

SUPREME COURT
FILED

Court of Appeal, First Appellate District, Division Four - No. A154354 SEP 11 2019

S256797

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

EVERETT SPILLARD, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

APPENDIX C

APR 15 2020

Jorge Navarrete Clerk

S261100

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

EVERETT L. SPILLARD II, Petitioner,

v.

SUPERIOR COURT OF HUMBOLDT COUNTY, Respondent;

THE PEOPLE, Real Party in Interest.

The petition for writ of mandate is denied without prejudice to filing a motion in the trial court for discovery in accordance with Penal Code section 1054.9 if petitioner is unable to obtain the records he seeks from the attorney who represented him in appeal no. A154354.

CANTIL-SAKAUYE

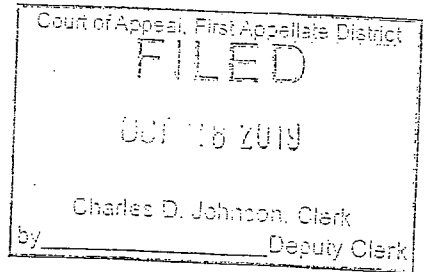
Chief Justice

APPENDIX F

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR



EVERETT L. SPILLARD II,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF HUMBOLDT,

Respondent;

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest.

A158480

Humboldt County Super. Ct.
No. CR1703134

THE COURT*:

The petition for writ of mandate was transferred to us from the Supreme Court.
We deny the petition as follows:

Petitioner's claim that he has not received trial records and other documents from the superior court and his trial attorney is denied without prejudice to petitioner filing a request in the superior court for the records.

Petitioner's claim that his trial counsel was ineffective is denied without prejudice to petitioner raising the claim in a petition for writ of habeas corpus filed in the superior court. (*In re Steele* (2004) 32 Cal.4th 682, 692.)

* Pollak, P.J., Tucher, J., and Brown, J.

1 This is a Writ of
2 Mandate
3
4 (not a Habeas Corpus)
5
6
7

FILED

BRENDA N.

DEC 05 2019

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT
9

10 In the Matter of the Application of

11 EVERETT L. SPILLARD II,

12 Petitioner,

13 For a Writ of Habeas Corpus
14

NO: CR1905504

JUDGMENT OF DISMISSAL

15
16 The above entitled matter was duly considered by the Court on December 4, 2019. The issues
17 were found moot and/or the Writ denied; therefore;

18 IT IS ORDERED, ADJUDGED, AND DECREED that the within action be dismissed without
19 prejudice.

20 DATED: December 4, 2019.

21
22  GREGORY ELVINE-KREIS

23 Judge of the Superior Court
24
25
26
27
28

FILED

DEC 05
2019

BRENDA N.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

In the Matter of the Application of
EVERETT L. SPILLARD II,
Petitioner,
For a Writ of Habeas Corpus

NO: CR1905504

ORDER DENYING PETITION
OR TRANSFERRING PETITION

The petition titled "Motion for Writ of Mandate (Mandamus)," but deemed a Petition for Writ of Habeas Corpus due to its substance, which was received November 12, 2019, has been read and considered.

1. The Writ of Habeas Corpus is denied for the following reason:

____ Petitioner fails to state a claim for which relief may be granted. People v. Duvall (1995) 9 Cal.4th 464; In re Clark (1993) 5 Cal.4th 750.

____ The vague, unsupported, and conclusionary allegations contained in the Petition are insufficient to allow for intelligent consideration of the issues which Petitioner had attempted to raise. In re Swain (1949) 34 Cal. 2d 300; In re Patton (1918) 178 Cal. 629.

____ Petitioner is required to exhaust administrative remedies before seeking relief in the courts. In re Muszalski (1975) 52 Cal.App. 3d 500.

____ Petitioner has available remedies at law which have not been exhausted.

____ The facts alleged in support of this Writ have been previously considered and the Writ was denied on _____.

____ The circumstances described to support the request for issuance of the Writ have changed thereby rendering the Petition moot.

____ Habeas corpus will not serve as a second appeal or in place of appeal. In re Harris (1993) 5

WRIT OF HABEAS CORPUS or TRANSFERRING PETITION APPENDIX D

FILED

SEP 26 2019

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 4

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

Office of the County Clerk
Humboldt County Superior Court - Main
Attention: Appeals Clerk
825 Fifth Street
Eureka, CA 95501

THE PEOPLE,
Plaintiff and Respondent,
v.
EVERETT SPILLARD,
Defendant and Appellant.

A154354
Humboldt County Super. Ct. No. CR1703134

* * REMITTITUR * *

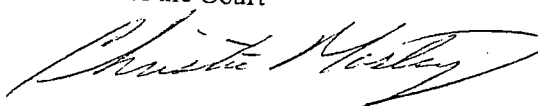
I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on June 28, 2019 and that this opinion has now become final.

☐ Appellant ☐ Respondent to recover costs
☐ Each party to bear own costs
☒ Costs are not awarded in this proceeding
☐ See decision for costs determination

Witness my hand and the Seal of the Court affixed at my office this

SEP 24 2019

Very truly yours,
Charles D. Johnson
Clerk of the Court


Deputy Clerk

P.O. Report: ☒
Marsden Transcript: ☐
Boxed Transcripts: ☐
Exhibits: ☐
None of the above: ☐

APPENDIX A

ABSTRACT OF JUDGMENT—PRISON COMMITMENT—INDETERMINATE
(NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED)

CR-292

| | | | | |
|--|--------------------------------------|---|----|--------------|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF: HUMBOLDT | | <div style="font-size: 2em; font-weight: bold; margin: 0;">FILED</div> <div style="font-size: 1.2em; font-weight: bold; margin: 5px 0;">MAY 11 2018</div> <div style="font-size: 0.8em; margin: 0;">SUPERIOR COURT OF CALIFORNIA COUNTY OF HUMBOLDT</div> | | |
| PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: SPILLARD, EVERETT LEROY II | DOB: 4/30/1962 | | | CR1703134 -A |
| AKA: | | | | -B |
| CII NO.: A07307936 | | | | -C |
| BOOKING NO.: 1700007973 | <input type="checkbox"/> NOT PRESENT | | -D | |
| COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT | | <input type="checkbox"/> AMENDED ABSTRACT | | |
| DATE OF HEARING 05/09/2018 | DEPT. NO. Three | JUDGE Dale A. Reinholdtsen | | |
| CLERK G. Beattie | REPORTER Sheryl Brown | PROBATION NO. OR PROBATION OFFICER None Present | | |
| COUNSEL FOR PEOPLE Stacey Eads | | COUNSEL FOR DEFENDANT David Lee | | |
| | | <input type="checkbox"/> IMMEDIATE SENTENCING <input checked="" type="checkbox"/> APPTD. | | |

1. Defendant was convicted of the commission of the following felonies:

☐ Additional counts are listed on attachment

_____ (number of pages attached)

| COUNT | CODE | SECTION NO. | CRIME | YEAR CRIME COMMITTED | DATE OF CONVICTION (MO./DATE/YEAR) | CONVICTED BY | | | CONCURRENT | CONSECUTIVE | 654 STAY |
|-------|------|-------------|--|----------------------|------------------------------------|--------------|-------|------|------------|-------------|----------|
| | | | | | | JURY | COURT | PLEA | | | |
| 10 | PC | 288.7(b) | Oral Copulation /Sexual Penetration with a Child | 2017 | 04 /02 / 18 | X | | | | | |
| 11 | PC | 288.7(b) | Oral Copulation/ Sexual Penetration with a Child | 2017 | 04 /02 / 18 | X | | | X | | |
| 12 | PC | 288.7(b) | Oral Copulation /Sexual Penetration with a Child | 2017 | 04 /02 / 18 | X | | | X | | |
| | | | | | / / | | | | | | |
| | | | | | / / | | | | | | |
| | | | | | / / | | | | | | |

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

| COUNT | ENHANCEMENT | TIME IMPOSED OR "S" FOR STAYED | ENHANCEMENT | TIME IMPOSED OR "S" FOR STAYED | ENHANCEMENT | TIME IMPOSED OR "S" FOR STAYED | TOTAL |
|-------|-------------|--------------------------------|-------------|--------------------------------|-------------|--------------------------------|-------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

| ENHANCEMENT | TIME IMPOSED OR "S" FOR STAYED | ENHANCEMENT | TIME IMPOSED OR "S" FOR STAYED | ENHANCEMENT | TIME IMPOSED OR "S" FOR STAYED | TOTAL |
|-------------|--------------------------------|-------------|--------------------------------|-------------|--------------------------------|-------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Defendant was sentenced to State Prison for an INDETERMINATE TERM as follows:

4. ☐ LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts _____

5. ☐ LIFE WITH THE POSSIBILITY OF PAROLE on counts _____

6. a. ☒ 15 years to Life on counts 10,11. c. ☒ 15 years to Life on counts 12

b. ☐ 25 years to Life on counts _____ d. ☐ _____ years to Life on counts _____

PLUS enhancement time shown above

7. ☐ Additional determinate term (see CR-290).

8. ☐ Defendant was sentenced pursuant to ☐ PC 667(b)-(i) or PC 1170.12 ☐ PC 667.61 ☐ PC 667.7 ☐ other (specify):

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

| | | | | |
|-----------|----|----|----|----|
| CR1703134 | -A | -B | -C | -D |
|-----------|----|----|----|----|

9. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. Restitution Fines:

Case A: \$10,000.00 per PC 1202.4(b) forthwith per PC 2085.5; \$10,000.00 per PC 1202.45 suspended unless parole is revoked.
 \$_____ per PC 1202.44 is now due, probation having been revoked.

Case B: \$_____ per PC 1202.4(b) forthwith per PC 2085.5; \$_____ per PC 1202.45 suspended unless parole is revoked.
 \$_____ per PC 1202.44 is now due, probation having been revoked.

Case C: \$_____ per PC 1202.4(b) forthwith per PC 2085.5; \$_____ per PC 1202.45 suspended unless parole is revoked.
 \$_____ per PC 1202.44 is now due, probation having been revoked.

Case D: \$_____ per PC 1202.4(b) forthwith per PC 2085.5; \$_____ per PC 1202.45 suspended unless parole is revoked.
 \$_____ per PC 1202.44 is now due, probation having been revoked.

b. Restitution per PC 1202.4(f):

Case A: \$TBD ☒ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case B: \$_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case C: \$_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case D: \$_____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

☐ *Victim name(s), if known, and amount breakdown in item 12. below. ☐ *Victim name(s) in probation officer's report.

c. Fines:

Case A: \$_____ per PC 1202.5 \$_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$50 Lab Fee per HS 11372.5(a) ☐ \$_____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case B: \$_____ per PC 1202.5 \$_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$50 Lab Fee per HS 11372.5(a) ☐ \$_____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case C: \$_____ per PC 1202.5 \$_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$50 Lab Fee per HS 11372.5(a) ☐ \$_____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case D: \$_____ per PC 1202.5 \$_____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$50 Lab Fee per HS 11372.5(a) ☐ \$_____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

d. Court Security Fee: \$120.00 per PC 1465.8.

e. Criminal Conviction Assessment: \$90.00 per GC 70373.

10. TESTING: a. ☐ Compliance with PC 296 verified b. ☐ AIDS per PC 1202.1 c. ☒ other (specify): Compliance with PC296

11. REGISTRATION REQUIREMENT: ☒ per (specify code section): PC290 Sex Offender

12. Other orders (specify):

13. IMMEDIATE SENTENCING:

☐ Probation to prepare and submit post-sentence report to CDCR per PC 1203c.

Defendant's race/national origin: WHI

14. EXECUTION OF SENTENCING IMPOSED

- a. ☒ at initial sentencing hearing
- b. ☐ at resentencing per decision on appeal
- c. ☐ after revocation of probation
- d. ☐ at resentencing per recall of commitment (PC 1170(d).)
- e. ☐ other (specify):

15. CREDIT FOR TIME SERVED

| CASE | TOTAL CREDITS | ACTUAL | LOCAL CONDUCT |
|--------------------------|---------------|----------------------------------|---------------|
| A | 258 | 220 | 38 |
| B | | | |
| C | | | |
| D | | | |
| Date Sentence Pronounced | | Time Served in State Institution | |
| | | DMH | CDC |
| | | [] | [] |

16. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
 To be delivered to ☒ the reception center designated by the director of the California Department of Corrections and Rehabilitation.
☐ other (specify):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE: *Kimberly Hackett* DATE: 05/11/2013

FILED

APR 30 2020

NEW

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

In the Matter of the Application of
EVERETT L. SPILLARD,
Petitioner,
For a Writ of Habeas Corpus

NO: CR2000534

ORDER DENYING PETITION
OR TRANSFERRING PETITION

The Petition for Writ of Habeas Corpus filed February 4, 2020, has been read and considered.

✓ 1. The Writ of Habeas Corpus is denied for the following reason:

✓ Petitioner fails to state a claim for which relief may be granted. People v. Duvall (1995) 9 Cal.4th 464; In Re Clark (1993) 5 Cal.4th 750.

_____ The vague, unsupported, and conclusionary allegations contained in the Petition are insufficient to allow for intelligent consideration of the issues which Petitioner had attempted to raise. In re Swain (1949) 34 Cal. 2d 300; In re Patton (1918) 178 Cal. 629.

_____ Petitioner is required to exhaust administrative remedies before seeking relief in the courts. In re Muszalski (1975) 52 Cal.App. 3d 500.

_____ Petitioner has available remedies at law which have not been exhausted.

_____ The facts alleged in support of this Writ have been previously considered and the Writ was denied on _____.

_____ The circumstances described to support the request for issuance of the Writ have changed thereby rendering the Petition moot.

✓ Habeas corpus will not serve as a second appeal or in place of appeal. In re Harris (1993) 5 Cal.4th 813; In re Foss (1974) 10 Cal.3d 910; In re Waltreus (1965) 62 Cal.2d 218. Absent strong

WRIT OF HABEAS CORPUS or TRANSFERRING PETITION

justification, any issue that was actually raised and rejected on appeal cannot be renewed by
habeas corpus and failure to present an issue on appeal will generally preclude its consideration
by writ of habeas corpus. In re Harris, supra.; In re Dixon (1953) 41 Cal.2d 756.)

____ Other.

2. ____ This matter is transferred to the Superior Court of ____ County.
The Court finds that to be the appropriate jurisdiction for the above-mentioned Writ in that the
Petitioner is confined in ____ County or the circumstances upon which this
Writ is based arise out of ____ County. Griggs v. Superior Court 16 Cal. 3d 341.

(Cal. Rules of Court, Rule 4.551(g))

Dated: 4/14/20.


____ GREGORY ELVINE KREIS

Judge

WRIT OF HABEAS CORPUS or TRANSFERRING PETITION

EXHIBIT 6.