

S260608

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Accusation of JAMES E. BoWELL Against an Attorney.

The petition is denied.

SUPREME COURT
FILED

MAR 25 2020

Jorge Navarrete Clerk

Deputy

CANTIL-SAKAUYE

Chief Justice

APRIL BOELK
AUTOMATIC APPEALS SUPERVISOR



EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

May 22, 2020

James BoWell #H-04180
California State Prison
480 Alta Road
San Diego, CA 92179

Re: **S260608 — Accusation of BoWell**

Dear Mr. Bowell:

No action may be taken on your "motion for reconsideration," received May 20, 2020. The order of this court filed March 25, 2020, denying the above-referenced accusation, was final forthwith and may not be reconsidered or reinstated. Please rest assured, however, that the entire court considered the accusation against an attorney, and the contentions made therein, and the denial expresses the court's decision in this matter.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court


By: Robert R. Toy, Senior Deputy Clerk

Enclosure

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL - SECOND DIST.

FILED

Mar 11, 2020

DANIEL P. POTTER, Clerk

JLozano Deputy Clerk

In re

JAMES BOWELL

on

Habeas Corpus.

B304630

(Super. Ct. L.A. County
No. BA191442)

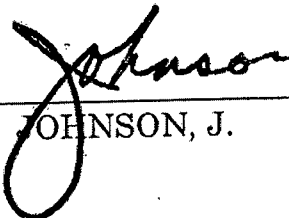
ORDER

THE COURT*:

The petition for writ of habeas corpus, filed March 2, 2020, has been read and considered.

The petition is denied.


*ROTHSCHILD, P. J.


JOHNSON, J.


BENDIX, J.

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 02/05/20

CASE NO. BA191442

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: JAMES BOWELL

INFORMATION FILED ON 12/15/99.

COUNT 01: 290(G)(2) PC FEL

ON 01/31/20 AT 130 PM IN CENTRAL DISTRICT DEPT 100

CASE CALLED FOR JUDICIAL ACTION

THIS IS A THIRD STRIKE CASE.

PARTIES: WILLIAM C. RYAN (JUDGE) JESSICA CABRERA (CLERK)
 NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

NO LEGAL FILE

MEMORANDUM OF DECISION

(HABEAS CORPUS)

IN CHAMBERS

"MOTION FOR LEAVE TO FILE NEW U.S. SUPREME COURT PRECEDENTS
REOPENING 9/11/19 HABEAS APPLICATION RECONSIDERATION MANDATORY
PROVISIONS WARRANTING MY IMMEDIATE RELEASE AND DISMISSAL OF
CONVICTION," CONSTRUED AS A MOTION FOR RECONSIDERATION FILED ON
JANUARY 15, 2020 BY JAMES BOWELL, PRO SE ("PETITIONER"). NO
APPEARANCE BY A RESPONDENT. DENIED.

IN 2000, PETITIONER WAS CONVICTED BY A JURY OF FAILURE TO
REGISTER AS A SEX OFFENDER (FORMER PEN. CODE, § 290, SUBD.
(G)(2), NOW § 290.018, SUBD. (B)). HE WAS SENTENCED UNDER THE
THREE STRIKES LAW (PEN. CODE, §§ 667, SUBDS. (B)-(I), 1170.12,

PAGE NO. 1

JUDICIAL ACTION
HEARING DATE: 01/31/20

CASE NO. BA191442
DEF NO. 01

DATE PRINTED 02/05/20

SUBDS. (A)-(D)) TO 25 YEARS TO LIFE IN STATE PRISON. (ABSTRACT OF JUDGMENT, DATED SEPT. 7, 2000, CASE NO. BA191442, ATTACHED TO THE PETITION.) THE JUDGMENT WAS AFFIRMED IN FULL ON APPEAL. (PEOPLE V. BOWELL (AUG. 28, 2001, B144266) [NONPUB. OPN.] .) PETITIONER IS CURRENTLY INCARCERATED AT RICHARD J. DONOVAN CORRECTIONAL FACILITY, LOCATED IN SAN DIEGO, CALIFORNIA.

ON JUNE 7, 2019, PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS CONTENDING THAT HIS UNLAWFUL FAILURE IN 1999 TO REGISTER AS A SEXUAL OFFENDER WAS IMPROPER USED BOTH TO VIOLATE HIS PAROLE AND TO INITIAL A NEW CRIMINAL FILING FOR THAT OFFENSE IN VIOLATION OF THE DOUBLE JEOPARDY PROHIBITION. THIS PETITION WAS DENIED BY THE COURT ON JULY 2, 2019. (MINUTE ORDER DATED

JULY 2, 2019, CASE NO. BA191442.) THE COURT ALSO NOTES THAT THIS CLAIM, AS WELL AS RELATED CLAIMS CONTENDING THAT HIS SENTENCE WAS UNAUTHORIZED, HAS BEEN RAISED AND REJECTED NUMEROUS TIMES BY THE COURT. (SEE MINUTE ORDERS DATED MAY 9, 2002, OCT. 7, 2003, JAN. 10, 2007, APR. 25, 2007, APR. 24, 2009, JAN. 4, 2010, SEPT. 10, 2010, JULY 22, 2011, JULY 6, 2012, JAN. 21, 2016, FEB. 11, 2016, CASE NO. BA191442.)

ON AUGUST 23, 2019, PETITIONER FILED ANOTHER PETITION FOR WRIT OF HABEAS CORPUS CONTAINING THE SAME ALLEGATIONS REGARDING HIS "UNAUTHORIZED SENTENCE." THE COURT DENIED THIS PETITION ON SEPTEMBER 9, 2019 ON THE GROUNDS THAT THE PETITION PRESENTED CLAIMS RAISED AND REJECTED IN PRIOR HABEAS PETITIONS, AND PETITIONER HAS NOT ALLEGED FACTS ESTABLISHING AN EXCEPTION TO THE RULE BARRING RECONSIDERATION OF CLAIMS PREVIOUSLY REJECTED. (IN RE CLARK (1993) 5 CAL.4TH 750, 797.) PETITIONER WAS INFORMED THAT IF HE IS DISSATISFIED WITH THIS COURT'S RULING ON HIS PETITION, HIS REMEDY IS NOT TO FILE ANOTHER PETITION AND INSTEAD IS TO FILE A PETITION FOR WRIT OF HABEAS CORPUS IN THE COURT OF APPEAL. "BECAUSE NO APPEAL LIES FROM THE DENIAL OF A PETITION FOR WRIT OF HABEAS CORPUS, A PRISONER WHOSE PETITION

HAS BEEN DENIED BY THE SUPERIOR COURT CAN OBTAIN REVIEW OF HIS CLAIMS ONLY BY THE FILING OF A NEW PETITION IN THE COURT OF APPEAL." (ID. AT P. 767, N. 7.) SUCH SUCCESSIVE CLAIMS CONSTITUTE AN ABUSE OF THE WRIT OF HABEAS CORPUS. (ID. AT P. 769; IN RE RENO (2012) 55 CAL.4TH 428, 455; IN RE MARTINEZ (2009) 46 CAL.4TH 945, 956; EX PARTE MILLER (1941) 17 CAL.2D 734, 735.)

ON JANUARY 15, 2020, PETITIONER FILED THE INSTANT MOTION FOR RECONSIDERATION ASKING THAT THE COURT "REOPEN" A "9/11/19 HABEAS APPLICATION." PETITIONER COULD BE REFERRING TO HIS AUGUST 23, 2019 PETITION, WHICH WAS DENIED BY THIS COURT ON SEPTEMBER 9, 2019. INITIALLY, THE COURT IS FINDS THAT THE CASE AUTHORITY CITED BY PETITIONER HAS NO RELEVANCE TO ANY OF HIS CLAIM(S). FOR INSTANCE, U.S. V. DAVIS (2019) 139 S.CT. 2319

CASE NO. BA191442
DEF NO. 01

DATE PRINTED 02/05/20

HELD THAT THE RESIDUAL CLAUSE OF SECTION 924 OF TITLE 18 OF THE UNITED STATES CODE IS UNCONSTITUTIONALLY VAGUE. IN PEOPLE V. WILEY (2019) 36 CAL.APP.5TH 1063, THE COURT OF APPEAL HELD THAT SECTION 1385 DOES NOT AUTHORIZE A TRIAL COURT TO DISMISS A PAROLE REVOCATION PETITION IN THE FURTHERANCE OF JUSTICE. THE COURT OF APPEAL AFFIRMED AN ORDER REVOKING THE DEFENDANT'S PAROLE AND REMANDING HIM TO THE CDCR. THE REMAINING CASES CITED BY PETITIONER CONCERN THE FEDERAL STATUTE (18 U.S.C. § 3583) GOVERNING REVOCATION OF SUPERVISED RELEASE, WHICH IS NOT AT ISSUE IN PETITIONER'S CASE.

FINALLY, AS PETITIONER HAS BEEN INFORMED NUMEROUS TIMES IN THE PAST, IF HE IS DISSATISFIED WITH THIS COURT'S RULING ON HIS

PETITION, HIS REMEDY IS NOT TO FILE ANOTHER PETITION AND INSTEAD IS TO FILE A PETITION FOR WRIT OF HABEAS CORPUS IN THE COURT OF APPEAL AND THAT SUCCESSIVE CLAIMS CONSTITUTE AN ABUSE OF THE WRIT OF HABEAS CORPUS. (IN RE CLARK, SUPRA, 5 CAL.4TH AT PP. 767, N. 7, 769; IN RE RENO, SUPRA, 55 CAL.4TH AT P. 455; IN RE MARTINEZ, SUPRA, 46 CAL.4TH AT P. 956; EX PARTE MILLER, SUPRA, 17 CAL.2D AT P. 735.)

ACCORDINGLY, THE MOTION FOR RECONSIDERATION IS DENIED.

THE CLERK IS ORDERED TO SERVE A COPY OF THIS ORDER UPON PETITIONER, AND UPON THE OFFICE OF THE DISTRICT ATTORNEY, AS COUNSEL FOR RESPONDENT, THE PEOPLE OF THE STATE OF CALIFORNIA.

** DUE TO LIMITED SPACING MINUTE ORDER ENTRY CONTINUED TO 2:00 P.M. **

NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

02/05/20

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ELECTRONIC MINUTE ORDER ON FILE IN THIS OFFICE AS OF THE ABOVE DATE.

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK OF SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY _____, DEPUTY



PAGE NO. 3

7.

JUDICIAL ACTION
HEARING DATE: 01/31/20

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 02/05/20

CASE NO. BA191442

THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

DEFENDANT 01: JAMES BOWELL

INFORMATION FILED ON 12/15/99.

COUNT 01: 290(G)(2) PC FEL

ON 01/31/20 AT 200 PM IN CENTRAL DISTRICT DEPT 100

CASE CALLED FOR JUDICIAL ACTION

THIS IS A THIRD STRIKE CASE.

PARTIES: WILLIAM C. RYAN (JUDGE) JESSICA CABRERA (CLERK)
 NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

.
** MINUTE ORDER CONTINUED FROM 1:30 P.M.**

.
THE COURT ORDER IS SIGNED AND FILED THIS DATE.
.

A TRUE COPY OF THIS MINUTE ORDER IS SENT VIA U.S. MAIL TO THE
FOLLOWING PARTIES:

.
JAMES BOWELL, H04180
RJ DONOVAN CORRECTIONAL FACILITY
480 ALTA ROAD
SAN DIEGO, CA 92179

.
OFFICE OF THE DISTRICT ATTORNEY
POST-CONVICTION LITIGATION & DISCOVERY DIVISION
HABEAS CORPUS LITIGATION TEAM
320 W. TEMPLE ST., RM. 540
LOS ANGELES, CA 90012

.
ENTRY MADE BY G. ALONZO

CASE NO. BA191442
DEF NO. 01

DATE PRINTED 02/05/20

NEXT SCHEDULED EVENT:
PROCEEDINGS TERMINATED

02/05/20

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ELECTRONIC MINUTE
ORDER ON FILE IN THIS OFFICE AS OF THE ABOVE DATE.

SHERRI R. CARTER ,EXECUTIVE OFFICER/CLERK OF SUPERIOR COURT, COUNTY OF LOS
ANGELES, STATE OF CALIFORNIA

BY _____, DEPUTY

G. ALONZO



<p align="center">SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</p>	<p align="center">Reserved for Clerk's File Stamp</p>
<p>COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012</p>	<p align="center">CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles</p> <p align="center">FEB 05 2020</p>
<p align="center">JAMES BOWELL,</p>	<p align="center">Sherri R. Carter, Executive Officer/Clerk of Court By: Gabriela Alonzo, Deputy</p>
<p align="center">CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)</p>	<p>CASE NUMBER: BA191442</p>

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- ☐ Order to Show Cause
☐ Assignment Order

- ☐ Motion to Compel Appointed Counsel to Act
☒ Memorandum of Decision (Habeas Corpus)

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

James Howell, H04180
RJ Donovan Correctional Facility
480 Alta Road
San Diego, CA 92179

Office of the District Attorney
Post-Conviction Litigation & Discovery Division
Habeas Corpus Litigation Team
320 W. Temple St., Rm. 540
Los Angeles, CA 90012

February 05, 2020
DATED AND DEPOSITED

SHERRI R. CARTER, Executive Officer/Clerk

By: G. ALONZO, Clerk
Gabriela Alonzo

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

June 19, 2020

James E. Howell
CDC # H-04180, C-12-221
480 Alta Road
San Diego, CA 92179

RE: In Re James Howell
SCCA No. S260608

Dear Mr. Howell:

The above-entitled petition for writ of certiorari was originally postmarked April 30, 2020 and received again on June 17, 2020. The papers are returned for the following reason(s):

Questions presented for review should be short and should not be argumentative or repetitive. Rule 14.1(a).

The petition fails to comply with the content requirements of Rule 14, in that the petition does not contain:

A reference to the opinions below. Rule 14.1(d).

A concise statement of the grounds on which jurisdiction is invoked. Rule 14.1(e).

A concise statement of the case. Rule 14.1(g).

The reasons relied on for the allowance of the writ. Rules 10 and 14.1(h).

The appendix to the petition does not contain the following documents required by Rule 14.1(i):

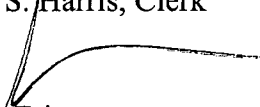
The lower court opinion(s) must be appended from the California Court of Appeals.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk

By:



Susan Frimpong
(202) 479-3039

Enclosures

BOARD OF PAROLE HEARINGS

P.O. BOX 4036
SACRAMENTO, CA 95812-4036

A P P E N D I X "A"

April 04, 2020

BOWELL, JAMES EDWARD #H04180
C 012 2221001LP
RJD-C

James Edward Bowell:

This is in response to your letter dated January 13, 2020. In your letter, you appear to be: (1) raising concerns with the legality of your sentence for failing to register and your incarceration for that sentence based on your belief that you should only be subject to 180 days of imprisonment following a parole revocation, (2) asserting your belief that you have been and continued to be falsely imprisoned, (3) demanding the Board release and discharge you from CDCR, and (4) requesting the Board to "recall" your sentence. Because the Board has already responded to multiple previous letters from you regarding the same or similar issues to those you raise in this letter, your letter has now been referred to me. My responses to each of the issues I identified in your letter is below. The Board now considers all of these matters closed and will no longer respond to any correspondence from you that raises any of the issues resolved below.

First, you appear to be raising concerns with the legality of your sentence for 1999 conviction of failing to register as a sex offender. As explained to you in our previous responses to your letters, the Board has no involvement in the conviction and sentencing of criminal defendants. Rather, that power lies solely with the California judicial system. If you believe your sentence is incorrect, your remedy is to raise those issues with the specific Superior Court that issued your sentence.

I note, however, that you appear to base your concerns regarding the legality of your sentence on California Penal Code section 3057 and the 2008 edition of the California Criminal Law Procedure and Practice guidebook, both of which you attached to your letter. You appear to have received incorrect information as these legal sources are out of date and further, they do not relate to a new conviction, which is the basis of your current incarceration. Neither of these cited materials has any legal relevance to your case.

Penal Code section 3057 governs confinement upon revocation of parole; however, your conviction for failing to register as a sex offender is not a parole violation. Rather, this was charged as a separate and independent crime. Additionally, the sentence for this new felony was imposed in accordance with California's three-strike laws. Therefore, section 3057 has no legal applicability to your case and further the explanation of the law from the guidebook do not relate to your current incarceration.

The Board considers this issue to be resolved as it relates to our agency, and we will no longer respond to any further questions from you with respect to your conviction and sentence for failing to register as a sex offender.

Second, you allege that you have been and continue to be "falsely imprisoned" for your current offense of failing to register. Here again, the Board has no jurisdiction over your physical custody. Concerns about your custody must be directed to the California Department of Corrections and Rehabilitation (CDCR) and the Superior Court that issued your current conviction and sentence. The Board considers this issue to be resolved as it relates to our agency, and we will no longer respond to any further questions from you with respect to your current incarceration.

BOARD OF PAROLE HEARINGS

P.O. BOX 4036

SACRAMENTO, CA 95812-4036



Third, the Board may only release an inmate from his or her life term if the inmate has both (1) reached at least one parole eligibility date and (2) demonstrated that he or she is suitable for parole. Your earliest parole eligibility date is currently calculated by CDCR to be in 2023. Therefore, you are currently scheduled to receive a hearing before the Board approximately one year prior in 2022, during which the hearing panel will assess your suitability for parole at that time. Since you have not yet reached any parole eligibility dates, the Board has not yet acquired legal jurisdiction to assess your suitability and has no legal authority to release or discharge you at this time. Consequently, the Board considers this issue to be resolved as it relates to our agency, and we will no longer respond to any further questions from you with respect to immediately releasing or discharging you from your sentence based on your concerns about the legality of that sentence.

Fourth, you claim that the Board has a "duty to recall [your] sentence." Here again, you appear to have received incorrect information about the laws governing the Board. The Board has no legal authority to "recall" an inmate's sentence. That power lies solely with the sentencing court. While the Board may submit recommendations to courts under certain unique circumstances, any recommendations to courts are solely within the discretion of the Board, meaning the Board has no "duty" to act in any case. Consequently, the Board considers this issue to be resolved as it relates to our agency, and we will no longer respond to any further questions from you with respect to recalling your sentence based on your concerns about the legality of that sentence.

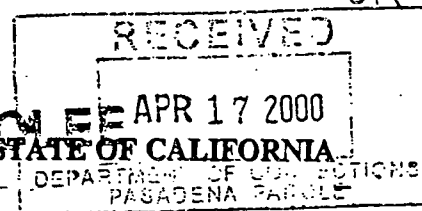
As noted above, the Board now considers all of these matters to be resolved as they relate to our agency. The Board will not respond to any further letters from you that attempt to re-raise any of the issues addressed above. You remain free to write to the Board regarding any future issues involving your parole consideration hearings before the Board.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather L. McCray".

HEATHER L. MCCRAY
Assistant Chief Counsel
Board of Parole Hearings

BOARD OF PRISON TERMS
OFFICE OF POLICY AND APPEALS
DECISION ON APPEAL



Your appeal was received by the BPT Office of Policy and Appeals on October 15, 1999.
Received necessary documents on December 10, 1999.

Decision at issue

Parole revocation hearing (unconditional waiver) of May 11, 1999. Parole revoked: returned to custody for 10 months, ineligible for PC § 3057(d)(1) credits.

Reasons for appeal

The parolee wishes to avoid the consequences of an unconditional waiver.

The following represents the findings, determination, and order of the Board of Prison Terms, State of California.

☒ Deny

☐ Grant

☐ Dismiss

DEPUTY COMMISSIONER

Yvonne C. Walker

DATE

4-4-00

DEPUTY COMMISSIONER

DATE

NAME
BOWELL, James

CDC NUMBER
H04180

INST/REGION
CRS/Pasadena
Log # 7365

DECISION DATE
APR 04 2000

APPEAL DECISION

Introduction

Title 15 of the California Code of Regulations (15 CCR), § 2600 et seq., sets forth parole supervision and revocation criteria and procedures, implementing California Penal Code (PC) § 3052 et seq. Parolee rights are specified at 15 CCR § 2643. Appeals from parole revocation hearings are governed by 15 CCR §§ 2050-3056.

Decision on Appeal

The parolee wishes to avoid the consequences of an unconditional waiver. On May 14, 1999, the parolee signed an unconditional waiver, waiving his right to request a revocation hearing or to contest the charges. The Office of Policy and Appeals will not address the issues raised in the appeal regarding the good cause finding for charges 1, 2 and 3 at this time. An unconditional waiver includes a waiver of any right to a personal appearance before the BPT to contest the charges against the parolee but is not an admission of guilt (15 CCR § 2641(a)). Pursuant to the guidelines set forth in Administrative Directive (AD) 85/6, the parolee's case was reviewed by a BPT deputy commissioner and a proposed return to custody of 10 months - ineligible was assessed. The hearing agent then presented the proposed assessment to the parolee as the return to custody period if he desired to waive the hearing. The parolee accepted the offer, as evidence by the signing of the Form 1101, Waiver of Revocation Hearing (Unconditional). There is no supporting evidence to indicate the parolee was unable to submit a knowledgeable waiver.

Exhaustion of Remedies

Since all grounds of appeal must be included in the same appeal (15 CCR § 2052(a)(2)), this decision is the final administrative decision on all issues from the decision in question. No further appeals or requests for review based on the issues from this decision will be accepted. *J.B.*

APR 04 2000

STATE OF CALIFORNIA
HARGE SHEET/REVOCAION TRACKING/SCHEDULING REQUEST
DC 1676 (4/91)

DISTRIBUTION:
ORIGINAL - BOARD REPORT
1ST COPY - R.H.C. (THE R.H.C. COPY WITH BORDERED AREA
COMPLETED MUST BE FORWARDED WITHIN ONE WORKING
DAY OF HOLD/DISCOVERY)
2ND COPY - H.A.
3RD COPY - PAROLEE
4TH COPY - U.S.
DEPARTMENT OF CORRECTIONS-

REPORT TO: ☒ BOARD OF PRISON TERMS
☐ NARCOTIC ADDICT EVALUATION AUTHORITY

CDC NUMBER H04180	NAME (LAST, FIRST, MI) BOWELL, JAMES	NAME BOOKED AS SAME	REGION/UNIT III/PASD.1	CSTCU - ST <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ARREST DATE 4/25/99	ARRESTING AGENCY LAS VEGAS PD	IF REFERRED <input checked="" type="checkbox"/> MANDATORY <input type="checkbox"/> NON-MANDATORY	BOOKING NUMBER AND/OR LOCATION N/A - LAS VEGAS	
ARREST CODE B	* ARREST CODES: A PACSD STAFF ALONE AB PACSD ASSISTED BY LAW ENFORCEMENT AGENCY B LAW ENFORCEMENT AGENCY ALONE D LAW ENFORCEMENT AGENCY WITH INFORMATION FROM PACSD			
HOLD DATE 4/25/99	DISCOVERY DATE 4/26/99	HOLD REMOVED DATE INTACT	AGENT OF RECORD ROBERTS	CONTROLLING DISCHARGE DATE 10/31/2001 PTS
			DISCHARGE REVIEW DATE 2/12/2000PTS	IMMINENT DISCHARGE <input type="checkbox"/>
CHARGES AND CODES 1. ABSCONDING (021)		PLED GUILTY	CHARGES AND CODES 4.	
2. INSTRUCTIONS: TRAVEL BEYOND 50MI OF RESIDENCE W/OUT P&CSD APPROVAL (028)			5.	
3. FAILURE TO REGISTER PER PC290 (390)			6.	
REASON FOR RETAINING PAROLE HOLD: PAROLEE DANGER TO: <input checked="" type="checkbox"/> ABSCOND <input type="checkbox"/> SELF <input type="checkbox"/> PROPERTY-OTHERS <input checked="" type="checkbox"/> SAFETY-OTHERS			DATE COPY SENT TO PAROLEE	INITIALS OF PERSON SENDING
PAROLEE'S ADDRESS		ADJUDICATION PENDING COURT DATE	VIOLATION REPORT FORWARDED TO REGION / DATE:	
TELEPHONE NUMBER		DATE P.A. III SIGNED REPORT 5/4/99	VIOLATION REPORT FORWARDED TO HEARING AGENT DATE:	
NAME OF HEARING AGENT		DATE HEARING AGENT RECEIVED REPORT	DATE HEARING AGENT SERVED	
<input type="checkbox"/> REGIONAL SCREENING CALENDAR DATE: _____ <input type="checkbox"/> PAROLEE ACCEPTED <input type="checkbox"/> PAROLEE REJECTED <input type="checkbox"/> BPT REJECTED		<input type="checkbox"/> WAIVER CASE UNCONDITIONAL _____ OPTIONAL _____ TIMELINESS _____ ACTIVATED _____		<input type="checkbox"/> HEARING REQUESTED DATE: _____ <input type="checkbox"/> WAIVER FORWARDED TO REG. RECORDS DATE: _____
<input type="checkbox"/> INTERPRETER LANGUAGE: (SPECIFY) <input type="checkbox"/> FOR PAROLEE <input type="checkbox"/> FOR WITNESS <input type="checkbox"/> SIGN LANGUAGE		ATTORNEY DETERMINATION <input type="checkbox"/> WAIVED <input type="checkbox"/> DENIED <input type="checkbox"/> STATE <input type="checkbox"/> OWN		
PANEL	HEARING DATE & TIME	HEARING LOCATION	HEARING TIME (IN MINUTES)	NUMBER OF WITNESSES
NUMBER OF CHARGES				
IF THE REQUEST IS MORE THAN 3 DAYS FROM HOLD DATE, STATE REASON:				
COMMENTS:				
DATE IF EXTENSION REQUESTED BY PAROLEE		DATE REVOCATION PACKAGE TO ATTORNEY		DATE SUPPLEMENTAL REPORT TO ATTORNEY
SCHEDULING INFORMATION				
H.A. REQUESTED? <input type="checkbox"/> YES <input type="checkbox"/> NO	R.H.C. REQUESTED? <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE CONFIRMED BY BPT	DATE H.A. NOTIFIED	DATE SUBPOENA ISSUED BY H.A.
POSTPONED DATES	DATE RESCHEDULED BY H.A.	DATE RESCHEDULED BY R.H.C.	DATE CONFIRMED	DATE H.A. NOTIFIED
HEARING DECISION				
DATE HEARING HELD	WAIVER DECISION	REV/RTC NO. MONTHS	C.O.P. EFFECTIVE	DISCHARGE EFFECT. DATE
OTHER				
VIOLATION PACKAGE DISPOSITION				
DATE TO R.H.C.	DATE TO RECORDS	OTHER		

000184

REPORT TO: ☒ BOARD OF PRISON TERMS
☐ NARCOTIC ADDICT EVALUATION AUTHORITY2ND COPY - H.A.
3RD COPY - PAROLEE
4TH COPY - U.S.

NUMBER 4180	NAME (LAST, FIRST, MI) BOWELL, JAMES	NAME BOOKED AS SAME	REGION/UNIT III/PASD.1	CSTCU - ST <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
ARREST DATE 4/25/99	ARRESTING AGENCY LAS VEGAS PD	BPT REFERRALS: <input checked="" type="checkbox"/> MANDATORY <input type="checkbox"/> NON-MANDATORY	BOOKING NUMBER AND/OR LOCATION N/A - LAS VEGAS	
ARREST CODE * B	* ARREST CODES: A P&CSD STAFF ALONE AB P&CSD ASSISTED BY LAW ENFORCEMENT AGENCY B LAW ENFORCEMENT AGENCY ALONE D LAW ENFORCEMENT AGENCY WITH INFORMATION FROM P&CSD			
HOLD DATE 4/25/99	DISCOVERY DATE 4/26/99	HOLD REMOVED DATE INTACT	AGENT OF RECORD ROBERTS	CONTROLLING DISCHARGE DATE 10/31/2001PTS DISCHARGE REVIEW DATE 2/12/2000PTS IMMEDIATE DISCHARGE <input type="checkbox"/>
CHARGES AND CODES 1. ABSCONDING (021)		CHARGES AND CODES 4.		
2. INSTRUCTIONS: TRAVEL BEYOND 50 MI. OF RESIDENCE W/OIT P&CSD APPROVAL (028)		5.		
3. FAILURE TO REGISTER PER PC290 (390)		6.		
REASON FOR RETAINING PAROLE HOLD: PAROLEE DANGER TO: <input checked="" type="checkbox"/> ABSCOND <input type="checkbox"/> SELF <input type="checkbox"/> PROPERTY-OTHERS <input checked="" type="checkbox"/> SAFETY-OTHERS			DATE COPY SENT TO PAROLEE INITIALS OF PERSON SENDING	

SUPPORTING EVIDENCE:

CHARGE 1:

On 1/13/99, Subject reported after being released from a Parole Violation. Subject indicated he was homeless. Agent of Record instructed Subject to remain in the lobby until housing arrangements could be made. Subject failed to comply. Attempts to locate Subject at his prior residence and a review of his social factor sheet were uneventful.

On 1/14/99, Agent of Record submitted a Miscellaneous Decision to the Board of Prison Terms, requesting to suspend Subjects Parole. Request was granted by the Board of Prison Terms to suspend Subjects Parole this same date.

CHARGE 2:

Subject's whereabouts remained unknown to P&CSD until his current arrest on 4/25/99, by the Las Vegas Police Department. Subject failed to follow instructions by traveling beyond 50 miles from his residence without P&CSD approval.

CHARGE 3:

As a convicted sex offender Subject is required to register per 290PC. Subject failed to register as required by law.

Note: Details of Subjects arrest in Las Vegas are unavailable at this time, Agent of Record will submit a supplemental report if warranted.

PAROLEE STATEMENT:

Subject was unavailable for interview due to being in Las Vegas.

COURT INFORMATION: Pending.

WITNESSES: C. Roberts, Parole Agent I, Pasadena Parole Unit #1.

ATTACHMENTS: None.

PAROLEE'S NAME BOWELL, JAMES	CDC NUMBER H04180
---------------------------------	----------------------

BOARD OF PRISON TERMS
STATE OF CALIFORNIA

This Page was signed by me as such:

James E. Powell (Coerced to Sign)
on 5-11-99. Notice it has been

SUMMARY OF REVOCATION DECISION: removed and dated
HEARING WAIVED / SCREENING OFFER 5-14-99?

000090

Records Officer Use Only

Revocation Release Date

2-22-2000

Controlling Discharge Date

2-12-2002

Discharge Review Date

2-22-2001

I. PRELIMINARY INFORMATION

A. HEARING TYPE

- ☒ REVOCATION ☐ REVOCATION EXTENSION
☐ PREREVOCATION

B. BASIS FOR CHARGES

- ☒ PAROLE VIOLATION/MISCONDUCT
REPORT DATED _____
☐ CDC RULES VIOLATION
REPORT DATED _____
☐ OTHER
DATED _____

C. ADMISSIONS/DENIALS

- ☒ SCREENING OFFER ☐ FACE TO FACE
SCREENING
☐ OPTIONAL ☐ UNCONDITIONAL
☐ PAROLEE WAIVED RIGHT
TO CONTEST CHARGES (Date) _____
AND DID NOT ADMIT GUILT.

D. LEGAL DATA

ARREST DATE _____ HOLD DATE _____

II. DECISION

A. ☒ HOLD STATUS ☐ Place ☒ Retain ☐ Remove

B. ☐ CONTINUE ON PAROLE

C. ☐ SCHEDULE FOR REVOCATION PROCEEDINGS

D. ☐ SCHEDULE FOR REVOCATION EXTENSION
PROCEEDINGS

E. ☐ MISCELLANEOUS ACTION:

F. ☒ PAROLE REVOKED-RETURN TO CUSTODY ORDERED

☐ REVOCATION PERIOD EXTENDED

Months _____ Days _____

TEN (10)

G. SPECIAL CONDITIONS OF PAROLE

☒ REAFFIRMED ☐ ADDED
Reasons for adding: _____

H. ☐ INSTRUCTIONS TO CDC OR PCCSD STAFF

3057d-1 Credits

☐ Eligible ☒ Ineligible:

Reason(s) for Decision of Ineligibility:

☒ Commitment offense 220PC

☐ Parole Violation

Commissioner/Deputy Commissioner Signature

James E. Powell

Date 5-11-99

PAROLEE ACKNOWLEDGEMENT

- ☒ 1. I accept the above return to custody order (Section F) and unconditionally waive
my rights to contest the charges against me or have a hearing.
☐ 2. I reject the above order (Section F) and request a revocation hearing.
☐ 3. I reject the above order and optionally waive my right to a hearing.

Parolee Signature

Date 5/14/99

Witness Signature

Date 5/14/99

NAME

Bowell, James

CDC NUMBER

104180

INST/REGION

HEARING DATE

BPT 1104 (Rev. 7/88)

white-C file pink-parolee
canary-BPT goldenrod-agent of record

Page 1 of 1 Pages

PERMANENT ADDENDUM

000092

old CDO: 10-31-2001

R. C. WEST C.I.M.

MAXIMUM 2-22-2000

MINIMUM (1/3) 2-22-2000

MINIMUM (1/2) 2-22-2000

TERM ACCEPTED 10 mos (straight)

LEVEL 4

POINTS 72

RX. CEN , LAC

MAP ADD: 2-12-2002

D. SALADINO CC-I

DATE: 8-9-99

COMMENTS: PAL: 104 days

The existence of any fact which would bring a person under this paragraph shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(h) Violation; parole revocation. Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the Board of Prison Terms, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked.

(i) Confidential records. The statements, photographs, and fingerprints herein required shall not be open to inspection by the public or by any person other than a regularly employed peace or other law enforcement officer.

(j) Temporary release; notice to local law enforcement agency. In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including fire fighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision does not apply to any person temporarily released under guard from the institution where he or she is confined.

(k) Mentally disordered sex offender defined. As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) Notice of reduction or registration period. Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (f) if the person did register within 30 days. (Added by Stats.1985, c. 1474, § 2. Amended by Stats.1986, c. 1299, § 7; Stats.1987, c. 753, § 3; Stats.1987, c. 1418, § 3.1; Stats.1989, c. 1316, § 2; Stats.1989, c. 1402, § 5; Stats.1989, c. 1407, § 4.)

Former § 290 was repealed by its own terms on Jan. 1, 1988.

Under the provisions of § 5 of Stats.1989, c. 1407, the 1989 amendments of this section by c. 1316, c. 1402 and c. 1407 were given effect and incorporated in the form set forth in § 4 of c. 1407.

Cross References

Petition to seal Court records by person arrested for misdemeanor while a minor, see § 851.7.

Validity. Provision of subd. (a) was held unconstitutional in *In re Reed* (1983) 191 Cal.Rptr. 658, 663 P.2d 216, 33 C.3d 914.

§ 290.1. Registration of sex offenders; felony sex offenses; probation

Notwithstanding Section 1203.4 and except as provided in Section 290.5, a person convicted of a felony sex offense shall not be relieved from the duty to register under Section 290. (Added by Stats.1981, c. 105, § 1.)

§ 290.2. Sex offenders and persons convicted of murder or assault or battery; blood specimens and saliva samples on discharge, parole, probation or release; analysis; filing; release of information; violations; penalty

(a) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, or who is convicted of murder in violation of Section 190 or 190.05, or who is convicted of a felony offense of assault or battery in violation of Section 217.1; 220; 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3; or 245.5, and who is discharged or paroled from a state prison, county jail, or any institution under the jurisdiction of the Youth Authority where he or she was confined, or is granted probation, or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under the provisions of Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, the granting of probation or release, be required to provide two specimens of blood and a saliva sample to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing. The county shall make every effort to utilize one location for testing a person under this section.

The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist, or clinical laboratory bioanalyst may withdraw the blood specimens for purposes of this section.

(b) The Department of Justice shall provide all blood specimen vials, mailing tubes, labels, and instructions for the collection of the blood specimens and saliva samples. The specimens and samples shall thereafter be forwarded to the Department of Justice for analysis of deoxyribonucleic acid (DNA) and other genetic typing analysis at the department's DNA laboratory.

The Department of Justice shall perform DNA analysis and other genetic typing analysis only for law enforcement purposes.

(c) The Department of Justice DNA laboratory shall perform genetic typing only for those markers having value for law enforcement purposes.

For purposes of this subdivision, "marker" shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.

(c) Subject to appropriation of funds, the department is authorized to enter into contracts, or amend existing contracts, for community residential treatment services for offenders and minor children in an offender's custody in order to carry out the goals stated in paragraph (1) of subdivision (a).

(d)(1) It is the intent of the Legislature that the programs demonstrate the cost-effectiveness of providing the enhanced services described in subdivision (b), based upon an annual evaluation of a representative sample of female parolees, in order to determine the impact of these services upon the criminal recidivism, employment, and welfare dependency of the offenders and their families.

(2) The department, with the assistance of an independent consultant with expertise in criminal justice programs, shall complete a report evaluating the cost-effectiveness of the pilot programs in regard to the effect of the programs (A) on the recidivism of participating female offenders compared with a comparable nonparticipating group of female offenders and (B) on the employment of female offenders and the welfare dependency of a female offender's family. The report shall be provided to the Governor and the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees of both houses of the Legislature by January 1, 2002. (Added by Stats.1998, c. 500 (S.B.491), § 2, eff. Sept. 15, 1998.)

§ 3055. Repealed by Stats.1997, c. 165, § 57, operative July 1, 1977

§ 3056. Legal custody; reimprisonment

Prisoners on parole shall remain under the legal custody of the department and shall be subject at any time to be taken back within the inclosure of the prison. (Formerly § 3057, added by Stats.1941, c. 106, p. 1113, § 15. Renumbered § 3056 and amended by Stats.1941, c. 893, p. 2471, § 8. Amended by Stats.1957, c. 2256, p. 3935, § 64.)

Cross References

Camps for parolees, see Penal Code § 2792.
Community correctional centers, placement of parolees, see Penal Code § 6253.
Leaving state without permission by parolee, see Penal Code § 3059.
Paroling prisoners to camps, see Penal Code § 3040.
Suspension or revocation of paroles, see Penal Code § 3060 et seq.
Uniform act for out-of-state parolee supervision, see Penal Code § 11175 et seq.

§ 3057. Confinement upon revocation of parole; parole period; extension or reduction of confinement

(a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the pa-

role authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d)(1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of Section 192, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history. (Added by Stats.1976, c. 1139, p. 5153, § 282.5, operative July 1, 1977. Amended by Stats.1977, c. 165, p. 669, § 58, eff. June 29, 1977, operative July 1, 1977; Stats.1978, c. 582, p. 2004, § 4; Stats.1983, c. 757, § 2; Stats.1984, c. 805, § 3; Stats.1987, c. 1435, § 1.2, eff. Sept. 30, 1987; Stats.1988, c. 1608, § 4; Stats.1992, c. 695 (S.B.97), § 15, eff. Sept. 15, 1992; Stats.1993, c. 610 (A.B.6), § 24.5, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 27, eff. Oct. 1, 1993; Stats.1994, c. 1188 (S.B.59), § 19; Stats.1998, c. 936 (A.B.105), § 18, eff. Sept. 28, 1998.)

Cross References

Initial sentencing, application of this section, see Penal Code § 1170.

§ 3058. Communications intended to deprive parolee from employment or to extort; threats; offense

Any person who knowingly and wilfully communicates to another, either orally or in writing, any statement concerning any person then or theretofore convicted of a felony, and then on parole, and which communication is made with the purpose and intent to deprive said person so convicted of employment, or to prevent him from procuring the same, or with the purpose and intent to extort from him any money or article of

1 degree murder is no later
us parole. Pen C §3001(b).
0 days after completion of
fter a conviction of second
individual paroled after a
so 15 Cal Code Regs §2535.
ate is initiated by a request
1 requires a finding of good
5. The BPH's decision must
nates by operation of law.
arr (1995) 38 CA4th 209.

during the BPH's review of
er the BPH action, the agent
DCR Form 1632 (Discharge
f the BPH decides to retain
or that decision and CDCR
he CDCR must also notify
Ruzicka (1991) 230 CA3d
y the parolee of review was
: appeal regulations (former

re used to determine whether
I will note applicable reasons
the form ordering retention
and the commitment offense
fety.

ation and Life leted]

moved to §47.1A.

1 year of imprisonment for
duct in prison while serving
additional months of custody
days of custody assessed for
unishable as a misdemeanor
on. Pen C §3057(c). Currently
for violations amounting to

t count against the maximum

period of parole. Instead it extends the parole period. However, if the prescribed period for a prisoner is 3 years, he or she may not be retained on parole supervision or in custody on a parole violation for more than 4 years. If the prisoner was subject to a maximum 5 years of parole, he or she may not be retained for more than 7 years. Pen C §3000(b)(5). If the prisoner was subject to a maximum of 10 years of parole, he or she may not be retained for more than 15 years. Pen C §3000(b)(5)(C). A parolee facing a revocation hearing may have his or her parole period extended in order to encompass the hearing date. 15 Cal Code Regs §2637(b)(12).

Parolees may earn credit under Pen C §2933 for each day in prison during a parole revocation period if they qualify under Pen C §3057(d), unless the revocation is for psychiatric treatment under 15 Cal Code Regs §2646(d) or unless they are denied credit because of the circumstances or gravity of the parole violation or because of prior criminal history. See Pen C §3057(d)(2)(E).

Parolees on parole for life (those convicted of first or second degree murder) who have their parole revoked may be returned to the status of life prisoners with annual parole consideration hearings. See Pen C §3000.1(d).

B. Grounds for Parole Revocation

47.8

1. In General

The following are examples of good cause to revoke parole:

- Violating any general or special condition of parole (a standard condition of parole enjoins the parolee not to engage in criminal conduct) (15 Cal Code Regs §§2512(a), 2513; *In re Monzo* (1973) 33 CA3d 144, 146, 108 CR 795);
- Absconding from parole (15 Cal Code Regs §2616(a)(5); see also 15 Cal Code Regs §§2000(b)(75), 2637(b)(1), 2731(a), 2732(a));
- Failing to sign a parole agreement containing lawfully imposed conditions of parole or a statement regarding registration under the Sex Offender Registration Act (Pen C §§290-290.023), when required (Pen C §3060.5);
- Failing to provide blood or saliva samples, if required (Pen C §3060.5);
- Failing to be tested or examined for tuberculosis when that medical procedure has been required (Pen C §3053(b)); and
- Failing to pay court-ordered restitution imposed as a condition of parole (Pen C §3000(b)(6)).

For limitations on revocation of parole for parolees who have committed nonviolent drug possession offenses, or drug-related parole violations, see §47.30.

47.9

2. For Psychiatric Treatment

Under 15 Cal Code Regs §2646(d), parole may be revoked for psychiatric treatment when all the following conditions are met:

- The hearing panel finds that the parolee has engaged in conduct indicating that his or her mental condition has deteriorated to such an extent that he or she is likely

under Pen C §1168 for a crime other than first or second degree murder is no later than 30 days after the completion of 3 years of continuous parole. Pen C §3001(b). The presumptive parole discharge date is no later than 30 days after completion of 5 years of continuous parole for an individual paroled after a conviction of second degree murder, and 7 years of continuous parole for an individual paroled after a conviction of first degree murder. Pen C §3000.1(b). See also 15 Cal Code Regs §2535.

Retention on parole after the presumptive discharge date is initiated by a request from the Division of Adult Parole Operations (DAPO) and requires a finding of good cause by the BPH. Pen C §3001; 15 Cal Code Regs §2535. The BPH's decision must be made within the 30-day period; otherwise, parole terminates by operation of law and the BPH loses jurisdiction over the parolee. *In re Carr* (1995) 38 CA4th 209, 213, 45 CR2d 34.

A parolee has no right to a hearing or to be present during the BPH's review of DAPO's request for retention. However, within 10 days after the BPH action, the agent of record (AOR) must provide the parolee with a copy of CDCR Form 1632 (Discharge Review Report) and BPH Form 1130 (BPH Decision). If the BPH decides to retain the parolee, the notification must include the reasons for that decision and CDCR Form 602 (Inmate/Parolee Appeal). DOM §81080.1.2. The CDCR must also notify the parolee that he or she has been retained. See *In re Ruzicka* (1991) 230 CA3d 595, 281 CR 435. The remedy for CDCR failure to notify the parolee of review was an administrative appeal of the decision; however, those appeal regulations (former 15 Cal Code Regs §2535(c)) have been repealed.

- **Note:** Factors listed in 15 Cal Code Regs §2535(d)(1)-(5) are used to determine whether there is good cause to retain on parole. Generally, the BPH will note applicable reasons under Title 15, without further comment, on the back of the form ordering retention. Retention is usually based on DAPO's recommendation and the commitment offense or offenses, with great consideration given to public safety.

§47.6

F. Distinction Between Parole Revocation and Life Parole Consideration Hearings [Deleted]

Material previously covered in this section has been moved to §47.1A.

IV. REVOCATION OF PAROLE

§47.7

A. Consequences of Parole Revocation

Revocation can result in the parolee's receiving up to 1 year of imprisonment for each return to custody. Pen C §3057(a). Acts of misconduct in prison while serving a revocation term may result in up to a total of 12 additional months of custody (called a revocation extension), with maximums of 180 days of custody assessed for each act punishable as a felony, 90 days for each act punishable as a misdemeanor, and 30 days for each act amounting to a serious rule violation. Pen C §3057(c). Currently the BPH initiates revocation extension proceedings only for violations amounting to misdemeanor or felony crimes.

Time spent in custody on a parole violation does not count against the maximum

CRIMINAL LAW & PROCEDURE

Section 1385 of the Penal Code does not authorize a trial court to dismiss a parole revocation petition in the interest of justice.

Cite as 2019 DJDAR 6151

THE PEOPLE,
Plaintiff and Respondent,
v.
BARRY WILLIAM WILEY,
Defendant and Appellant.

No. A154248
(City & County of San Francisco
Super. Ct. No. CT18002539)
California Courts of Appeal
First Appellate District
Division Three
Filed June 28, 2019

Trial Judge: Honorable Joseph M. Quinn

Counsel

Randall Conner, by appointment of the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Phillip J. Lindsay, Senior Assistant Attorney General, Sara J. Romano, Supervising Deputy Attorney General, Michael G. Lagrama, Deputy Attorney General, for Plaintiff and Respondent.

Does Penal Code section 1385¹ authorize a trial court to dismiss a parole revocation petition "in furtherance of justice"? No. The authority to dismiss conferred by section 1385, subdivision (a) is addressed to the criminal charges or allegations in the indictment or information, so we reject defendant Barry Wiley's assertion that the trial court abused its discretion when it declined to dismiss his parole violation petition. We therefore affirm the order revoking Wiley's parole and remanding him to the California Department of Corrections and Rehabilitation (CDCR).

BACKGROUND

In 1991 Wiley was convicted of offenses including first degree murder, second degree robbery, and kidnapping. He was sentenced to 26 years to life in prison.

On March 9, 2017, Wiley was released on parole. Between August and November 2017 he violated his parole conditions and the rules of Geo Care Parolee Services Center (Geo Care), his transitional housing and sober living environment program, by drinking alcohol on four occasions. He also failed to register as a sex offender as required under section 290.

On February 11, 2018, Wiley violated parole by returning to Geo Care after his midnight curfew. He had previously been referred to multiple programs

for substance abuse and sex-offender treatment, medical and mental health care, and other services, but failed to make use of them. Wiley's parole agent considered intermediate sanctions for the curfew violation such as additional referrals to outpatient or residential treatment facilities but concluded such measures would be insufficient in light of Wiley's poor performance on parole. According to the parole violation report, Wiley's behavior was "destructive to maintaining his sobriety. His less than stellar compliance while on parole supervision has exhausted the multiple service providers that have attempted to provide him the multidisciplinary support, guidance and direction to address his dual diagnosis, [so] it appears that a referral to the Court is appropriate at this time." Wiley's failures to follow Geo Care rules also resulted in his termination from the program.

The Division of Adult Parole Operations filed a parole revocation petition based on three grounds: (1) the curfew violation; (2) Wiley's failure to remain in a transitional housing program and sober living environment for at least six months; and (3) his failure to obey his parole agent's directive to stay out of Golden Gate Park.

After a contested evidentiary hearing the court found that Wiley violated parole by returning to Geo Care after curfew. It found the remaining two allegations were unsubstantiated.

Wiley argued reincarceration was an excessive sanction for the curfew violation and urged the court to dismiss the parole revocation petition in the interest of justice pursuant to section 1385. The court said it did not disagree as a factual matter, but that it lacked the legal authority to dismiss the petition. It explained: "my understanding of Penal Code section 3000.08(h) and the provisions around that and realignment statutes overall is what I said is that—so as to other petitions to revoke parole, the Court has much more authority. And as to lifers, the legislature gave the authority, once there's any violation, essentially, and a petition's been filed and a finding—well, and a petition's been filed and the evidence supports a finding of a violation, that I have to find a violation and return the parolee to CDCR and the jurisdiction of BPH for a determination of how to respond to that violation. Is that what I want to do? No. And, you know, that's on the record. But it's what I feel like I have to do."

The court revoked Wiley's parole and remanded him to the CDCR's custody. This appeal is timely.

DISCUSSION

For most parolees, the court may modify or revoke parole upon finding a violation if the interests of justice so require. (§§ 1203.2, 300.08, subd. (f).) In doing so, the court may order the parolee to serve up to 180 days in jail (§ 3000.08, subds. (f), (g).) But when a parolee subject to supervision under section 3000.1 (for murder offenses) or section 3000, subdivision (b)(4) (for certain sex offenses) has violated parole, he or she "shall be remanded to the custody of the [CDCR] and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration." (§ 3000.08, subd. (h).)

Section 1385, subdivision (a) provides: "The judge or magistrate may, either of his or

her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed.” Wiley contends this provision authorized the trial court to dismiss the parole revocation petition, and, therefore, that the court’s failure to recognize its power to do so requires reversal and remand for an informed exercise of discretion. The Attorney General asserts parole revocation proceedings are not “actions” within the meaning of section 1385, and therefore that the order should be affirmed. The issue is one of statutory construction subject to independent review. (*People v. VonWahlde* (2016) 3 Cal.App.5th 1187, 1196 (*VonWahlde*).)

VonWahlde addressed a closely related issue: whether section 1385 authorizes the trial court to terminate a defendant’s parole term when sentencing him in another case. The appellate court concluded it does not. It explained: “Section 1385 permits a court, ‘in furtherance of justice, [to] order an action to be dismissed.’ [Citation.] Although the statute literally authorizes a court to dismiss only an entire criminal action, [the California Supreme Court has] held it also permits courts to dismiss, or ‘strike,’ factual allegations relevant to sentencing, such as those that expose the defendant to an increased sentence. [Citations.] However, the court’s power under section 1385 is not unlimited; it reaches only the ‘individual charges and allegations in a criminal action.’ [Citation.] Thus, a court may not strike facts that need not be charged or alleged such as the sentencing factors that guide the court’s decisions whether to grant probation [citation] or to select the upper, middle or lower term for an offense.” (*VonWahlde*, *supra*, 3 Cal.App.5th at p. 1197.) “The only action that may be dismissed under . . . section 1385, subdivision (a), is a criminal action or a part thereof.” [Citation.] [Citation.] A period of parole is not a criminal action or a part thereof as contemplated by section 1385. Rather, it is ‘a form of punishment accruing directly from the underlying conviction.’” (*Ibid.*, quoting *In re Varnell* (2003) 30 Cal.4th 1132, 1137 (*Varnell*).)

The *VonWahlde* court expressed no opinion concerning whether a court may dismiss a parole revocation proceeding, as opposed to striking a term of parole, under section 1385. (*VonWahlde*, *supra*, 3 Cal.App.5th at p. 1198, fn. 6.) Faced squarely with that question, we conclude section 1385 does not apply. Simply put, a parole revocation proceeding is not an “action” or a part thereof as contemplated by section 1385.” (*Id.* at p. 1197.) A criminal “action” is defined as “[t]he proceeding by which a party charged with a public offense is accused and brought to trial and punishment.” (§ 683.) Parole revocation petitions and hearings do not fit within that definition, as they occur *after* the proceeding by which the defendant is brought to trial and punished. “[T]he revocation of parole is not part of a criminal prosecution. . . . Parole arises after the end of the criminal prosecution, including imposition of sentence.” (*Morrissey v. Brewer* (1972) 408 U.S. 471, 480, internal citation omitted; see *Williams v. Superior Court* (2014) 230 Cal.App.4th 636, 647, disapproved on another point in *People v. DeLeon* (2017) 3 Cal.5th 640, 653 (*Williams*).) Nor can such proceedings plausibly be classified as “part” of an action, which for purposes of section 1385 means “charges or allegations in an indictment or information.” (*People*

u Hernandez (2000) 22 Cal.4th 512, 523 [holding sanity proceedings do not constitute an “action” or part thereof for purposes of section 1385, subdivision (a)]; *Varnell*, *supra*, 30 Cal.4th at p. 1137 [sentencing factors not subject to section 1385 dismissal because they “are not included as offenses or allegations in an accusatory pleading”]; *VonWahlde*, *supra*, 3 Cal.App.5th at p. 1197.) The conclusion from these authorities that probation revocation petitions are not actions or parts thereof for purposes of section 1385 is inescapable.

Wiley disagrees. He relies on *People v. Chavez* (2018) 4 Cal.5th 771, 784 (*Chavez*) to argue a parole revocation proceeding is part of a criminal action because “the procedure permits resumption of the defendant’s ‘punishment.’” But authorities such as *Varnell* (sentencing factors) and *VonWahlde* (parole) show that the potential to affect punishment does not convert a proceeding into an “action” for purposes of section 1385. *Chavez* says nothing different. There, rather than construing the term “action” in the provision, the Court addressed *when* an action may be dismissed. Specifically, *Chavez* asks whether section 1385 authorizes trial courts to dismiss a criminal action after the defendant has successfully completed probation. (4 Cal.5th at pp. 779, 780.) Under the established principle that section 1385 does not authorize dismissals after a judgment has become final, the Court reasoned that where the trial court suspends imposition or execution of sentence and grants probation there is no final judgment, so it may dismiss the criminal action throughout (although not after) the probationary period. (*Id.* at pp. 782-787.) Nothing in any of this suggests a parole revocation proceeding is an “action” subject to dismissal under section 1385.²

We understand the trial court’s concern about the result dictated by the statutory scheme. Nonetheless, the Legislature’s directive is clear, and we are not at liberty to alter it. “Courts must take a statute as they find it, and if its operation results in inequality or hardship in some cases, the remedy therefor lies with the legislative authority.” (*Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689, 1697.)

DISPOSITION

The order revoking parole is affirmed.

Siggins, P.J.

WE CONCUR:
Fujisaki, J.
Wiseman, J.*

¹ Further statutory citations are to the Penal Code.

² Because we conclude section 1385 does not encompass parole revocation petitions, we do not address Wiley’s further contention that no other statutes have eliminated the power to dismiss them.

* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

----- End Footnotes-----

II

[*LEdHR4]** [4]^{LEdHR(4)} ~~HN3~~ The heart of the *Ex Post Facto* Clause, U.S. Const., Art. I, § 9, bars application of a law "that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed" *Calder v. Bull*, 3 Dall. 386, 390 (1798) (emphasis deleted). To prevail on this sort of *ex post facto* claim, Johnson must show both that the law he challenges operates retroactively (that it applies to conduct completed before its enactment) and that it raises the penalty from whatever the law provided when he acted. See *California Dept. of Corrections v. Morales*, 514 U.S. 499, 506-507, n. 3, 131 L. Ed. 2d 588, 115 S. Ct. 1597 (1995).

A

The Sixth Circuit, as mentioned earlier, disposed of the *ex post facto* challenge by applying its earlier cases holding the application of § 3583(h) not retroactive at all: revocation **[*700]** of supervised release "imposes punishment for defendants' new offenses for violating the conditions of their supervised release." *United States v. Page*, 131 F.3d 1173, 1176 (1997). On this theory, that is, if the violation of the conditions of supervised release occurred after the enactment of § 3583(h), as Johnson's did, the new law could be given effect without applying it to events before its enactment.

[*LEdHR5]** [5]^{LEdHR(5)} While this understanding of revocation of supervised release has some intuitive appeal, the Government **[***736]** disavows it, and wisely so in view of the serious constitutional questions that would be raised by construing revocation and reimprisonment as punishment for the violation of the conditions of supervised release. Although such violations often lead to reimprisonment, the violative conduct need not be criminal and need only be found by a judge under a preponderance of the evidence standard, not by a jury beyond a reasonable doubt. See 18 U.S.C. § 3583(e)(3) (1988 ed., Supp. V). Where the acts of violation are criminal in their own right, they may be the basis for separate prosecution, which would raise an issue of double jeopardy if the revocation of supervised release were also punishment for the same offense. Treating postrevocation sanctions as part of the penalty for the initial offense, however (as most courts have done), avoids these difficulties. See, e.g., *United States v. Wyatt*, 102 F.3d 241, 244-245 **[**1801]** (CA7 1996) (rejecting double jeopardy challenge on ground that sanctions for violating the conditions of supervised release are part of the original sentence); *United States v. Beals*, 87 F.3d 854, 859-860 (CA7 1996) (noting that punishment for noncriminal violations must be justified by reference to original crimes), overruled on other grounds, *United States v. Withers*, 128 F.3d 1167 (1997); *United States v. Meeks*, 25 F.3d 1117, 1123 (CA2 1994) (noting absence of constitutional procedural protections in revocation proceedings). Cf. *Gagnon v. Scarpelli*, 411 U.S. 778, 782, 36 L. Ed. 2d 656, 93 S. Ct. 1756 (1973) ("Probation revocation . . . is not a stage of a criminal **[*701]** prosecution"). For that matter, such treatment is all but entailed by our summary affirmance of *Greenfield v. Scafati*, 277 F. Supp. 644 (Mass. 1967) (three-judge court), summarily aff'd, 390 U.S. 713, 20 L. Ed. 2d 250, 88 S. Ct. 1409 (1968), in which a three-judge panel forbade on *ex post facto* grounds the application of a Massachusetts statute imposing sanctions for violation of parole to a prisoner originally sentenced before its enactment. We therefore attribute postrevocation penalties to the original conviction.

B

[*LEdHR2B]** [2B]^{LEdHR(2B)} **[***LEdHR6]** [6]^{LEdHR(6)} Since postrevocation penalties relate to the original offense, to sentence Johnson to a further term of supervised

000043

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FILED

DEC 15 1999

JOHN A. CLARKE

BY [Signature] Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

01 JAMES BOWELL (11/5/1955),
aka PHILLIP RIZZIO

Defendant(s).

CASE NO. BA191442

INFORMATION

Arraignment Hearing
Date: 12/15/1999
Department: CEN 124

**INFORMATION
SUMMARY**

Ct. No.	Charge	Charge Range	Defendant	Special Allegation	Alleg. Effect
1	PC 290(g)(2)	16-2-3	BOWELL, JAMES	PC 667.5(b) PC 1170.12(a)-(d)	+1 yr. per prior MSP Check Code

The District Attorney of the County of Los Angeles, by this Information alleges that:

COUNT 1

On or about January 12, 1999, in the County of Los Angeles, the crime of FAILURE TO REGISTER, in violation of PENAL CODE SECTION 290(g)(2), a Felony, was committed by JAMES BOWELL, who being a person required to register under Section 290 based on a felony conviction, did willfully violate a requirement of Section 290.

It is further alleged as to count(s) 1 pursuant to Penal Code section 667.5(b) that the defendant(s), JAMES BOWELL, has suffered the following prior conviction(s):

A P P E N D I X "B"

000044

<u>Case No.</u>	<u>Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
A325882	PC211(3 COUNTS)	02/28/1977	LOS ANGELES	CA	SUPERIOR
A133178	PC496	03/08/1977	LOS ANGELES	CA	SUPERIOR
19872	PC4530B	01/19/1979	KERN COUNTY	CA	SUPERIOR
PA003248	664/PC207&PC220	07/31/1991	LOS ANGELES	CA	SUPERIOR

and that a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant(s) did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.

It is further alleged pursuant to Penal Code sections 1170.12(a) through (d) and 667(b) through (i) as to count(s) 1 that said defendant(s), JAMES BOWELL, has suffered the following prior convictions of a serious or violent felony or juvenile adjudication:

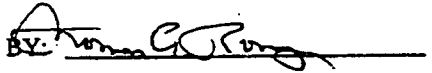
<u>Case No.</u>	<u>Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
A325882	PC211(3 COUNTS)	02/28/1977	LOS ANGELES	CA	SUPERIOR
PA003248	664/PC207&PC220	07/31/1991	LOS ANGELES	CA	SUPERIOR

* * * * *

THIS INFORMATION CONSISTS OF 1 COUNT(S).

000045

GIL GARCETTI
DISTRICT ATTORNEY
County of Los Angeles,
State of California

BY: 
THOMAS A. ROMEYN
DEPUTY DISTRICT ATTORNEY

Filed in Superior Court,
County of Los Angeles

/MN

DATED: _____

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

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FILED
JUL 22 1976

Don J. Brown
BY DON J. BROWN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

---oOo---

DEPARTMENT NO. 129

HON. KATHLEEN PARKER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

NO. A-325882

JAMES EDWARD BOWELL,)

PLEA

Defendant.)

LOS ANGELES, CALIFORNIA; TUESDAY, JUNE 29, 1976; 2:07 P.M.

---oOo---

On the above date, the defendant being present in court represented by counsel, ABBOTT C. BERNAY, Esq. and FREDERICK M. GOLDBERG, Esq.; the People being represented by JOHN WATSON, Deputy District Attorney of Los Angeles County, the following proceedings were had:

(LEWIS S. HOLTON, -Official Reporter, CSR 1212.)

---oOo---

THE COURT: The People against James Edward Bowell.

1 MR. B. MAY: In the Bowell matter, Your Honor, may I
2 state to the court for the record that Mr. Frederick Goldberg,
3 one of my partners, is also associated in this case on behalf
4 of this defendant, and is standing now with the defendant and
5 myself before the court.

6 THE COURT: I understand there is to be a plea in this
7 matter pursuant to a plea bargain.

8 MR. BERNAY: Yes, there is, Your Honor.

9 It has been discussed, and the defendant has
10 indicated his willingness to take the plea.

11 THE COURT: You may proceed.

12 MR. WATSON: Thank you, Your Honor.

13 James Edward Bowell, is that your true name, sir?

14 THE DEFENDANT: Yes, sir.

15 MR. WATSON: Mr. Bowell, you are charged in 12 counts in
16 Information A-325882 with various felonies.

17 Your attorneys have indicated you wish to plead
18 guilty to four of those felonies in return for a case settlement
19 or a plea bargain.

20 Is that what you want to do?

21 THE DEFENDANT: Yes, sir.

22 MR. WATSON: Mr. Bowell, in order to do that, you have
23 to give up certain constitutional rights that I will explain to
24 you.

25 You have the right to a trial, either a trial by
26 jury, where 12 people are selected from the community to hear
27 all the evidence for you and against you, and they decide if
28 you are innocent or guilty. Before they could find you guilty,

1 12 of them would have to agree that you have been proven guilty
2 beyond a reasonable doubt.

3 You are also entitled to a court trial, where the
4 judge sitting alone decides the issue of your innocence of guilt.

5 If you plead guilty, you will be giving up your
6 right to any kind of trial.

7 Do you understand that, and is that what you want
8 to do, Mr. Bowell?

9 THE DEFENDANT: Yes..

10 MR. WATSON: You also have the right to remain silent,
11 and that means to force the people to prove the charges against
12 you.

13 You can avoid incriminating yourself. If you
14 plead guilty, Mr. Bowell, you will be giving up that right, you
15 will be incriminating yourself by admitting the truth of four
16 of these charges.

17 Do you understand that, and do you wish to give
18 up that right?

19 THE DEFENDANT: Yes.

20 MR. WATSON: Mr. Bowell, you also have the right to
21 present a defense, and that means to call all witnesses to the
22 witness stand, use the subpoena power of the court to bring
23 people in to tell your side of the story.

24 If you plead guilty, Mr. Bowell, there isn't going
25 to be a trial, so you will be giving up that right, you wouldn't
26 have the opportunity to call witnesses.

27 Do you understand that, and do you give it up?

28 THE DEFENDANT: Yes.

1 MR. WATSON: You also have the right to confront and
2 cross-examine the witnesses against you.

3 That means to have them called up to the witness
4 stand, where you could see them and you could hear them, and
5 your attorney could ask them questions.

6 If you plead guilty, there is not going to be a
7 trial, no witnesses will be called, and you will be giving up
8 your right to confront and cross-examine them.

9 Do you understand that, and is that what you want
10 to do?

11 THE DEFENDANT: Yes.

12 MR. WATSON: Now, this is a plea bargain, Mr. Bowell,
13 that your attorneys have indicated you wish to enter into.

14 First, on your part, that you would plead guilty
15 to Count I of the Information, which charges a robbery in the
16 first degree, that is a felony in this state, and that you would
17 admit two of the allegations that are contained in Count I of
18 the Information in the last paragraph, one of them being an
19 allegation that you used a firearm during the offense, within the
20 meaning of Penal Code Section 12022.5 and, further, that the
21 offense comes within the provisions of 1203.06 (a)(1) of the
22 Penal Code, and I will explain that to you a little later.

23 Further, that you plead guilty to Count III of
24 the Information, which also alleges a first degree robbery, and
25 that is a felony; and to Count VII of the Information, that is
26 a first degree robbery, also a felony; and to Count X of the
27 Information, kidnapping, and that is a felony.

28 In return for the plea on those latter three counts,

1 all the allegations would be stricken.

2 Further, Mr. Bowell, that to maintain this plea
3 bargain, you would have to cooperate completely with the
4 authorities, the district attorney's office through myself, and
5 the police department, and that means to give complete, truthful
6 statements to the district attorney and the police department,
7 to cooperate fully in the recovery or locating any stolen
8 property you know about now, and to cooperate in clearing up
9 any unsolved crimes that you know about now;

10 Further, and perhaps most importantly, to testify
11 in trials where the district attorney's office requests you to,
12 especially the trials against Robert Rubin and Raymond Knaeble,
13 and there might be trials against other people that we don't
14 know about now.

15 In return for this the district attorney's office
16 represented by myself, would move to dismiss the remaining eight
17 counts against you after you had cooperated in the ways that
18 I have just got done describing.

19 Your sentencing hearing, what would happen to
20 you, would be continued or put back until you had cooperated,
21 and then after you had cooperated, or after these trials, then
22 the sentencing would take place.

23 You will have to give up your right to an
24 immediate sentence for that to happen; you understand that?

25 THE DEFENDANT: Yes.

26 MR. WATSON: Do you give up that right?

27 THE DEFENDANT: Yes.

28 MR. BERNAY: There is a matter of immunity, too, for any

1 other crime he may have committed.

2 MR. WATSON: I have got another page and a half,
3 Mr. Bernay.

4 I have also agreed to represent the People at the
5 probation and sentence, and not to argue for consecutive time
6 in state prison.

7 If your attorney asks for concurrent time, I
8 would not ask for consecutive time for these four crimes if
9 you have been 100 percent cooperative and truthful with us in
10 the meantime.

11 Further, you would not be prosecutive for any
12 of these other crimes that you reveal to us that we don't know
13 about, that didn't involve harm to the victim, physical harm
14 to the victim. If they involve physical harm to the victim,
15 you wouldn't get immunity for them, but like a burglary in a
16 house where no one is present, crimes such as those, you would
17 get immunity.

18 Do you understand what I have said, Mr. Bowell?

19 THE DEFENDANT: Yes.

20 MR. WATSON: Is that the plea bargain that you have
21 agreed to join in?

22 THE DEFENDANT: Yes.

23 MR. WATSON: Have you had an opportunity to talk this
24 over with your attorney Mr. Bernay?

25 THE DEFENDANT: Yes.

26 MR. WATSON: You have talked to him quite a bit in fact,
27 have you not?

28 THE DEFENDANT: Yes.

1 MR. BERNAY: Also Mr. Goldberg today.

2 MR. WATSON: Now, I want to go through these counts
3 briefly, Mr. Bowell.

4 Count I charges you with robbery. That is in
5 violation of Section 211 of the Penal Code, it is a felony, and
6 it charges that in 1976, on February 25th, you used force and
7 fear to take personal property from the person, possession, and
8 immediate presence of Henry and Grace Salvatori in Los Angeles
9 County.

10 Do you understand that, sir?

11 THE DEFENDANT: Yes.

12 MR. WATSON: Okay. Is that what you did?

13 THE DEFENDANT: Yes.

14 MR. WATSON: And this property we are talking about is
15 seven or \$800 in cash, \$250,000 in silver service, and about
16 \$250 in precious stones and jewels.

17 Is that true?

All property was returned.

f.B.

18 THE DEFENDANT: Yes.

19 MR. WATSON: Now, pursuant to that count, Mr. Bowell,
20 there is an allegation that you used a firearm, that you had
21 a gun, and that you displayed it during this crime.

22 Is that true, sir?

23 THE DEFENDANT: Yes.

24 MR. WATSON: Okay. There is a further allegation pursuant
25 to 1203.06 (a)(1), and that provision provides that for certain
26 crimes, and this Count I is one of them, that probation is not
27 to be granted.

28 Do you understand that?

1 THE DEFENDANT: I do now, yes.

2 MR. WATSON: Okay. Count III of the Information alleges
3 a robbery in violation of Section 211 of the Penal Code, a
4 felony, committed in Los Angeles County on February 22nd, 1976,
5 and it says that you took personal property by force and fear
6 from the person, possession, and immediate presence of
7 Bruce A. Thabit.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 MR. WATSON: Do you know who Mr. Thabit is?

11 THE DEFENDANT: Yes.

12 MR. WATSON: He testified at the preliminary hearing,
13 do you recall that?

14 THE DEFENDANT: Yes.

15 MR. WATSON: And he testified losing the chess set and
16 large chess pieces; you recall that?

17 THE DEFENDANT: Yes.

18 MR. WATSON: Did you take those in the manner I just
19 described to you, sir?

20 THE DEFENDANT: Yes.

21 MR. WATSON: Mr. Bowell, Count VII charges you with
22 violation of Section 211, Penal Code, robbery, a felony, and
23 it alleges that you committed it on February 23rd, 1976 in
24 Los Angeles County, taking by force and fear personal property
25 from the person, possession, and immediate presence of
26 Mort Olshan, Sylvia Olshan, and Maria Adkins.

27 Do you understand that, sir?

28 THE DEFENDANT: Yes.

1 MR. WATSON: And you saw each of these people testify
2 at the preliminary hearing, did you not?

3 THE DEFENDANT: Yes.

4 MR. WATSON: You heard Mrs. Olshan having a diamond
5 removed from around her neck, and I think one from her hand?

6 THE DEFENDANT: Yes.

7 MR. WATSON: Did you do that, sir, in the manner I have
8 described here?

9 THE DEFENDANT: Yes.

10 MR. WATSON: Mr. Bowell, Count X charges you with
11 kidnapping, in violation of Section 207 of the Penal Code, a
12 felony.

13 It alleges that on March 17th, 1976 in Los Angeles
14 County you willfully, unlawfully, and feloniously, and forcibly
15 took and carried away Frank and Susan Georgianni.

16 Do you understand those allegations, sir?

17 THE DEFENDANT: Yes.

18 MR. WATSON: On that occasion you made them get into
19 a car at gun point, and drove them to various parts of the
20 county, did you not?

21 THE DEFENDANT: Yes.

22 MR. WATSON: All the facts and allegations I have
23 suggested to you in these four counts, and the use of the
24 firearm, and the fact that Count I prohibits probation, are all
25 these things true, do you admit the truth of all these things,
26 sir?

27 THE DEFENDANT: Yes.

28 MR. WATSON: Now, the allegation under 12022.5 provides

1 that a person who is found to have used a firearm during the
2 commission of a robbery receives an additional punishment of
3 a term of five years in state prison. The punishment for each
4 of those robberies, Counts I, III, and VII, they can have a
5 maximum term of five years to life in the state prison, and
6 Count X, the kidnapping, is a term of one to 25 years in the
7 state prison.

8 Do you understand that, sir?

9 THE DEFENDANT: Yes.

10 MR. WATSON: Your possible sentence also could include
11 probation with or without a term in the county jail.

12 If you were put on probation, if you violated
13 probation, you could then be returned to prison, or sent to
14 prison, but it could also include a fine.

15 Do you also understand that?

16 THE DEFENDANT: Yes.

17 MR. WATSON: We have also discussed with the court the
18 possibility of you being sentenced under the Interstate
19 Compact where your state prison time could be done in another
20 state under another name; do you understand that?

21 THE DEFENDANT: Yes.

22 MR. WATSON: As part of the plea bargain, if you request
23 that, then I will ask the judge to sentence you under those
24 sections, and I will do whatever I can to cooperate with the
25 prison authorities in this state to see that you qualify for
26 that program; do you understand that?

27 THE DEFENDANT: Yes.

28 MR. WATSON: That is, if you want it. It will be up to

1 you?

2 MR. GOLDBERG: I think you might add there is the
3 possibility of Youth Authority.

4 MR. WATSON: He is 20 years old at this time, that's
5 true.

6 Do you have any questions you want to ask me
7 at this time, Mr. Bowell?

8 THE DEFENDANT: On this plea bargain, does that mean
9 that's what I am definitely going to have to take, or the
10 sentence is?

11 MR. WATSON: No. The maximum possible sentence, what
12 I described to you, that is to say, five years to life for
13 each of those robberies, an additional five year term for that
14 12022.5 use allegation, that you had a firearm, those are the
15 maximum possible punishments.

16 You could receive theoretically nothing. It's
17 all up to the judge, whether you go to state prison, whether
18 you go to state prison consecutive, whether you to to
19 Youth Authority, you could go to state prison under a special
20 provision called 1168, where the judge could bring you back in
21 six months, or a 1202(b) where, because of your age, you would
22 be eligible for parole in six months, you might not go to
23 prison at all, you might be put on probation, and as a condition
24 of probation you might be required to do some time in the
25 county jail, up to a year, maybe no time at all; you might
26 only be required to pay a fine, and it might be none of these
27 things.

28 In reality, however, Mr. Bowell, these are very

1 serious crimes, so those minor punishments are probably not
2 realistic of what the final punishment will be, it is all up
3 to the judge.

4 Yourself, your attorneys, the probation department,
5 myself, can all make our arguments to the judge, but the
6 judge will decide what your punishment is after reviewing your
7 background, your explanations, the facts of these crimes, et
8 cetera.

9 THE DEFENDANT: Yes.

10 MR. WATSON: Does that answer the question you asked?

11 THE DEFENDANT: Yes. Thank you.

12 MR. WATSON: Would you like to ask me anything else?

13 THE DEFENDANT: No.

14 MR. WATSON: Mr. Bowell, we will also cooperate with you
15 in obtaining keep-away status for you in the county jail if
16 you want it.

17 Do you want that now?

18 THE DEFENDANT: No.

19 MR. WATSON: All right. If you change your mind,
20 communicate that to your attorneys or to the sheriffs, who will
21 communicate that to me, if we can change that, too; you under-
22 stand that?

23 THE DEFENDANT: Yes.

24 MR. WATSON: I want to stress to you, Mr. Bowell, the
25 underlying things that are going to make this work is 100 percent
26 truthful cooperation by you; you understand that?

27 THE DEFENDANT: Yes.

28 MR. WATSON: May I take the plea?

1 THE DEFENDANT: I have one more question, please.

2 THE COURT: Yes.

3 THE DEFENDANT: About the newspapers, how is it going
4 to be written up in the newspapers?

5 THE COURT: Well, I cannot control what is in the
6 newspapers, but I am going to, I believe I have agreed with the
7 attorneys that I am not going to issue a press release here.
8 As far as you pleading guilty to four counts, those are public
9 records, public documents, but what the conditions of that
10 agreement are, the press is not going to find out from me, and
11 will not find out from the police department. I mean we will
12 do our best not to have it in the papers; you understand that?

13 THE DEFENDANT: Yes. Thank you.

14 MR. WATSON: Is there anything else?

15 THE DEFENDANT: No.

16 MR. WATSON: Mr. Bowell, as to Count I of the Information,
17 A-325882, charging you with first degree robbery, a felony, how
18 do you plead, guilty or not guilty? James E. Bowell

19 THE DEFENDANT: Guilty.

20 MR. WATSON: As to the two allegations, Mr. Bowell, first
21 of all that you used a firearm within the meaning of Penal Code
22 Section 12022.5, and secondly, that this crime is not one for
23 which probation can be granted pursuant to 1203.06 (a)(1), do
24 you admit those allegations, sir?

25 THE DEFENDANT: Yes.

26 MR. WATSON: Now, as to Counts III and IV, both charging
27 you with first degree robbery, felonies, and to Count X charging
28 you with kidnapping, 207, how do you plead, sir? Not Guilty.
J.E.B.

1 THE DEFENDANT: Guilty.

2 MR. BERNAY: The defendant wishes to make application
3 for probation at the proper time, and waives time.

4 THE COURT: All right. We will be dark during July.
5 It will take approximately three weeks to get a probation report,
6 and I believe it is the agreement of all parties that, in any
7 event, this probation and sentence hearing would go over until
8 after the conclusion of the trial of the codefendant.

9 MR. BERNAY: That's correct, Your Honor.

10 THE COURT: I believe that is set for sometime in
11 August.

12 MR. WATSON: Late August, Your Honor.

13 THE COURT: That is set for August 30th.

14 MR. BERNAY: I think we perhaps ought to delay the
15 application until the Probation Department can then reflect
16 on the report what has been done by way of cooperation. There's
17 no point filing the application now.

18 THE COURT: I would say this, Mr. Bernay, from a
19 practical stand point, if I put a probation report over until
20 next year sometime, the probation officer wouldn't get around
21 to do it until three weeks, and have it in court whatever date
22 next year I put it. The more time you give the Probation
23 Department, the more time they will use, so they aren't going
24 to at this time write a probation report and get it right into
25 the court.

26 I might, in my minute order, state that the
27 Probation Department is to include the disposition as far as
28 the codefendant is concerned, and the facts as to whether the

1 defendant has or has not cooperated as he has agreed to do.
2 That information can be furnished the Probation Department by
3 the district attorney.

4 MR. BERNAY: Thank you, Your Honor.

5 THE COURT: I think then we should put this matter over
6 until about the 1st of October.

7 MR. BERNAY: That's fine.

8 MR. WATSON: Agreeable.

9 THE COURT: All right. How about October 7th?

10 MR. BERNAY: That is agreeable. Time is waived.

11 THE COURT: Is that agreeable to you, Mr. Bowell?

12 THE DEFENDANT: Yes.

13 THE COURT: You understand in any sentence you may
14 receive in this matter, you will be given credit for the time
15 that you spend in custody from the date of arrest to the day
16 sentence is imposed?

17 THE DEFENDANT: Yes.

18 THE COURT: All right; October 7th.

19 (The proceedings in the hereinbefore-
20 entitled cause were continued to Thursday,
21 October 7, 1976.)

22 ---o0o---

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

---ooo---

DEPARTMENT NO. 129

HON. KATHLEEN PARKER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

JAMES EDWARD BOWELL,)

Defendant.)

NO. A-325882

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss

I, LEWIS S. HOLTON, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing is a true and correct transcript of all of the admonitions given and waivers and admissions taken at the time of the taking of the plea in the above-entitled cause.

Dated this 15th day of July, 1976.

Lewis S. Holton, CSR

Official Reporter
Certificate No. 1212

THE DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS A FULL, TRUE, AND CORRECT COPY
OF THE ORIGINAL ON FILE AND OF RECORD IN
MY OFFICE.

ATTEST JUL 24 1996

JOHN A. CLARKE, CLERK

Executive Officer/Clerk of the Superior
Court of California, County of Los Angeles.

By B. Clark Deputy

B. Clark



1 now be pronounced as to each count, Counts I, III, VII and X,
2 the defendant is sentenced to the state prison for the term
3 prescribed by law.

4 He is remanded to the custody of the sheriff for
5 delivery by the sheriff to the California Institution for Men
6 at Chino.

7 The four counts are to run concurrently.

8 MR. WATSON: Does the court find them to be first degree?

9 THE COURT: They were pled to as first degree, Mr.
10 Watson.

11 MR. WATSON: I always understood that a specific finding
12 had to appear in the minute order at the time of sentencing.

13 THE COURT: I wasn't aware of that. But, they are all
14 robberies in the first degree.

15 The only count to which he admitted the armed and
16 use allegation is Count I. As to that count, the armed finding
17 is stricken.

18 MR. WATSON: Now, am I still instructed to go ahead with
19 investigation into the interstate compact?

20 THE COURT: Do you want to talk to your attorney about
21 that?

22 THE DEFENDANT: Your Honor, could I ask for a few more
23 things.

24 Like the district attorney last time said I was
25 planning to escape from court with guns.

26 I don't know where he got this information. He told
27 this to my family.

28 I feel all that going in front of the prison is

1 going to make me look bad, which is not true at all.

2 And that I jumped bail. He's putting a jacket on
3 me of being hostile in the county jail.

4 MR. BERNAY: The question is:

5 Do you want to do your time here in California or
6 do you want to go under an assumed name, if it can be arranged,
7 to another state, and do your time there? You've got the
8 election.

9 THE DEFENDANT: Could I ask one thing? Does the Nejedly
10 bill apply to other states?

11 I am sentenced to this state, time here. Or how
12 does the situation work?

13 THE COURT: Whatever time you will serve, Mr. Bowell, the
14 Nejedly bill goes into effect on the first of July. There
15 are some amendments that may be in before it even goes into
16 effect. They may go in afterwards.

17 If the bill stands the way it is now, you will be
18 given the benefit of the Nejedly bill whatever happens to it.
19 And it doesn't matter whether you are serving your time here
20 or the other state. It's California that determines the length
21 of time you serve. *S.B. 42 211 P.C. 2, 3, or 4, years.*

22 THE DEFENDANT: Could I add one other thing? *f.B.*

23 I was told that I would get no more than six months
24 to life under the Youth Act in prison, if I had to go to prison.
25 Instead of a five to life.

26 I was told it would be a six months to life. The
27 Youth Act.

28 I don't know anything about the Youth Act. That's

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 129

HON. KATHLEEN PARKER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

NO. A325882

JAMES EDWARD BOWELL,)

Defendant.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)

) ss

COUNTY OF LOS ANGELES)

I, ANTHONY M. GONZALEZ, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing is a true and correct transcript of the proceedings held at the time of pronouncing sentence; that the views and recommendations of the court, if any, are contained therein, pursuant to section 1203.01 of the Penal Code.

Dated this 8th day of March, 1977.


Official Reporter CSR

THE DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS A FULL, TRUE, AND CORRECT COPY
OF THE ORIGINAL ON FILE AND OF RECORD IN
MY OFFICE.

JUL 24 1996

ATTEST _____

JOHN A. CLARKE, CLERK

Executive Officer/Clerk of the Superior
Court of California, County of Los Angeles.

By _____

Deputy

B. Clark

60-A.



bt

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT. 129

Date:

February 28, 1977

ORABLE:

KATHLEEN PARKER

R LAU

JUDGE

J MARKS

Deputy Sheriff

T GONZALEZ

Deputy

Reporter

(Parties and counsel check as of 2:00)

A325882

PEOPLE OF THE STATE OF CALIFORNIA

Counsel for

JOHN K VAN de KAMP, DISTRICT ATTY.

Plaintiff

X J WATSON

DEPUTY

VS

BOWELL, JAMES EDWARD

Counsel for

Defendants

X A BIRNAY

~~JOHN K VAN de KAMP, DISTRICT ATTY.~~

~~DEPUTY~~

NATURE OF PROCEEDINGS PROBATION AND SENTENCE

(Boxes checked in order of process)

Matter is advanced from March 1, 1977.

PROBATION DENIED. SENTENCE AS INDICATED BELOW.

Whereas the said defendant having pleaded
guilty in this court of the crime of ROBBERY (Sec 211 PC), of the first degree, as
charged in each of the Counts 1, 3 and 7 of the information;
KIDNAPING (Sec 207 PC), as charged in Count 10; armed allegation
having been stricken in Count 1

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by Imprisonment in the

☐ County Jail of the County of Los Angeles for the term of.....

State Prison

☒ ~~County Jail of the County of Los Angeles~~ for the term prescribed by law, on said Counts.

Sentences as to Counts 1, 3, 7 and 10 are ordered to run CONCURRENTLY with each other.

This Court requests diagnostic information and recommendations as a basis for review under terms of Penal Code Section 1168.

Defendant has been held in custody for 340 days as a result of the same criminal act or acts for which he has been convicted.

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles

☒ to be by him delivered into the custody of the Director of Corrections at the California State Institution

for Men at Chino

ENTERED
2-28-77

JOHN J. CORCORAN, Acting

~~JOHN J. CORCORAN~~, COUNTY

CLERK AND CLERK OF THE

SUPERIOR COURT

☒ Remaining count(s) dismissed in interests of justice.

☐ Bail exonerated.

1203.03 PC

2 B 768 005A - 6/75

61.

JUDGMENT

DEPT. 129

bt

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: February 28, 1977

HONORABLE: KATHLEEN PARKER
R LAU

JUDGE
Deputy Sheriff

J MARKS
T GONZALEZ

, Deputy
, Reporter

A325882

(Parties and counsel checked if pre

PEOPLE OF THE STATE OF CALIFORNIA
VS

Counsel for Plaintiff X JOHN K VAN de KAMP, DISTRICT ATTY.
X J WATSON
DEPUTY

X BOWELL, JAMES EDWARD

Counsel for Defendant
X A BERNAY

~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXX~~

NATURE OF PROCEEDINGS PROBATION AND SENTENCE

(Boxes checked if order applicab

Matter is advanced from March 1, 1977.

PROBATION DENIED. SENTENCE AS INDICATED BELOW.

Whereas the said defendant having.....duly.....pleaded
guilty in this court of the crime of ROBBERY (Sec 211 PC), of the first degree, as
charged in Count 1 of the information and admitted using a firearm,
to wit, a pistol, within the meaning of Penal Code Sections 12022.5
and 1203.06(a)(1), at the time of the commission of the offense;
ROBBERY (Sec 211 PC), of the first degree, as charged in each of
the Counts 3 and 7; KIDNAPING (Sec 207 PC), as charged in Count 10;
the Court finds the defendant previously admitted the truth of the
used allegations contained in Count 1; armed allegations having
been stricken in Counts 1, 3, 7 and 10; used allegations having
been stricken in Counts 3, 7 and 10

per minute order of
APR 20 1977

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the
☐ County Jail of the County of Los Angeles for the term of.....

State Prison

☒ ~~XXXXXXXXXXXXXXXXXXXX~~.....for the term prescribed by law, on said Counts.

Sentences as to Counts 1, 3, 7 and 10 are ordered to run CONCURRENTLY with each other.

This Court requests diagnostic information and recommendations as a basis for review under terms of Penal Code Section 1168.
Defendant has been held in custody for 340 days as a result of the same criminal act or acts for which he has been convicted.

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles
☒ to be by him delivered into the custody of the Director of Corrections at the California State Institution
for.....Men.....at.....Chino.....

ENTERED
2-28-77

☒ Remaining count (s) dismissed in interests of justice.

62.

☐ Bail exonerated.
1203.03 PC

JOHN J. CORCORAN, Acting
~~XXXXXXXXXXXXXXXXXXXX~~ COUNTY
CLERK AND CLERK OF THE
SUPERIOR COURT
4-21-77
E.C.

JUDGMENT

THE DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS A FULL, TRUE, AND CORRECT COPY
OF THE ORIGINAL ON FILE AND OF RECORD IN
MY OFFICE.

JUL 24 1996

ATTEST _____

JOHN A. CLARKE, CLERK

Executive Officer/Clerk of the Superior
Court of California, County of Los Angeles.

By  Deputy



62-A.

B. Clark

CHAPTER 4.

Robbery.§211-214.

Section

211. Robbery defined. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. 1872.

Fricke, C.L. 10th, p. 309.

211a. Robbery of operator of any vehicle used for transportation of persons for hire. Penalty. The robbery of any person who is performing his duties as operator of any motor vehicle, streetcar, or trackless trolley used for the transportation of persons for hire, is punishable by imprisonment in the state prison for three, four or five years.—Amended, Stats. 1976, Chap. 1139.

NOTE: Penal Code Section 211a as amended by Chapter 1139, was amended to read as at present.

212. Fear as means of robbery. The fear mentioned in the section 211 may be either:

1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery.—Amended, Stats. 1963, Chap. 372.

Ref. P.C. 211.

Fricke, C.L. 10th, p. 312.

213. Punishment for robbery. Robbery is punishable by imprisonment in the state prison for two, three or four years. Notwithstanding Section 664, Attempted robbery is punishable by imprisonment in the state prison.—Amended, Stats. 1976, Chap. 1139.—Operative July 1, 1977.

NOTE: Penal Code Section 213 as amended by Chapter 1139 deletes "as follows" after "state prison" in line one and substitutes "for two, three or four years"; Subdivisions (1) and (2) are deleted.

Ref. P.C. 671, 1163.

Fricke, C.L. 10th, p. 320.

214. Robbery; boarding railroad trains for the purpose of. Every person who goes upon or boards any railroad train, car or engine, with the intention of robbing any passenger or other person on such train, car or engine, of any personal property thereon in the possession or care or under the control of any such passenger or other person, or who interferes in any manner with any switch, rail, sleeper, viaduct, culvert, embankment, structure or appliance pertaining to or connected with any rail-

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date:	MARCH 3, 1977	JUDGE	S.A. JACKSON	, Deputy Clerk
HONORABLE:	J. DI GIUSEPPE	Deputy Sheriff	J. LUCY	, Reporter
	L. MILLIAS		(Parties and counsel checked if present)	
A. 133178		JOHN K. VAN DE KAMP	DISTRICT ATTY.	BY
PEOPLE OF THE STATE OF CALIFORNIA		Counsel for Plaintiff	R. PHILIBOSIAN	DEPUTY
VS				
aka	BOWELL, JAMES ALLEN	Counsel for Defendant	F. GOLDBERG	PUBLIC DEFENDER BY
	Bow, James Allen		A. BERNAY	DEFENDANT
	X 696004			
NATURE OF PROCEEDINGS PROBATION AND SENTENCE				(Boxes checked if order applicable)

PROBATION DENIED. SENTENCE AS INDICATED BELOW.

Whereas the said defendant having.....duly.....pleaded.....
 guilty in this court of the crime of RECEIVING STOLEN PROPERTY (Sec. 496 P.C.). a felony
 as charged in the information,

It is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the

☐ County Jail of the County of Los Angeles for the term of.....

☒ California Institution for.....men.....for the term prescribed by law.

x Sentence to run CONCURRENTLY with any other now serving.

x Defendant to be given credit for two-hundred and thirty-six (236) days in custody.

It is further Ordered that the defendant be remanded into the custody of the Sheriff of the County of Los Angeles

☒ to be by him delivered into the custody of the Director of Corrections at the California State Institution
 for....men.....at Chino.....

☐ Remaining count(s) dismissed in interests of justice.
☐ Bail exonerated.

64.

JUDGMENT

ENTERED
 March 4, 1977
 John J. Corcoran, Acting
~~CLERK OF THE COURT~~
 CLERK AND CLERK OF THE
 SUPERIOR COURT



THE DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS A FULL, TRUE, AND CORRECT COPY
OF THE ORIGINAL ON FILE AND OF RECORD IN
MY OFFICE.

ATTEST JAN 31 2001

JOHN A. CLARKE, CLERK

Executive Officer/Clerk of the Superior
Court of California, County of Los Angeles.
By *E. Caplan*, Deputy

Abstract of JudgmentCommitment to State Prison **JAN 19 AM 11:58**Dept. No. 5 Case No. 19872
The People of the State of California

vs.

JAMES ALLEN BOWELL

Defendant.

Presented by
Hon. JOHN D. JELLETICH
BY Richard Bradshaw
the Superior Court

Prosecuting Attorney

John Thomas

Counsel for Defendant

This certifies that on the 29th day of December, 19 78, judgment of conviction of the above-named defendant was entered as follows:(1) In Case No. 19872 Count No. One he was convicted by Court; on his plea of Entered
(court or jury)Guilty

(guilty, not guilty, former conviction or acquittal, once in jeopardy, not guilty by reason of insanity)

of the crime of Escape Without Force From State Prison

(designation of crime and degree if any, including fact that it constitutes a second subsequent conviction of same offense if that affects the sentence.)

in violation of Section 4530(b) of the Penal Code

(reference to Code or Statute, including Section and Subsection thereof, if any violated)

with prior felony convictions as follows: (None)

DATE	COUNTY AND STATE	CRIME	DISPOSITION
/			
	/		
		/	
			/

Defendant has been held in jail custody for 561 days as a result of the same criminal act or acts for which he has been convicted. *Defendant was not armed with a deadly weapon at the time of his commission of the offense or a concealed deadly weapon at the time of his arrest within the meaning of Sections 969c and 3024 of the Penal Code.
(was or was not)Defendant was not armed with a deadly weapon at the time of his commission of the offense within the meaning of Sections 969c and 12022 of the Penal Code.
(was or was not)Defendant did not use a firearm in his commission of the offense within the meaning of Sections 969d and 12022.5 of the Penal Code.
(used or did not use)

(Repeat foregoing with respect to each count of which defendant was convicted.)

*Defendant is credited for time spent in custody, 561 days, including:

Actual Local Time 541 4019(b) Credit 14 State Institutions Time 6

65.

ABSTRACT OF JUDGMENT

- (3) IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said defendant be punished by imprisonment in the State Prison of the State of California for the term provided by law, and that he be remanded to the Sheriff of the County of KERN and by him delivered to the Director of Corrections of the State of California at _____

California Correctional Institution at Tehachapi

It is ordered that sentences shall be served in respect to one another as follows (concurrently or consecutively as to each count):

Not Applicable

and in respect to any prior incomplete sentence(s) as follows (concurrently or consecutively as to all incomplete sentences from other jurisdictions):

Concurrent, if any

- (4) To the Sheriff of the County of KERN and to the Director of Corrections at the _____

California Correctional Institution at Tehachapi

pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above-named defendant into the custody of the Director of Corrections at Tehachapi

California, at your earliest convenience.

Witness my hand and seal of said court

this 19th day of January, 1979

GALE S. ENSTAD Clerk,

by _____ Deputy

P. M. McCoy
State of California,

County of KERN } ss.

I do hereby certify the foregoing to be a true and correct abstract of judgment duly made and entered on the minutes of the Superior Court in the above entitled action as provided by Penal Code Section 1213.

SEAL

Attest my hand and seal of the said Superior Court this 19th day of January, 1979—

GALE S. ENSTAD

County Clerk and Ex-Officio Clerk of the Superior Court of California in and for the County of _____

KERN

The Honorable _____

Judge of the Superior Court of the State of California, in and for the County of _____

Memorandum

Date : July 6, 1983

To : James Powell - B-81200
via [REDACTED] CC: II

From : California State Prison, San Quentin 94964

Subject: Term Computation

The following shows how your release date was calculated:

You were assessed 9 years and 4 months total term at your Serious Offender Hearing on 4/19/79

4 years	Case A325882, Ct. 1
2 years	" " Use of Firearm
1 year	" " Ct. 3
1 year	" " Ct. 7
1 year & 4 months	" " Ct. 10

8 months	19872	Ct. 1 Credits of 561 days (1-6-12) deletes the 8 months
----------	-------	---

9 years 4 months Total Term

- 10 11 months 10 days (347 days presentence credit on A325882)

= 8 years 4 months 20 days Total Confinement Time

7	3	8
77	3	20

Received in CDC = Term Starts Date

Total Confinement Time

84-9-14

85 - 7 - 28

Unadjusted Maximum Release Date

+ 37 441

At Large Time (Escaped 6/13/77 to 8/28/78 signed waiver of extradition)

84-10-21 = 86 - 10 - 12

Adjusted Maximum Release Date

7-1-77 Dec 9-14-84 = 2,630 ÷ 3 = 876 Days Good Time Credit

876 Days Good time credit may be earned on your term from 6/30/77 to 7/28/85 and this is a total of 2950 days. Good time credit cannot be earned on time spent in custody prior to 7/1/77. The 2950 days in custody is divided by 3 to get the amount of good time credit available. 2950 ÷ 3 = 984 days.

82-5-26 cln Custody Incl Parole Time Served cln Full 5-26-83.

86 - 10 - 12

Adjusted Maximum Release Date

- 984

Good Time Credit Available

84 - 2 - 1

Minimum Release Date

+ 30

Credit loss from 115 of 9/4/82

+ 30

" " " " " 1/1/83

= 84 - 4 - 1 Current Minimum DSL Release Date

Correctional Case
Records Supervisor

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

124
DEPT. NVH
000099

Date: 7-31-91
HONORABLE: JOHN P. FARRELL
M. DOYLE

JUDGE S. LAGER
Deputy Sheriff S. HOLLEY

Deputy Clerk
Reporter

(Parties and counsel checked if present)
PA003248-01
PEOPLE OF THE STATE OF CALIFORNIA
VS
01 BOWELL, JAMES EDWARD
AKA 01 RIZZIO, PHILLIP
664/207.A 01CT 220 01CT
Counsel for People: D. LEVINE
DEPUTY DISTRICT ATTY: K. BARSHOP
Counsel for Defendant: IN PRO PER
X-286822

NATURE OF PROCEEDINGS P&S MO FOR NEW TRIAL REMANDED

Defendant's motions for new trial and petition for writ of habeas corpus are called for hearing, are argued, and denied.

Defendant is arraigned for sentencing and the court denies any legal cause why sentence should not be imposed.

Probation is denied. Sentence is imposed as follows:

Defendant is imprisoned in state prison for a total of 11 years.

The court selects the high term of 6 years for the base term as to Count 2, violation of Penal Code Section 220. The court finds the factors in aggravation outweigh the factors in mitigation.

As to Count 1, violation of Penal Code Section 664/207(a), the court sentences the defendant to the middle term of 2½ years in state prison. Pursuant to Penal Code Section 654, the court stays the punishment in Count 1 as it is the same incident as Count 2.

As to the prior conviction in Case A325882, pursuant to Penal Code Section 667(a), the defendant is sentenced to 5 years in state prison to run consecutive to the sentence in Count 2.

Defendant is given credit for 227 days in custody (151 days actual custody and 76 days good time/work time).

On motion of the People, the 2 remaining prior convictions are ordered stricken for not being within Penal Code Section 667.B.

The court advised the defendant of his appeal rights.

REMANDED

MINUTES ENTERED

7-31-91
COUNTY CLERK

FORM 413L C-120 11-85

MINUTE ORDER

People v. Harvey, (1979) 25 Cal. 3d 754, Directions to set aside sentence, two counts of robbery with use of a firearm as part of a plea bargain. Implicit in a plea bargain is understanding consequences, the accused will suffer no adverse sentencing. PC 1, sub. (a) permits enhancement only under 12022.5 in the case of a consecutive sentence. The court erred in imposing 8 month enhancement for firearm use.

ACCURATE TERM CALCULATION

- (1) Original Plea State Case A325882 Los Angeles 2/28/77

Count I Robbery (211 P.C.)

Counts III, VII, and X Ordered

To Run Concurrently With I

Determinate Sentencing Law Effective 7/1/77

2 Years (211 P.C.) Robbery

2 Years Armed Enhancement

No Aggravating Circumstances Plea Bargain

4 Years

4 Months Work/Good Time Off Each Year

Total Term Only 2 Years

I Served Eight

Illegal Incarceration

- (2) Plea State Case A133178 Van Nuys 3/3/77

Receiving Stolen Property

Order To Run Concurrently With A325882

- (3) Alleged Escape From State Prison

June 13, 1977

Plea Bargain Case 19872

Ordered To Run Concurrently With A325882

Time Served 561 Days Including 541 Days

Actual Credit 1,102 Days On

Abstract Of Judgment

I Was Paroled From San Quentin 3/2/84

Parole Agent Discharged Me 4/15/84

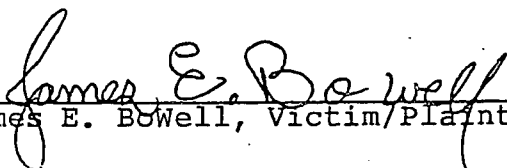
Only On Parole 44 Days

Certified Admission Of

Six Years wrongful Imprisonment

Hereby signed under penalty of perjury as being true.

October 9, 2017


James E. Bowell, Victim/Plaintiff

**DEPARTMENT OF CORRECTIONS
DEPARTMENTAL ARCHIVES UNIT**

Aerojet Campus
2015 Aerojet Road
Rancho Cordova, CA 95742
(916) 358-1523



DATE : SEPTEMBER 7, 1999

NAME : BOWELL, JAMES

CDC NUMBER : B81200

DISCH DATE : 04-84

CMHQ B81200

BOWELL, JAMES, ALLEN

***MOVEMENT HISTORY - MOST RECENT MOVEMENT FIRST ***

04/15/1984 DISCHARGED

FROM REG3 DCH TYPE: 2536A

03/02/1984 PAROLED

TO REG3 SFV-E FROM SQ

TENT DCH DATE: 03/01/1985 CD: LA

Dear Sir/Madam:

This is to certify that the Director of the Department of Corrections is the official legal custodian of the records of prisoners committed to the California State Prisons, and has authorized the undersigned as Case Records Analyst of the Department of Corrections to certify in his behalf the criminal records of persons who have served sentences in the California State prisons, including the certifications required under 969b of the California Penal Code.

I further certify that the copies of the commitment, photograph, fingerprints and chronological history and/or movement history are true and correct copies of those in my custody as required by law.

Sincerely,

Bernice Worthington

BERNICE WORTHINGTON
Correctional Case Records Analyst
Departmental Archives Unit
(916) 358-1523



SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

124
DEPT. NVH
000099

Date: 7-31-91
HONORABLE: JOHN P. FARRELL
M. DOYLE

JUDGE S. LAGER
Deputy Sheriff S. HOLLEY

Deputy Clerk
Reporter

(Parties and counsel checked if present)
PA003248-01
PEOPLE OF THE STATE OF CALIFORNIA
VS
Counsel for People: D. LEVINE
DEPUTY DISTRICT ATTY: K. BARSHOP
AKA 01 BOWELL, JAMES EDWARD
01 RIZZIO, PHILLIP
664/207.A 01CT 220 01CT
Counsel for Defendant: IN PRO PER
X-286822

NATURE OF PROCEEDINGS P&S MO FOR NEW TRIAL REMANDED

Defendant's motions for new trial and petition for writ of habeas corpus are called for hearing, are argued, and denied.

Defendant is arraigned for sentencing and the court denies any legal cause why sentence should not be imposed.

Probation is denied. Sentence is imposed as follows:

Defendant is imprisoned in state prison for a total of 11 years.

The court selects the high term of 6 years for the base term as to Count 2, violation of Penal Code Section 220. The court finds the factors in aggravation outweigh the factors in mitigation.

As to Count 1, violation of Penal Code Section 664/207(a), the court sentences the defendant to the middle term of 2½ years in state prison. Pursuant to Penal Code Section 654, the court stays the punishment in Count 1 as it is the same incident as Count 2.

As to the prior conviction in Case A325882, pursuant to Penal Code Section 667(a), the defendant is sentenced to 5 years in state prison to run consecutive to the sentence in Count 2.

Defendant is given credit for 227 days in custody (151 days actual custody and 76 days good time/work time).

On motion of the People, the 2 remaining prior convictions are ordered stricken for not being within Penal Code Section 667.B.

The court advised the defendant of his appeal rights.

REMANDED

MINUTES ENTERED
7-31-91
COUNTY CLERK

MINUTE ORDER

FORM 412L C-120 11-85

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
COURT I.D. 190914 BRANCH NORTH VALLEY

BK#2410858

PEOPLE OF THE STATE OF CALIFORNIA versus

DEFENDANT: BOWELL, JAMES EDWARDAKA: Rizzio, Phillip☒ PRESENT☐ NOT PRESENT

CASE NUMBER (S)

PA003248 - A

- B

- C

- D

- E

FILED

AUG 01 1991

JAMES H. DEMPSEY, CLERK

*H. J. [Signature]*COMMITMENT TO STATE PRISON
ABSTRACT OF JUDGMENTAMENDED
ABSTRACT ☐

DATE OF HEARING (MO) (DAY) (YR)

07 31 91

DEPT. NO

NV H

JUDGE

JOHN P. FARRELL

CLERK

S. LAGER

REPORTER

S. HOLLEY

COUNSEL FOR PEOPLE

D. LEVINE/K. BARSHOP

COUNSEL FOR DEFENDANT

IN PRO PER

PROBATION NO. OR PROBATION OFFICER

X286822

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY/MISDEMEANORS):

☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT

(NUMBER OF PAGES)

SENTENCE RELATION

<input type="checkbox"/> ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____ (NUMBER OF PAGES) _____																						
COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTED BY			JURY TRIAL	PLEA	Plea Change	CONCURRENT	CONSECUTIVE TO VIOLEN	CONSECUTIVE TO NON-VOL	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE AS ORDERED	RE-ENTRY	CONSECUTIVE TIME IMPOSED		
					MO	DAY	YEAR	JURY TRIAL	COURT TRIAL	FLA										YEARS	MONTHS	
01	PC	664/207(a)	ATTEMPT/KIDNAPPING	90	05	20	91	X				M									0	
02	PC	220	ASSLT W/INTEN TO RAPE	90	05	20	91	X				D									0	
																					0	
																					0	
																					0	

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.:

For each count list enhancements horizontally. Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add up time for enhancements on each line and enter line total in right-hand column.

Count	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total
											0
											0
											0
											0
											0

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER.

List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total
667(a)	5									5
Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total
										0

4. INCOMPLETED SENTENCE(S) CONSECUTIVE:

COUNTY	CASE NUMBER	CREDIT FOR TIME SERVED

5. OTHER ORDERS

Use additional sheets of plain paper if necessary.

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A):

	0
7. TIME STAYED TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE-BASED-TERM LIMIT, ETC. (Do not include § 654 stays or discretionary stays of term for enhancements.)	0
8. TOTAL TERM IMPOSED:	11

9. EXECUTION OF SENTENCE IMPOSED:

A. ☒ AT INITIAL SENTENCING HEARING B. ☐ AT RESSENTENCING PURSUANT TO DECISION ON APPEAL C. ☐ AFTER REVOCATION OF PROBATION D. ☐ AT RESSENTENCING PURSUANT TO RECALL OF COMMITMENT (PC § 1170(d)) E. ☐ OTHER

10. DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR)	CREDIT FOR TIME SPENT IN CUSTODY	TOTAL DAYS	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS	STATE INSTITUTIONS
<u>07-31-91</u>	<u>227</u>	INCLUDING:	<u>151</u>	<u>76</u>	<input type="checkbox"/> DMH <input type="checkbox"/> CDC

11. DEFENDANT IS REMAINED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

☒ FORTHWITH☐ AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS

INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:

☐ CALIF. INSTITUTION FOR WOMEN - FRONTIERA☐ CALIF. MEDICAL FACILITY - VACAVILLE☐ SAN QUENTIN☒ CALIF. INSTITUTION FOR MEN - CHINO☐ DEUEL VOC. INST.☐ OTHER (SPECIFY):

CLERK OF THE COURT

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

DEPUTY SHERIFF

DATE

AUG 01 1991

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

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290

Pen.C. 1213.5

Form Adopted by the Judicial Council of California Effective April 1, 1990

DISTRIBUTION:

PINK COPY - COURT FILE

YELLOW COPY - DEPARTMENT OF CORRECTIONS

WHITE COPY - ADMINISTRATIVE OFFICE OF THE PRISON

Rec 7-31-91 NVH

1 Name: James Bowell
 2 Booking No. 2410858
 3 Los Angeles County Jail
 4 Post Office Box 86164
 5 Los Angeles, California 90086-0164
 6
 7 Defendant, In Propria Persona

126.

FILED

AUG 01 1991

JAMES M. DEMPSEY, CLERK

J. C. [Signature]
 COUNTY CLERK

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF CALIFORNIA,)

11 Plaintiff,)

12 vs.)

13 James Edward Bowell)

14 Defendant.)

Case No. PA003248NOTICE OF APPEAL

15 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

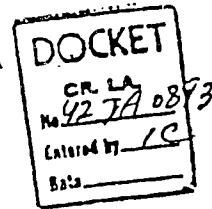
16 PLEASE TAKE NOTICE that the above named defendant hereby
 17 appeals to the Court of Appeal of the State of California,
 18 Second Appellate District, from the final judgment of conviction
 19 in the above cause of action entered on the 31 day of

20 July, 1991.21 Dated: 7-31-91.

22 Respectfully submitted,

23
 24
 25 James Edward Bowell
 26 Defendant, In Propria Persona
 27
 28

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION: 2



COURT OF APPEAL - SECOND DIST.

FILED

AUG 12 1992

JOSEPH A. CHLANDA Clerk

J. CHLANDA

Deputy Clerk

RE: People of the State of California
VS.
Bowell, James Edward
2 Criminal B061874
Los Angeles No. PA003248

THE COURT:

It appearing that the appellant is in default pursuant to
RULE 17A , California Rules of Court, the appeal filed
August 1, 1991 , is dismissed.

Cates, Atty. P. J.

Presiding Justice

OCT 23 1992 *E*JAMES H. DEMPSEY, CLERK
Alisner
BY A. CISNEROS, DEPUTY

OFFICE OF THE COUNTY CLERK
Los Angeles County
111 North Hill Street
Los Angeles, CA. 90012

RE: People of the State of California
vs.
Bowell, James Edward
2 Criminal B061874
Los Angeles NO. PA003248

noted

* * REMITTITUR * *

I, Joseph A. Lane, Clerk of the Court of Appeal of the State of California, For the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on 08/12/92 and that this order, opinion or decision has now become final.

* * Dismissed Per Rule 17(A). * *

☐ Appellant ☐ Respondent to recover costs.
☐ Each party to bear own costs.
☒ Costs are not awarded in this proceeding.

Witness my hand and the seal of the Court affixed at

my office this

Joseph A. Lane, Clerk

By: *[Signature]*

Deputy Clerk

OCT 22 1992

ABSTRACT OF JUDGMENT – PRISON COMMITMENT–INDETERMINATE
[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

000346

<input checked="" type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF <u>LOS ANGELES</u> <input type="checkbox"/> MUNICIPAL BRANCH OR JUDICIAL DISTRICT: <u>CENTRAL CRIMINAL</u>		<div style="font-size: 2em; font-weight: bold; margin-bottom: 10px;">FILED</div> <div style="font-size: 1.2em; font-weight: bold; margin-bottom: 10px;">SEP 07 2000</div> <div style="font-size: 0.8em;">JOHN A. CLARKE, CLERK</div> <div style="font-size: 0.8em;">BY <u>Ted Hudson</u> THT</div>
PEOPLE OF THE STATE OF CALIFORNIA vs DOB: <u>11/05/55</u> DEFENDANT BOWELL, JAMES		
AKA: _____ CME: _____ BOOKING #: _____ <input type="checkbox"/> NOT PRESENT		
COMMITMENT TO STATE PRISON <input type="checkbox"/> AMENDED ABSTRACT OF JUDGMENT ABSTRACT		
DATE OF HEARING <u>09/01/00</u> DEPT. NO. <u>122</u> JUDGE CRAIG E. VEALS		
CLERK N. BUCHANAN REPORTER R. GALYAN PROBATION NO. OR PROBATION OFFICER UNKNOWN		
COUNSEL FOR PEOPLE T. PERETZ COUNSEL FOR DEFENDANT J. BISNOW <input type="checkbox"/> APPTD		

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

☐ Additional counts are listed on attachment
 (number of pages attached)

CNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	64 DAY
						JURY	COURT	PLEA			
01	PC	290(G)(2)	SEX OFFENDER/FAIL TO REGIST	99	08/ 04/ 00	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 for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charge and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

Defendant was sentenced to State Prison for an INDETERMINATE TERM:

4. ☐ For LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts _____5. ☐ For LIFE WITH POSSIBILITY OF PAROLE on counts _____6. ☒ For 25 years to life, WITH POSSIBILITY OF PAROLE on counts 1
 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 ☐ PC 667.9
☐ other (specify): _____This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.
 (Continued on reverse)

000347

PEOPLE OF THE STATE OF CALIFORNIA vs DEFENDANT			
BOWELL, JAMES	-A	-B	-C

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

- a. RESTITUTION FINE of \$ 200.00* per PC 1202.4(b) forthwith per PC 2085.5.* PLUS PENALTY ASSESSMENT OF \$100
b. RESTITUTION FINE of \$ 200.00 per PC 1202.45 suspended unless parole is revoked. AND \$70 PER 1464 P.C. AND
c. RESTITUTION of \$ _____ per PC 1202.4(f) to [] victims* [] Restitution Fund 76000 G.C.
(*List victim name(s) if known and amount breakdown in item 7, below.)
(1) [] Amount to be determined.
(2) [] Interest rate of: _____ % (not to exceed 10% per PC 1204.4(f)(3)(F)).
d. [] LAB FEE of: \$ _____ for counts: _____ Per H&SC 11372.5(a).
e. [] DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a)
f. [] FINE of: \$ _____ per PC 1202.5.

10. TESTING

- a. [] AIDS pursuant to [] PC 1202.1 [] other (specify):
b. [] DNA pursuant to [] PC 290.2 [] other (specify):

11. Other orders (specify):

COURT ADVISES DEFENDANT OF APPEAL AND PAROLE RIGHTS.

12. Execution of sentence 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
e. [] other (specify):

13. CREDIT FOR TIME SERVED

CASE NUMBER	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
BA191442 -A	744	496	248 [] 4019 [] 2933.1
-B			[] 4019 [] 2933.1
-C			[] 4019 [] 2933.1
-D			[] 4019 [] 2933.1
DATE SENTENCE PRONOUNCED: 09/01/00		SERVED TIME IN STATE INSTITUTION: [] DMH [] CDC [] CRC	

14. 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.
[] other (specify):

CLERK OF THE COURT

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

DEPUTY'S SIGNATURE T. HUDSON	DATE SEPTEMBER 7, 2000
---------------------------------	---------------------------

OCT 01 2001

CLASSIFICATION SERVICES UNIT (CSU) USE ONLY

1) CSU Determination:	YES	MAYBE	NO - 1	NO - 2	NO - 3	Initials
Comments:	A P P E N D I X "C"					Date
						DB (date)
						Rec'd at CSU
						On 290 List
						Added to 290 list, dated

THE CDC SEXUALLY VIOLENT PREDATOR SCREENING FORM

2) Institution: REGION III PASD #1 (LACT)	6) CI&I number: mo 4629258
3) Inmate's last name: BOWELL, JAMES E First MI	7) CDC number: 404180
4) County of present commitment (controlling case): LOS ANGELES	8) Discharged CDC # (s): (if applicable)
5) Release date (s):	9) Parole Agent Section
EPRD () 1/5 () 1/3 () 1/2	PEND/REV (if yes, circle)
PRRD	Date Parole Hold Placed (if known)
RRD	01-12-98
CDD	

10) W&IC Section 6600 Qualifying Offenses

PC 261 (a)(2) - Rape by force, fear, violence, duress or menace
 PC 262 (a)(1) - Rape of spouse by force, fear, violence, duress, menace
 PC 264.1 - Rape/pen. of genitals/anal opening; in concert
 PC 286 - Sodomy (all subdivisions)
 PC 288(a) - Lewd acts on a child under 14

PC 288(h) - Lewd acts on a child under 14 w/force, fear, violence, duress or menace
 PC 288a - Oral copulation (all subdivisions)
 PC 289(a) - Pen. of genital/anal openings by foreign object w/force, fear, violence, duress or menace

11) Screener's Determination:

(X) NO - 1 : Subject has no qualifying conviction (listed above). PC290 registrant due to PC: 220

() NO - 2 : Subject has qualifying conviction(s) with one victim only.

() NO - 3 : Subject has qualifying conviction(s) with son or daughter as victim.

12) () Maybe : Insufficient information to determine status.

If case is a "MAYBE", what information is needed to make the determination? _____

13) () Yes : Meets criteria as a potential SVP.

If case is a "YES", are there any additional documents re: qualifying offenses the DA's office may need? _____

14) Comments: _____

Convicted Qualifying Offense:	PC:	PC:	PC:
15) Date of Offense:	/ /	/ /	/ /
16) Date of conviction:	/ /	/ /	/ /
17) County/state of conviction:			
18) Superior Court case number:			
19) Number of CONVICTED counts:			
20) Number of victims:			
21) Victim relationship (Son, daughter, stranger, etc.):			

22) Source documents REVIEWED for SVP screening: (X) LSS (X) ISRS (X) POR (X) AOJ () Complaint () CII (X) FBI

23) Source documents ATTACHED (sent to CSU): () LSS () ISRS () POR () AOJ () Complaint () CII () FBI

24) For all RTC cases include: (X) Parole Violation Charge Sheet () Summary of Revocation Decision

25) Other: _____

I have completed a thorough review of all relevant documentation available to make an accurate SVP determination.

I hereby certify and attest that the above is true.

MACIL TAYLOR 2-11-98

26) Parole Agent II
(Print name and date)

27) SVP Coordinator
(Signature and date)



The State Bar
of California

180 Howard Street, San Francisco, CA 94105

415-538-2575

OFFICE OF GENERAL COUNSEL

Personal and Confidential

Complaint Review Unit

January 31, 2020

A P P E N D I X "D"

James E BoWell #H04180
RJDCF C-12-221
480 Alta Rd
San Diego CA 92179

RE: Case No.: 19-O-19691
Respondent(s): Nancy Lorraine Tetreault

Dear Mr. BoWell:

The Complaint Review Unit received your correspondence on December 02, 2019, requesting reconsideration of the decision to close your complaint. An attorney reviewed all the information provided and has determined that there is not a sufficient basis to recommend reopening your complaint.

The Complaint Review Unit will recommend reopening a complaint when there is significant new evidence or when we determine there is good cause to recommend that the matter be reopened. The State Bar Court is authorized to impose or recommend disciplinary sanctions only if there is clear and convincing evidence to establish that the attorney has committed a violation of the Rules of Professional Conduct or the State Bar Act. Therefore, the Complaint Review Unit will not recommend that a matter be reopened unless there is a reasonable possibility that a disciplinary violation can be proven by clear and convincing evidence.

By letter to you dated November 13, 2019 ("Closing Letter"), the Office of Chief Trial Counsel ("OCTC") closed your complaint against attorney Nancy Tetreault.

You requested review by the Complaint Review Unit of OCTC's decision to close your complaint by letter dated November 25, 2019.

After a thorough review of the complaint file, we have concluded that OCTC's closing decision was correct, including for the reasons set forth in the Closing Letter.

The Closing Letter accurately summarized your allegations against Ms. Tetreault, as well as its reasons for closing your complaints, as follows:

You stated in your complaint dated July 18, 2019, that your attorney, Ms. Tetreault, failed to raise constitutional issues in your state habeas proceedings (Court of Appeal, case no. B285434). In a letter dated August 7, 2019, this office asked for additional information as to whether you presented the issues to the attorney, and whether the attorney responded. The letter requested you provide copies of all pertinent correspondence with the attorney. In response, you sent a copy of a letter from the attorney dated August 1, 2019, showing that the attorney had considered the issues you wanted the attorney to raise in your case, and the attorney concluded that those issues could not be raised due to the limited scope of the proceedings in which she was appointed to represent you.

Based on our evaluation of the information provided, we are closing your complaint. Under the laws of California, the facts as you have alleged them would not be grounds for disciplinary action. It is misconduct for an attorney to intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence. (Rules Prof. Conduct, rule 1.1.) In contrast, mere negligence or poor judgment by an attorney does not provide a basis for discipline. Moreover, an attorney has "latitude in choosing among legitimate but competing considerations, and is not liable for an informed tactical choice within the range of reasonable competence. [Citations.]" (Barner v. Leeds (2000) 24 Cal.4th 676, 690.) Here, the facts you alleged show that the attorney made an informed and reasonable decision that the claims you wanted her to raise were outside the scope of the proceedings in which she was appointed to represent you.

Furthermore, it is misconduct for an attorney to fail to reasonably consult with the client about the means by which to accomplish the client's objectives (Rules of Prof. Conduct, rule 1.4(a)(2)), or to fail to promptly comply with reasonable requests for information (Rules of Prof. Conduct, rule 1.4(a)(3)). Based on the attorney's August 1, 2019, correspondence, it appears the attorney reasonably consulted with you about your claims and promptly responded to your requests for information.

OCTC's analysis of your allegations and the conclusions it reached were correct. In your request for review, you do not set forth any new facts or good cause that would support reopening your complaint. Rather, your request for review appears to cite various cases for the general

proposition that it can amount to ineffective assistance of counsel for an attorney to fail to raise Constitutional arguments. That point is not relevant to the question at issue here, which is whether Ms. Tetreault—who determined that she represented you only on a limited issue—committed misconduct by not raising various Constitutional issues that she determined were outside of the single appellate matter in which she was representing you. While we understand that you may wish that Ms. Tetreault represented you on all of the arguments you wished to make, her representation of you was limited in scope, and it was not misconduct for her to decline to pursue arguments that she reasonably concluded were outside the scope of her representation of you.

Thus, having received no new material evidence and finding no good cause, we are without a sufficient basis to recommend that your complaint be reopened.

If you disagree with this decision, you may file an accusation against the attorney with the California Supreme Court. A copy of the applicable rule is enclosed. (See Rule 9.13, subsections (d) through (f), California Rules of Court.) If you choose to file an accusation, you must do so within 60 days of the date of the mailing of this letter. Together with your accusation, you should provide the Supreme Court (1) a copy of this letter and (2) a copy of the original closing letter from the Office of Chief Trial Counsel.

The State Bar cannot give you legal advice or representation. If you have not already done so, you may wish to consult with an attorney for advice regarding any other remedies which may be available to you. Attorneys can be located by contacting a lawyer referral service certified by the State Bar in your area. You may obtain a list of State Bar certified lawyer referral services by calling the State Bar at 866-442-2529 or by visiting the State Bar website at:

<http://www.calbar.ca.gov/Public/Need-Legal-Help/Lawyer-Referral-Service>

Sincerely,
Complaint Review Unit
Enclosure





The State Bar
of California

OFFICE OF CHIEF TRIAL COUNSEL
INTAKE

845 S. Figueroa Street, Los Angeles, CA 90017 213-765-1469

November 13, 2019

James E BoWell #H04180
RJDCF C-12-221
480 Alta Rd.
San Diego, CA 92179

RE: Case Number: 19-O-19691
Respondent: Nancy Tetreault

Dear Mr. BoWell:

The State Bar's Office of Chief Trial Counsel has reviewed your complaint against Nancy Tetreault to determine whether there are sufficient grounds to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You stated in your complaint dated July 18, 2019, that your attorney, Ms. Tetreault, failed to raise constitutional issues in your state habeas proceedings (Court of Appeal, case no. B285434). In a letter dated August 7, 2019, this office asked for additional information as to whether you presented the issues to the attorney, and whether the attorney responded. The letter requested you provide copies of all pertinent correspondence with the attorney. In response, you sent a copy of a letter from the attorney dated August 1, 2019, showing that the attorney had considered the issues you wanted the attorney to raise in your case, and the attorney concluded that those issues could not be raised due to the limited scope of the proceedings in which she was appointed to represent you.

Based on our evaluation of the information provided, we are closing your complaint. Under the laws of California, the facts as you have alleged them would not be grounds for disciplinary action. It is misconduct for an attorney to intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence. (Rules Prof. Conduct, rule 1.1.) In contrast, mere negligence or poor judgment by an attorney does not provide a basis for discipline. Moreover, an attorney has "latitude in choosing among legitimate but competing

San Francisco Office
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www.calbar.ca.gov

Los Angeles Office
845 S. Figueroa Street
Los Angeles, CA 90017

considerations, and is not liable for an informed tactical choice within the range of reasonable competence. [Citations.]” (*Barner v. Leeds* (2000) 24 Cal.4th 676, 690.) Here, the facts you alleged show that the attorney made an informed and reasonable decision that the claims you wanted her to raise were outside the scope of the proceedings in which she was appointed to represent you.

Furthermore, it is misconduct for an attorney to fail to reasonably consult with the client about the means by which to accomplish the client’s objectives (Rules of Prof. Conduct, rule 1.4(a)(2)), or to fail to promptly comply with reasonable requests for information (Rules of Prof. Conduct, rule 1.4(a)(3)). Based on the attorney’s August 1, 2019, correspondence, it appears the attorney reasonably consulted with you about your claims and promptly responded to your requests for information.

For these reasons, the State Bar is closing this matter.

If you have new facts and circumstances that you believe may change our determination to close your complaint, you may submit a written statement with the new information to the Intake Unit for review. If you have any questions about this process, you may call Deputy Trial Counsel Tyrone Sandoval at 213-765-1469. If you leave a voice message, be sure to clearly identify the lawyer complained of, the case number assigned, and your telephone number including the area code. We should return your call within two business days.

If you are not aware of new facts or circumstances but otherwise disagree with the decision to close your complaint, you may submit a request for review by the State Bar’s Complaint Review Unit, which will review your complaint and the Intake Unit’s decision to close the complaint. The Complaint Review Unit may reopen your complaint if it determines that your complaint was inappropriately closed or that you presented new, significant evidence to support your complaint. To request review by the Complaint Review Unit, you must submit your request **in writing**, together with any new evidence you wish to be considered, post-marked within **90 days of the date of this letter**, to:

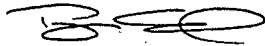
The State Bar of California
Complaint Review Unit
Office of General Counsel
180 Howard Street
San Francisco, CA 94105-1617

James E BoWell
November 13, 2019
Page 3

We would appreciate if you would complete a short, anonymous survey about your experience with filing your complaint. While your responses to the survey will not change the outcome of the complaint you filed against the attorney, the State Bar will use your answers to help improve the services we provide to the public. The survey can be found at <http://bit.ly/StateBarSurvey1>.

Thank you for bringing your concerns to the attention of the State Bar.

Sincerely,



Tyrone Sandoval
Deputy Trial Counsel

TS

of Mexico as just one factor supporting the denial of his CAT petition:

In assessing whether it is more likely than not that the respondent would be tortured in Mexico, all evidence relevant to the possibility of future torture shall be considered, including evidence of past torture inflicted upon the respondent and evidence that the respondent could relocate where torture is unlikely. See, 8 C.F.R. § 208.16(c) (3) (ii).

The BIA credited Maldonado's testimony that the police in Michoacán had previously tortured him, but concluded that Maldonado "did not show that the influence of the corrupt police officers located in Morelia extended country wide." The BIA went on to analyze the other factors, explaining that "the 2007 Country Report indicates that the Mexican government is aggressively prosecuting those who are involved in police corruption Therefore, the Mexican government will provide protection to the respondent from any corrupt police officers." The BIA determined that record evidence of other human rights violations in Mexico was not relevant to Maldonado's CAT claim because these violations were perpetrated against members of organized drug gangs, and Maldonado does not claim to be a member of such an organization. In denying Maldonado's petition, the BIA ultimately concluded: "Given that the respondent has not shown that the corrupt police officers could locate him anywhere in Mexico, and the Mexican government is aggressively prosecuting police corruption, the respondent has failed to show that internal relocation within Mexico is impossible."

A CAT petitioner is not required to conclusively prove that internal relocation is impossible—but the BIA did not hold Maldonado to such a standard here. I would dismiss this case as moot, but were I to reach the merits, I would affirm the decision of the BIA.

I respectfully dissent.

CRIMINAL LAW AND PROCEDURE

Boykin-Tahl warnings, and appraisal of penal consequences, required before criminal defendant stipulates prior felony conviction.

Cite as 2015 DJDAR 5444

THE PEOPLE,
Plaintiff and Respondent,

v.
JOSHUA CROSS,
Defendant and Appellant.

S212157
Ct.App. 3 C070271
Sacramento County
Super. Ct. Nos. 09F06395, 11F03888
Supreme Court of California
Filed May 18, 2015

Penal Code section 273.5 defines various domestic violence crimes. Defendant Joshua Cross was charged with felony infliction of corporal injury in violation of section 273.5, subdivision (a) (hereafter section 273.5(a)). The information further alleged that Cross had suffered a prior conviction under section 273.5. At trial, Cross stipulated to the prior conviction, and the trial court accepted the stipulation without advising Cross of any trial rights or eliciting his waiver of those rights. The jury found Cross guilty of the charged offense under section 273.5(a) and also found true the prior conviction allegation. As provided in section 273.5, former subdivision (e) (now § 273.5, subd. (f)), Cross's prior conviction exposed him to a prison term of two, four, or five years instead of two, three, or four years. The trial court sentenced Cross to the maximum term of five years.

On appeal, Cross argues that, because his unwarned stipulation to the prior conviction had the direct consequence of subjecting him to a longer prison term, the stipulation was invalid under *In re Yurko* (1974) 10 Cal.3d 857 (*Yurko*). We agree and therefore conclude that Cross's sentence must be set aside.

I.

On May 20, 2011, Cross went to see the mother of his children at her apartment. In the course of a dispute, Cross slapped, punched, and choked her, resulting in a charge of felony infliction of corporal injury in violation of Penal Code section 273.5(a). (All undesignated statutory references are to the Penal Code.) A violation of section 273.5(a) is punishable by two, three, or four years in prison or up to one year in the county jail.

The information further alleged that Cross had previously been "convicted of the crime of

Cite as 89 S.Ct. 1709 (1969)

Co., 220 U.S. 590, 31 S.Ct. 561, 55 L.Ed. 596 (1911); *Fairport, P. & E. R. Co. v. Meredith*, *supra*, at 598, 54 S.Ct. 826; *Moore v. C. & O. R. Co.*, *supra*, at 215, 54 S.Ct. 402; *Tipton v. Atchison, T. & S. F. R. Co.*, 298 U.S. 141, 56 S.Ct. 715, 80 L.Ed. 1091 (1936). Our examination of the relevant legislative materials convinces us that this line of decisions should be reaffirmed.²

[8] We recognize the injustice of denying recovery to a nonemployee which would not be denied to an employee performing the same task in the same manner as did petitioner.³ But it is for Congress to amend the statute to prevent such injustice. It is not permitted the Court to rewrite the statute.

Affirmed.

Mr. Justice BLACK, with whom The Chief Justice and Mr. Justice DOUGLAS join, dissenting.

Congress, not the States, passed the Federal Safety Appliance Act of 1893, 27 Stat. 531, 45 U.S.C. § 1 et seq. Consequently, I think the question of a railroad's liability to a person injured by a violation of that Act is a federal, not a state, question. Although it is true that several old cases, cited by the Court, gave the Safety Appliance Act a different interpretation, and left injured workers to

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whatever remedies they might have under state law, the premises of these old decisions have been thoroughly and I think properly discredited. See *J. I. Case Co. v. Borak*, 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964).

The Federal Employers' Liability Act of 1908, 35 Stat. 65, as amended, 45 U.S.C. § 51 et seq., allows railroad employees injured by violations of the Safety Appliance Act to recover against their employer, and contributory negligence of the employee is not a defense. I cannot

believe that Congress intended that contributory negligence should become a defense simply because the action is brought by a nonemployee, when an employee doing the same work and subjected to the same violation of the Safety Appliance Act could clearly recover. For this reason I would hold that under federal law contributory negligence is not a defense in this case and reverse the judgment of the Iowa Supreme Court.



395 U.S. 238

Edward BOYKIN, Jr., Petitioner,

v.

State of ALABAMA.

No. 642.

Argued March 4, 1969.

Decided June 2, 1969.

The defendant was convicted in the Circuit Court, Mobile County, of robbery and he was sentenced to death by electrocution. The defendant appealed. The Alabama Supreme Court, 281 Ala. 659, 207 So.2d 412, affirmed. Certiorari was granted. The Supreme Court, Mr. Justice Douglas, held that there was reversible error where record did not disclose that defendant voluntarily and understandingly entered his pleas of guilty.

Reversed.

Mr. Justice Harlan and Mr. Justice Black dissented.

1. Criminal Law §1031(4), 1134(1)

It was error, plain on face of record, for Alabama trial judge to accept plea

2. In addition to the Federal Safety Appliance Act and the Federal Employers' Liability Act, see H.R.Rep. No. 1336, 60th Cong., 1st Sess., 6 (1908).

3. See *Louisell & Anderson. The Safety Appliance Act and the FELA: A Plea for Clarification*, 18 Law & Contemp. Prob. 291 (1953).

Cite as 89 S.Ct. 1709 (1969)

U.S. 157, 173, 82 S.Ct. 248, 256, 7 L.Ed. 2d 207; *Spacht v. Patterson*, 386 U.S. 605, 610, 87 S.Ct. 1209, 1212, 18 L.Ed.2d 326), and forestalls the spin-off of collateral proceedings that seek to probe murky memories.⁷

The three dissenting justices in the Alabama Supreme Court stated the law accurately when they concluded that there was reversible error "because the record does not disclose that the defendant voluntarily and understandingly entered his pleas of guilty." 281 Ala., at 663, 207 So.2d, at 415.

Reversed.

Mr. Justice HARLAN, whom Mr. Justice BLACK joins, dissenting.

The Court today holds that petitioner Boykin was denied due process of law, and that his robbery convictions must be reversed outright, solely because "the record

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[is] inadequate to show that petitioner * * * intelligently and knowingly pleaded guilty." *Ante*, at 1711. The Court thus in effect fastens upon the States, as a matter of federal constitutional law, the rigid prophylactic requirements of Rule 11 of the Federal Rules of Criminal Procedure. It does so in circumstances where the Court itself has only very recently held application of Rule 11 to be unnecessary in the federal courts. See *Halliday v. United States*, 394 U.S. 831, 89 S.Ct. 1498, 23

7-8; *Illinois*, Ill.Rev.Stat., c. 38, §§ 113-1 to 114-14; *Missouri*, *State v. Blaylock*, Mo., 394 S.W.2d 364 (1965); *New York*, *People v. Seaton*, 19 N.Y.2d 404, 407, 230 N.Y.S.2d 370, 371, 227 N.E.2d 294, 295 (1967); *Wisconsin*, *State ex rel. Burnett v. Burke*, 22 Wis.2d 486, 494, 126 N.W.2d 91, 96 (1964); and *Washington*, *Woods v. Rhy*, 68 Wash.2d 601, 605, 414 P.2d 601, 604 (1966).

7. "A majority of criminal convictions are obtained after a plea of guilty. If these convictions are to be insulated from attack, the trial court is best advised to conduct an on the record examination of the defendant which should include, inter alia, an attempt to satisfy itself that the

L.Ed.2d 16 (1969). Moreover, the Court does all this at the behest of a petitioner who has never at any time alleged that his guilty plea was involuntary or made without knowledge of the consequences. I cannot possibly subscribe to so bizarre a result.

I.

In June 1966, an Alabama grand jury returned five indictments against petitioner Boykin, on five separate charges of common-law robbery. He was determined to be indigent, and on July 11 an attorney was appointed to represent him. Petitioner was arraigned three days later. At that time, in open court and in the presence of his attorney, petitioner pleaded guilty to all five indictments. The record does not show what inquiries were made by the arraigning judge to confirm that the plea was made voluntarily and knowingly.¹

Petitioner was not sentenced immediately after the acceptance of his plea. Instead, pursuant to an Alabama statute, the court ordered that "witnesses * * be examined, to ascertain the character of the offense," in the presence of a jury which would then fix petitioner's sentence.

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See Ala.Code, Tit. 14, § 415 (1958); Tit. 15, § 277. That proceeding occurred some two months after petitioner pleaded guilty. During that period, petitioner made no attempt to withdraw his plea. Petitioner was pres-

defendant understands the nature of the charges, his right to a jury trial, the acts sufficient to constitute the offenses for which he is charged and the permissible range of sentences." *Commonwealth ex rel. West v. Rundle*, 428 Pa. 102, 105-106, 237 A.2d 196, 197-198 (1968).

1. The record states only that:

"This day in open court came the State of Alabama by its District Attorney and the defendant in his own proper person and with his attorney, Evan Austill, and the defendant in open court on this day being arraigned on the indictment in these cases charging him with the offense of Robbery, and plead guilty." Appendix 4.