

ORIGINAL

No. 20-6116

Supreme Court, U.S.
FILED

OCT 09 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TERRY WERNICKE JR. — PETITIONER
(Your Name)

VS.

THIRD Appellate District of Cal. ; RESPONDENT(S)
PATRICK COVELLO, WARREN
ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TERRY WERNICKE JR. K-54043
(Your Name)
MULE CREEK STATE PRISON
P.O. Box 409090
(Address)

IONE, CA 95640
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE CALIFORNIA SUPREME COURT'S DECISION IS "CONTRARY TO" SANTOBELLO V. NEW YORK, 404 US 257 (1971), AND MARY J. JOHNSON, 467 US 504 (1984), BY REFUSING/FAILING TO PROVIDE 'STATE CORRECTIVE PROCESS' TO THE BREACHED OF PETITIONER'S NEGOTIATED PLEA BARGAIN AGREEMENT BY STATE OFFICIALS RETROACTIVELY CHANGING THE LEGAL CONSEQUENCES OF PETITIONER'S 1974 PRIOR MISDEMEANOR CONVICTION TO A FELONY STRIKE CONVICTION UNDER CALIFORNIA'S THREE STRIKES LAW?

2. WHETHER PETITIONER'S 1974 NEGOTIATED PLEA BARGAIN AGREEMENT THAT WAS EMBODIED INTO THE JUDGMENT OF THE COURT REQUIRES SPECIFIC ENFORCEMENT OF THE TERMS OF THE NEGOTIATED PLEA BARGAIN AGREEMENT?

3. WHETHER IT WOULD BE A FUNDAMENTAL MISCARRIAGE OF JUSTICE IF THIS COURT DOES NOT VACATE THE JUDGMENT OF THE CALIFORNIA SUPREME COURT?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

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

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

PLEASE SEE THE AUTHORITIES CITED BELOW.
BECAUSE PETITIONER IS UNSKILLED IN THE LAW,
TIME-CONSTRAINTS, AND NOT HAVING A COMPUTER,
PETITIONER WAS UNABLE TO MAKE A TABLE
OF AUTHORITIES.

STATUTES AND RULES

OTHER

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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☐ is unpublished.

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

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

☒ For cases from **state courts**:

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

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

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

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was July 15, 2020
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

1 CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

2
3 THE CONTRACTS CLAUSE PROVIDES THAT "NO
4 STATE SHALL ... PASS ANY ... LAW IMPAIRING
5 THE OBLIGATION OF CONTRACTS," (U.S. CONST. ART. I,
6 § 10, CL. 1), THEREBY "RESTRICT[ING] THE POWER
7 OF STATES TO DISRUPT CONTRACTUAL
8 ARRANGEMENTS." (SVEEN V. MELIN, 138 S. CT 1815,
9 1821 (2018).)

STATEMENT OF THE CASE.

A. INTRODUCTION.

1. PETITIONER RESPECTFULLY REQUESTS THIS HONORABLE COURT TO CONSTRUCT THE FOLLOWING LIBERALLY AND TO AFFORD PETITIONER THE BENEFIT OF DOUBT AS TO THE CORRECT INTERPRETATION OF THE FOLLOWING TO MEAN WHAT PETITIONER IS REQUIRED TO SAY TO JUSTIFY THIS HONORABLE COURT'S JURISDICTION OVER THE FINAL JUDGMENT OF THE CALIFORNIA POST-CONVICTION SUPREME COURT'S DENIAL OF RELIEF ON A CLAIM UNDER SANTOBELLO V. NEW YORK, 404 U.S. 257, 262 (1971), AND MARRY V. JOHNSON, 467 U.S. 504, 507 (1984). (SEE HAINES V. KERNER, 404 U.S. 519, 520 (1972); BLAISDELL V. FRANKIE, 729 F.2d 1237, 1241 (9th Cir. 2013) ("THIS RULE RELIEVES PRO SE LITIGANTS FROM THE STRICT APPLICATION OF PROCEDURAL RULES AND DEMANDS THAT COURTS NOT HOLD MISSING OR INACCURATE LEGAL TERMINOLOGY OR MUNDANE DRAFTSMANSHIP AGAINST" PRO SE LITIGANT); PEOPLE V. DAVIS (1981) 29 CAL3d 814, 828 (DEFENDANT IS ENTITLED TO THE BENEFIT OF EVERY DOUBT); CF. O'NEAL V. MCANINCH, 513 U.S. 432, 436 (1995) (GIVE THE PETITIONER THE BENEFIT OF DOUBT); SEE ALSO WEARRY V. CAIN, 136 S. CT. 1002 (2016) (PER CURIAM) (REVERSING THE STATE POSTCONVICTION

1 COURT" JUDGMENT ON A CLAIM UNDER BRADY V.
2 MARYLAND, 373 US 83 (1963)); FOSTER V. CHATMAN, 195
3 LED 2d 1 (2016) (REVIEWING THE GEORGIA COURT" DENIAL
4 OF POSTCONVICTION RELIEF TO A CAPITAL DEFENDANT RAISING
5 A CLAIM UNDER BASTON V. KENTUCKY, 476 US 79 (1986));
6 SMITH V. CAIN, 565 US 73 (2012) (REVERSING A STATE
7 POSTCONVICTION COURT" DENIAL OF RELIEF UNDER
8 BRADY V. MARYLAND, SUPRA.); SEARS V. LYPTON,
9 561 US 945 (2010) (PER CURIAM) (VACATING A STATE
10 POSTCONVICTION COURT" DENIAL OF RELIEF ON A
11 PENALTY PHASE CLAIM UNDER STRICKLAND V.
12 WASHINGTON, 466 US 668 (1984)); YOUNG V. RAGEN, 337
13 US. 235, 240 (1949) (VACATED THE ORDER DENYING
14 THE WRIT OF HABEAS CORPUS AND REMANDED THE
15 CAUSES TO THE STATE COURT FOR RECONSIDERATION).
16

17 2. PETITIONER RESPECTFULLY REQUESTS THIS
18 HONORABLE COURT, PURSUANT TO DYER V. HOFBAUER,
19 546 US. 1, 4 (2005), TO INCORPORATE THE
20 ATTACHED PETITION FOR WRIT OF ERROR CORAM
21 VOBIS, FILED IN THE CALIFORNIA SUPREME
22 COURT ON JUNE 8, 2020, NO. S262682,
23 AND DOCUMENTS ATTACHED THERETO, BY REFERENCE
24 AS FULLY SET FORTH HEREIN.

25 3. PETITIONER RESPECTFULLY REQUESTS THIS
26 HONORABLE COURT, PURSUANT TO ERICKSON V.
27 PARDUS, 551 US 89, 94 (2007); ASHCROFT V. IQBAL,
28 556 US 662, 679 (2009), TO ACCEPT THE FOLLOWING
FACTS AS TRUE FOR DETERMINING WHETHER

1 THIS CASE PRESENTS THE TYPE OF "EXTREME
2 MALFUNCTION" IN CALIFORNIA 'STATE-CORRECTIVE
3 PROCESS' THAT JUSTIFIES THIS HONORABLE COURT'S
4 JURISDICTION UNDER 28 U.S.C. § 1257(a). (SEE
5 HARRINGTON V. RICHTER, 562 U.S. 86, 102 (2011)
6 (QUOTING JACKSON V. VIRGINIA, 443 U.S. 307, 332
7 N.5 (1979) (STEVENS, J., CONCURRING IN
8 JUDGMENT)).)

9 4. BECAUSE, ASSUMING THE FOLLOWING
10 FACTS AS TRUE, THEN BY APPLYING THIS
11 HONORABLE COURT'S DECISION IN KERNAN
12 V. CUERO, 138 S. CT. 4 (2014) (PER CURIAM),
13 DEMONSTRATES CLEARLY AND CONVINCINGLY
14 THAT THE CALIFORNIA COURTS' DECISION(S),
15 FROM THE SUPERIOR COURT, APPELLATE COURT,
16 AND SUPREME COURT, ARE "CONTRARY TO"
17 SANTOBELLO V. NEW YORK, SUPRA, 404 U.S. 257,
18 AND MARY V. JOHNSON, SUPRA, 467 U.S.
19 504. (SEE HARRINGTON V. RICHTER, 562 U.S. 86, 100
20 (2011); HOWES V. FIELDS, 132 S. CT. 1181, 1187 (2012);
21 KNOWLES V. MIRZAYAN, 556 U.S. 111, 122 (2009); BERGHUIS
22 V. SMITH, 559 U.S. 314, 321 (2010).) IN OTHER WORDS,
23 THIS HONORABLE COURT WILL FIND THAT THE
24 CALIFORNIA COURTS' DECISION(S) IS "SO LACKING
25 IN JUSTIFICATION THAT THERE WAS AN ERROR
26 ... BEYOND ANY POSSIBILITY FOR FAIRMINDED
27 DISAGREEMENT." (BURT V. TITLOW, 134 S. CT. 10, 16
28 (2013); SEE ALSO BOARMAN V. DIXON, 132 S. CT. 26,

27(2011) (A STATE COURT "ERRED SO TRANSPARENTLY THAT NO FAIRMINDED JURIST COULD AGREE WITH THAT COURT" DECISION.").

B. RELEVANT FACTUAL BACKGROUND.

5. IN 1959, THE CALIFORNIA LEGISLATURE ENACTED PENAL CODE § 17, SUBDIVISION (b), TO PROVIDE THAT WHEN A CRIME IS PUNISHABLE AS A FELONY OR A MISDEMEANOR, IT IS A MISDEMEANOR FOR ALL PURPOSES "WHEN THE COURT COMMITS THE DEFENDANT TO THE YOUTH AUTHORITY." (IN RE DEWING (1977) 19 CAL.3D 54, 56 (QUOTING STATS. 1969, CH. 1144, § 1, P. 2214) (EMPHASIS ITALICIZED).)

6. IN 1963, THE CALIFORNIA COURT OF APPEAL IN PEOPLE V. ZACCARIA (1963) 216 CAL. APP. 2d 787, EXPLAINED THAT PENAL CODE § 17, SUBDIVISION (b), BY AMENDMENT IN 1959, MADE OFFENSES WHICH ARE PUNISHABLE IN THE ALTERNATIVE MANNER, CONFINEMENT IN STATE PRISON OR COUNTY JAIL OR FINE, MISDEMEANOR WHERE THE COURT COMMITS THE DEFENDANT TO THE YOUTH AUTHORITY. (ID. AT 789 (EMPHASIS ITALICIZED)).

7. IN PEOPLE V. RAMSEY (1962) 202 CAL. APP. 2d 856, EXPLAINED THAT "IT IS TRUE THAT SECTION 17 OF THE PENAL CODE WAS AMENDED IN 1959 SO THAT A DEFENDANT, CONVICTED

1 OF A CRIME PUNISHABLE IN THE DISCRETION OF THE
2 COURT BY IMPRISONMENT IN THE STATE PRISON OR BY
3 FINE OR IMPRISONMENT IN THE COUNTY JAIL AND
4 COMMITMENT TO THE YOUTH AUTHORITY, IS NOW
5 GUILTY OF A MISDEMEANOR ONLY." (Id. at 859.)

6 8. IN 1971, THE CALIFORNIA SUPREME COURT
7 EXPLAINED IN PEOPLE V. HANNON (1971) 5 CA13d 320,
8 THAT PENAL CODE § 17, SUBDIVISION (b)(2), REMAINED
9 ESSENTIALLY AS IT WAS ENACTED IN 1959 - A
10 SIMPLE STATEMENT THAT AN ALTERNATIVELY
11 PUNISHABLE OFFENSE "IS A MISDEMEANOR FOR
12 ALL PURPOSES . . . [WHEN] THE COURT COMMITS
13 THE DEFENDANT TO THE YOUTH AUTHORITY." (Id. at
14 328 (EMPHASIS ITALICIZED).)

15 9. THE HANNON COURT HELD THAT DEFENDANT'S
16 COMMITMENT TO THE YOUTH AUTHORITY DENOMINATED
17 HIS OFFENSE AS A MISDEMEANOR FOR ALL
18 PURPOSES, AND THAT PENAL CODE § 17,
19 SUBDIVISION (b)(2), RELATING TO FELONY -
20 MISDEMEANOR OFFENSES PRECLUDED IMPOSITION
21 OF FELONY PUNISHMENT. (Id. at 325, 340.)

22 10. ON JUNE 27, 1974, PETITIONER, BY
23 AND THROUGH THE ADVICE OF TRIAL COUNSEL,
24 AND PURSUANT TO A NEGOTIATED PLEA
25 BARGAIN AGREEMENT, WAIVED HIS FUNDAMENTAL
26 CONSTITUTIONAL RIGHTS AND AGREED TO PLEAD
27 GUILTY TO ROBBERY, PENAL CODE § 211, IN
28 EXCHANGE FOR THE PROMISE THAT THE

1 CHARGE OF ACCESSORY AFTER THE FACT, PENAL
2 CODE § 32, WOULD BE DISMISSED AND THAT
3 THE ROBBERY CONVICTION WOULD BE REDUCED
4 TO A MISDEMEANOR "WHEN THE COURT COMMITTS
5 THE DEFENDANT TO THE YOUTH AUTHORITY." (SEE
6 APPENDIX B AT PP. 84-85, 86-87, 105-106.)

7 11. ON JULY 18, 1974, THE VENTURA COUNTY
8 SUPERIOR COURT APPROVED PETITIONER'S NEGOTIATED
9 PLEA MARGAIN AGREEMENT AND EMBODIED IT
10 INTO THE JUDGMENT OF THE COURT. (APPENDIX B
11 AT PP. 86-87.)

12 12. ON JULY 25, 1974, PURSUANT TO THE
13 NEGOTIATED PLEA MARGAIN AGREEMENT, THE
14 TRIAL COURT COMMITTED PETITIONER "TO
15 THE YOUTH AUTHORITY." (APPENDIX B AT PP. 88,
16 90 (EMPHASIS ITALICIZED).)

17 13. IN 1976, THE CALIFORNIA LEGISLATURE
18 AMENDED PENAL CODE § 17, SUBDIVISION (b)
19 (2), TO PROVIDE THAT WHEN A CRIME IS
20 PUNISHABLE AS A FELONY OR MISDEMEANOR
21 IT IS A MISDEMEANOR FOR ALL PURPOSES
22 "WHEN THE COURT, UPON COMMITTING THE
23 DEFENDANT TO THE YOUTH AUTHORITY,
24 DESIGNATE THE OFFENSE TO BE A
25 MISDEMEANOR." (IN RE DEWING, SUPRA, 19 CAL 3D
26 AT 57 (QUOTING STAT. 1976, CH. 1070, § 1) EMPHASIS
27 ITALICIZED).)

28 14. IN 1994, THE CALIFORNIA LEGISLATURE

1 AND VOTERS ENACTED THE "THREE STRIKES LAW".
2 (PENAL CODE §§ 667(b)-(i), 1170.12.)

3 15. THE THREE-STRIKES LAW PROVIDES IN
4 RELEVANT PART THAT: "... THE DETERMINATION
5 OF WHETHER A PRIOR CONVICTION IS A PRIOR
6 FELONY CONVICTION FOR PURPOSES OF SUBDIVISIONS
7 (b) TO (i), INCLUSIVE, SHALL BE MADE UPON
8 THE DATE OF THAT PRIOR CONVICTION AND
9 IS NOT AFFECTED BY THE SENTENCE IMPOSED
10 UNLESS THE SENTENCE AUTOMATICALLY, UPON
11 THE INITIAL SENTENCING, CONVERTS THE
12 FELONY TO A MISDEMEANOR. (PENAL CODE §§
13 667, Subd. (d)(1), 1170.12, Subd. (b)(1).)

14 16. ON JUNE 5, 1997, THE SACRAMENTO
15 COUNTY SUPERIOR COURT, AFTER CONSIDERING
16 THE COURT DOCUMENTS FROM PETITIONER"
17 1974 PRIOR CONVICTION, THAT WERE
18 INTRODUCED INTO EVIDENCE BY THE PROSECUTION,
19 REJECTED PETITIONER" CLAIM THAT HIS 1974
20 PRIOR FELONY CONVICTION AUTOMATICALLY
21 CONVERTED TO A MISDEMEANOR WHEN THE
22 1974 TRIAL COURT COMMITTED PETITIONER
23 TO THE YOUTH AUTHORITY, AND USED HIS 1974
24 PRIOR CONVICTION AS A "STRIKE" UNDER THE
25 THREE STRIKES LAW TO IMPOSE PUNISHMENT
26 BEYOND THE STATUTORY MAXIMUM FOR THE
27 OFFENSES HE WAS FOUND GUILTY OF. (APPENDIX
28 B AT PP. 66-67, 96-98, 84-90.)

17. ON OCTOBER 25, 1998, THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT, ERRONEOUSLY RELIED UPON PENN CODE § 17, Subdivision (c), AND PEOPLE V. FRANKLIN (1997) 57 CAL. App. 4th 68, TO REJECT PETITIONER'S CLAIM THAT HIS 1974 PRIOR FELONY CONVICTION AUTOMATICALLY CONVERTED TO A MISDEMEANOR WHEN THE 1974 TRIAL COURT COMMITTED HIM TO THE YOUTH AUTHORITY, AND AFFIRMED THE JUDGMENT WITH DIRECTIONS TO VACATE ONE OF PETITIONER'S 5-YEAR SERIOUS FELONY ENHANCEMENTS (APPENDIX B AT pp. 96-98, 67.)

18. ON JUNE 24, 2019, PETITIONER EXPLAINED IN SPECIFIC DETAIL TO THE SACRAMENTO COUNTY SUPERIOR COURT THAT THE UNITED STATES SUPREME COURT COMMANDED THE TRIAL COURT NOT TO IMPOSE, AND TO CORRECT, AN ILLEGAL AND UNAUTHORIZED SENTENCE PROHIBITED, BARRED, AND PREVENTED BY THE CONSTITUTION OF THE UNITED STATES. (SEE APPENDIX B AT pp. 68-82, 71-76, 77-78.)

19. PETITIONER EXPLAINED TO THE TRIAL COURT THAT THE REASON HE SUFFERED AN ILLEGAL AND UNAUTHORIZED SENTENCE IS BECAUSE PURSUANT TO HIS 1974 NEGOTIATED PLEA BARGAIN AGREEMENT HE PLEAD GUILTY ON JUNE 27, 1974, TO ROBBERY, PENN CODE § 211, BASED UPON THE CHARGE OF ACCESSORY AFTER THE FACT, PENN

1 CODE § 32, BEING DISMISSED AND PETITIONER'S ROBBERY
2 CONVICTION BEING A MISDEMEANOR UPON THE TRIAL
3 COURT COMMITTING PETITIONER TO CALIFORNIA
4 YOUTH AUTHORITY, AND THE TRIAL COURT COMMITTING
5 PETITIONER TO YOUTH AUTHORITY ON JULY 25, 1974;
6 AND THE TRIAL COURT IN 1997 REJECTING
7 PETITIONER'S CLAIMS THAT HIS 1974 PRIOR
8 FELONY CONVICTION AUTOMATICALLY CONVERTED
9 TO A MISDEMEANOR AND USING PETITIONER'S
10 1974 PRIOR FELONY CONVICTION AS A 'STRIKE'
11 UNDER CALIFORNIA'S THREE STRIKES LAW TO
12 IMPOSE PUNISHMENT BEYOND THE STATUTORY
13 MAXIMUM. (APPENDIX B AT PP. 72-74, 72-76,
14 77-78.)

15 20. ON AUGUST 15, 2019, THE SACRAMENTO
16 COUNTY SUPERIOR COURT, ARBITRARILY AND
17 ERRONEOUSLY FOUND THE PETITIONER'S CLAIM
18 WAS THAT HIS 1974 PRIOR FELONY CONVICTION
19 CONVERTED TO A MISDEMEANOR UPON HIS RELEASE
20 FROM THE CALIFORNIA YOUTH AUTHORITY PURSUANT
21 TO PENAL CODE § 17, SUBDIVISION (b)(2), AND
22 RELIED UPON PEOPLE V. FRANKLIN, SUPRA, 57 CAL.
23 APP. 4TH 68, 73-74, TO DENY PETITIONER RELIEF
24 FROM THE ILLEGAL AND UNAUTHORIZED SENTENCE.
25 (SEE APPENDIX B AT PP. 121-123.)

26 21. IN ADDITION, THE TRIAL COURT ARBITRARILY
27 AND ERRONEOUSLY RELIED UPON STATE
28 PROCEDURAL BARS TO REJECT PETITIONER'S

1 CLAIMS OF SUFFERING AN ILLEGAL AND UNAUTHORIZED
2 SENTENCE. (SEE APPENDIX B AT PP. 121-123.) BECAUSE,
3 AS PETITIONER EXPLAINED TO THE TRIAL COURT,
4 WHICH THE TRIAL COURT KNOWS, AN ILLEGAL
5 AND UNAUTHORIZED SENTENCE CAN BE
6 CORRECTED AT ANY TIME. (SEE APPENDIX B AT
7 PP. 70, 71, 77-78, 80; SEE ALSO ID. AT P. 71 (PEOPLE
8 V. TURNER (1998) 67 CAL. APP. 4TH 1258, 1259 ("AN
9 UNAUTHORIZED SENTENCE ENHANCEMENT CAN BE
10 ADDRESSED AT ANY TIME"); IN RE HARRIS (1993)
11 5 CAL. 4TH 813, 841-842); AND SEE ID. AT PP.
12 77-78 (ARGUING CLEARLY ESTABLISHED FEDERAL
13 LAW AS DETERMINED BY THE SUPREME
14 COURT OF THE UNITED STATES).
15

16 22. ON OCTOBER 11, 2019, PETITIONER EXPLAINED
17 IN SPECIFIC DETAIL TO THE THIRD APPELLATE DISTRICT
18 OF CALIFORNIA, IN HIS PETITION FOR WRIT OF
19 ERROR CORAM VOBIS AND PETITION TO RECALL
20 THE REMITTITUR IN CASE NO. CO2689, HOW HE
21 EXPLAINED TO THE LOWER COURT WHY HIS 1974
22 PRIOR CONVICTION WAS AUTOMATICALLY REDUCED
23 TO A MISDEMEANOR, PURSUANT TO A NEGOTIATED
24 PLEA MARGIN AGREEMENT, BY PLEADING
25 GUILTY TO ROBBERY AND THE TRIAL COURT
26 COMMITTING HIM TO THE YOUTH AUTHORITY.
27 (SEE APPENDIX B AT PP. 14-17, 17-18, 25-
28 28, 28-40.)

23. IN ADDITION, PETITIONER PRESENTED

THREE QUESTIONS TO THE STATE APPELLATE COURT
RELATING TO WHETHER THE 1959 ENACTMENT
OF PENAL CODE § 17, SUBDIVISION (b) (2), APPLIED
TO PETITIONER'S CONVICTION OF JUNE 27, 1974,
TO "AUTOMATICALLY" CONVERT PETITIONER'S FELONY
CONVICTION TO A MISDEMEANOR CONVICTION "WHEN
THE COURT COMMITS THE DEFENDANT TO THE
YOUTH AUTHORITY." (STATS. 1969, CH. 1144, § 1, P. 2214)
AND WHETHER PETITIONER'S 1974 MISDEMEANOR
CONVICTION COULD BE USED AS A "STRIKE"
UNDER THE THREE STRIKES LAW. AND WHETHER
THE DUE PROCESS CLAUSE MANDATES THE
ELIMINATION OF THE ILLEGAL AND UNAUTHORIZED
SENTENCE. (SEE APPENDIX B AT PP. 17, PARA.
14, PP. 4.

24. ON OCTOBER 18, 2019, INSTEAD OF
THE STATE APPELLATE COURT ORDERING
RESPONDENT TO ADDRESS THE CLAIMS PETITIONER
PRESENTED TO THE STATE APPELLATE COURT,
THE STATE APPELLATE COURT ASKED RESPONDENT
TO ADDRESS THE ISSUE THAT PETITIONER'S
1974 CONVICTION FOR ROBBERY WAS A
STRAIGHT FELONY AND NOT REDUCIBLE
TO A MISDEMEANOR AS PETITIONER CLAIMED.
(SEE APPENDIX B AT PP. 18-19, PARA. 20; SEE
ALSO ID. AT PP. 100-101.)

25. ON NOVEMBER 18, 2019, PETITIONER
FILED WITH THE THIRD APPELLATE DISTRICT OF

1 CALIFORNIA HIS REPLY TO RESPONDENT'S INFORMAT
2 RESPONSE TO THE PETITION FOR WRIT OF ERROR
3 CORAM VOBIS. (SEE APPENDIX B AT PP. 19, 103 -
4 111.)

5 26. PETITIONER ASKED THE STATE APPELLATE COURT
6 TO TAKE JUDICIAL NOTICE OF COURT RECORDS IN
7 PEOPLE V. WERNICK JR., IN CASE NO. CO26891,
8 AND IN CASE NO. CR-10430 THAT WAS ATTACHED
9 TO HIS PETITION FOR WRIT OF ERROR CORAM
10 VOBIS, CASE NO. CO90576, AS EXHIBIT C. (SEE
11 APPENDIX B AT PP. 19, 104, 83-90.)

12 27. IN ADDITION, PETITIONER TOOK EXCEPTION
13 TO THE SUFFICIENCY OF RESPONDENT'S RESPONSE
14 ON THE GROUND THAT IT GOES BEYOND THE
15 SCOPE OF ISSUES ALREADY DECIDED BY THE
16 THIRD APPELLATE DISTRICT OF CALIFORNIA
17 IN THE PREVIOUS APPEAL, CASE NO. CO26891,
18 AND CITED ALLEN V. MCCURRY, 449 US 90,
19 915 (1980). (APPENDIX B AT PP. 19, 104.)

20 28. IN ADDITION, PETITIONER ARGUED TO
21 THE THIRD APPELLATE DISTRICT THE REASONING
22 OF KERNAN V. CUERO, SUPRA, 138 S Ct 4, TO
23 ALLEG, CONTEND, AND ARGUE PURSUANT
24 TO MARRY V. JOHNSON, SUPRA, 467 US 504,
25 507, AND SANTOBELLO V. NEW YORK, SUPRA,
26 404 US 257, 262, THAT PURSUANT TO
27 A NEGOTIATED PLEA BARGAIN AGREEMENT,
28 AND BY AND THROUGH THE ADVICE OF TRIAL

1 COUNSEL, PETITIONER WAIVED HIS FUNDAMENTAL
2 RIGHTS AND PLEAD GUILTY TO THE CHARGE OF
3 ROBBERY, PENAL CODE § 211, IN EXCHANGE
4 FOR THE PROMISE THAT THE CHARGE OF
5 ACCESSORY AFTER THE FACT, PENAL CODE §
6 32, WOULD BE DISMISSED AND THE PETITIONER
7 WOULD BE "COMMITTED" TO YOUTH AUTHORITY,
8 AND THAT THE FELONY CONVICTION WOULD
9 BE REDUCED TO A MISDEMEANOR.. (SEE APPENDIX
10 B AT PP. 19-20, 104-109, 84-90.)

11 29. ON NOVEMBER 22, 2019, THE THIRD
12 APPELLATE DISTRICT OF CALIFORNIA DENIED
13 PETITIONER'S PETITION FOR WRIT OF ERROR
14 CORAM VOBIS WITHOUT ANY EXPLANATION.
15 (APPENDIX B AT PP. 20, 113.)

16 30. ON FEBRUARY 3, 2020, PETITIONER
17 EXPLAINED IN SPECIFIC DETAIL TO THE CALIFORNIA
18 SUPREME COURT, IN HIS PETITION FOR WRIT
19 OF HABEAS CORPUS, PETITION FOR WRIT OF
20 ERROR CORAM VOBIS, AND PETITION TO RECALL
21 THE REMITTUR, THAT WAS ASSIGNED CASE NO.
22 S260628, THAT HIS 1974 FELONY CONVICTION
23 "AUTOMATICALLY" CONVERTED TO A MISDEMEANOR
24 AND WAS NOT A "STRIKE" UNDER THE THREE STRIKES
25 LAW (SEE APPENDIX B AT PP. 116, 25-40, 60, 61.)

26 31. IN ADDITION, PETITIONER EXPLAINED IN
27 SPECIFIC DETAIL THAT HE WAS DENIED DUE
28 PROCESS OF LAW BY THE LOWER COURTS

1 ARBITRARILY REFUSING TO PROVIDE STATE "CORRECTIVE
2 PROCESS" TO PETITIONER SUFFERING AN ILLEGAL
3 AND UNAUTHORIZED SENTENCE. (SEE APPENDIX B
4 AT PP. 116, 41-58.)

5 32. INSTEAD OF THE CALIFORNIA SUPREME
6 COURT DENYING PETITIONER'S PETITION NO. S260678,
7 ON THE MERITS AND/OR FOR PROCEDURAL
8 REASONS, THE CALIFORNIA SUPREME COURT
9 TRANSFERRED THE MATTER BACK TO THE
10 THIRD APPELLATE DISTRICT OF CALIFORNIA. (SEE
11 APPENDIX B AT P. 117, FEBRUARY 27, 2020.)

12 33. ON MARCH 9, 2020, THE THIRD APPELLATE
13 DISTRICT OF CALIFORNIA, WITHOUT ANY BRIEFING FROM
14 RESPONDENT OR PETITIONER, DENIED PETITIONER'S
15 PETITION FOR WRIT OF ERROR CORAM VOBIS
16 WITHOUT ANY EXPLANATION. (SEE APPENDIX B AT
17 PP. 20-21, 119, 61.)

18 34. ON JUNE 8, 2020, IN PETITIONER'S
19 PETITION TO VACATE THE JUDGMENT, PETITION FOR
20 WRIT OF HABEAS CORPUS, PETITION TO RECALL THE
21 REMITTITUR, AND PETITION FOR WRIT OF ERROR CORAM
22 VOBIS, CASE NO. S262682, HE EXPLAINED IN VERY
23 SPECIFIC DETAIL TO THE CALIFORNIA SUPREME COURT
24 THAT HIS RIGHT TO MEANINGFUL ACCESS TO THE
25 COURTS AND RIGHT TO DUE PROCESS OF LAW
26 WERE VIOLATED BY THE THIRD APPELLATE DISTRICT,
27 AFTER THE CALIFORNIA SUPREME COURT
28 TRANSFERRED THE MATTER BACK, ABUSING

1 ITS DISCRETION ARBITRARILY FAILING/REFUSING TO
2 TAKE CORRECTIVE ACTION OF THE ILLEGAL AND
3 UNAUTHORIZED SENTENCE PETITIONER SUFFERS.
4 (SEE APPENDIX B AT PP. 1-130, 2, 12-24.)

5 35. IN ADDITION, PETITIONER EXPLAINED IN
6 SPECIFIC DETAIL TO THE CALIFORNIA SUPREME
7 COURT HOW HE EXPLAINED TO THE LOWER
8 COURTS, AS WELL AS TO THE CALIFORNIA
9 SUPREME COURT, AS DESCRIBED ABOVE IN
10 PARAGRAPHS 10 TO 12, THAT HIS 1974 PRIOR
11 FELONY CONVICTION AUTOMATICALLY CONVERTED
12 TO A MISDEMEANOR PURSUANT TO A NEGOTIATED
13 PLEA BARGAIN AGREEMENT, THAT REQUIRED
14 PETITIONER TO WAIVE HIS FUNDAMENTAL
15 CONSTITUTIONAL RIGHTS AND PLEAD GUILTY
16 TO ROBBERY, PENAL CODE § 211, IN EXCHANGE
17 FOR THE PROMISE THAT THE CHARGE OF ACCESSORY
18 AFTER THE FACT, PENAL CODE § 32, WOULD BE
19 DISMISSED AND HIS FELONY ROBBERY CONVICTION
20 WOULD BE REDUCED TO A MISDEMEANOR WHEN THE
21 TRIAL COURT "COMMITTS" PETITIONER TO THE YOUTH
22 AUTHORITY. (SEE APPENDIX B AT PP. 14-23, 25-40,
23 41-57, 69-81, 84-90, 103-110.)

24 36. FURTHERMORE, PETITIONER EXPLAINED IN
25 SPECIFIC DETAIL TO THE CALIFORNIA SUPREME COURT
26 THAT HE WAS DENIED DUE PROCESS OF LAW BY THE
27 LOWER COURTS ARBITRARILY REFUSING TO PROVIDE
28 STATE "CORRECTIVE PROCESS" TO PETITIONER

1 SUFFERING AN ILLEGAL AND UNAUTHORIZED SENTENCE.
2 (SEE APPENDIX B AT PP. 2-4, 41-58.)

3 37. ON JULY 15, 2020, THE CALIFORNIA
4 SUPREME COURT DENIED PETITIONER'S PETITION
5 FOR WRIT OF ERROR CORAM VOBIS WITHOUT
6 ANY EXPLANATION. (SEE APPENDIX A AT P. 1.)

7 38. THIS PETITION FOR WRIT OF CERTIORARI
8 IS BEING PROVIDED TO PRISON OFFICIALS
9 WITHIN 90 DAYS OF JULY 15, 2020, AS
10 DESCRIBED IN THE ATTACHED PROOF OF
11 SERVICE BY MAIL.
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1 REASONS FOR GRANTING THE PETITION.

2
3 A. THE RECORD BEFORE THE CALIFORNIA COURTS
4 SHOWS THAT THE STATE OF CALIFORNIA
5 BREACHED ITS CONTRACTUAL OBLIGATIONS
6 WITH PETITIONER.
7

8 39. PETITIONER INCORPORATES THE FACTS OF
9 PARAGRAPHS 1 TO 38 BY REFERENCE AS FULLY
10 SET FORTH HEREIN.

11 40. PETITIONER ALLEGES, CONTENTS, AND
12 ARGUES PURSUANT TO CULLEN V. PINHOLSTER,
13 563 U.S. 170, 185 & N. 7 (2011); GREEN V. FISHER,
14 132 S. CT. 78, 44 (2011), THAT THE RECORD
15 (APPENDIX B AT PP. 84-90) BEFORE THE CALIFORNIA
16 COURTS SHOWS THAT THE STATE OF CALIFORNIA
17 BREACHED ITS CONTRACTUAL OBLIGATIONS WITH
18 PETITIONER BY NOT CONSIDERING "PETITIONER"
19 1974 PRIOR FELONY CONVICTION "AUTOMATICALLY,
20 UPON THE INITIAL SENTENCING CONVERTS THE
21 FELONY TO A MISDEMEANOR." (PENAL CODE § 8
22 (b)(7), Subd. (d)(1), 1170.12, Subd. (b)(1).)

23 41. BECAUSE THE RECORD BEFORE THE
24 CALIFORNIA COURTS SHOWS THAT IN 1974
25 PURSUANT TO A NEGOTIATED PLEA BARGAIN
26 WITH THE STATE OF CALIFORNIA, AND BY THE
27 ADVICE OF TRIAL COUNSEL, WAIVED HIS FUNDAMENTAL
28 CONSTITUTIONAL RIGHTS AND AGREED TO PLEAD

1 Guilty to Robbery, Penal Code § 211, in exchange
2 for the promise from the State of California
3 to dismiss the charge of accessory after
4 the fact, Penal Code § 32, and for the
5 Robbery conviction to be reduced to a
6 misdemeanor "when the [trial] court "commits"
7 [petitioner] to the youth authority." (California
8 Penal Code § 17, Subd. (b)(2); In re Dewing, Supra,
9 19 Cal.3d at 56 (quoting Stats. 1969, ch. 1144, § 1, p. 2214).)

10 42. In addition, petitioner alleges, contends,
11 and argues that, according to this court,
12 "when a plea rests in any significant degree
13 on a promise or agreement of the prosecutor,
14 so that it can be said to be part of the
15 inducement or consideration, such promise
16 must be fulfilled." (Santobello v. New York, Supra,
17 404 U.S. at 262; accord People v. Feyer (2010)
18 48 Cal.4th 426, 436-437 (acceptance of the agreement
19 binds the court and the parties to the agree-
20 ment); see also Puckett v. United States, 556
21 U.S. 129, 137 (2009) ("plea bargains are
22 essentially contracts," and are evaluated
23 under contract principles).)

24 43. Furthermore, petitioner alleges, contends,
25 and argues pursuant to Mabry v. Johnson, Supra,
26 467 U.S. 504, that because petitioner's negotiated
27 plea bargain agreement was embodied in the
28 judgment of the court on July 18, 1974,

(See Appendix B at pp. 86-87, 84-88), THEN IT "IMPLICATES THE CONSTITUTION," TRANSFORMING PETITIONER'S PLEA BARGAIN FROM A "MERE EXECUTORY AGREEMENT" INTO A BINDING CONTRACT. (Id. at pp. 507-508; ACCORD IN RE ALVARADO (1992) 2 CAL.4TH 924, 943 ("A PLEA BARGAIN STANDING ALONE IS ... A MERE EXECUTORY AGREEMENT WHICH UNTIL EMBODIED IN THE JUDGMENT OF A COURT, DOES NOT DEPRIVE AN ACCUSED OF LIBERTY OR ANY OTHER CONSTITUTIONALLY PROTECTED INTEREST." (QUOTING MARRY V. JOHNSON, SUPRA, 467 U.S. AT 507)).)

44. PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT BECAUSE PLEA AGREEMENTS ARE INTERPRETED ACCORDING TO THE GENERAL RULE "THAT AMBIGUITIES ARE CONSTRUED IN FAVOR OF THE DEFENDANT. FOCUSING ON THE DEFENDANT" REASONABLE UNDERSTANDING ALSO REFLECTS THE PROPER CONSTITUTIONAL FOCUS ON WHAT INDUCED THE DEFENDANT TO PLEAD GUILTY." (UNITED STATES V. DE LA FUENTE, 8 F3d 1333, 1337, FN.7 (9TH CIR. 1993); SEE PEOPLE V. TOSCANO (2004) 124 CAL. APP. 4TH 340, 345; BROWN V. POOLE, 337 F2d 1155, 1159 (9TH CIR. 2003); SEE ALSO MARRY V. JOHNSON, SUPRA, 467 U.S. AT 507-511.) THEN BECAUSE 'THE RECORD BEFORE THE CALIFORNIA COURTS 'SHOWING PETITIONER'S "REASONABLE UNDERSTANDING" OF THE NEGOTIATED PLEA BARGAIN AGREEMENT REQUIRED PETITIONER TO WAIVE HIS FUNDAMENTAL

1 CONSTITUTIONAL RIGHTS AND PLEAD GUILTY TO ROBBERY,
2 PENAL CODE § 211, IN EXCHANGED FOR THE PROMISE
3 THAT IT WOULD BE REDUCED TO A MISDEMEANOR FOR
4 ALL PURPOSES "WHEN THE COURT COMMITS THE
5 DEFENDANT TO THE YOUTH AUTHORITY." (SEE APPENDIX
6 B AT PP. 84-85, 86-88.) IT WAS BINDING.

7 45. IN ADDITION, PETITIONER ALLEGES, CONTENTS,
8 AND ARGUES THAT HIS "REASONABLE UNDERSTANDING"
9 OF THE NEGOTIATED PLEA BARGAIN AGREEMENT
10 REQUIRING HIS 1974 FELONY CONVICTION TO BE
11 REDUCED TO A MISDEMEANOR FOR ALL PURPOSES
12 "WHEN THE COURT COMMITS THE DEFENDANT
13 TO THE YOUTH AUTHORITY" UNDER PENAL CODE §
14 17, SUBDIVISION (b)(2), IS SUPPORTED BY THE
15 LEGAL LANDSCAPE. (SEE IN RE NELSON (2005) 126
16 CAL. APP. 4TH 585, 599 (THE COURT ASSUMED) FOR THE
17 SAKE OF DISCUSSION THAT A PROSECUTOR WHO
18 AGREES IN A PLEA BARGAIN TO A PARTICULAR
19 PAROLE DATE SHOULD BE BOUND BY THAT AGREE-
20 MENT, WHETHER ACTUALLY AUTHORIZED TO ENTER
21 IT OR NOT. (CITING BROWN V. POOLE, SUPRA, 237
22 F2D AT 1159-61)); PEOPLE V. TERRY 3. (2011) 201
23 CAL. APP. 4TH 296, 320 (THE COURT RELIED UPON
24 BROWN V. POOLE, SUPRA, 237 F2D AT 1159, TO HOLD
25 THAT DISMISSAL OF LIFE TIME REGISTRATION UNDER
26 PENAL CODE § 290 WAS PART OF THE PLEA BARGAIN
27 AGREEMENT); BROWN V. POOLE, SUPRA, 237 F2D AT
28 1159-60 (HOLDING THAT BROWN'S DUE PROCESS

1 RIGHTS CONFERRED BY THE FEDERAL CONSTITUTION
2 ALLOWED BROWN TO ENFORCE THE TERMS OF
3 THE PLEA AGREEMENT FOR RELEASE AFTER
4 COMPLETING 15 YEARS, INSTEAD OF 15 YEARS
5 TO LIFE, WITHOUT ANY DISCIPLINARY INFRACTIONS;
6 BUCKLEY V. TERHUNE, 441 F.3d 688, 694-699 (9th
7 CIR. 2006) (EN BANC) (HOLDING THAT BUCKLEY'S
8 PLEA AGREEMENT WAS REQUIRED TO BE
9 INTERPRETED AS PROVIDING FOR A MAXIMUM
10 PRISON SENTENCE OF 15 YEARS, NOT 15 YEARS
11 TO LIFE); QUINTANA V. CATE, 88 F. Supp.3d 1102
12 (9th CIR. 2014) (HOLDING THAT QUINTANA'S PLEA
13 AGREEMENT MANDATED THAT HE WOULD BE
14 ELIGIBLE FOR PAROLE AFTER COMPLETING
15 80% OF HIS TWENTY-FIVE TO LIFE
16 SENTENCE).

17 46. PETITIONER ALLEGES, CONTENTS, AND ARGUES,
18 BASED UPON THE REASONING OF INS V. ST. GYR,
19 121 S.Ct. 2271, 2287-2293 (2001), THAT THE
20 CALIFORNIA COURTS APPLIED CALIFORNIA THREE
21 STRIKES LAW RETROACTIVELY TO PETITIONER'S
22 NEGOTIATED PLEA BARGAIN AGREEMENT TO "TAKE
23 AWAY OR IMPAIRS VESTED RIGHTS ACQUIRED
24 UNDER EXISTING LAWS, OR CREATES A NEW
25 OBLIGATION, IMPOSES A NEW DUTY, OR ATTACKS
26 A NEW DISABILITY, IN RESPECT TO TRANS-
27 ACTIONS OR CONSIDERATIONS ALREADY PAST..."
28 (ID. AT 2290-91 (QUOTING LANDGRAF V. U.S.)

1 Film Products, 511 US 244, 269 (1994) (Quoting Society
2 For Propagation of the Gospel v. Wheeler, 22 F. Cas.
3 756, 767, No. 13,156 (C.C.D. M.H. 1814) (Story, J.)))))

4 47. THEREFORE, BASED UPON THE FOREGOING
5 REASONS, THE STATE OF CALIFORNIA BREACHED
6 ITS CONTRACTUAL OBLIGATIONS WITH PETITIONER
7 BY APPLYING CALIFORNIA THREE STRIKES LAW
8 RETROACTIVELY TO CHANGE THE LEGAL
9 CONSEQUENCES OF PETITIONER'S 1974 PRIOR
10 MISDEMEANOR CONVICTION TO A FELONY
11 CONVICTION UNDER THE THREE STRIKES
12 LAW TO IMPOSE PUNISHMENT BEYOND
13 THE STATUTORY MAXIMUM. (SEE IN RE
14 DEWING, SUPRA, 19 CAL. 3D AT 57-58 (THE NEW
15 LANGUAGE IN THE STATUTE EXTENDING BY TWO
16 YEARS THE MAXIMUM PERIOD DURING WHICH
17 PERSONS COMMITTED PRIOR TO ITS ENACTMENT
18 MAY BE HELD IN THE CUSTODY OF THE YOUTH
19 AUTHORITY VIOLATES THE CONSTITUTIONAL SANCTION
20 AGAINST EX POST FACTO LAWS); DUBRIN V. CALIFORNIA,
21 720 F.3D 1095, 1097 (9TH CIR. 2013) (HOLDING THAT
22 THE STATE BREACHED THE PLEA AGREEMENT BY USING
23 DUBRIN'S 2000 CRIMINAL THREATS CONVICTION
24 AS A STRIKE TO ENHANCE HIS SENTENCE IN
25 THE 2008 CASE); DAVIS V. WOODFORD, 446 F.3D 957,
26 _____ (9TH CIR. 2006) (HOLDING THAT THE STATE
27 BREACHED THE PRIOR PLEA AGREEMENT BY
28 USING EIGHT STRIKES, INSTEAD OF JUST ONE TO

75

Page Number

1 ENHANCE HIS PRESENT SENTENCE TO 25 YEARS TO
2 LIFE).)

3
4 B. THE CALIFORNIA COURTS WERE MANDATED BY
5 "CLEARLY ESTABLISHED FEDERAL LAW," AS
6 DETERMINED BY THIS COURT, TO PROVIDE
7 'STATE-CORRECTIVE PROCESS' FOR THE
8 BREACH OF PETITIONER'S NEGOTIATED
9 PLEA BARGAIN AGREEMENT.

10
11 48. BECAUSE THE ONLY FEDERAL RIGHT AT
12 ISSUE IS PROCEDURAL, THE RELEVANT INQUIRY
13 IS WHAT PROCESS PETITIONER RECEIVED. (SWARTZOUT
14 V. COOKE, 131 S. CT. 859, 863 (2011) (PER CURIAM).)

15 49. CALIFORNIA COURTS ARE BOUND BY THE
16 RULINGS OF THE UNITED STATES SUPREME COURT, AS
17 TO THE UNITED STATES CONSTITUTION. (PEOPLE V. BRADLEY
18 (1969) 1 CAL 3D 80, 86; ACCORD PEOPLE V. MENDOZA
19 (2016) 62 CAL 4TH 856, 914; CF LOCKHART V. FRETWELL,
20 506 US 264, 275-276 (1993) (THOMAS, J., CONCURRING)
21 (THE "SUPREMACY CLAUSE DOES NOT REQUIRE STATE
22 COURTS TO FOLLOW RULINGS OF FEDERAL COURTS OF
23 APPEALS ON QUESTIONS OF FEDERAL LAW").)

24 50. A STATE COURT DECISION THAT A
25 PARTICULAR REMEDY IS CONSTITUTIONALLY REQUIRED
26 IS ITSELF A FEDERAL QUESTION. (DANFORTH V.
27 MINNESOTA, 552 U.S. 264, —, FN. 21 (2005).)

28 51. "ALTHOUGH STATES ARE UNDER NO OBLIGATION

1 TO PROVIDE MECHANISMS FOR POST-CONVICTION RELIEF,
2 WHEN THEY CHOOSE TO DO SO, THE PROCEDURES
3 THEY EMPLOY MUST COMPORT WITH THE DEMANDS
4 OF THE DUE PROCESS CLAUSE . . . BY PROVIDING
5 LITIGANTS WITH FAIR OPPORTUNITY TO ASSERT THEIR
6 STATE CREATED RIGHTS." (EVITTS V. LUCEY, 469 U.S.
7 467, 493 (1984); PENNSYLVANIA V. FINLEY, 481 U.S.
8 551, 556 (1987) (POSTCONVICTION RELIEF PROCEDURES
9 ARE CONSTITUTIONAL IF THEY "COMPORT WITH
10 FUNDAMENTAL FAIRNESS."))

11 52. IF A STATE COURT'S COLLATERAL PROCEEDINGS
12 ARE OPEN TO A CLAIM CONTROLLED BY FEDERAL LAW,
13 THE CALIFORNIA COURTS "HAS A DUTY TO GRANT
14 THE RELIEF THAT FEDERAL LAW REQUIRES."
15 (MONTGOMERY V. LOUISIANA, 136 S.C.T. 718, 731
16 (2016) (QUOTING YATES V. AIKEN, 484 US 201, 218
17 (1980)); ACCORD IN RE GOMEZ (2009) 45 CAL.4TH 650,
18 655 (CALIFORNIA COURTS ARE MANDATED TO PROVIDE
19 A REMEDY ON COLLATERAL REVIEW OF A FINAL
20 JUDGMENT IF THAT REMEDY WOULD BE AVAILABLE
21 IN THE FEDERAL COURTS); SEE MOONEY V. McDOHAN,
22 294 US 103, 113 (1935) (UPON THE STATE COURTS,
23 EQUALLY WITH THE COURTS OF THE UNION, RESTS THE
24 OBLIGATION TO GUARD AND ENFORCE EVERY RIGHT
25 SECURED BY THE FEDERAL CONSTITUTION).)

26 53. THE UNITED STATES SUPREME COURT HAS
27 HELD THAT WHERE THE STATE IMPOSES PUNISH-
28 MENT IN EXCESS OF THAT AUTHORIZED BY STATE

1 LAW, THE DEFENDANT HAS BEEN DENIED DUE PROCESS.
2 (WHITEN V. UNITED STATES, 445 U.S. 684, 689-690,
3 N. 4 (1980); ACCORD MONTGOMERY V. LOUISIANA,
4 SUPRA, 136 S. CT. AT 729-730 (WHEN A STATE
5 ENFORCES A PROSCRIPTION OR PENALTY BARRED
6 BY THE CONSTITUTION, THE RESULTING CONVICTION
7 OR SENTENCE IS, BY DEFINITION UNLAWFUL).)

8 54. CALIFORNIA COURTS MAY NOT DISREGARD
9 A CONTROLLING CONSTITUTIONAL COMMAND IN
10 THEIR OWN COURTS. (MONTGOMERY V. LOUISIANA,
11 SUPRA, 136 S. CT. AT 727.)

12 55. A COURT, STATE OR FEDERAL, HAS NO
13 AUTHORITY TO LEAVE IN PLACE A CONVICTION OR
14 SENTENCE THAT VIOLATES A SUBSTANTIVE RULE,
15 REGARDLESS OF WHETHER THE CONVICTION OR
16 SENTENCE BECAME FINAL BEFORE THE RULE
17 WAS ANNOUNCED. (ID AT 721.)

18 56. STATE COLLATERAL REVIEW COURTS HAVE
19 NO GREATER POWER THAN FEDERAL COURTS
20 TO MANDATE THAT A PRISONER CONTINUE TO
21 SUFFER PUNISHMENT BARRED BY THE CONSTITUTION.
22 (IBID.; ACCORD PARHAM V. J.R., 442 U.S. 584,
23 600 (1979) (EXPLAINING THE "SUBSTANTIAL LIBERTY
24 INTEREST IN NOT BEING CONFINED UNNECESSARILY").)

25 57. WHEN THE "CORRECTIVE PROCESS" IS
26 PROVIDED BY THE STATE OF CALIFORNIA, IN RELATION
27 TO THE FEDERAL QUESTION OF CONSTITUTIONAL
28 VIOLATION, ERROR CREEPS INTO THE RECORD,

1 THE UNITED STATES SUPREME COURT HAS THE RESPONSIBILITY
2 TO REVIEW THE STATE PROCEEDINGS. (EKBERG V. MCGEE,
3 194 F.2D 178 (9TH CIR. 1951); WILLIAMS V. KAISER, 323
4 U.S. 471, 472 (1945); ACCORD ROBB V. CONNOLLY, III
5 U.S. 624, 637 (1884) (IF THE STATE COURTS FAIL TO
6 GUARD, ENFORCE, AND PROTECT EVERY RIGHT GRANTED
7 OR SECURED BY THE CONSTITUTION OF THE UNITED STATES
8 AND LAWS MADE PURSUANCE THEREOF, "AND WITH-
9 HOLD OR DENY RIGHTS, PRIVILEGES, OR IMMUNITIES
10 SECURED BY THE CONSTITUTION AND LAWS OF THE
11 UNITED STATES, THE PARTY AGGRIEVED MAY BRING
12 THE CASE FROM HIGHEST COURT OF THE STATE
13 IN WHICH THE QUESTION COULD BE DECIDED
14 TO THIS COURT FOR FINAL AND CONCLUSIVE
15 DETERMINATION."))

16 58. PETITIONER ALLEGES, CONTENTS, AND ARGUES
17 THAT THIS COURT'S DECISION IN KERNAN V.
18 CUERO, 138 S.Ct. 4 (2017) (PER CURIAM),
19 DEMONSTRATES CLEARLY AND CONVINCINGLY THAT
20 THE CALIFORNIA SUPREME COURT'S DECISION
21 REFUSING/FAILING TO PROVIDE 'STATE-CORRECTIVE
22 PROCESS' FOR THE BREACH OF PETITIONER'S
23 NEGOTIATED PLEA BARGAIN AGREEMENT IS
24 "CONTRARY TO" MARRY V. JOHNSON, SUPRA,
25 467 US 504, AND SANTOBELLO V. NEW YORK,
26 SUPRA, 404 US 257, AND THERE IS NOT
27 EVEN A "POSSIBILITY" OF "DISAGREEMENT"
28 AMONG "FAIRMINDED" JURISTS. (SEE HARRINGTON

1 v. Richter, Supra, 562 US at 102.)

2 59. IN ADDITION, THE CALIFORNIA SUPREME
3 COURT'S DECISION IS "SO LACKING IN JUSTIFICATION
4 THAT THERE WAS AN ERROR ... BEYOND ANY
5 POSSIBILITY FOR FAIRMINDED DISAGREEMENT." (Burt
6 v. Titlow, 134 S.Ct. 10, 16 (2013).) BECAUSE THIS
7 COURT'S DECISIONS IN MARRY V. JOHNSON,
8 Supra, 467 U.S. 504, AND SANTOPELLO V. NEW
9 YORK, Supra, 404 U.S. 257, MANDATES SPECIFIC
10 PERFORMANCE OF A PLEA BARGAIN AGREEMENT
11 WHEN IT IS EMBODIED IN THE JUDGMENT OF
12 THE COURT. (SEE BUCKLEY V. TERHUNE, Supra, 441 F.3d
13 AT 694 (UNDER SANTOPELLO V. NEW YORK, Supra,
14 404 U.S. AT 261-262, A CRIMINAL DEFENDANT HAS
15 A DUE PROCESS RIGHT TO ENFORCE THE TERMS OF HIS
16 PLEA AGREEMENT); BROWN V. POOLE, Supra, 337 F.2d
17 AT 1159 ("THE DEFENDANT'S" DUE PROCESS RIGHTS
18 CONFERRED BY THE FEDERAL CONSTITUTION ALLOW
19 [HIM] TO ENFORCE THE TERMS OF THE PLEA
20 AGREEMENT); PEOPLE V. KANANE (1977) 19 CAL. 3d 1,
21 13-15 (A DEFENDANT IS ENTITLED TO SPECIFIC
22 PERFORMANCE OF A PLEA AGREEMENT WHEN
23 THERE IS A SUBSTANTIAL POSSIBILITY THAT
24 ENFORCEMENT WILL COMPLETELY REPAIR THE HARM
25 CAUSED BY THE BREACH); CF. KERNAN V. CUERO,
26 Supra, 130 S.Ct. 4 (SPECIFIC PERFORMANCE OF PLEA
27 AGREEMENT IS NOT CONSTITUTIONALLY REQUIRED
28 UNLESS EMBODIED IN THE JUDGMENT OF THE COURT).)

60. THEREFORE, BASED UPON THE FOREGOING REASONS, THE CALIFORNIA SUPREME COURT "ERRED SO TRANSPARENTLY THAT NO FAIRMINDED JURIST COULD AGREE WITH THAT COURT'S DECISION." (POMAY V. DIXON, 132 S. CT. 26, 27 (2011); RICHTER, SUPRA, 562 US AT 102.) IN OTHER WORDS, THE CALIFORNIA SUPREME COURT "ERRED SO TRANSPARENTLY" THAT "NO" FAIRMINDED JURIST - I. E., NOT ONE - EVEN "COULD" AGREE WITH THAT COURT'S DECISION. (POMAY V. DIXON, SUPRA, 132 S. CT. AT 27.)

C. IT WOULD BE A FUNDAMENTAL MISCARriage OF JUSTICE IF THIS COURT DOES NOT VACATE THE JUDGMENT OF THE CALIFORNIA SUPREME COURT.

61. PETITIONER ALLEGES, CONTENTS, AND ARGUES THAT HIS RIGHT TO DUE PROCESS CANNOT EXIST IN ANY PRACTICAL SENSE WITHOUT A REMEDY AGAINST ITS ABROGATION. (IN RE LAWRENCE (2008) 44 CAL-4TH 1181, 1211; ACCORD MARBURY V. MADISON, 1 CRANCH 137, 163 (1803) ("THE VERY ESSENCE OF CIVIL LIBERTY CERTAINLY CONSISTS IN THE RIGHT OF EVERY INDIVIDUAL TO CLAIM THE PROTECTION OF THE LAWS, WHENEVER HE RECEIVES AN INJURY".))

62. PETITIONER RELIES UPON THE REASONING OF THOUSLEY V. UNITED STATES, 523 US 614 (1998);

1 FIORE V. WHITE, 531 US 225 (2001); TO ALLEGE, CONTENT,
2 AND ARGUE THAT PETITIONER IS "ACTUALLY INNOCENT"
3 UNDER CALIFORNIA'S THREE STRIKES LAW BASED ON
4 HIS 1974 NEGOTIATED PLEA MARGAIN AGREEMENT
5 "AUTOMATICALLY, UPON THE INITIAL SENTENCING
6 [CONVERTED] THE FELONY TO A MISDEMEANOR." (PENN
7 CODE §§ 667, Subd. (d)(1), 1170.12, Subd. (b)(1);
8 SEE IN RE HARRIS (1993) 5 CAL. 4TH 813, 842 (AN
9 UNAUTHORIZED SENTENCE ENHANCEMENT CAN BE
10 ADDRESSED AT ANY TIME); IN RE BIRDWELL (1996)
11 50 CAL. APP. 4TH 926, 930 (AN UNAUTHORIZED SENTENCE
12 MAY BE SUBJECT TO LATER REVIEW EVEN AFTER
13 AFFIRMANCE OF THE JUDGMENT ON DIRECT APPEAL);
14 IN RE MILLER (2017) 14 CAL. APP. 5TH 960, 977 (FEDERAL
15 DUE PROCESS GUARANTEES REQUIRE REVERSAL WHERE
16 EVIDENCE WAS NOT LEGALLY SUFFICIENT TO SUPPORT
17 ROBBERY MURDER SPECIAL CIRCUMSTANCE) ACCORD
18 MONTGOMERY V. LOUISIANA, SUPRA, 136 S. CT AT
19 731 (A COURT, STATE OR FEDERAL, HAS NO
20 AUTHORITY TO LEAVE IN PLACE A CONVICTION OR
21 SENTENCE THAT VIOLATES A SUBSTANTIVE RULE,
22 REGARDLESS OF WHETHER THE CONVICTION OR
23 SENTENCE BECAME FINAL BEFORE THE RULE
24 WAS ANNOUNCED).

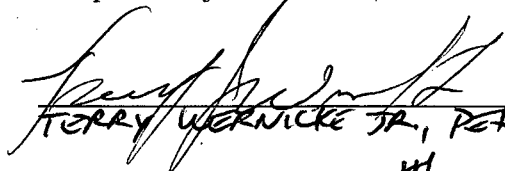
25 63. THEREFORE, BECAUSE PETITIONER IS
26 "ACTUALLY INNOCENT", WITHIN THE MEANING OF
27 BOUSLEY V. UNITED STATES, SUPRA, 523 US AT
28 623-624, OF HAVING A 'STRIKE' UNDER THE

THREE STRIKES LAW, IT WOULD BE A FUNDAMENTAL MISCARriage OF JUSTICE IF THIS COURT DOES NOT VACATE THE JUDGMENT OF THE CALIFORNIA SUPREME COURT. BECAUSE, CONTRARY TO THE CALIFORNIA SUPREME COURT'S DECISION (APPENDIX A AT P. 1), THE "HOLDING[S] OF THIS COURT" REQUIRES THE REMEDY OF SPECIFIC PERFORMANCE UNDER THE CIRCUMSTANCES PRESENT HERE. (KERNAN V. CUERO, SUPRA, 138 S. CT. 4 (QUOTING HARRINGTON V. RICHTER, SUPRA, 562 US AT 100).) 64. IN OTHER WORDS, BECAUSE THIS COURT'S PRIOR DECISIONS IN MARRY AND SANTOBELLO CLEARLY ENTITLE PETITIONER TO THE RELIEF HE SOUGHT, THE "STATE COURT'S" DECISION COULD [] BE 'CONTRARY TO' [] HOLDING[S] FROM THIS COURT." (KERNAN V. CUERO, SUPRA, 138 S. CT. 4 (QUOTING WOODS V. DONALD, 575 US — (2015) (PER CURIAM) (SLIP OP. AT 6) (QUOTING LOPEZ V. SMITH, 574 US — (2014) (PER CURIAM) (SLIP OP. AT 5))).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


TERRY WERNICKE JR., PETITIONER

Date: OCTOBER 8TH, 2020