had only minimal probative value in showing a lack of mental illness because the State did not produce evidence that the attempted robbery was alcohol-induced or that it was motivated by racism, which were its theories at trial. Nor did Dr. Schialli's testimony demonstrate the relevance of the 1983 conviction to his assessment of Roque's mental health." *State v. Roque*, 213 Ariz. 193, at ¶ 57, 141 P.3d 368, 387 (2006).

² The New York Court of Appeals vacated the conviction. *Johnson*, 486 U.S. at 582 n. 3.

document establishing that Johnson had been convicted of the offense, the Supreme Court held:

Since that conviction has been reversed, unless and until petitioner should be retried, he must be presumed innocent of that charge. Indeed, even without such a presumption, the reversal of the conviction deprives the prosecutor's sole piece of documentary evidence of any relevance to Mississippi's sentencing decision.

Id. at 585.

Unlike the situation in *Johnson*, Roque's prior conviction wasn't reversed on appeal. That reversal meant Johnson's prior ceased to exist and he was presumed innocent of the charge. Assuming Roque's allegations are true, his conviction was only "set aside" pursuant to Cal. Penal Code § 1203.4(a)(1). That subsection also provides that the prior continues to exist because "in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed." Arizona has a similar statute. See A.R.S. § 13-907(C)(1); *State v. Barr*, 217 Ariz. 445, ¶ 17, 175 P.3d 694, 698 (App. 2008)(the statute allows an otherwise admissible prior conviction to be used for subsequent prosecutions as if the judgment of guilt had not been set aside). Thus Roque, unlike Johnson, doesn't enjoy the presumption of innocence regarding his prior offense. Both California's and Arizona's statutes demonstrate that his prior conviction still exists for

use in subsequent prosecutions. Therefore, the State's use of Roque's prior at his murder trial was lawful.

Further, Roque's defense at trial was insanity. Once a defendant raises insanity as a defense, all prior relevant conduct in the defendant's life is admissible because such evidence may assist the trier of fact in determining criminal responsibility. Thus, the State may present evidence of "previous troubles" to assist the jury in understanding the defendant's mental condition at the time of the crime. *State v. Hinchey*, 165 Ariz. 432, 436, 799 P.2d 352, 356 (1990). In Roque's direct appeal, the Arizona Supreme Court recognized that evidence of Roque's prior conviction was relevant and admissible to rebut his expert's assertion that Roque didn't have a history of violence and didn't pose a threat. *State v. Roque*, 213 Ariz. at ¶ 109, 141 P.3d at 396. Therefore, Roque's claim that use of his prior conviction violated his rights is meritless.

IV. CONCLUSION

Rule 32.2(a)(3) bars relief because Roque failed to raise his current claim on appeal or in his previous Rule 32 petitions. In addition, even if this Court could consider the claim on its merits, Roque has failed to establish a colorable claim for post-conviction relief. Therefore, his petition should be summarily dismissed.

DATED this 15th day of September, 2017.

WILLIAM G. MONTGOMERY
MARICOPA COUNTY ATTORNEY

BY /s/ Gerald R. Grant
GERALD R. GRANT
Deputy County Attorney

Copies of the foregoing mailed/
hand-delivered this 15th day of
September, 2017 to:

The Honorable Danielle J. Viola
Rule 32 Management Unit
Maricopa County Superior Court

Frank Silva Roque #180333
ASPC – Lewis – Buckley Unit
P.O. Box 3400
Buckeye, AZ 85326

By /s/ Gerald R. Grant
GERALD R. GRANT
Deputy County Attorney

APPENDIX F

MATTHEW O. BROWN
State Bar Number 025213
3185 S Price Rd
Chandler, AZ 85248
Telephone: (480) 299-2314; Fax: (888) 503-7561
matt@brownandlittlelaw.com
Attorney for Defendant

**ARIZONA SUPERIOR COURT
MARICOPA COUNTY**

STATE OF ARIZONA,) No. CR 2001-095385
vs. Plaintiff,)
FRANK SILVA ROQUE,)
Defendant.)

)
) REPLY TO STATE'S RESPONSE TO
) NOTICE OF POST-CONVICTION
) RELIEF AND PETITION FOR
) POST-CONVICTION RELIEF
)
)
)

Defendant, FRANK SILVA ROQUE ("Mr. Roque"), by and through undersigned counsel, hereby respectfully replies to the State's Response to his Notice of Post-Conviction Relief and Petition for Post-Conviction Relief and asks this Court to grant him relief for the reasons set forth in his Petition for Post-Conviction Relief and in the Memorandum of Points and Authorities attached hereto and incorporated herein by this reference.

RESPECTFULLY SUBMITTED this 5th day of January, 2018.

MATTHEW O. BROWN

By: _____ //s//
Matthew O. Brown
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

In its Response, the State ignores the history of this case and the contents of Mr. Roque's Petition for Post-Conviction Relief ("Petition") as well as its own cited authority in arguing that the preclusion doctrine should apply here. Furthermore, the State ignores the language in *Johnson v. Mississippi*, 486 U.S. 578 (1988) and the language of Cal. Penal Code § 1203.4(a)(1) as well as the similarities between *Johnson* and the instant case in arguing that using Mr. Roque's dismissed criminal history against him was lawful. As explained below, the preclusion doctrine should not apply, and the State should not have been able to use Mr. Roque's dismissed criminal history against him.

I. The Preclusion Doctrine Does Not Bar Relief Here

In the first of its two primary arguments against Mr. Roque's Petition, the State claims that "a defendant cannot obtain post-conviction relief based on any claim not raised at trial, on appeal, or in a previous post-conviction relief proceeding; such claims will be presumed waived." *See* State's Response, p.4-5 (citing Rule 32.2(a)(3), Ariz. R. Crim. P.; *State v. Alford*, 157 Ariz. 101, 103, 754 P.2d 1376, 1378 (App. 1988)). The State goes on to explain that, although the set-aside and dismissal happened on January 2, 1985, Mr. Roque "offers no excuse for failing to raise his claim on appeal or in any of his many previous post-conviction relief proceedings." *See* State's Response, p.5. According to the State, that bars Mr. Roque from arguing that "his claim is one of newly discovered material facts pursuant to Rule 32.1(e)" because "[e]vidence supporting a colorable claim under that subsection must have, among other requirements, existed at the time of trial but be discovered after trial and the defendant must also allege facts from which the court can conclude the defendant was diligent in discovering the new evidence and bringing it to the court's attention." *See* State's Response, p.5 (citing *State v. Amaral*, 239 Ariz. 217, ¶ 9, 368 P.3d 925, 927

(2016)).

The State's arguments plainly ignore both the history of this case and its own cited authority. In the section of his Petition dated May 16, 2017 and filed June 16, 2017 asking him why “[t]he issues which are raised in this petition have not been finally decided nor raised before,” Mr. Roque clearly explained as follows:

Petitioner is without counsel and had to contact the courts in Los Angeles, Calif. to find the court which handled his case in 1983. Also had to contact other agencys [sic] to obtain documents.

See Petition for Post-Conviction Relief (“Petition”), p.4, section 7. Moreover, the document from the Los Angeles court showing the dismissal was certified in March 29, 2017. *See* Petition, p.19. Mr. Roque’s previous attempts to obtain documentation of the dismissal either showed that the dismissal allowed his criminal record to be “enhanced” or came from federal authorities rather than the California court where the conviction occurred. *See* Petition, p.21, 24-25. It was therefore obviously not until much more recently, despite previous attempts to gather information about his criminal history, that Mr. Roque actually received relevant documentation from the court where the conviction occurred.

The Court in *State v. Amaral* - the State's own cited authority - set forth the following five requirements for presenting a colorable claim of newly discovered evidence:

- (1) the evidence must appear on its face to have existed at the time of trial but be discovered after trial;
- (2) the motion must allege facts from which the court could conclude the defendant was diligent in discovering the facts and bringing them to the court's attention;

- (3) the evidence must not simply be cumulative or impeaching;
- (4) the evidence must be relevant to the case;
- (5) the evidence must be such that it would likely have altered the verdict, finding, or sentence if known at the time of trial.

Amaral, 239 Ariz. 217, ¶ 9. The new evidence from the Los Angeles court that Mr. Roque obtained less than a year ago no doubt existed at the time of trial because the entry showing dismissal was dated January 2, 1984. *See* Petition, p.19. Moreover, it is apparent from Mr. Roque's sworn statement as well as the date the actual court documents were certified that he failed to raise this claim on appeal or in previous post-conviction relief proceedings because he had not yet been able to obtain those documents. *See* Petition, p.4, 19.

Mr. Roque was also clearly diligent in attempting to discover that new evidence and bring it to the court's attention, as he had been trying to gather information on it since his communications with the California Department of Justice in 2006 and the FBI case information filed in his federal case in 2009. *See* Petition, p.21, 24-25. While he may have had some secondary source information earlier, nothing suggests he had the specific Los Angeles court records that serve as the basis for his Petition prior to 2017.

The evidence here is not simply cumulative or impeaching, as the State's expert at trial used the dismissed criminal history to establish a supposed pattern of behavior involving violence. *See* Petition, p.5. The criminal history was obviously relevant, as it was admitted at trial. Accordingly, information showing it was actually dismissed is relevant as well. Finally, the difference between a criminal conviction and a dismissal is certainly one capable of affecting the outcome of a case where the conviction is relevant. For those reasons, Mr Roque is entitled to relief.

II. The Use of Mr. Roque's Priors Was in Fact Unlawful

In its Response, the State argues *Johnson v. Mississippi*, 486 U.S. 578 (1988) should not apply, an argument premised on the fact the conviction wrongfully used against the defendant in *Johnson* was reversed while Mr. Roque's conviction "was only 'set aside' pursuant to Cal. Penal Code § 1203.4(a)(1)." See Response, p.5-7. That argument plainly ignores the explicit language in *Johnson*, where the Court noted, "[w]e do not share the Mississippi Supreme Court's concern that its procedures would become capricious if it were to vacate a death sentence predicated on a prior felony conviction when such a conviction is set aside." *Johnson*, 486 U.S. at 586 (emphasis added). It is clearly not just a reversal specifically that makes *Johnson* applicable, or else the Court would have limited its language to discussing the situation where a conviction is reversed specifically rather than saying "set aside."

Additionally, the State argues that, because Cal. Penal Code § 1203.4(a)(1) states that, "in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed," Mr. Roque does not "enjoy the presumption of innocence regarding his prior offense." See Response, p.7. That argument again ignores *Johnson*, specifically the striking similarities between the subject of part of the Court's analysis there and the situation here. After all, the analysis of the Court in *Johnson* included the following:

In Mississippi's sentencing hearing following petitioner's conviction for murder, however, the prosecutor did not introduce any evidence concerning the alleged assault itself; the only evidence relating to the assault consisted of a document establishing that petitioner had been convicted of that offense in 1963.

Johnson, 486 U.S. at 586. Here, the Supreme Court of Arizona described the State's use of Mr. Roque's dismissed criminal conviction as follows:

The defense called only one witness, Dr. Jack Potts, to offer mitigating evidence in the penalty phase. On direct examination, Dr. Potts said, "[Roque's] lack of prior violence . . . like the shootings, clearly argues against this occurring again." On cross-examination, the prosecutor asked Dr. Potts if he was aware of Roque's 1983 attempted robbery conviction. The judge overruled the defense's relevance objection.

Roque's prior conviction was relevant to rebut Dr. Potts' assertion that Roque did not have a history of violence and did not pose a threat. The threshold for relevance is a low one, and the evidence did tend to prove a matter at issue. The judge therefore did not err in allowing the jury to hear that evidence.

State v. Roque, 213 Ariz. 193, 221, 141 P.3d 368, 396 (2006) (internal citation omitted).

Like in *Johnson*, it was not the specific facts of Mr. Roque's dismissed conviction, but rather the mere fact there was a conviction that the State admitted to show Mr. Roque's supposed history of violence. Here, the prior conviction was not something that had to be pleaded and proved to be relevant, however. Indeed, the State only used it to question one of Mr. Roque's witnesses. Accordingly, that portion of Cal. Penal Code § 1203.4(a)(1) is not relevant. Instead, like in *Johnson*, the mere fact there was a conviction that was set aside is what matters. The State should not have been permitted to introduce evidence of Mr. Roque's dismissed prior because he had been "released from all penalties and disabilities resulting from the offense of which he or she has been convicted" and this was not a situation where the prior conviction was pleaded or proved. *See* Cal. Penal Code § 1203.4(a)(1).

III. Mr. Roque Should Receive a New Trial

Here, despite his own due diligence, Mr. Roque did not obtain proof of dismissal of criminal history that was used against him at trial from the court where the conviction occurred until recently. Furthermore, that newly discovered new evidence would have changed the outcome of this case, as the criminal history he can now prove was dismissed was used against him by the State. The analysis of the Supreme Court of the United States in *Johnson* is directly applicable.

WHEREFORE, for the reasons set forth above and in his Petition for Post-Conviction Relief, Mr. Roque respectfully requests that this Court grant him relief as requested above and in his Petition for Post-Conviction Relief.

RESPECTFULLY SUBMITTED this 5th day of January, 2018.

MATTHEW O. BROWN

By: _____ //s// _____
Matthew O. Brown
Attorney for Defendant

Original filed with the Court, and
a copy delivered on 1/5/18 to:

Hon. Christopher Coury
Judge of the Superior Court
South Court Tower
Courtroom 7A
175 West Madison Street
Phoenix, AZ 85003

The Honorable Danielle J. Viola
Rule 32 Management Unit
201 West Jefferson
Phoenix, Arizona 85003

Gerald Grant
Deputy County Attorney
Maricopa County Attorney's Office

301 West Jefferson, Second Floor
Phoenix, AZ 85003
mcaoexec@mcao.maricopa.gov
Attorney for Plaintiff

Frank Roque
(ADOC # 180333)
ASPC Lewis
P.O. Box 3400
Buckeye, AZ 85326

//s//

APPENDIX G

SE
19

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

MICHAEL X. JEANES, CLERK
S.Y. *Chapman* DEP

FILED

2003 JUN 24 PM 3:49

Vince Imbordino
Deputy County Attorney
BAR ID #: 004291
MCAO Firm #: 00032000
Administration Building
301 W Jefferson St Ste 800
Phoenix, AZ 85003-2143
Telephone: (602) 506-5780
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

The State of Arizona, by and through undersigned counsel, pursuant to A.R.S. § 13-604(A), (B), (C), (D), (G), (H), (U) and Rule 13.5, Arizona Rules of Criminal Procedure, amends the Indictment in CR 2001-095385 to allege the following historical felony conviction:

On April 19, 1983, Defendant committed the crime of Attempted Robbery. Defendant was convicted for that crime on June 10, 1983, such conviction arising in the Superior Court, Los Angeles County, CA, in Cause Number A804688.

Submitted June 12, 2003.

RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY

BY

Vince Imbordino
Deputy County Attorney

·000035

Copy mailed\delivered
June 24th, 2003,
to:

The Honorable Mark F. Aceto
Judge of the Superior Court

Daniel Patterson
Deputy Public Defender

BY


Vince Imbordino
Deputy County Attorney

APPENDIX H

Court of Appeals, Division One
Criminal Petition Review Post Conviction Relief

1 CA-CR 19-0488 PRPC

STATE v. ROQUE

Appellate Case Information

Case Filed: 5-Sep-2019

Case Closed: 21-Apr-2020

Dismissal

Dept/Composition

Side 1. STATE OF ARIZONA, Respondent

(Litigant/Group) **STATE OF ARIZONA**

• State of Arizona

Attorneys for: Respondent

Andrea L Kever, Esq. (AZ Bar No. 13577)

Side 2. FRANK SILVA ROQUE, Petitioner

(Litigant/Group) **FRANK SILVA ROQUE**

• Frank Silva Roque

PRO SE

C A S E S T A T U S

Apr 21, 2020....Case Closed

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role & Comments	Trial	Dispo
MAR	CR 2001-095385		Christopher A Coury, Judge on PC		

DESCENDENT CASE(S)

ASC CR-19-0326-PR

C A S E D E C I S I O N

16-Sep-2019 ORDER

ORDERED: Dismissing this matter. FURTHER ORDERED: Motion for Permission to File a Late Petition for Review (Petitioner Pro Per) = DENIED.

Filed: 16-Sep-2019

Mandate:

Decision Disposition

Dismissed

Benjamin Armstrong.....Author

11 PROCEEDING ENTRIES

1. 5-Sep-2019 FILED: Petition for Review (PCR) (Petitioner Pro Per)
2. 5-Sep-2019 FILED: Motion for Permission to File a Late Petition for Review (Petitioner Pro Per)
3. 16-Sep-2019 ORDERED: Dismissing this matter. FURTHER ORDERED: Motion for Permission to File a Late Petition for Review (Petitioner Pro Per) = DENIED. Benjamin A Armstrong ProTem Judge - Author
4. 3-Oct-2019 FILED: Letter, 10/03/19, forwarding 'Motion for Extension of Time to File Petition for Review' to Arizona Supreme Court for consideration and disposition
5. 10-Oct-2019 FILED: ASC Order filed 10/10/2019 re: extending time for filing Petition for Review to 11/15/2019
6. 26-Nov-2019 FILED: Email Notice from ASC re: Petition for Review filed 11/14/19; request for partial record
7. 26-Nov-2019 FILED: Letter forwarding partial record to Arizona Supreme Court
8. 28-Jan-2020 FILED: ASC Order filed 01/28/2020 re: Granting the motion to submit an amendment to petition for review. FURTHER ORDERED: No further filings will be accepted from petitioner pending review. The Petition for Review will be decided in due course.
9. 27-Mar-2020 FILED: Letter from ASC, 03/27/2020, re: Petition for Review DENIED on 03/26/2020
10. 7-Apr-2020 FILED: ASC Order filed 04/07/2020 re: dismissing Petitioner's Motion for Reconsideration
11. 21-Apr-2020 FILED: Letter, 04/21/2020, Certified Copy of Order dismissing appeal. No record to be returned to clerk, Maricopa County Superior Court.

[154426]

1 CA-CR 19-0488 PRPC CR190488 CR 19 0488 CR-19-0488

Information presented in this document may not reflect all case activity and is subject to change without notice.

Court of Appeals, Division One
Criminal Petition Review Post Conviction Relief

1 CA-CR 19-0488 PRPC

STATE v. ROQUE

11 PROCEEDING ENTRIES

[154426]

1 CA-CR 19-0488 PRPC CR190488 CR 19 0488 CR-19-0488

Information presented in this document may not reflect all case activity and is subject to change without notice.



Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

JANET JOHNSON
Clerk of the Court

March 27, 2020

RE: STATE OF ARIZONA v FRANK SILVA ROQUE
Arizona Supreme Court No. CR-19-0326-PR
Court of Appeals, Division One No. 1 CA-CR 19-0488 PRPC
Maricopa County Superior Court No. CR 2001-095385

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on March 26, 2020, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Vice Chief Justice Timmer, Justice Bolick, Justice Lopez and Justice Gould participated in the determination of this matter.

Janet Johnson, Clerk //

TO:

Joseph T Maziarz
Jeffrey L Sparks
Frank Silva Roque, ADOC 180333, Arizona State Prison, Lewis -
Rast Unit
Amy M Wood
ga

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,) Arizona Supreme Court
v.) No. CR-19-0326-PR
FRANK SILVA ROQUE,) Respondent,)
Petitioner.)) Court of Appeals
) Division One
) No. 1 CA-CR 19-0488 PRPC
)) Maricopa County
) Superior Court
) No. CR 2001-095385
)

FILED: 04/07/2020

O R D E R

On March 26, 2020, a panel composed of Vice Chief Justice Timmer, Justice Bolick, Justice Lopez and Justice Gould denied Petitioner Roque's "Petition for Review." On April 6, 2020, Petitioner filed a "Motion for Reconsideration." In accordance with Arizona Rules of Criminal Procedure Rule 31.20(f), unless permitted by specific order of the appellate court, no party shall file a motion for reconsideration of an order denying a petition for review. Therefore,

IT IS ORDERED dismissing Petitioner's Motion for Reconsideration.

DATED this 7th day of April, 2020.

/s/
CLINT BOLICK
Duty Justice

TO:

Joseph T Maziarz
Jeffrey L Sparks
Frank Silva Roque, ADOC 180333, Arizona State Prison, Lewis - Rast
Unit
Amy M Wood
ga

APPENDIX B



AMY M. WOOD
CLERK OF THE COURT

Court of Appeals

STATE OF ARIZONA
DIVISION ONE
STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007

Phone: (602) 452-6700
Fax: (602) 452-3226

February 15, 2017

Frank Silva Roque, ADOC 180333
Arizona State Prison
Lewis - Rast Unit
PO Box 3600
Buckeye AZ 85326

Re: 1 CA-CR 16-0104 PRPC - *State v Roque*

Mr. Roque:

I received your *Copy Request Form* on February 3rd, 2017, along with check #500818238 in the amount of \$2.00, asking for a copy of Exhibit 227 filed in the above matter.

Enclosed, please find a copy of the requested document, as well as receipt #2017-00191.

Cordially,

A handwritten signature in black ink, appearing to read "Amy M. Wood".

Amy M. Wood
Clerk of the Court

Enclosure (As Noted)
AW/jt

PAGE 1

1000

1/2 hr.

**IN THE MUNICIPAL COURT OF LOS ANGELES
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

JUDICIAL DISTRICT

COMPLAINT

FELONY

FILED

MAY 3 1983

John J. Corcoran, County Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA,
v.

Plaintiff,

PATRICK GIBSON, and
FRANK SILVA ROQUE,

(TJ)
(TJ)

Defendants

No. A-804688

NO. DIV.

FILED
MUNICIPAL COURT

APR 21 1983

LOS ANGELES JUDICIAL DIST.
CLARK K. SAITO, CLERK

BY DEPUTY

DEPUTY

Personally appeared before me this 21st day of April, 1983,
BY E. C. MILLER, DEPUTY R. M. SHANE
of the
County of Los Angeles, who being first duly sworn on oath, upon information and belief complains and says:
That on or about the 19th day of April, 1983, at and in the County of Los
Angeles, State of California, the crime of ATTEMPTED ROBBERY, in violation of Section
664/211, Penal Code of California, a felony, was committed by

PATRICK GIBSON and FRANK SILVA ROQUE

who did willfully and unlawfully and by means of force and fear

take

personal property from the person, possession, and immediate presence of Carl J. Mooslin.

Subscribed and sworn to before me on

Issued by JOHN K. VAN DE KAMP, District Attorney

xByx

x Judge of the above entitled Court

Bail Recommended

WITNESSES

Deputy

x\$

xXXXXX6666XXXX

Patrick Gibson:

PAGE 2

63117024 4/23/83, \$1,000.00, classified, A-20411, 5-3-83, 119-
Frank Silva Roque: 63123035 4/1/83

MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff
vs.Division No. 119Case No. A 804688

FILED CERTIFICATE OF MAGISTRATE

Frank Silva Rogue

MAY 3 1983 GUILTY PLEA TO FELONY

Defendant J. Ferguson, County Clerk*J. Ferguson*

I, the undersigned Judge of the above-entitled court, do hereby certify: that the complaint attached hereto was filed in the above entitled court on 4-21-83; that on 5-3-83, while the charge(s) in said complaint remained pending in said court, the defendant

Frank Silva Rogue with his counselDennie Ryan, appeared before me

in open court, and waived the reading of the said complaint to said defendant and the informing said defendant of his () legal rights; and that I asked the said defendant whether he pleaded guilty to the offense(s) charged in said complaint.

Whereupon, with my consent and the consent of Deputy District Attorney Donald

Soldobel, and while said defendant's counsel was still present in court, the

said defendant pleaded guilty to the following felony offense(s) charged in said complaint, to wit:

COUNT II - 664/211 P.C.

committed on or about 4-19-83, in the County of Los Angeles, State of California.

Count(s) I to be dismissed on motion of the people.

By reason of the foregoing, I hereby certify this case to the Superior Court of the State of California, in and for the County of Los Angeles, and I do hereby commit the said defendant to the custody of the Sheriff of Los Angeles County, to be detained until legally discharged. Bail is set in the sum of 1,000.00

B.T.S.

Further proceedings set for JUNE 10, 1983, at 8:30 A.M., in Dept. No. 119-R

of the VAN NUYS Branch, Superior Court in and for

said County of Los Angeles.



I further certify that the foregoing is a true and correct record of all proceedings had before me this date in said case, and that attached hereto are copies of all proceedings held in this court in said case.

MAY 3 1983

JAMES E. SATT
JAMES E. SATT, Judge of Municipal Court,
Los Angeles Judicial District, DIV. 119

CERTIFICATE OF MAGISTRATE - GUILTY TO PLEA TO FELONY

P.C. 859a

*PAGE 3**1000*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: JUNE 10, 1983
HONORABLE DAVID HOROWITZ
ROMANSKYJUDGE
Deputy Sheriff

DEPT. NW R

Deputy Clerk
Reporter

CASE NO:

501

A 804688

PEOPLE OF THE STATE OF CALIFORNIA

VS
02: ROQUE, FRANK, SILVA
664/211 OI CT

(BOX CHECKED IF ORDER APPLICABLE) X 954132

(Parties and counsel checked if present)

Counsel for People:
DEPUTY DISTRICT ATTY:ARB UCKLE
WALSHK Collier
D Ryan

Counsel for Defendant:

NATURE OF PROCEEDINGS

P&S

BAIL

71. <input type="checkbox"/>	IS SWORN AS THE ENGLISH/		
72. <input type="checkbox"/>	CRIMINAL PROCEEDINGS ADJOURNED/RESUMED.		
73. <input type="checkbox"/>	DEFENDANT ORDERED DELIVERED TO DEPARTMENT OF CORRECTIONS PER SECTION 1203.03 PENAL CODE.		
74. <input type="checkbox"/>	ON MOTION, PROBATION AND SENTENCE HEARING CONTINUED TO AT A.M. IN DEPT. <input type="checkbox"/> SUPPLEMENTAL PROBATION REPORT/PROGRESS REPORT ORDERED.		
75. <input type="checkbox"/>	DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR SENTENCING.		
76. <input type="checkbox"/>	PROBATION DENIED. SENTENCE IS IMPOSED AS FOLLOWS: <input type="checkbox"/> IMPRISONED IN STATE PRISON FOR <input type="checkbox"/> TERM PRESCRIBED BY LAW. <input type="checkbox"/> TOTAL OF YEARS. <input type="checkbox"/> COURT SELLECTS THE TERM OF YEARS FOR THE BASE TERM AS TO COUNT. <input type="checkbox"/> PLUS AS INDICATED IN BOX 87 BELOW. <input type="checkbox"/> COMMITTED TO CALIFORNIA YOUTH AUTHORITY THE TERM OF IMPRISONMENT TO WHICH THE DEFENDANT WOULD HAVE BEEN SENTENCED PURSUANT TO SECTION 1170 PENAL CODE IS YEARS. <input type="checkbox"/> IMPRISONED IN LOS ANGELES COUNTY JAIL FOR TERM OF YEARS. <input type="checkbox"/> FINED IN SUM OF \$ <input type="checkbox"/> PLUS ASSESSMENT TO BE PAID TO COUNTY CLERK. <input type="checkbox"/> SENTENCE IS SUSPENDED.		
77. <input type="checkbox"/>	PROCEEDINGS SUSPENDED.		
78. <input type="checkbox"/>	PROBATION GRANTED FOR A PERIOD OF 3 YEARS. (SEE CONDITIONS LISTED BELOW).		
79. <input type="checkbox"/>	PROBATION TO BE WITHOUT FORMAL SUPERVISION.		
80. <input type="checkbox"/>	1. SPEND FIRST 10 MONTHS IN COUNTY JAIL. <input type="checkbox"/> ROAD CAMP OR HONOR FARM RECOMMENDED. <input type="checkbox"/> WORK FURLough PROGRAM RECOMMENDED. <input type="checkbox"/> NOT TO BE ELIGIBLE FOR COUNTY PAROLE.		
81. <input type="checkbox"/>	2. PAY FINE OF \$ <input type="checkbox"/> PLUS SURCHARGE OF \$5.00 PURSUANT TO SECTION 1206.5 PENAL CODE. <input type="checkbox"/> PLUS ADDITIONAL FINE OF \$50.00 <input type="checkbox"/> PURSUANT TO SECTION 1137.5 HEALTH AND SAFETY CODE. TOTAL FINE OF \$ <input type="checkbox"/> PLUS ASSESSMENT TO BE PAID TO COUNTY CLERK/PROBATION OFFICER IN SUCH AMOUNT AND MANNER AS HE SHALL PRESCRIBE.		
82. <input type="checkbox"/>	3. MINIMUM PAYMENT OF FINE/RESTITUTION TO BE \$ <input type="checkbox"/> .		
83. <input type="checkbox"/>	4. MAKE RESTITUTION THROUGH PROBATION OFFICER IN SUCH AMOUNT AND MANNER AS HE SHALL PRESCRIBE.		
84. <input type="checkbox"/>	5. <input type="checkbox"/> TOTAL AMOUNT OF RESTITUTION TO INCLUDE A 2% SERVICE CHARGE AS AUTHORIZED BY SECTION 279 WELFARE & INST. CODE.		
85. <input type="checkbox"/>	6. <input type="checkbox"/> NOT DRINK ANY ALCOHOLIC BEVERAGE AND STAY OUT OF PLACES WHERE THEY ARE THE CHIEF ITEM OF SALE.		
86. <input type="checkbox"/>	7. <input type="checkbox"/> NOT USE OR POSSESS ANY NARCOTICS, DANGEROUS OR RESTRICTED DRUGS OR ASSOCIATED PARAPHERNALIA, EXCEPT WITH VALID PRESCRIPTION, AND STAY AWAY FROM PLACES WHERE USERS CONGREGATE.		
87. <input type="checkbox"/>	8. <input type="checkbox"/> NOT ASSOCIATE WITH PERSONS KNOWN BY YOU TO BE NARCOTIC OR DRUG USERS OR SELLERS.		
88. <input type="checkbox"/>	9. <input type="checkbox"/> SUBMIT TO PERIODIC ANTI-NARCOTIC TESTS AS DIRECTED BY THE PROBATION OFFICER.		
89. <input type="checkbox"/>	10. <input type="checkbox"/> HAVE NO BLANK CHECKS IN POSSESSION. NOT WRITE ANY PORTION OF ANY CHECKS. NOT HAVE BANK ACCOUNT UPON WHICH YOU MAY DRAW CHECKS.		
90. <input type="checkbox"/>	11. <input type="checkbox"/> NOT GAMBLE OR ENGAGE IN BOOKMAKING ACTIVITIES OR HAVE PARAPHERNALIA THEREOF IN POSSESSION, AND NOT BE PRESENT IN PLACES WHERE GAMBLING OR BOOKMAKING IS CONDUCTED.		
91. <input type="checkbox"/>	12. <input type="checkbox"/> NOT ASSOCIATE WITH PROSTITUTES.		
92. <input type="checkbox"/>	13. <input type="checkbox"/> COOPERATE WITH PROBATION OFFICER IN A PLAN FOR SUPPORT DEPENDENTS AS DIRECTED BY PROBATION OFFICER.		
93. <input type="checkbox"/>	14. <input type="checkbox"/> SEEK AND MAINTAIN TRAINING, SCHOOLING OR EMPLOYMENT AS APPROVED BY PROBATION OFFICER.		
94. <input type="checkbox"/>	15. <input type="checkbox"/> MAINTAIN RESIDENCE AS APPROVED BY PROBATION OFFICER.		
95. <input type="checkbox"/>	16. <input type="checkbox"/> SURRENDER DRIVER'S LICENSE TO CLERK OF COURT TO BE RETURNED TO DEPARTMENT OF MOTOR VEHICLES.		
96. <input type="checkbox"/>	17. <input type="checkbox"/> NOT DRIVE A MOTOR VEHICLE UNLESS LAWFULLY LICENSED AND INSURED.		
97. <input type="checkbox"/>	18. <input type="checkbox"/> NOT OWN, USE OR POSSESS ANY DANGEROUS OR DEADLY WEAPONS.		
98. <input type="checkbox"/>	19. <input type="checkbox"/> SUBMIT HIS PERSON AND PROPERTY TO SEARCH OR SEIZURE AT ANY TIME OF THE DAY OR NIGHT BY ANY LAW ENFORCEMENT OFFICER WITH OR WITHOUT A WARRANT.		
99. <input type="checkbox"/>	20. <input type="checkbox"/> OBEY ALL LAWS, ORDERS, RULES AND REGULATIONS OF THE PROBATION DEPARTMENT AND OF THE COURT.		
100. <input type="checkbox"/>	21. DEFENDANT TO BE GIVEN CREDIT FOR 100 DAYS IN CUSTODY <input type="checkbox"/> 50 DAYS GOOD TIME/WORK TIME.		
101. <input type="checkbox"/>	22. SENTENCE/COUNTS TO RUN CONSECUTIVELY/CONCURRENTLY WITH <input type="checkbox"/> OTHER SENTENCE/COUNTS.		
102. <input type="checkbox"/>	23. STAY OF EXECUTION GRANTED TO <input type="checkbox"/> 15 DAYS.		
103. <input type="checkbox"/>	24. ON MOTION OF PEOPLE COUNTS <input type="checkbox"/> 30 DAYS.		
104. <input type="checkbox"/>	25. DISMISSED IN FURTHERANCE OF JUSTICE.		
105. <input type="checkbox"/>	26. COURT ADVISES DEFENDANT OF HIS APPEAL/PAROLE RIGHTS.		
106. <input type="checkbox"/>	27. FURTHER ORDER AS FOLLOWS/ADDITIONAL CONDITIONS OF PROBATION:		
107. <input type="checkbox"/>	Court 2 is 664/211 Date 6/10/83		
108. <input type="checkbox"/>	SHERIFF IS ORDERED TO ALLOW DEFENDANT <input type="checkbox"/> PHONE CALLS AT DEFENDANT'S OWN EXPENSE.		
109. <input type="checkbox"/>	DEFENDANT FAILS TO APPEAR WITH/WITHOUT SUFFICIENT EXCUSE. <input type="checkbox"/> BAIL FORFEITED <input type="checkbox"/> O.R. REVOKED		
110. <input type="checkbox"/>	BENCH WARRANT ORDERED ISSUED AND HELD UNTIL <input type="checkbox"/> NO BAIL <input type="checkbox"/> BAIL FIXED AT \$ <input type="checkbox"/>		
111. <input type="checkbox"/>	DEFENDANT APPEARING, BENCH WARRANT ORDERED RECALLED/QUASHED.		
112. <input type="checkbox"/>	WARRANT/WARRANT ABSTRACT FILED. <input type="checkbox"/> WARRANT RECALL WRITTEN.		
113. <input type="checkbox"/>	RECALLED. <input type="checkbox"/> BAIL <input type="checkbox"/> BAIL EXON. <input type="checkbox"/> BOND NO. <input type="checkbox"/> 10134989		
114. <input type="checkbox"/>	RELEASED. <input type="checkbox"/> O.R. <input type="checkbox"/> O.R. DISCHARGED <input type="checkbox"/> ON PROBATION		
115. <input type="checkbox"/>	MINUTE ORDER <input type="checkbox"/> IN CUSTODY OTHER MATTER		

APPENDIX I



SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK

14400 Erwin St. Mall
Van Nuys, Ca. 91401

Superior Court of California

County of Los Angeles

DATE: March 29, 2017

CASE NO.: **A804688**

DEFENDANTS NAME: **Frank Silva Roque** DOB: **Not Given**

Your request for documents or information pertaining to the above case(s) cannot be completed due to one or more of the following reasons:

- Full name of defendant and/or date of birth is needed.
- Case number, violation date or violation charge(s) are needed.
- Fee required (.50 cents per page) or (\$25.00 for certification) is needed.
- Case is currently out of file.
- Incorrect Court or Agency; Correct Court or Agency is: _____
- Misdemeanor case files are destroyed after (7) seven years, pursuant to section 71008 of the Government Code. (if applicable)
- After a thorough search of our record storage area and our microfiche indexing, **no case file was found**.
- Other: Additionally the case is not in TCIS (Trial Court Information System) so we cannot provide a docket/disposition. The only document available from Case File Locator is a "Register of Actions". This document indicates a 1203.3/1203.4 Dismissal on page 2 and is enclosed.

This is to certify that the record(s) requested were not located for reasons state above.

T. Fischer
CSA II

THE PEOPLE OF THE STATE
OF CALIFORNIA VSATTORNEY FOR
THE PEOPLEFELONY
NUMBER

A 804688

DEFT ID	NAME	BAIL	1st CHARGE	2nd CHARGE	3rd CHARGE	ATTORNEY FOR DEFENDANT
01	GIBSON PATRICK	1000	664	211 01 CTS		#1 PD, Kasserman
02	Rogue, Frank Silva	1000	664	211 01 CTS		#2 D. Ryan

Division or Mun. Ct.	Date of Crime	Arresting Agency	Superior Court Judges
119	04 19 83		
Complaint Filed:	05 05 83		

Arraignment Set For 06 10 83 In Dept. NHR #516-10-83 D. Horowitz

QA. G/R Preliminary transcript and copies filed MAY 16 1983 forwarded to NWR on JUN 10 1983

Copy of transcript received

DATE	DEPT	PROCEEDINGS			ENTERED BY	REPORTER
		INFORMATION FILED	Certificate on guilty plea filed	Indictment filed		
6-10-83	R	#2 Proc. susp - Ct. 3 yrs - 1st 10 mos (C.J.) no co-bar - Submit to 4th D - See MD				
		Rung Cts division - Ct 2 is 664/211 PC				
		Credit for total of 15 days				
		#1 Proc. susp - Ct. 3 yrs - 1st 10 mos (C.J.)				
		no co-bar - Submit to 4th D -				
		Credit for total of 6 days - Ct. 10 mos				
		divided - Ct 2 is 664/211 PC -				
9-23-83	R	#2 - Utility fees - \$120 - D. Ryan - #2 49605 D				
11/28/84		#1 IMP set 12/20/84 9/T				
12/14/84		#2 TXD set on 1/2/85 9/T				
1/22/85	T	Dept. Vice of Dept. Prof. Rev. Prot. Reinstated Name TIC - on Prof. set 1/22/85				
FURTHER PROCEEDINGS CONTINUED ON BACK SIDE						

DEFT. NO.	BOND FILED	NAME OF SURETY	NAME OF AGENT
01	5-17-83 \$1,000-	Classified Ins. A 20411	Barbara Untsn
02	5-17-83 \$1,000-	Nat'l Auto ML 394989	S + H

