

APPENDIX A PETITIONER'S MOTION TO CORRECT SENTENCE

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5 In Pro Se

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10
11
12 EDDIE ASHLEY) Case No. _____
13 Petitioner,) (Sup.Ct.No MA037159)
14 v.)
15) PETITIONER'S MOTION TO CORRECT
16) SENTENCE; Pursuant to Penal Code §
17) 1170.1(a) & (f)
18) Date:
19) Time:
20) Dept:A19

21 TO: THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY
22 OF LOS ANGELES, TO THE HONORABLE SUP. J. LISA CHUNG

23 I. Statement of Facts

24 This brief summary of the "Statement of Facts," will be provided
25 from Petitioner's attached "Opening Brief" (See Exh. A -pages 2-3).

26 "On November 11, 2006, sheriff deputies responded to a call of an
27 assault with a deadly weapon. At that location, they found the victim
28 Andrew Hayes, lying in front of an apartment door; he had been shot.
The owner of the apartment told the deputies that she had heard some
gunshots. The victim knocked on her apartment door after he had been
shot. She laid him down and called police. (The victim was airlifted
to Holy Cross Medical Center for emergency surgery. He suffered a gun
shot to his hand and abdomen.) The victim later identified the co-
defendant in a photo line-up as the shooter.

On December 8, 2006, sheriff deputies responded to [a report] of a
shooting at a vehicle. At that location, they made contact with the
victims, Alexa Milla and Andrew Hayes. Victim Milla reported that she
was the driver of her vehicle and her boyfriend (victim Hayes) was the
passenger. The defendant walked up to her vehicle, pulled out a gun,
and fired a shot at them. She immediately drove away. Victim Hayes

1 "reported that the defendant used the same gun that his brother (co-
2 defendant Raymond Thompson) used to shoot him the previous month. (The
3 sheriff department's gang unit knows the defendants as members of the
4 ''Palmer Bloc Crip.'') Victim Milla later identified the defendant in
5 a photo-lined up"

6 **II. Statement of Case Proceedings**

7 On February 9, 2009, an information was filed charging Petitioner,
8 Eddie Ashley with violations of Penal Code section 664/187, subdivision
9 (a), premeditated, deliverate, attempted murder (counts 1,2,3),
10 and Penal Code § 246, shooting at an occupied vehicle (count 4).
11 As to count 1, it was alleged that a principal used and discharged
12 a handgun (§ 12022.53, subd. (b),(d),(e)) and that the offense was
13 committed for the benefit of a criminal street gang (§ 186.22, subd.
14 (b)). As to counts 2, 3, and 4, it was further alleged that Petitioner
15 had personally used and discharged a firearm (§ 12022.53, subd. (b),(c)).
16 Petitioner was charged for both offense, i.e., the November 11, 2006,
17 and the December 8, 2006.

18 On February 10, 2010, Petitioner had entered into an "Plea Agreement"
19 for Twenty-Four (24) years. Whereby, the time was calculated as
20 followed -- for Count 1, Twenty-Two (22) years (9 years, plus 10
21 years for the gang engancement, plus 3 years for the great bodily
22 injury enhancement); Count 5, Two (2) years consecutive (1/3 the
23 mid-term). For which, this motion for correction of sentence is being
24 filed.(See Exh. A -pages 2).

25 **III. Summary of Proceedings Post Plea**

26 On April 19, 2010, Petitioner had filed a "Notice of Appeal and
27 Request for Certificate of Probable Cause," (Form CR-120), within
28 the Los Angeles Superior Court (See Exhibit B). Whereby, Petitioner's

1 had requested to take Petitioner's "no-contest plea" back due to the
2 fact that Petitioner had felt that trial Counsel, i.e., Larry M. Baker,
3 was ineffective and performing deficient within his representation
4 of Petitioner. For which, the Los Angeles Superior Court had granted
5 Petitioner's "Request for Probable Cause" (See Exhibit B -Judge Hayden
6 Zacky's signature granting Certificate).

7 On July 9, 2010, while initially under the impression that Petitioner
8 "Notice of Appeal" was late, Petitioner filed a "Petition for Writ
9 of Habeas Corpus" to file a late Appeal (See Exhibit C). On October
10 13, 2010, the Second Appellate District Court granted Petitioner's
11 late "Notice of Appeal," as being timely (See Exhibit D).

12 On April 5, 2011, with the appointment of an Appellate Counsel,
13 i.e., John F. Schuck, Petitioner's "Opening Brief" was filed -raising
14 Two (2) primary claims: A). The Trial Court Abused its Discretion by
15 Denying Appellant's Marsden Motion for New Counsel. As a Result, Appel-
16 lant's Right to Counsel under the Sixth Amendment was Violated; and,
17 B). The Trial Court Violated Appellant's Sixth Amendment Rights when
18 it Denied His Request to Represent Himself (See Exhibit A -Opening
19 Brief). On July 19, 2011, the "Respondent's Brief" was filed (See
20 Exhibit E -Respondent's Brief). On July 26, 2011, Petitioner's "Reply
21 Brief" was filed (See Exhibit F-Reply Brief). On October 26, 2011,
22 the Second Appellate District Court's "Order" was filed, addressing
23 1). Issues that "Defendant makes no contention here that his guilty
24 plea was not intelligently and voluntarily made;" 2). "Nor does defen-
25 dant urge that the advice he received from counsel was inappropriate
26 concerning his plea resulting in the plea not being intelligently
27
28

1 and voluntarily made;" and, 3). that Petitioner's "Marsden error does
2 not go to the legality of the proceedings resulting in the plea" (See
3 Exhibit G -2nd App. Order pages 3-4). Therefore, Petitioner's "Appeal/
4 Certificate of Probable Cause" was denied. Petitioner's "Petition
5 for Review" was summarily denied.
6
7

MEMORANDUM OF POINTS AND AUTHORITIES

9 1. The Court's Authority to Correct an Unauthorized Sentence:

10 In People v. Williams (2007) 156 Cal.App.4th 898; 67 Cal.Rptr.3d
11 516, the California Supreme Court stated: "It is settled that an un-
12 authorized sentence is subject to correction despite the circumstances
13 that an appeal is pending... Since a court can correct an unauthorized
14 sentence at any time, it may also avoid one" (156 Cal.App.4th at p.
15 906).

16 Therefore, Petitioner files this motion to correct an unauthorized
17 plea/sentence. For which, this Court has jurisdiction to modify.
18

19 2. Penal Code § 1170.1(a) Prohibits the Imposition of Petitioner's
20 Firearm Enhancement, i.e., PC § 12022.7

21 In People v. Rodriguez (2009) 47 Cal.4th 501; 98 Cal.Rptr.3d 108;
22 213 P.3d 647, the California Supreme Court had stated: "the additional
23 punishments that the trial court imposed... under two different
24 sentence enhancement provisions: section 12022.5's subdivision (a),
25 and section 186.22's subdivision (b)(1)(C). These additional punish-
26 ments comprised a total of 18 years and eight months-defendant's total
27 prison sentence was 22 years and eight months... Because two
28

1 different sentence enhancements were imposed for defendant's firearm
2 use in each crime, section 1170.1's subdivision (f) requires that
3 "only the greatest of those enhancements be imposed" (47 Cal.4th
4 at pp. 508-509).

5 Wherefore, according to Petitioner's sentencing transcripts, on pages
6 (See Exhibit H -Sentencing Transcripts), this is how Petitioner
7 was illegal sentenced in violation of PC § 1170.1(f):
8

9 THE COURT: Back on the record now.

10 The Defendant will be entering a plea of guilty or no contest to Count 1.
11 The People will strike the premeditated and Deliberate language, so it'll be just.
12 attempted murder.

13 And in exchange for his plea, the Defendant will be getting the High Term,
14 which is nine years in state prison.

15 He will also admit the gang allegation pursuant to 186.22, for a consecutive
16 ten years.

17 And he will admit the G.B.I. allegation, pursuant to 12022.7, subdivision
18 (A), which will add three more years. And that means that the base term as to Count
19 1 will be 22 years

20 So, therefore, in violation to the prohibition of 1170.1(f),
21 Petitioner requests re-sentencing so that Court could strike the Three
22 (3) year enhancement -from the PC § 12022.7(a) ("The proper remedy,
23 however, was not to strike the punishment under section 12022.5 but
24 to reverse the trial court's judgment and remand the matter for resent-
25 encing. Remand will give the trial court and opportunity to restructure
26 its sentencing choices in light of our conclusion that the sentence
27 imposed here violated section 1170.1's subdivision (f)) (Rodriguez,
28 supra, 47 Cal.4th at p. 509) (See also, People v. Lee (2015) 61 Cal.4th
29 416,428; 189 Cal.Rptr.3d 166; 351 P.3d 295).

30 ///

31 ///

1 3. Petitioner Should Have Received a Five Years Sentence for the PC
2 § 186.22 Allegation, then a Ten (10) Year Sentence as Part of
3 Petitioner's Negotiated Plea

4 In People v. Navarro (2008) 161 Cal.App.4th 1100; 74 Cal.Rptr.3d
5 828, the argument that was raised in Navarro's negotiated plea, was:
6 "that the court committed an error of law and an abuse of discretion
7 by imposing a 10-year term, rather than a five-year term, on the crim-
8 inal street gang enhancement" (161 Cal.App.4th at p. 1102). Although,
9 Navarro's case was dismissed for his "failure to secure a certifi-
10 cate of probable cause" (id. at p. 1106). Petitioner did secure but
11 due to ineffective assistance of appellate counsel, Petitioner's appeal
12 and certificate of probable cause proceedings did not raise this issue
13 on appeal. Therefore, Petitioner raises this issue before the court,
14 so that the record could be correct and Petitioner's sentence be reduced
15 from the Ten (10) year -off PC § 186.22 - to the Five (5) year term
16 imposed on Petitioner's criminal street gang enhancement (Navarro,
17 supra, id. at p. 1103).

19
20 4. Ineffective Assistance of Trial and Appellate Counsel for Failure
21 to Raise the Section 1170.1(a) within Petitioner's Negotiated Plea:

22 In People v. Panes, supra, it was decided by the Court of Appeal
23 that although: "Panes also asserts his trial counsel was ineffective
24 for failing to raise section 1170.1(a) at sentencing and to incorporate
25 it into the Orange Court plea agreement... Our directions to modify
26 the sentence in accordance with section 1170.1(a) moots the first claim
27 of ineffective assistance. Reversal on direct appeal for the second
28 claim of ineffective assistance is unwarranted because the record does

1 demonstrate there could be no rational tactical purpose for trial
2 counsel's asserted conduct" (People v. Panes (2018) G054857, Aug. 14,
3 2018, (4th App.Dist. 2018)(Unpub. Opn).

4 So, although, Petitioner has court documentations that Petitioner
5 did have prior issues with the representations of former trial Counsel,
6 i.e., Larry M. Baker. Whom, Petitioner did file a Marsden motion and
7 did receive a hearing on Petitioner's asserted grounds for appointment
8 of new counsel (See Exh. I). Petitioner's only allegations within this
9 motion for correction of an unauthorized sentence, is trial Counsel
10 should have raised the section 1170.1(a) prohibition during Petitioner's
11 sentence and negotiated plea proceedings.

13
14 CONCLUSION

15 Petitioner requests that the Court will remand Petitioner back for
16 resentencing, and take off the Three (3) enhancement from the PC §
17 12022.7; and, reduce Petitioner's 186.22 Ten (10) year enhancement
18 to a Five (5) year term. Therefore, reducing Petitioner's sentence
19 from a Twenty-Four (24) years sentence to a Sixteen (16) years sentence.
20 This, Petitioner's requests in the interests of justice.

21
22 I declare under penalty of perjury that the foregoing is true and correct.

23 Date: July 9, 2020

24 
Eddie Ashley AC-6361

PROOF OF SERVICE

EDDIE ASHLEY

v.

Case No. _____

THE PEOPLE OF THE STATE OF
CALIFORNIA

PROOF OF SERVICE

I am the above Petition in this proceeding. On July 9, 2020, I am depositing my MOTION TO CORRECT SENTENCE, in the mailbox at Kern Valley State Prison, in the State of California, to the below addresses:

Los Angeles Superior Court
210 W. Temple Street
Los Angeles, Ca 90012-3210

District Attorney's Office
210 W. Temple Street, Room 18-709
Los Angeles, Ca 90012-3210

I declare under penalty of perjury that the foregoing is true and correct


Eddie Ashley

COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA,) No: B228295
)
Plaintiff/Respondent,)
)
) APPELLANT'S
v.) OPENING BRIEF
)
EDDIE AHSLEY,)
)
)
Defendants/Appellants.)
)
)
)

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
LOS ANGELES COUNTY
SUPERIOR COURT CASE NO. MA037159

THE HONORABLE HAYDEN ZACKY, JUDGE

LAW OFFICES OF JOHN F. SCHUCK
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(Appointed by the Court)

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I. STATEMENT OF APPEALABILITY

This appeal follows entry of guilty pleas. A certificate of probable cause was granted. (Penal Code sec.1237.5; Calif. Rules of Court, rule 8.304(b)(1), (2); CT 86.)¹

II. STATEMENT OF THE CASE

On February 9, 2009, an information was filed charging appellant Eddie Ashley with violations of Penal Code section 664/187, subdivision (a), premeditated, deliberate, attempted murder (counts 1, 2, 3), and Penal Code section 246, shooting at an occupied vehicle (count 4). As to count 1, it was alleged that a principal used and discharged a handgun (sec.12022.53, subds.(b), (d), (e)) and that the offense was committed for the benefit of a criminal street gang (sec.186.22, subd.(b).) As to counts 2, 3, and 4, it was alleged that appellant personally used and discharged a firearm (sec.12022.53, subds.(b), (c).) Count 1 involved an incident which occurred on November 11, 2006. Counts 2, 3, and 4 involved an incident which occurred on December 8, 2006. (CT 30-34.)

On May 29, 2009, appellant's *Marsden*² motion was denied. (CT 56; RT A6-A22.) On January 25, 2010, his request for self-representation was denied. (CT 71; Aug. RT 1-24.)³ Trial commenced on February 2, 2010. (CT 77.)

¹ "CT" refers to the Clerk's Transcript. "RT" refers to the Reporter's Transcript.

² *People v. Marsden* (1970) 2 Cal.3d 118, 84 Cal.Rptr.156.

³ Pages 13-21 of the reporter's transcript of the self-representation hearing are of an in camera hearing with appellant and counsel. Appellant has no objection to this transcript being made available to respondent.

On February 4, 2010, the information was amended to add count 5, a violation of Penal Code section 245, subdivision (b), assault with a semiautomatic firearm. Pursuant to an agreement calling for a sentence of 24 years in prison, appellant waived his rights and entered a plea of no contest to count 1 and admitted the gang enhancement and a great bodily injury enhancement (sec.12022.7, subd.(a)). He entered a no contest plea to count 5. Appellant was sentenced to the agreed-upon term of 24 years in prison: count 1 - 22 years (9 years, plus 10 years for the gang enhancement, plus 3 years for the great bodily injury enhancement); count 5 - 2 years consecutive (1/3 the mid-term). A restitution fine of \$4,800 was imposed. A \$4,800 parole revocation fine was imposed and suspended. Restitution was ordered and reserved. Other fines and fees were assessed. Appellant received 491 days presentence custody credit. The remaining counts and allegations were dismissed. (CT 79-87; RT 6-15.)⁴

On April 19, 2010, pursuant to the order of this Court (CT 87), a notice of appeal was filed. (CT 85.) A certificate of probable cause was granted. (CT 86.)⁵

III. STATEMENT OF THE FACTS

The probation report provides an account of the facts of both incidents:

On November 11, 2006, sheriff deputies responded to a call of an assault with a deadly weapon. At that location,

⁴ Case no. NA044255 was dismissed and probation was terminated in case no. MA034150. (RT 15-16.)

⁵ The certificate of probable cause raised the issue of the denial of appellant's motions for new counsel and self-representation.

they found the victim, Andrew Hayes, lying in front of an apartment door; he had been shot. The owner of the apartment told the deputies that she had heard some gunshots. The victim knocked on her apartment door after he had been shot. She laid him down and called police. (The victim was airlifted to Holy Cross Medical Center for emergency surgery. He suffered a gun shot to his hand and abdomen.) The victim later identified the co-defendant in a photo line-up as the shooter.

On December 08, 2006, sheriff deputies responded to [a report] of a shooting at a vehicle. At that location, they made contact with the victims, Alexa Milla and Andrew Hayes. Victim Milla reported that she was the driver of her vehicle and her boyfriend (victim Hayes) was the passenger. The defendant walked up to her vehicle, pulled out a gun, and fired a shot at them. She immediately drove away. Victim Hayes reported that the defendant used the same gun that his brother (co-defendant Raymond Thompson) used to shoot him the previous month. (The sheriff department's gang unit knows the defendants as members of the "Palmer Bloc Crips.") Victim Milla later identified the defendant in a photo-line up. (CT 37-38.)

IV. ARGUMENT

A. **THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING APPELLANT'S *MARSDEN* MOTION FOR NEW COUNSEL. AS A RESULT, APPELLANT'S RIGHT TO COUNSEL UNDER THE SIXTH AMENDMENT WAS VIOLATED; REVERSAL IS REQUIRED.⁶**

1. Introduction

Appellant was dissatisfied with the representation he was receiving from his

⁶ The denial of a *Marsden* motion may be raised after a guilty plea where, as here, the appellant obtains a certificate of probable cause. (See, *People v. Caravajal* (2007) 157 Cal.App.4th 1483, 1486, 69 Cal.Rptr.3d 270, 271.)

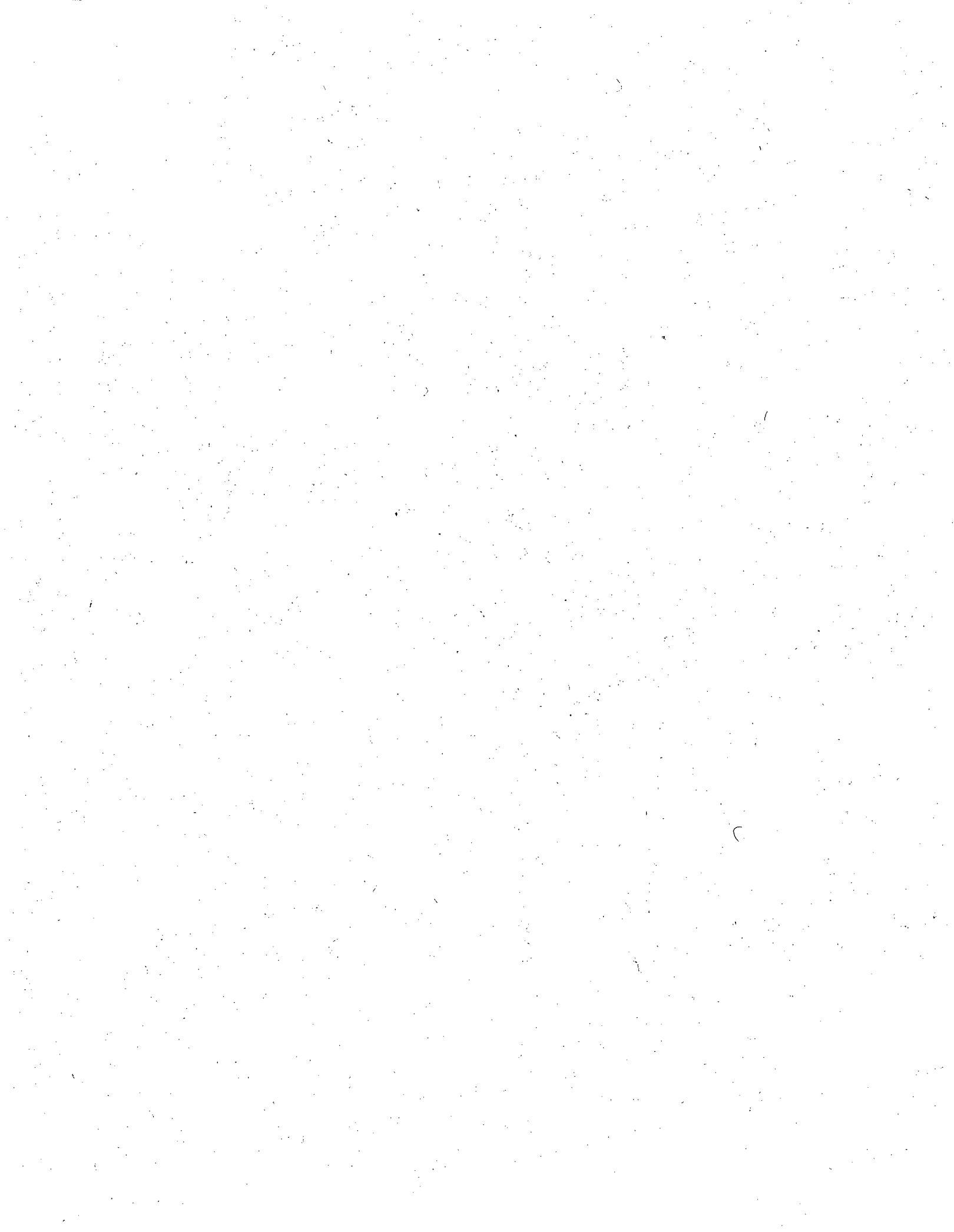
appointed defense counsel, Mr. Baker. Therefore, appellant sought appointment of new trial counsel. (CT 56; RT A6-A22.) After a hearing, the trial court denied appellant's request for new counsel. CT 56; RT A21-A22.) However, this ruling constituted an abuse of discretion which denied appellant his Sixth Amendment right to counsel. Reversal is therefore required.

2. Standard of Review

The denial of a motion for substitution of appointed counsel is reviewed for abuse of discretion. (*People v. Hart* (1999) 20 Cal. 4th 546, 603, 85 Cal. Rptr. 2d 132, 166-167; *People v. Marsden* (1970) 2 Cal. 3d 118, 12, 84 Cal. Rptr. 156, 159 [“...the decision whether to permit a defendant to discharge his appointed counsel and substitute another attorney...is within the discretion of the trial court...”]) If an abuse of discretion is established, reversal is required *per se*; prejudice need not be shown. (*Perry v. Leeke* (1989) 488 U.S. 272, 280, 109 S. Ct. 594, 600 [“[C]onstructive denial of the assistance of counsel...’...is not subject to...prejudice analysis...”]) Employing the above-stated standard of review, it is clear that the trial court abused its discretion. Therefore, reversal is required.

3. Appellant was unconstitutionally denied his right to counsel of his choice.

It is beyond dispute that, “[T]he right of a criminal defendant to counsel and to present a defense are among the most sacred and sensitive of our constitutional rights.” (*People v. Ortiz* (1990) 51 Cal. 3d 975, 982, 275 Cal. Rptr. 191, 196; accord, *Kimmelman*



v. Morrison (1986) 477 U.S. 365, 374, 377, 106 S. Ct. 2574, 2582, 2584 [“The right to counsel is a fundamental right of criminal defendants; it assures the fairness, and thus the legitimacy, of our adversary process...***... [T]he right to counsel is the right to effective assistance of counsel.”])

This fundamental right to counsel requires that new counsel be appointed to represent an indigent defendant when present counsel is providing ineffective assistance or where the relationship between the defendant and his or her attorney has devolved into an irreconcilable conflict. As stated in *People v. Hart, supra*, 20 Cal. 4th at 603, 85 Cal. Rptr. 2d at 167:

“The governing legal principles are well settled. When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney’s inadequate performance. A defendant is entitled to relief if the record clearly shows that the first appointed attorney is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. [S]ubstitution is a matter of judicial discretion. Denial of the motion is not an abuse of discretion unless the defendant has shown that a failure to replace the appointed attorney would ‘substantially impair’ the defendant’s right to assistance of counsel.”” (Citations and internal quotation marks omitted.)

(Accord, *People v. Marsden, supra*, 2 Cal. 3d at 124-125, 84 Cal. Rptr. at 160.)

Pursuant to *Marsden* and *Hart*, the trial court allowed appellant to explain why he wanted new counsel appointed. At the May 29, 2009 hearing, appellant informed the

trial court that counsel "...hasn't came to visit me in the last two, three months...except for the fact that he was accusing me..." (RT A7; and see RT A11-A22.) Counsel failed to call witnesses at the preliminary examination "...that contradicted the victim's story." (RT A8-A9.) Counsel failed to file a *Pitchess*⁷ motion. (RT A10.) Appellant was concerned that counsel "...was telling me about getting the deal before he read the case." (RT A12-A13.) Appellant stated counsel had "...lied to my family members..." (RT A11.) Appellant could not contact counsel. (RT A19.)

At the May 29, 2009 *Marsden* hearing, defense counsel summarized his legal experience. (RT A14-A15.) However, he confirmed that he and appellant "...don't get along that well." (RT A3.) Counsel conceded that many of appellant's points were well-taken:

MR. BAKER: Well, Mr. Ashley has two cases. He's got the one case where there are multiple counts of 664-187. The other is a narcotics case. I don't -- this is a case that I haven't had a lot of contact recently. And to that extent, he's absolutely correct and truthful. I don't recall if there's been any outside investigation to this point on this case. And to that extent, he's also truthful where we come into some conflict with respect to truth and falsity. I resent the fact that I was told or the Court was just told that I lied to his family. (RT A15.)

When the trial court asked counsel whether he had spoken with appellant "...more than the one to three times that he claims" (RT A17), counsel replied:

⁷ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 113 Cal.Rptr.897.

MR. BAKER: He's pretty close. I'm not saying he's dishonest about that. You know, I have not seen him in the jail system. I don't want to go over my other calendar suffice to say that -- and this is no disrespect to Mr. Ashley, but I've got a full plate and I have to take it as it comes. You take these things chronologically as the case presents itself. If I'm somewhat remiss or slightly remiss, so be it. But I can only be at one place at one time. I'm only a human being. (RT A17.)

The trial court's denial of appellant's *Marsden* motions constituted an abuse of discretion. Clearly, counsel was not giving appellant's case the attention it deserved and that appellant was entitled to under the Sixth Amendment. Counsel rarely visited appellant and did not even know whether any investigation had been conducted. Counsel was too busy to work on appellant's case -- "...I've got a full plate..." Counsel was not rendering proper representation. And, from appellant's and counsel's statements, it is clear the attorney-client relationship had irretrievably broken down; they simply could no longer work together effectively. Appellant did not trust counsel and believed that counsel had not represented him properly. Counsel confirmed that many of appellant's complaints were valid. Indeed, in a classic case of under-statement, counsel conceded they "...don't get along that well." (RT A3.)

Obviously, the strained, difficult relationship between appellant and counsel precluded effective assistance of counsel. As a result, this unproductive relationship violated appellant's constitutional right to counsel under the Sixth Amendment. His right to effective counsel was substantially impaired. Thus, the motion for new counsel should

have been granted. (*People v. Crandell* (1988) 46 Cal. 3d 833, 854, 251 Cal. Rptr. 227, 235 [new counsel should be appointed where "...defendant and counsel have become embroiled in such an irreconcilable conflict that no effective representation is likely to result."])

4. Conclusion

The trial court abused its discretion in denying appellant's *Marsden* motion. As a result, appellant was denied his rights to counsel, effective assistance of counsel, and to present a defense under the Sixth Amendment and the California Constitution, article 1, section 15. Reversal is therefore required.

B. THE TRIAL COURT VIOLATED APPELLANT'S SIXTH AMENDMENT RIGHTS WHEN IT DENIED HIS REQUEST TO REPRESENT HIMSELF; REVERSAL IS REQUIRED.⁸

1. Introduction

On Monday, January 25, 2010, appellant requested that he be permitted to represent himself at trial, which was due to commence on February 1, 2010. (CT 71, 73.) After a hearing (Aug.RT 1-23) and an in camera hearing with appellant and counsel (Aug.RT 13-21), the trial court denied appellant's request. (Aug. RT 22-23.) This ruling was wrong and violated appellant's Sixth Amendment right to self-representation. Reversal is required.

⁸ Because appellant obtained a certificate of probable cause, he may raise this issue on appeal. (*People v. Robinson* (1997) 56 Cal.App.4th 363, 370, fn.2, 65 Cal.Rptr.2d 406, 410, fn.2.)

2. The facts

Appellant wanted to represent himself because he was not happy with his counsel's representation. (Aug.RT 11.) Counsel did not locate a witness that appellant believed was critical to his case. Nor did counsel "have a defense" for appellant. As appellant stated, "...every time I come up with something to try to help to make a defense, he turns me down." (Aug.RT 13-16.) Counsel explained that he had been unable to locate the witness and that appellant's case was a "slam dunk" for the prosecution. (Aug.RT 18-20.) Appellant stated that he would not be prepared to start trial within the next 10 days if pro per status was granted. (Aug.RT 2, 5.)

The trial court denied appellant's self-representation request on the grounds it was untimely, made for the purpose of delay, and that counsel was providing proper assistance. (Aug.RT 22-23.)

3. Standard of review

The erroneous denial of a motion for self-representation is reversible per se. (*McKaskle v. Wiggins* (1984) 465 U.S. 168, 177, fn.8, 104 S.Ct. 944, 950, fn.8; *People v. Butler* (2009) 47 Cal.4th 814, 824, 102 Cal.Rptr.3d 56, 63.)

4. Appellant had the right to represent himself.

Under the Sixth Amendment, a defendant in a criminal case has the right to represent himself at trial. (*Faretta v. California* (1975) 422 U.S. 806, 95 S.Ct. 2525.) As stated in *People v. Butler*, *supra*, 47 Cal.4th at 824, 102 Cal.Rptr.2d at 62-63:

In *Faretta*, the United States Supreme Court declared that a defendant “must be free personally to decide whether in his particular case counsel is to his advantage,” even though “he may conduct his own defense ultimately to his own detriment...” “The Sixth Amendment...implies a right of self-representation.” Thus, a state may not “constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense.” (Citations omitted.)

(Accord, *People v. Tena* (2007) 156 Cal.App.4th 598, 604, 67 Cal.Rptr.3d 412, 416-417.)

A request for self-representation may not properly be denied “...on the basis of the defendant’s inability to present a defense, provided that the defendant is competent to stand trial.” (*People v. Tena, supra*, 156 Cal.App.4th at 605, 67 Cal.Rptr.3d at 417.) And, “...the defendant’s “technical legal knowledge” is irrelevant to the court’s assessment of the defendant’s knowing exercise of the right to defend himself.”” (*People v. Butler, supra*, 47 Cal.4th at 824, 102 Cal.Rptr.3d at 63; accord, *Wiesner v. Abrams* (E.D.N.Y. 1989) 726 F.Supp. 912, 919 [“...an accused’s lack of lawyering skills is not a proper ground for denying the right to proceed pro per...”]) A trial court may deny a self-representation request made by a competent defendant only where the request is equivocal or made for an improper purpose, where the request is not knowingly and intelligently made, or where the request is untimely. (*People v. Butler, supra*, 47 Cal.4th at 825, 102 Cal.Rptr.3d at 63; *People v. Tena, supra*, 156 Cal.App.4th at 606-605, 67 Cal.Rptr.3d at 417; *United States v. Mackovich* (10 Cir.2000) 209 F.3d 1227, 1236.) Appellant’s request was unequivocal and was knowing and intelligent.

Here, the trial court's reasons for denying appellant's motion are not well-founded.

The fact that appellant's counsel may have been providing adequate assistance is not a proper reason for denying a request for self-representation. A defendant is entitled to represent himself even if counsel is providing effective representation. Even if not "want[ing] to hear what his attorney has to tell him...isn't a very good reason to give up a constitutional right to the assistance of counsel" (Aug.RT 22), as the trial court stated, it is not a proper or legally justifiable reason to deny a request for self-representation.

The trial court denied the motion on the ground that it was untimely. (Aug.RT 22.) But, "...a motion to proceed pro per is timely if made before the jury is empaneled, unless it is shown to be a tactic to secure delay." (*Fritz v. Spalding* (9th Cir.1982) 682 F.2d 782, 784.) Here, appellant's request was made more than 10 days before a jury was to be chosen. And, although appellant stated that he would need a continuance, there is no evidence that the court or the prosecution would have been unduly prejudiced by a short continuance to allow appellant to prepare his case. Although the case was relatively old, there was only a "potential" (Aug.RT 23) that the witnesses would be unavailable.

Nor was there any persuasive evidence that appellant was making the motion solely for delay. From his statements to the trial court at the hearing, it appears that he was sincere in his dissatisfaction with counsel's representation and in his desire to represent himself. And, appellant did not have a proclivity for making delaying motions; there is no evidence that appellant's previous *Marsden* motion was for an improper

purpose.

5. Conclusion

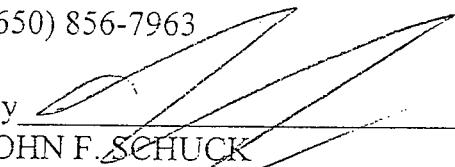
The trial court erred and violated appellant's Sixth Amendment rights when it denied his motion for self-representation. Reversal is required.

V. CONCLUSION

For the reasons stated above, reversal is required.

Dated: 4 April 2011

Respectfully submitted,
LAW OFFICES OF JOHN F. SCHUCK
John F. Schuck, #96111
4083 Transport Street, Suite B
Palo Alto, CA 94303
(650) 856-7963

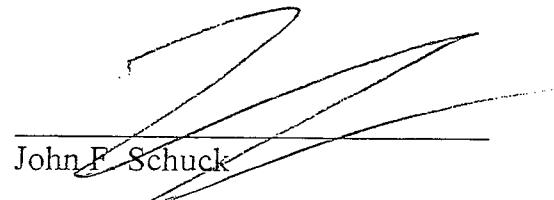
By 
JOHN F. SCHUCK
Attorney for Appellant
EDDIE ASHLEY
(Appointed by the Court)

CERTIFICATE OF WORD COUNT

In reliance on the word count of the computer program used to generate this brief, I, John F. Schuck, hereby certify that this Opening Brief contains 2,963 words.

I declare under penalty of perjury that the above is true and correct.

Dated: April 14, 2011



John F. Schuck

PROOF OF SERVICE

I, John Schuck, declare:

I am a citizen of the United States and a resident of the County of Santa Clara; I am over the age of eighteen years and am not a party to the within action; my business address is 4083 Transport Street, Suite B, Palo Alto, California 94303.

On April 5, 2011, I served the within:

APPELLANT'S OPENING BRIEF

on the following interested persons in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as follows:

District Attorney
Room 18-709
210 W. Temple Street
Los Angeles, CA 90012-3210

Attorney General
North Tower, Suite 5001
300 S. Spring Street
Los Angeles, CA 90013

California Appellate Project
Suite 400
520 S. Grand Avenue
Los Angeles, CA 90071

Los Angeles County Superior Court
Room M3
210 W. Temple Street
Los Angeles, CA 90012-3210

Eddie Ashley
AC-6361
Kern Valley State Prison
P. O. Box 5101
Delano, CA 93216

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Palo Alto, California on April 5, 2011.

John F. Schuck

EXHIBIT B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)		FOR COURT USE ONLY
TELEPHONE NO. (661) 257-1322 ATTORNEY FOR (Name) LARRY M. BAKER SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: Eddie Ashley		RECEIVED 4/15/10
Date of birth: 4/1/87 Cal. Dept. of Corrections and Rehabilitation No. (if any):		RECEIVED BUT NOT FILED APR 19 2010
NOTICE OF APPEAL—FELONY (DEFENDANT) (Pen. Code, §§ 1237, 1237.5, 1538.5(m); Cal. Rules of Court, rule 8.304)		NORTH DISTRICT
CASE NUMBER(S) MA0371590		

NOTICE

- You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.
- IMPORTANT: If your appeal challenges the validity of a guilty plea, a no-contest plea, or an admission of a probation violation, you must also complete the Request for Certificate of Probable Cause on page 2 of this form. (Pen. Code, § 1237.5.)

1. Defendant appeals from a judgment rendered or an order made by the superior court.

NAME of defendant: Eddie Ashley

DATE of the order or judgment: 2/6/10

2. Complete either item a. or item b. Do not complete both.

a. If this appeal is after entry of a plea of guilty or no contest or an admission of a probation violation, check all that apply:

- (1) This appeal is based on the sentence or other matters occurring after the plea that do not affect the validity of the plea. (Cal. Rules of Court, rule 8.304(b).)
- (2) This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
- (3) This appeal challenges the validity of the plea or admission. (You must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature.)
- (4) Other basis for this appeal (you must complete the Request for Certificate of Probable Cause on page 2 of this form and submit it to the court for its signature) (specify):

b. For all other appeals, check one:

- (1) This appeal is after a jury or court trial. (Pen. Code, § 1237(a).)
- (2) This appeal is after a contested violation of probation. (Pen. Code, § 1237(b).)
- (3) Other (specify):

Defendant requests that the court appoint an attorney for this appeal. Defendant was was not represented by an appointed attorney in the superior court.

Defendant's mailing address is: same as in attorney box above.

as follows: NKSP
P.O. Box - 4994
Delano CA, 93216

EDDIE ASHLEY
(TYPE OR PRINT NAME)

Eddie Ashley
(SIGNATURE OF DEFENDANT OR ATTORNEY)

PEOPLE OF THE STATE OF CALIFORNIA vs.	CASE NUMBER(S) MA0371590
DEFENDANT: <u>Eddie Ashley</u>	

REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

I request a certificate of probable cause. The reasonable constitutional, jurisdictional, or other grounds going to the legality of the guilty plea, no-contest plea, or probation violation admission proceeding are (specify):

I am requesting that my no-contest plea be taken back based on the fact that my attorney was not represented me properly. My judge reason for denied me my pro-pro status was not constitutional, Even after I have given the judge probable cause for my request. Before that I have ask to fixed my council for mis representation me, I was denied.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 3/30/10

Eddie Ashley
(TYPE OR PRINT NAME)

Eddie Ashley
(SIGNATURE OF DEFENDANT OR ATTORNEY)

COURT ORDER

This Request for Certificate of Probable Cause is (check one): granted denied.

Date: 4-19-10

JAYDEE ZACKY, JUDGE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TED E. THOMPSON, Attorney at Law (310)559-1352 4275 Madison Avenue Culver City, CA 90232-3223		FOR COURT USE ONLY
TELEPHONE NO.: 310-559-1352 FAX NO.: 310-559-2791		<i>Received 10/20/03 J Bradley</i>
ATTORNEY FOR (Name): Defendant, STEVEN BURGUAN		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
PEOPLE OF THE STATE OF CALIFORNIA		
DEFENDANT: STEVEN BURGUAN Date of birth: 3/5/83 California Dept. of Corrections No. (if applicable): n/a		vs.
NOTICE OF APPEAL—FELONY (DEFENDANT) (Pen. Code, §§ 1237, 1538.5(m); Cal. Rules of Court, rule 31(d))		CASE NUMBER(S): KA061804

NOTICE

- If your appeal challenges the validity of the plea you must complete the *Request for Certificate of Probable Cause* on the other side of this form. (Pen. Code, § 1237.5.)
- You must file this form in the superior court within 60 days after entry of judgment.

1. Defendant (name): STEVEN BURGUAN
appeals from the order or judgment entered on (specify date of order, judgment, or sentence): October 20, 2003
2. This appeal follows:
 - A jury or court trial. (Pen. Code, § 1237(a).)
 - A contested violation of probation. (Pen. Code, § 1237(b).)
 - A guilty (or no-contest) plea or an admitted probation violation (check all boxes that apply):
 - This appeal is based on the sentence or other matters occurring after the plea. (Cal. Rules of Court, rule 31(d).)
 - This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
 - This appeal challenges the validity of the plea or admission. (You must complete the *Request for Certificate of Probable Cause* on the other side of this form.)
3. I request that the court appoint an attorney on appeal. Defendant was represented by an appointed attorney in the superior court.
4. Defendant's address: same as in attorney box above.
 as follows: Steven Burguan
Booking No. 7681784
Los Angeles County Men's Central Jail
Los Angeles, CA 90012

Date: October 20, 2003

*Oct 20/03
J. Bradley
J. Held
JMS*

TED E. THOMPSON, Attorney at Law
(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(A Request for Certificate of Probable Cause is on the other side)

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

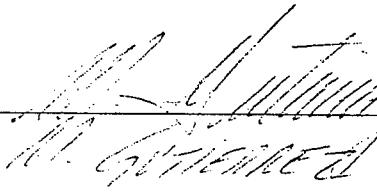
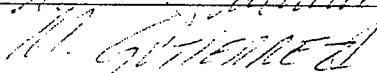
206
BURGUAN, STEVEN-01
KA061804-01 Conc w/KA53569-01

I, JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK of the Superior Court for the County and State aforesaid, do hereby certify that I have compared this transcript with the original documents on file and/or of record in this office and it is a full, true and correct copy.



Date: NOV 12 2003

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
of the Superior Court of California, County of Los Angeles

By:  Deputy


Notice of Completion of the Clerk's Transcripts on appeal of the within action having been mailed/delivered to the attorneys representing the appellant and the respondent pursuant to Rule 35(c) of the rules on appeal, I hereby certify the foregoing record consisting of 206 pages to be a full, true and correct transcript on appeal.

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
of the Superior Court of California, County of Los Angeles

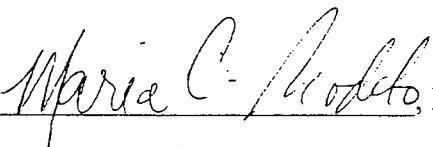
Date:

By: _____, Deputy

Portions of this transcript are governed by the provisions of Code of Civil Procedure Section 237(a)(2), and all of the personal juror identifying information has been redacted.

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
of the Superior Court of California, County of Los Angeles

Date: November 4, 2003

By:  Deputy

Maria C. Rodelo

CERTIFICATION

EXHIBIT C

**INSTRUCTION FOR FILING
PETITION FOR WRIT OF HABEAS CORPUS AND/OR
APPLICATION FOR RELIEF FROM DEFAULT**

1. Find out which appellate district your case is in (this is determined by the county in which you were convicted, not the county where the prison is located), and fill in the appropriate blanks at the top of pages 1 and 2. **LEAVE THE SPACES AFTER "DIVISION" and "CRIM." BLANK** -- the court will fill these in after you have filed your petition.
2. You are the petitioner. Print or type your name on the line in the box on pages 1 and 2, and wherever else it is called for.
3. Fill in your Superior Court Case number. In the text of the petition and in the attached order and notice of appeal, fill in the blanks for the name of the Superior Court -- that is, the county (i.e., Los Angeles County Superior Court Case No. MA 0371590), as well as the number.
4. Be as specific as possible in describing when you discovered your right to appeal, why your notice of appeal was not filed on time, and what you have done since then to file an appeal. Put these facts in the body of the petition (pages 2-4), and in your sworn declaration, and summarize them in the Memorandum of Points and Authorities (page 7).
5. If possible, include declarations from others who can help explain why your notice of appeal was not filed on time -- for example, your trial lawyer, friends or fellow inmates, your prison counselor, etc. If you have mailing receipts from the prison or post office, attach copies as exhibits. Identify your exhibits at the bottom of the page (i.e., "EXHIBIT A," "EXHIBIT B," etc.).
6. Included in the packet is a notice of appeal which you must fill out and sign. The notice of appeal should be attached as the last exhibit in your petition. If you had a trial (i.e., you did not plead guilty), **CROSS OUT THE BRACKETED WORDS RELATING TO GUILTY PLEAS** in the notice of appeal. If you did plead guilty, you must leave the bracketed words in or the court could deny the writ/application.
7. Send the original plus four copies to the appropriate Court of Appeal. Their addresses are:

First Appellate District

[Alameda, Contra Costa, Del Norte, Humboldt,
Lake Marin, Mendocino, Napa, San Francisco,
San Mateo, Santa Clara, Solano & Sonoma
Counties]

Clerk

Court of Appeal

350 McAllister St.

San Francisco, CA 94102-3600

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Second APPELLATE DISTRICT

DIVISION * _____

In re) CRIM. * _____
)
Eddie Ashley) Superior Court No. MA0371540
[name])
)
Petitioner,)
)
On Habeas Corpus.)
)

PETITION FOR WRIT OF HABEAS CORPUS AND/OR
APPLICATION FOR RELIEF FROM DEFAULT
RE: NOTICE OF APPEAL.

Eddie Ashley

[print or type your name]

In Propria Persona

AC 6361

[CDC or Booking Number]

Eddie Ashley AC 6361

KVSP A-5-217

P.O. Box 6000

Delano, CA 93216

[address]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Second APPELLATE DISTRICT

DIVISION *

In re) CRIM. * _____
_____Eddie Ashby_____,) Superior Court No. MA037150
[name])
Petitioner,)
On Habeas Corpus.)

PETITION FOR WRIT OF HABEAS CORPUS AND/OR
APPLICATION FOR RELIEF FROM DEFAULT
RE: NOTICE OF APPEAL.

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE
JUSTICES OF THE COURT OF APPEAL OF THE STATE
OF CALIFORNIA, Second APPELLATE DISTRICT:

Petitioner Eddie Ashley hereby petitions this court for a writ of habeas corpus or, in the alternative, applies for relief from default, in the form of an order directing the constructive filing of his/her notice of appeal in Los Angeles County Superior Court Case No. AA02-1500, and by this verified petition alleges as follows:

I.

Petitioner was convicted of Three counts of attempted murder and one count of shooting at an inhabited dwelling or vehicle; there were going and great bodily injury enhancements alleged.

following Guilty plea

[a court trial or jury trial or guilty plea]

in Los Angeles County Superior Court Case No. MA0371505.

On 2 / 3, 2010, petitioner was sentenced to 21
[month/day] [year]

years in state prison.

II.

Petitioner is currently unlawfully incarcerated under restraint of this judgment at

Kern Valley State Prison
[name of jail or prison]

P.O. Box 6000, Delano,
[address] [city]

California 93216
[zip code]

III.

Petitioner's notice of appeal was not filed within the 60-day time limit because:

I was unaware of the time limit and had no opportunity to raise the issue. I didn't receive the proper Appeal papers until four days before my deadline.

IV.

On or about 4/19, 2010, petitioner discovered
[month/day] [year]

that a notice of appeal was not filed in his/her case within the 60-day deadline. The facts surrounding that discovery are as follows:

When I received my notice of appeal back, it said that it was granted but not filed they said it was received late.

V.

Since discovering that the deadline for filing an appeal had passed, petitioner has taken the following steps to file a notice of appeal:

I sent a copy of the legal mail log list to the courts to show that my notice of appeal was on time. I was told about California Appellate Project can help. When I write to them (CAP) I was give a habeas corpus.

VI.

Petitioner believes that s/he has a meritorious issue on appeal because: [Explain why your conviction should be overturned.]

My attorney was not compensated properly, I ask for my pro-sec status I was denied. Newly discovered evidence of misconduct by a government official.

VII.

No notice of appeal has yet been filed in this case. No other petition for writ of habeas corpus or application for relief from default pertaining to this matter has been sought by or on behalf of petitioner in this or any other court.

VIII.

By this petition, petitioner seeks a writ of habeas corpus or, in the alternative, an order, directing the constructive filing of the attached notice of appeal in Los Angeles County Superior Court Case No. AK0371590. (In re Benoit (1973) 10 Cal.3d 72, 78.)

IX.

Petitioner is in prison, indigent, and unable to afford private counsel, and therefore requests the appointment of counsel on appeal.

WHEREFORE, petitioner respectfully requests that this court issue (1) a writ of habeas corpus, or (2) an order, directing the constructive filing of the attached notice of appeal in Los Angeles County Superior Court Case No. AK0371590, attached hereto as Exhibit A.

DATED: 7/9/10

Respectfully submitted,

Eddie Ashley
[signature]

Eddie Ashley
[print or type your name]

In Propria Persona

VERIFICATION

I, Eddie Ashby, declare as follows:
[print or type your name]

I am the petitioner in this action. I have read the foregoing petition, and I declare that the facts stated in the petition are true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed

on 7/9, 2010, at Delano.
[month and day] [year] [city]

California.

Eddie Ashby
[signature]

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS AND/OR APPLICATION
FOR RELIEF FROM DEFAULT

PETITIONER SHOULD BE GRANTED RELIEF FROM
DEFAULT UNDER THE DOCTRINE OF CONSTRUCTIVE FILING.

Rule 31(a) of the California Rules of Court provides that a notice of appeal must be filed within 60 days of the rendition of judgment. Petitioner requests that s/he be granted relief from default arising from the expiration of the 60-day limit.

California courts have consistently liberally exercised their power to permit the late filing of a notice of appeal. (See In re Benoit (1973) 10 Cal.3d 72, 81-84.) Under Benoit, a defendant who has acted diligently to protect his/her appellate rights may be entitled to relief under "compelling circumstances." (In re Benoit, supra, 10 Cal.3d at 87.)

Thus, where the defendant has demonstrated his/her intent to file an appeal in a timely fashion, the doctrine of constructive filing will relieve him of his/her failure to do so when s/he is thwarted by circumstances beyond his/her control. For example, a defendant who relies on his/her attorney's promise to file a notice of appeal, or who depends on prison officials to mail the notice, may be held to have complied with the 60-day filing deadline. (In re Benoit, supra, 10 Cal.3d at 86-87; People v. Slobodian (1947) 30 Cal.2d 362; In re Fountain (1977) 74 Cal.App.3d 715.)

Relief has also been granted where a defendant could show that s/he was never advised of the right to appeal and was ignorant of appellate procedures. (In re Arthur N. (1974) 36 Cal.App.3d 935; People v. Riley (1977) 73 Cal.App.3d Supp.1; Castro v. Superior Court (1974) 40 Cal.App.3d 614, 621; see also In re Hernandez (1974) 40 Cal.App.3d 893, 894; see also Pen. Code, § 1240.1.)

The doctrine of constructive filing applies to petitioner's case as well. [Explain why.]

I was ignorant of the appellate procedures, when I made it
Kern Valley state Prison, I was inform by a inmate
that I can put a notice of Appeal, No soon when I
found that out I put in for my notice of Appeal pap-
ers in. I didn't know about the deadline, The inmate
told me to put a deadline on my requests paper so
I can receive my notice of appeal faster.

Having exercised diligence in pursuing his/her appellate rights, petitioner

Eddie Ashby respectfully requests that this court grant him/her relief from default by issuing its writ of habeas corpus or, in the alternative, an order, directing the constructive filing of the attached notice of appeal in Los Angeles County Superior Court Case No. MA0271590.

DATED: 7/9/10

Respectfully submitted,

Eddie Ashby
[signature]

Eddie Ashby
[print or type your name]

In Propria Persona

DECLARATION OF Eddie Ashley
[name]

I, Eddie Ashley,
[name] declare:

(1) I am the defendant in Los Angeles County Superior Court
Case No. MA0371500. On 7/9, 2010, I was

sentenced to 24 years in state prison after
Guilty Plea. I am presently

incarcerated in Kern Valley State Prison at
[name of prison]

Delano, California
[city]

(2) [Explain why you or your attorney did not file a notice of appeal within the 60-day time limit.]

My attorney was not representing me properly, I was ignorant of the appellate procedures and didn't have a way to get the notice of appeal papers on time.

(3) [Explain what you have done to try to get an appeal since discovering that a notice of appeal was not filed in time.]

I turn in a copy of the legal log showing that I turn in my notice of appeal before the deadline and a copy of law Houston v. Lack in to the courts. I was told to seek help from California Appellate Project, so I wrote to them (CAP). They sent me a Habeas corpus to fill in.

(4) I cannot afford to hire a private attorney to represent me on appeal, and therefore I request the appointment of an attorney to represent me.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 7/9, 2010, at Delano,
[month/day] [year] [city]

California:

Eddie A. M.
[signature]

Eddie Ashley
[print or type your name]

In Propria Persona

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

Second APPELLATE DISTRICT

DIVISION * _____

THE PEOPLE OF THE STATE OF CALIFORNIA,) CRIM. * _____
)
Plaintiff and Respondent,) Sup. Ct. No. MA03-71540
)
v.)
Eddie Ashley,)
Defendant and Petitioner.)

)

ORDER

This court has read and considered petitioner Eddie Ashley's application for relief from default re: notice of appeal.

GOOD CAUSE HAVING BEEN SHOWN, the requested relief is granted. The

Los Angeles County Superior Court is hereby directed to accept as timely filed the attached notice of appeal in Case No. MA03-71540.

DATED: 7/9/10

Hayden Zacky
PRESIDING JUSTICE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO. (619) 257-1227 FAX NO. (619) 257-2176		
ATTORNEY FOR (Name): <u>Larry M. Baker</u>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
PEOPLE OF THE STATE OF CALIFORNIA		
vs.		
DEFENDANT: <u>Eddie Ashley</u>		
Date of birth: <u>4/11/87</u> California Dept. of Corrections No. (if applicable): <u>AC163101</u>		
NOTICE OF APPEAL-FELONY (DEFENDANT) (Pen. Code, §§ 1237,1538.5(m); Cal. Rules of Court, rule 30(b))		CASE NUMBER(S): <u>ANAL371590</u>

NOTICE

- If your appeal challenges the validity of the plea you must complete the *Request for Certificate of Probable Cause* on the other side of this form. (Pen. Code, § 1237.5.)
- You must file this form in the superior court within 60 days after entry of judgment.

1. Defendant (name): Eddie Ashley
appeals from the order or judgment entered on (specify date of order, judgment, or sentence): 2/3/10

2. This appeal follows:

- A jury or court trial. (Pen. Code, § 1237(a).)
- A contested violation of probation. (Pen. Code, § 1237(b).)
- A guilty (or no-contest) plea or an admitted probation violation (check all boxes that apply):
 - This appeal is based on the sentence or other matters occurring after the plea. (Cal. Rules of Court, rule 30(b)(4)(B)) (d).)
 - This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
 - This appeal challenges the validity of the plea or admission. (You must complete the *Request for Certificate of Probable Cause* on the other side of this form.)
- Other (specify):

3. I request that the court appoint an attorney on appeal. Defendant was was not represented by an appointed attorney in the superior court.

4. Defendant's address: same as in attorney box above.
 as follows:

Date: 7/9/10

Eddie Ashley
(TYPE OR PRINT NAME)

Eddie Ashley
(SIGNATURE OF DEFENDANT OR ATTORNEY)

Page 1 of 2

PEOPLE OF THE STATE OF CALIFORNIA vs.

CASE NUMBER(S): MA0371590

DEFENDANT: Eddie Ashley

REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

I request a certificate of probable cause. The reasonable constitutional, jurisdictional or other grounds going to the legality of the guilty plea, no contest plea or probation violation admission proceeding are (specify):

I am requesting that my no-contest plea be taken back based on the fact that my attorney did not represent me properly. The judge reason for denied me my pro-se status was not constitutional. Even after I have given the judge probable cause for my request. Before that I have ask to fire my counsel for mis representation me, I was denied. Penal code 147.3.6.
(3) Newly discovered evidence of misconduct by a government official.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 7/9/10

Eddie Ashley

(TYPE OR PRINT NAME)

Eddie Ashley

(SIGNATURE OF DEFENDANT OR ATTORNEY)

COURT ORDER

This Request for Certificate of Probable Cause is (check one): granted denied.

Date:

JUDGE

EXHIBIT D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL - SECOND DIST.

FILED

OCT 13 2010

JOSEPH A. LANE

Clerk

Deputy Clerk

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE ASHLEY,

Defendant and Appellant.

B226484

(L.A.S.C. No. MA037159)

ORDER

THE COURT*:

The petition for writ of habeas corpus, filed August 12, 2010, is considered herein as an application to file a belated notice of appeal. As such, it is granted.

The clerk of the superior court is ordered to accept the notice of appeal as timely filed.

*MALLANO, P. J.

ROTHSCHILD, J.

JOHNSON, J.

EXHIBIT E

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

Case No. B228295

EDDIE ASHLEY,

Defendant and Appellant.

Los Angeles County Superior Court, Case No. MA037159
The Honorable Hayden Zacky, Judge

RESPONDENT'S BRIEF

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Attorneys for Plaintiff and Respondent

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

Case No. B228295

v.

EDDIE ASHLEY,
Defendant and Appellant.

Los Angeles County Superior Court, Case No. MA037159
The Honorable Hayden Zacky, Judge

RESPONDENT'S BRIEF

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STATEMENT OF THE CASE

By information, the Los Angeles County District Attorney charged appellant with three counts of willful, deliberate and premeditated attempted murder¹ (Pen. Code,² §§ 664/187, subd. (a)) and one count of shooting at an inhabited dwelling (§ 246; count four). As to counts two through four, personally and intentionally discharging a firearm (§ 12022.53, subds. (b) & (c)) was alleged. (CT 30-32.) As to count one, it was alleged that a principal personally and intentionally discharged a firearm causing great bodily injury and death (§ 12022.53, subds. (b), (c), (d), (e)(1).) As to count one, it was alleged that the offense was committed for the benefit of, at the direction of, and in association with a criminal street gang (§ 186.22, subd. (b)(4)). (CT 30-33.) Appellant pled not guilty and denied the allegations. (CT 52.)

After jury selection, count five, alleging a violation of section 245, subdivision (b), was added by interlineation. (CT 79.) Thereafter, appellant withdrew his plea of not guilty and pled nolo contendere to count one and count five. Appellant also admitted the gang allegation (§ 186.22, subd. (b)(1)(C)) and an allegation of section 12022.7, subdivision (a). (CT 80.)

Appellant was sentenced to state prison for 24 years, including the upper term of 9 years for count one, 10 years pursuant to section 186.22, subdivision (b)(1)(C), 3 years pursuant to section 12022.7, subdivision (a), and the mid-term of 6 years (2 years) for count five. (CT 81, 83.)

¹ Counts one and two both charged the willful, deliberate and attempted murder of Andrew Hayes. (CT 30.) Count three charged the willful, deliberate and attempted murder of Alexa Mila. (CT 31.)

² All further statutory references are to the Penal Code, unless otherwise indicated.

and Thompson shot Hayes. (CT 14.) Hayes identified appellant from a photographic six-pack. (CT 14-15.) As a result of the November shooting, Hayes suffered a gunshot wound to his chest. He also had a wound to his hand and arm, but he explained that he believed it was the same bullet that traveled through his hand, his arm, and his chest. (CT 15.)

Hayes also identified the shooter in the December shooting incident as appellant. (CT 16.)

According to Detective Gillis, the Palmer Bloc Crips had over 100 documented members in the Compton area and about 10 in the Antelope Valley. (CT 16-17.) Detective Gillis testified regarding two predicate gang offenses, one involving Thompson and one involving appellant. (CT 17-20.) Detective Gillis knew appellant to be a member of the Palmer Bloc Crips based on self-admissions. Appellant's gang moniker was "PK-Boo." (CT 20.) In Detective Gillis' opinion, the shootings of Hayes were committed for the benefit of Palmer Bloc Crips because these shootings sent a message that the Palmer Bloc Crips were capable of doing such things and made witnesses less likely to cooperate with authorities. (CT 20-21.)

ARGUMENT

I. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING APPELLANT'S MOTION FOR NEW COUNSEL

Appellant contends the trial court abused its discretion in denying his motion for new counsel.⁵ (AOB 3-8.) Respondent disagrees.

⁵ *People v. Marsden* (1970) 2 Cal.3d 118, 123-126 (*Marsden*), held that when a criminal defendant seeks a new attorney based upon a claim that he has received ineffective assistance from appointed counsel, the trial court must inquire into the reasons for the defendant's dissatisfaction with counsel.

don't get along all that well." (RT A3.) At this point, appellant informed the court that he did not get along with counsel: "Because he thinks I'm guilty." (RT A3.)

At the *Marsden* hearing, appellant complained that his counsel believed that he was guilty and had not visited him in several months. (RT A7; *see AOB 6.*) The court, however, explained to appellant that the defense attorney's job was not necessarily to believe in appellant's innocence, but rather to be realistic with appellant and evaluate the strengths and weaknesses of the case. (RT A8.) Appellant also informed the court that his counsel had spoken with him prior to each court appearance. (RT A12.)

Appellant also complained that his counsel had not called witnesses at the preliminary hearing to contradict the victim's testimony. (RT A8-A9; *see AOB 6.*) The court however, explained to appellant that a preliminary hearing is not a full-blown trial and that many defense attorneys do not present evidence at a preliminary hearing in order to avoid showing their cards. (RT A9.)

Appellant also complained that his counsel had not filed a *Pitchess* motion.⁶ (RT A10; *see AOB 6.*) Appellant, however, conceded that he had never asked his attorney to file a *Pitchess* motion. (RT A11.)

Appellant complained that his counsel spoke to him about wanting to talk to the prosecution about a plea deal prior to the preliminary hearing. (RT A12-A13.) The court, however, noted that such timing was not unusual and sometimes the best offers come before the preliminary hearing. (RT A13.)

Counsel explained to the court that he had been practicing for 33 years and had tried between 100 and 200 felonies, including 23 homicide

⁶ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

find an abuse of that discretion unless the failure to remove and replace appointed counsel would substantially impair the defendant's right to effective assistance of counsel. (*People v. Abilez* (2007) 41 Cal.4th 472, 487-488.) The trial court did not abuse its discretion in denying appellant's request for new counsel.

The number of times a defendant sees his or her attorney and the way in which a defendant relates with that attorney does not establish incompetence of counsel. (*People v. Hart* (1999) 20 Cal.4th 546, 604.) Thus, although appellant complained that his counsel did not visit him sufficiently, any disagreement over the amount of contact is not sufficient to justify replacing appointed counsel. Indeed, according to counsel's comments, he had a "full plate" and was approaching his cases "chronologically" and was tackling his immediate trial matters before concentrating his full attention on appellant's trial matter which was not as immediate. (AOB 7, citing RT A17.) This was certainly a reasonable means of proceeding.

"A defendant does not have the right to present a defense of his own choosing, but merely the right to an adequate and competent defense." (*People v. Welch* (1999) 20 Cal.4th 701, 728, citing *People v. Hamilton* (1989) 48 Cal.3d 1142, 1162.) When a defendant chooses to be represented by counsel, that attorney is captain of the ship and can make all but a few fundamental decisions for the defendant. (*People v. Alfaro* (2007) 41 Cal.4th 1277, 1320.)

Indeed, trial defense counsel often must provide their clients with advice that is difficult to hear or which may result in a tactical disagreement about how best to proceed. Such frank discussions are often the hallmark of the proper discharge of a defense attorney's ethical duties as a lawyer. (*People v. Welch*, *supra*, 20 Cal.4th at pp. 728-729.)

The standard of proof at a preliminary hearing is rather low and most criminal defense attorneys choose not to present evidence at a preliminary

Highway Patrol v. Superior Court (2000) 84 Cal.App.4th 1010, 1019.)

Thus, it was within counsel's purview to choose not to present a *Pitchess* motion.

Nor was appellant entitled to a new appointed attorney because his counsel suggested a plea deal. It appears that counsel's honest assessment of this case was that appellant had no convincing defense and that appellant's best strategy would be to accept a plea deal, something appellant ultimately did accept.

Appellant, furthermore, failed to demonstrate an irreconcilable conflict with counsel. (*People v. Jackson* (2009) 45 Cal.4th 662, 688 [tactical disagreements between defendant and counsel do not in themselves constitute an irreconcilable conflict].)

The court listened to appellant's reasons for substituting counsel before finding those reasons lacked merit. “[T]he trial court was entitled to credit counsel's explanations and to conclude that defendant's complaints were unfounded.” (*People v. Taylor* (2010) 48 Cal.4th 574, 600.) There is, therefore, no basis for concluding that the trial court failed to conduct a proper *Marsden* inquiry. (*People v. Smith* (2003) 30 Cal.4th 581, 607-608.)

II. THE TRIAL COURT DID NOT VIOLATE APPELLANT'S CONSTITUTIONAL RIGHTS WHEN IT DENIED HIS REQUEST FOR SELF-REPRESENTATION

Appellant next contends the trial court violated his Sixth Amendment rights when it denied his request to represent himself. (AOB 8-11.) Respondent disagrees.

The court then “deem[ed] this request to go pro per untimely.” (Aug. RT 6.) The court found “it untimely when it’s made on the eve of trial” because the court intended to send the matter to the master calendar court for trial. (Aug. RT 6.) This case, the court noted, was alleged to have occurred in November and December 2006, over three years earlier, and was one of the oldest, if not the oldest, case on the court’s docket. (Aug. RT 6.) The court noted that there had been a previous attempt to substitute counsel. (Aug. RT 7-8.)

The court then inquired why it was at this point that appellant was seeking to go pro per after his current lawyer had been appointed for over a year. (Aug. RT 9.) Appellant complained that his attorney had told him he had no defense. (Aug. RT 10.) Appellant stated that the reason he wanted to go pro per was because he was unhappy with his attorney. (Aug. RT 11.) At this point, the court asked the prosecutor to step out of the courtroom and held an in-camera proceeding. (Aug. RT 12.)

Appellant then complained that his counsel had told him that he could not locate any alibi witness. (Aug. RT 13.) Appellant told the court that he had talked to a person who might be able to find a witness and that appellant had told this person to call the special investigator. (Aug. RT 14.) When asked by the court if he had provided his attorney with contact information regarding the alleged witness, appellant informed the court that he had not been able to track down information on this alleged witness to give to the attorney. (Aug. RT 15.)

Appellant also complained that his counsel did not have a defense for him. (Aug. RT 16.) The court, however, explained that part of the attorney’s job was to tell appellant the strengths and weaknesses of the case, not necessarily to simply tell appellant whatever appellant wanted to hear. (Aug. RT 17.)

B. Applicable Law and Legal Analysis

A defendant has a constitutional right to self-representation if he or she knowingly and voluntarily waives the right to counsel. (*Faretta v. California*, *supra*, 422 U.S. at p. 819; *People v. Marshall* (1997) 15 Cal.4th 1, 20, 24.)

The right of self-representation is absolute, but only if a request to do so is knowingly and voluntarily made and if asserted a reasonable time before trial begins.

(*People v. Doolin* (2009) 45 Cal.4th 390, 453.)

Absent timely assertion of the right, the trial court has discretion to deny the request, considering such factors as the quality of counsel's representation, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and state of the proceedings, and the disruption or delay that might result. (*People v. Marshall* (1996) 13 Cal.4th 799, 827.) There is no "particular time at which a motion for self-representation is considered untimely, other than that it must be [made] a reasonable time before trial." (*People v. Clark* (1992) 3 Cal.4th 41, 99, emphasis added.)

Here, the request was untimely as it was made the day the case was being sent out to the calendar court for trial assignment. (Aug. RT 6 [court noting the request was made on the eve of trial because the court intended to send the case to the master calendar court for trial].) The trial court was not required to automatically grant it. (*People v. Lynch* (2010) 50 Cal.4th 693, 722–726; *People v. Burton* (1989) 48 Cal.3d 843, 853; *People v. Howze* (2001) 85 Cal.App.4th 1380, 1397.)

Further, absent reasonable cause for the late request, the trial court could properly exercise its discretion to deny the request. Here, appellant was not prepared to proceed to trial, a continuance would have been necessary, and a delay would have interfered with the orderly

been, the law in California.” (*People v. Jackson* (2009) 45 Cal.4th 662, 690.) In *People v. Burton, supra*, 48 Cal.3d at p. 854, the California Supreme Court declined to follow the federal rule that a motion for self-representation is timely as a matter of law if made before the jury is impaneled, finding “the federal rule too rigid in circumscribing the discretion of the trial court.” The law in California remains that a trial court has the discretion to deny a request for self-representation that is not made within “a reasonable time” before trial. (*People v. Jackson, supra*, 45 Cal.4th at p. 689; *People v. Stanley, supra*, 39 Cal.4th at p. 932.) Appellant did not make his request within a reasonable time prior to trial.

Appellant further argues that the mere potential that witnesses might no longer be available did not qualify as a prejudice to the prosecution. (AOB 11.) Yet, here, appellant sought a continuance of an unspecified length. Each day that went by made it more unlikely that the witnesses would be available to testify. Appellant’s case had not moved forward in three years. There is a limit on how much time the public and, in particular, the victims had to be required to wait for justice. It was not appropriate for appellant’s open-ended request for a continuance of no limit to delay the trial any further.

Consequently, given all of these factors, the trial court did not abuse its discretion in denying appellant’s request.⁸ (*People v. Welch, supra*, 20 Cal.4th at p. 735.)

⁸ Indeed, given that appellant had previously sought to substitute new appointed counsel when his counsel needed a short continuance for leg surgery, it could be concluded that appellant’s request for self-representation was equivocal.

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13 point Times New Roman font and contains 4,620 words.

Dated: July 19, 2011

KAMALA D. HARRIS
Attorney General of California



DAVID A. WILDMAN
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Ashley**

No.: **B228295**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On July 19, 2011, I electronically filed the attached Respondent's Brief with the Clerk of the Court using the Online Form provided by the California Court of Appeal, Second Appellate District.

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 19, 2011, I served the attached **RESPONDENT'S BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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Attorney at Law
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District Attorney, Los Angeles
County
Attn: Sue Lasicka
Deputy District Attorney
18-709 Clara Shortridge Foltz Bldg.
210 West Temple Street
Los Angeles, CA 90012

Hon. John A. Clarke
County Clerk/Executive Officer
Los Angeles County Superior
Court
111 North Hill Street
Los Angeles, CA 90012

FOR DELIVERY TO: Hon. Hayden Zacky.
Judge

The one copy for the California Appellate Project was placed in the box for the daily messenger run system established between this Office and California Appellate Project (CAP) in Los Angeles for same day, personal delivery.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 19, 2011, at Los Angeles, California.

L. Luna

Declarant

L. Luna

Signature

DAW:ll

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EXHIBIT F

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE ASHLEY,

Defendant and Appellant.

B228295

(Los Angeles County
Super. Ct. No. MA037159)

COURT OF APPEAL - SECOND DIST.

FILED

OCT 26 2011

JOSEPH A. LANE

Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County.
Kathleen Blanchard and Hayden Zacky, Judges. Affirmed with directions.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Stephanie A. Miyoshi and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Eddie Ashley appeals from the judgment entered following his no contest plea to attempted murder and assault with a semiautomatic firearm. Defendant contends the trial court abused its discretion by denying his motion for a substitution of counsel and violated his federal constitutional rights by denying his motion for self-representation. We affirm but direct the trial court to correct its minutes and issue an amended abstract of judgment to reflect correctly the nature of defendant's conviction.

BACKGROUND

At the preliminary hearing, Detective Robert Gillis testified that on November 11, 2006, he interviewed Andrew Hayes, who had been shot and was in a hospital. At that time, Hayes told Gillis he had been shot during a fight near Avenue Q-5 and 5th Street East in Palmdale. Hayes subsequently told Gillis that he had gotten into a fight with Raymond Thompson and was winning. Defendant then handed Thompson a gun, and Thompson shot Hayes once, causing wounds in Hayes's hand, arm, and chest.

Hayes's girlfriend, Alexa Mila, testified that on the night of December 8, 2006, she was driving her van near Avenue Q-6 and 5th Street East in Palmdale, with Hayes as her passenger. Defendant stepped out into the street in front of her van. She swerved to the right to avoid defendant and saw that he was pointing a gun at her. Defendant fired once, shattering the driver's side window on the van. Mila ducked and was not injured. She was familiar with defendant and knew he was called "Boo." Hayes also told Gillis that defendant, whom Hayes knew as "PK-Boo," was the shooter in the December 8 shooting.

Gillis testified that defendant and Thompson were members of the Palmer Bloc Crips, which was primarily based in Compton but had about ten members in the Antelope Valley. Defendant's moniker was "PK-Boo."

Defendant was charged with three counts of attempted murder, each of which was alleged to have been willful, deliberate, and premeditated, and a single count of shooting at an occupied vehicle. The information also alleged personal and principal firearm-use and discharge enhancements under Penal Code section 12022.53, subdivisions (b) through (e), and that the November 11, 2006 attempted murder was committed for the

benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members.

On the third day of his jury trial, defendant entered into a plea agreement under which he pleaded no contest to the November 11, 2006 attempted murder, admitted gang and personal infliction of great bodily injury enhancement allegations as to the attempted murder, and pleaded no contest to a newly added charge of assault with a semiautomatic firearm. The prosecutor dismissed an allegation that the attempted murder was willful, deliberate, and premeditated. In accordance with the plea agreement, the trial court sentenced defendant to 24 years in prison.

Defendant sought and obtained a certificate of probable cause.

DISCUSSION

1. *Marsden* motion

Bar panel attorney Larry Baker represented defendant at the preliminary hearing and throughout the proceedings in this case. At a pretrial conference on May 29, 2009, defendant asked the trial court to appoint a new attorney to represent him, stating that Baker “thinks I’m guilty.” After confirming that defendant was making a motion under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*), the court conducted an ex parte hearing at which defendant explained the grounds for his request. The court denied the motion. Defendant contends this was an abuse of discretion.

Although defendant obtained a certificate of probable cause following entry of his no contest plea, Penal Code section 1237.5, subdivision (a) still limits the issues cognizable in this appeal to those that raise “reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.” Irregularities that could have been cured, or that would not have precluded subsequent proceedings to establish guilt, were waived when he pleaded no contest. (*People v. Turner* (1985) 171 Cal.App.3d 116, 126.) This includes denial of defendant’s *Marsden* motion. “Defendant makes no contention here that his guilty plea was not intelligently and voluntarily made. Nor does defendant urge that the advice he received from counsel was inappropriate concerning his

plea resulting in the plea not being intelligently and voluntarily made. The claimed *Marsden* error does not go to the legality of the proceedings resulting in the plea.” (*People v. Lobaugh* (1987) 188 Cal.App.3d 780, 786.) The certificate of probable cause is irrelevant because it does not expand the scope of cognizable issues. (*People v. Lovings* (2004) 118 Cal.App.4th 1305, 1311.) Accordingly, defendant may not raise his claim of *Marsden* error on appeal.

2. *Farettta* motion

On January 25, 2010, which was day zero of 10 for trial, defendant moved to discharge his attorney and represent himself under *Farettta v. California* (1975) 422 U.S. 806, 821 [95 S.Ct. 2525] (*Farettta*). The court asked, “Are you ready to proceed to trial representing yourself in the next ten days?” Defendant said he was not. The court reminded defendant that it had declared at the last hearing that there would be no further continuances and had ordered Baker to adjust his trial calendar to be ready to try defendant’s cases, which were “both very old.” (Also pending against defendant were a separate case charging possession of cocaine base for sale and three probation violations.) The court asked Baker whether he was ready to proceed to trial “within the period?” Baker said, “As ready as I can get.” The court told defendant it had a “strong suspicion that the reason that you’re asking is for purposes of delay because I can see no other reason on charges like this for you at this stage in the game to request to go pro per”

After defendant filled out a “pro per form” pertaining to the attempted murder and narcotics cases, the court conducted a lengthy hearing addressing defendant’s motion. Defendant confirmed that he would ask for a continuance if the court granted his motion. The court again asked defendant, “Is there any way that you would be ready on either case to go to trial within the next ten days?” Defendant said he would not. The court deemed the motion untimely and thus a matter within its discretion. The court then addressed a number of factors pertinent to the exercise of that discretion, including the dates of the crimes, which were November and December of 2006 for the shootings and December 2008 for the narcotics. The court noted that the case was one of the oldest on its docket.

It further noted that in October of 2009 it had said there would be no further continuances. The court also reviewed its file and noted defendant's prior *Marsden* motion.

The court asked defendant to explain why he was asking to represent himself at such a late stage of the proceedings. Defendant explained, "[W]e had a talk in the back before I came out here and he told me that he has no defense." Baker asked that the inquiry be conducted outside the presence of the prosecutor. The court then conducted an ex parte hearing in which defendant complained that Baker had not tracked down a witness, neither Baker nor his investigator answered defendant's phone calls, defendant did not have the funds to make all the phone calls he wanted, Baker did not have a theory of defense, and every time defendant came up with "something," Baker "turned [him] down." Defendant also explained that he would put more time into his own case than he believed counsel had. Baker explained his investigator's efforts to locate the witness defendant had mentioned and the limited utility of that witness, and recounted his explanations to defendant of the strength of the prosecution's case, the lack of a viable defense, and the heavy sentence defendant faced if convicted.

The court concluded the ex parte hearing and explained its ruling in open court: "In terms of the [*People v. Windham* [(1977) 19 Cal.3d 121 (*Windham*)] factor[s], I find that ultimately the reason for the request on the eve of trial appears to me to be twofold. One is it's for reasons of delay. I made it very, very clear that this case is going to trial in the next ten days, and now this is the first time that there's been a request to go pro per. The stated reasons by the defendant seem to be that he doesn't want to hear what his attorney has to tell him with regard to the strength of his case, and that simply isn't a very good reason to give up a constitutional right to the assistance of an attorney. [¶] In addition, I find the quality of counsel's representation up until now has been exemplary. Mr. Baker has been on these cases now for over a year. Just in the proffer that he gave me in our ex parte now, I can see that he is doing all the investigation that is necessary into this case. He has a very thorough understanding of all of the issues presented and of

all of the case factors, and I do find that the disruption that might ensue in me granting this untimely request is just immeasurable. I can't imagine how much time the defendant would need in order to actually go to trial on this case given the nature of the charges and given his unwillingness to accept the realities even in terms of his only limitations as a pro per attorney as well as the limitations in, for example, finding witnesses and things like that." The court further noted that the attempted murders occurred three years earlier, "[a]nd in the meantime, you have witnesses who, with the passage of time, are going to be forgetting things. There's the potential that they won't be around any longer, so it's imperative that the People's right to a speedy trial also be considered at this point. So looking at all the *Windham* factors, they just support my decision that I must deny this *Faretta* motion which has been made on the eve of trial on the grounds that a continuance will be necessary if I grant it"

Defendant contends that his motion was timely and the trial court erred by denying it, resulting in a violation of his Sixth Amendment rights.

Notwithstanding defendant's no contest plea, this issue is cognizable with a certificate of probable cause. (*People v. Robinson* (1997) 56 Cal.App.4th 363, 370.)

An accused's right to counsel also includes a right of self-representation. (*Faretta, supra*, 422 U.S. at p. 821.) "A trial court must grant a defendant's request for self-representation if the defendant unequivocally asserts that right within a reasonable time prior to the commencement of trial, and makes his request voluntarily, knowingly, and intelligently." (*People v. Lynch* (2010) 50 Cal.4th 693, 721 (*Lynch*), overruled on another ground in *People v. McKinnon* (2011) 52 Cal.4th 610, 636–643.) A *Faretta* motion that is untimely or is made for purpose of delay may be denied. (*Lynch*, 50 Cal.4th at pp. 721–722.)

"[T]imeliness for purposes of *Faretta* is based not on a fixed and arbitrary point in time, but upon consideration of the totality of the circumstances that exist in the case at the time the self-representation motion is made." (*Lynch, supra*, 50 Cal.4th at p. 724.) "[A] trial court properly considers not only the time between the motion and the

scheduled trial date, but also such factors as whether trial counsel is ready to proceed to trial, the number of witnesses and the reluctance or availability of crucial trial witnesses, the complexity of the case, any ongoing pretrial proceedings, and whether the defendant had earlier opportunities to assert his right of self-representation.” (*Id.* at p. 726.) In evaluating the timeliness of a *Farettta* motion, a trial court may also properly consider the delay that would be required if the motion were granted and the uncertainty caused by such delay. (*Lynch*, at p. 728.) The purpose of the timeliness requirement is to prevent a defendant from misusing the motion to delay unjustifiably the trial or obstruct the orderly administration of justice. (*Id.* at p. 722.) If the motion is untimely, the defendant has the burden of justifying the delay. (*People v. Horton* (1995) 11 Cal.4th 1068, 1110.)

Farettta motions that are not made a reasonable time before trial are addressed to the trial court’s discretion. (*People v. Doolin* (2009) 45 Cal.4th 390, 453.) In assessing an untimely *Farettta* motion, the trial court should consider the quality of counsel’s representation, the defendant’s prior efforts to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay reasonably likely to result from granting the motion. (*People v. Mayfield* (1997) 14 Cal.4th 668, 810 (*Mayfield*); *Windham*, *supra*, 19 Cal.3d at p. 128.) If the court abuses its discretion, the error is reviewed under the harmless error test of *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Rogers* (1995) 37 Cal.App.4th 1053, 1058.)

Citing a Ninth Circuit case, defendant argues that his *Farettta* motion was timely because it “was made more than 10 days” before trial. This is not the law in California. (*People v. Jackson* (2009) 45 Cal.4th 662, 690.) Defendant also miscalculates, as his motion was made on day zero of 10, 10 days before the last day to start the trial, not “more than 10 days.” Also, the case was sent out for trial on February 1, 2010, and jury selection commenced on February 2, 2010—eight days after the *Farettta* motion.

In determining that defendant’s motion was untimely, the trial court considered not only the time remaining before the last day for trial, but also that Baker was ready to proceed to trial, the age of the case—not only how long proceedings had been pending,

but also the date of the commission of the crimes, the necessity of an indefinite delay to permit defendant an opportunity to prepare for trial, the potential impact of such a delay upon witnesses, and that defendant had had a lengthy period during which he could have asserted his right of self-representation. We also note that defendant wanted to represent himself because he was unhappy with Baker's representation—an issue that surfaced approximately eight months earlier when defendant made his *Marsden* motion. Defendant's explanation of his particular grounds for dissatisfaction revealed that all were based on matters that had been ongoing for some time, rather than something that had just arisen. Thus, the trial court did not err by concluding that defendant's *Faretta* motion was untimely, and its grant or denial was a discretionary matter.

In determining how to exercise its discretion, the trial court expressly considered each of the factors set forth in *Windham* and *Mayfield*: the quality of Baker's representation, the reasons for defendant's request to represent himself, his prior effort to substitute counsel, the length and stage of the proceedings, and the disruption or delay reasonably likely to result from granting the motion. It also concluded, given defendant's inability to otherwise justify the delay in making his untimely motion, that the motion was made for purposes of delay. The court's denial of the motion was not an abuse of discretion.

3. Correction of abstract of judgment

Although the information alleged that each of the three attempted murders was willful, deliberate, and premeditated, the prosecutor struck that allegation and defendant did not admit it. The clerk's February 4, 2010 minute order erroneously reflects that the court found defendant's attempted murder conviction "to be in the first degree." Similarly, the abstract of judgment states the nature of the conviction as "attempt murder-1st degree." These descriptions are both factually and legally inaccurate. Attempted murder is not divided into degrees, and a finding that an attempted murder was willful, deliberate, and premeditated does not make the crime first degree attempted murder. (*People v. Bright* (1996) 12 Cal.4th 652, 668–669, overruled on a different ground in

People v. Seel (2004) 34 Cal.4th 535, 550, fn. 6.) Accordingly, we direct the trial court to correct its minutes and to issue an amended abstract of judgment by deleting all references to “first degree” and “1st degree.”

DISPOSITION

The judgment is affirmed. Unless it has already done so, the trial court is directed to correct its minutes for February 4, 2010, and to issue an amended abstract of judgment by deleting all references to “first degree” and “1st degree.”

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANAY, J.

EXHIBIT G

COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA,)	No: B228295
)	
Plaintiff/Respondent,)	APPELLANT'S
)	REPLY BRIEF
v.)	
EDDIE ASHLEY,)	B228295-Ashley-ARB.pdf
)	
Defendants/Appellants.)	
)	
)	

APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
LOS ANGELES COUNTY
SUPERIOR COURT CASE NO. MA037159

THE HONORABLE HAYDEN ZACKY, JUDGE

LAW OFFICES OF JOHN F. SCHUCK
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Attorney for Appellant
EDDIE ASHLEY
(Appointed by the Court)

COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA,) No: B228295
)
 Plaintiff/Respondent,) APPELLANT'S
) REPLY BRIEF
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)
 EDDIE ASHLEY,) B228295-Ashley-ARB.pdf
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 Defendants/Appellants.)
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APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
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EDDIE ASHLEY
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COURT OF APPEAL, STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

PEOPLE OF THE STATE OF CALIFORNIA,) No: B228295
)
Plaintiff/Respondent,)
)
v.) APPELLANT'S
)
EDDIE ASHLEY,) REPLY BRIEF
)
)
Defendants/Appellants.) B228295-Ashley-ARB.pdf
)
)
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APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT
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THE HONORABLE HAYDEN ZACKY, JUDGE

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United States Constitution, Sixth Amendment	3

I. ARGUMENT

A. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MARSDEN MOTION.

In the opening brief, appellant demonstrated that reversal was required because the trial court erroneously denied his well-taken *Marsden*¹ motion for new trial counsel. (AOB 3-8.) Respondent's contrary contention (RB 3-9) is without merit.

Respondent argues that the number of times an attorney visits a defendant "does not establish incompetence." (RB 7.) Here, however, when appellant said that counsel had not visited him in two or three months, counsel *agreed*: "...I haven't had a lot of contact recently. And to that extent, he's absolutely correct and truthful." (RB A15.) Counsel did not have enough time to work on appellant's case; counsel had a "full plate." (RB A17.) Respondent concedes that counsel was not "concentrating his full attention on appellant's trial matter..." (RB 7.) A defendant has "...the right...to consult with his counsel before trial in order that the accused and his attorney may present a proper defense." (*Cornell v. Superior Court* (1959) 52 Cal.2d 99, 102, 338 P.2d 447, 449.) It is essential that the defendant consult with his counsel before that. (*People v. Tribble* (1987) 191 Cal.App.3d 1108, 1117, 236 Cal.Rptr.733, 37-738.) Here, counsel was too busy with other matters to consult with appellant. New counsel should have been appointed.

¹ *People v. Marsden* (1970) 2 Cal.3d 118, 84 Cal.Rptr.156.

Counsel was unaware whether "any outside investigation" had been conducted. (RT A15.) But, an effective defense counsel must conduct a proper and timely investigation. (*People v. Jones* (2010) 106 Cal.App.4th 216, 237-238, 111 Cal.Rptr. 3d 745, 761-762.) Because this was not being done, appellant was entitled to a new appointed attorney.

Appellant recognizes that a defense attorney need not file futile motions and often provides unwelcome information and advice. But, the failure to explain to the defendant why certain motions are not to be filed and informing a defendant before adequate investigation has been conducted that his case does not look good certainly can give rise to an irreconcilable conflict, as it did in the instant case. This irreconcilable conflict prevented effective representation.

The trial court abused its discretion when it denied appellant's motion for new appointed counsel. Reversal is required.

B. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION FOR SELF-REPRESENTATION.

Appellant established that the trial court committed error of constitutional magnitude when it denied his motion to represent himself. (AOB 8-12.) Respondent claims there was no error. (RB 9-15.) The claim is not meritorious.

Respondent contends that appellant's motion for self-representation was properly denied because he did not provide any "convincing justification." (RB 14.) But, respondent has failed to cite any authority that such a justification must be provided.

Where a defendant is competent, he has the Sixth Amendment right to represent himself regardless of his reasons for doing so.

Respondent argues that the fact appellant was in discipline housing provided a reason to deny self-representation. (RB 14.) But, appellant never acted inappropriately in the courtroom and it is only disruptive courtroom behavior that can provide a proper basis for denial of a request for self-representation. (*McKaskle v. Wiggins* (1984) 465 U.S. 168, 173, 104 S.Ct. 944.)

The trial court's main reason for denying appellant's request was that it was supposedly untimely. Although the self-representation request was made six days before trial was to start, there is no actual evidence that the prosecution or the court would be prejudiced or inconvenienced by a short continuance to allow appellant to prepare. Respondent claims that a continuance would make it more "unlikely" that the witnesses could attend trial. But, this is pure speculation, devoid of any evidentiary support.

Appellant's self-representation motion was not made for any improper or delaying purpose. Although it was made within a week of the trial date, a short continuance was certainly feasible. The trial court erred when it denied the motion. Reversal is required.

II. CONCLUSION

For the reasons stated above, and in the opening brief, reversal is required.

Dated: 26 July 2011

Respectfully submitted,
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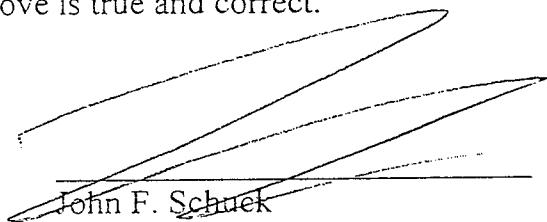
By JOHN F. SCHUCK
Attorney for Appellant
EDDIE ASHLEY
(Appointed by the Court)

CERTIFICATE OF WORD COUNT

In reliance on the word count of the computer program used to generate this brief, I, John F. Schuck, hereby certify that this Reply Brief contains 655 words.

I declare under penalty of perjury that the above is true and correct.

Dated: July 26, 2011



John F. Schuck

PROOF OF SERVICE

I, John Schuck, declare:

I am a citizen of the United States and a resident of the County of Santa Clara; I am over the age of eighteen years and am not a party to the within action; my business address is 4083 Transport Street, Suite B, Palo Alto, California 94303.

On July 26, 2011, I served the within:

APPELLANT'S REPLY BRIEF

on the following interested persons in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as follows:

District Attorney
Room 18-709
210 W. Temple Street
Los Angeles, CA 90012-3210

Attorney General
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California Appellate Project
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520 S. Grand Avenue
Los Angeles, CA 90071

Los Angeles County Superior Court
Room M3
210 W. Temple Street
Los Angeles, CA 90012-3210

Eddie Ashley
AC-6361
Kern Valley State Prison
P. O. Box 5101
Delano, CA 93216

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Palo Alto, California on July 26, 2011.

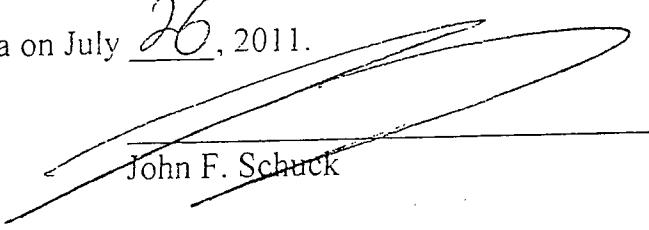

John F. Schuck

EXHIBIT H

1 CASE NUMBER: MA037159-02
2 CASE NAME: PEOPLE VS. ASHLEY
3 LANCASTER, CALIFORNIA THURSDAY, FEBRUARY 4, 2010
4 DEPARTMENT A-17 HON. HAYDEN ZACKY, JUDGE
5 REPORTER: LYNDY DAVIDSON, CSR #7427
6 TIME: 1:40 P.M.
7 APPEARANCES:

8 THE DEFENDANT, PRESENT IN COURT WITH COUNSEL,
9 LARRY BAKER, ATTORNEY AT LAW; JONATHAN CHUNG,
10 DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY,
11 REPRESENTING THE PEOPLE OF THE STATE OF
12 CALIFORNIA.

13
14 THE COURT: WE ARE ON THE RECORD NOW IN OUR TRIAL
15 MATTER. PEOPLE VERSUS ASHLEY. MA037159.

16 AND MR. ASHLEY IS PRESENT IN CUSTODY WITH HIS
17 ATTORNEY, LARRY BAKER. JOHN CHUNG IS HERE FOR THE PEOPLE.
18 WE ARE OUTSIDE THE PRESENCE OF THE JURY.

19 I ALSO HAVE MR. ASHLEY'S OTHER CASES HERE AS
20 WELL.

21 I UNDERSTAND THAT THE PARTIES HAVE BEEN
22 NEGOTIATING FOR POSSIBLE SETTLEMENT. AND WHAT I UNDERSTAND
23 IS THAT MR. ASHLEY MADE A COUNTEROFFER TO THE DISTRICT
24 ATTORNEY'S OFFICE TO SETTLE THIS CASE FOR 22 YEARS.

25 IS THAT RIGHT, MR. BAKER?

26 MR. BAKER: THAT IS CORRECT. THAT WAS YESTERDAY.

27 THE COURT: IS THAT CORRECT, MR. ASHLEY?

28 THE DEFENDANT: YES, SIR.

1 THE COURT: AND THE D.A.'S OFFICE CAME BACK AND THEY
2 SAID THEY WOULD SETTLE IT FOR 24 YEARS. IS THAT RIGHT,
3 MR. CHUNG?

4 MR. CHUNG: THAT'S CORRECT, YOUR HONOR.

5 THE COURT: IS THAT YOUR UNDERSTANDING, MR. BAKER?

6 MR. BAKER: THAT IS.

7 THE COURT: IS THAT YOUR UNDERSTANDING, MR. ASHLEY?

8 | THE DEFENDANT: YES, SIR.

11 IF NOT, THEN LISTEN TO ME AND HEAR ME OUT FOR
12 A SECOND. OKAY?

13 THE DEFENDANT: OKAY, SIR.

14 THE COURT: YOU ARE WILLING TO TAKE 22 YEARS RIGHT
15 NOW TO RESOLVE THE CASE; CORRECT?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: THEY HAVE OFFERED YOU 24. THAT'S ONLY A
18 TWO-YEAR DIFFERENCE. THAT'S IT. AND WITH GOOD TIME/WORK
19 TIME, IT'S LESS THAN A TWO-YEAR DIFFERENCE. SO I REALLY
20 WANT YOU TO THINK INTELLIGENTLY ABOUT THIS.

21 BECAUSE THE OFFER THAT THEY MADE, BASED ON
22 THE CHARGES, SEEMS REASONABLE, AND IT'S ONLY TWO YEARS MORE
23 THAN WHAT YOU SAID YOU WERE WILLING TO TAKE.

24 IF YOU GO TO TRIAL AND IF YOU ARE CONVICTED
25 OF THESE CHARGES, I WILL HAVE NO CHOICE BUT TO SENTENCE YOU
26 TO PRISON FOR THE REST OF YOUR LIFE, WITH THE POSSIBILITY
27 OF PAROLE.

28 BUT LET'S BE REAL ABOUT IT. YOUR PAROLE

1 OFFICER MAY NOT HAVE EVEN BEEN BORN YET.

2 SO YOU ARE A YOUNG MAN. WHAT ARE YOU? 22?
3 23?

4 THE DEFENDANT: 22.

5 THE COURT: RIGHT. I MEAN, YOU ARE POTENTIALLY
6 LOOKING AT THE REST OF YOUR LIFE IN PRISON. AND YOU
7 PROBABLY WILL GET A PAROLE DATE ONE DAY, BUT IT DOESN'T
8 MEAN YOU ARE GOING TO BE PAROLED. IT JUST MEANS YOU HAVE A
9 DATE BEFORE A BOARD.

10 WITH THE OFFER THAT THE D.A. HAS MADE, WHICH
11 IS ONLY TWO YEARS MORE THAN THE OFFER THAT YOU COUNTERED
12 WITH, YOU KNOW WHEN YOU'RE GOING TO GET OUT, YOU KNOW.
13 YOU'RE GOING TO BE OUT IN YOUR LOW 40'S. THAT'S BETTER
14 THAN BEING IN PRISON UNTIL YOU ARE 80 YEARS OLD OR
15 SOMETHING LIKE THAT.

16 MR. BAKER: ONE THING I WANTED TO ADD. THERE'S ABOUT
17 45 YEARS OF ENHANCEMENTS PER COUNT.

18 THE COURT: YES. AND I WAS GOING TO GET THERE.

19 IN FACT, ATTEMPTED MURDER, WITH PREMEDITATION
20 AND DELIBERATION, WHICH IS A FINDING THAT THE JURY HAS TO
21 MAKE, THAT'S WHAT WE CALL LIFE. THAT'S JUST A LIFE
22 SENTENCE.

23 BUT WITH THESE ENHANCEMENTS, IF THE GANG
24 ALLEGATION IS FOUND TRUE, FOR EXAMPLE, THAT MAKES IT
25 15 YEARS TO LIFE RIGHT THERE. THAT MEANS FOR THAT COUNT
26 ALONE, FOR ONE COUNT ALONE, 15 YEARS TO LIFE.

27 AND THEN WITH THE GUN ENHANCEMENTS, IF IT'S
28 FOUND THAT YOU USED AND DISCHARGED A FIREARM CAUSING GREAT

1 BODILY INJURY, THAT IS 25 YEARS TO LIFE CONSECUTIVE TO THE
2 15 TO LIFE ON COUNT 1 ALONE. THAT'S 40 YEARS TO LIFE ON
3 COUNT 1 ALONE.

4 NOW LET'S TALK COUNT 2. 15 YEARS TO LIFE,
5 PLUS ANOTHER 20 YEARS. 35 TO LIFE. CONSECUTIVE TO
6 COUNT 1, POTENTIALLY.

7 AND THE SAME THING WITH COUNT 3.

8 ARE YOU FOLLOWING ME SO FAR?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: AT LEAST IF YOU TAKE THE PEOPLE'S OFFER,
11 LIKE I SAID, YOU ARE IN CONTROL OF YOUR OWN DESTINY. YOU
12 WILL GET OUT OF PRISON ON PAROLE WHEN YOU ARE RELATIVELY
13 YOUNG. OKAY?

14 AND IF YOU ARE WILLING TO TAKE THE 22, YOU
15 NEED TO GIVE SERIOUS CONSIDERATION TO ACCEPTING THE
16 PEOPLE'S OFFER OF 24. IT'S ONLY A TWO-YEAR DIFFERENCE.

17 AND COULD YOU IMAGINE IF YOU GET CONVICTED OF
18 EVERYTHING HERE, AND AS A MATTER OF LAW, I HAVE TO SENTENCE
19 YOU TO LIFE IN PRISON, LET'S SAY, AND THAT 24 YEARS COMES
20 AROUND. AND YOU'RE GOING, I COULD BE PACKING MY BAGS RIGHT
21 NOW AND HEADING HOME.

22 DO YOU SEE WHAT I AM SAYING? BUT, INSTEAD,
23 THEY'RE GOING TO LOCK THAT PRISON DOOR RIGHT BEHIND YOU AND
24 YOU WILL STILL BE INSIDE.

25 NOW I'VE GOT THAT JURY WAITING DOWNSTAIRS,
26 AND WE SPENT A COUPLE OF DAYS PICKING A JURY, SO I NEED TO
27 GET YOUR DECISION NOW. BECAUSE ONCE WE START THIS TRIAL
28 WITH OPENING STATEMENTS, THERE'S GOING TO BE NO MORE

1 SETTLEMENT.

2 DO YOU UNDERSTAND?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: BECAUSE, I'LL USE AN ANALOGY FOR YOU,
5 ONCE WE BEGIN WITH OPENING STATEMENTS, THE TRAIN HAS LEFT
6 THE STATION. IT'S GONE.

7 YOU UNDERSTAND THAT?

8 THE DEFENDANT: YES.

9 THE COURT: DO YOU WANT A SECOND TO SPEAK TO YOUR
10 LAWYER?

11 THE DEFENDANT: YES.

12 THE COURT: GO AHEAD.

13 MR. BAKER: CAN WE GO IN THERE?

14 THE COURT: CAN YOU TALK TO HIM RIGHT HERE? I PREFER
15 IT HERE, BECAUSE IT'LL GO QUICKER, MR. BAKER. BECAUSE, YOU
16 KNOW, I NEED TO KNOW NOW BECAUSE THAT JURY IS WAITING
17 DOWNSTAIRS.

18 SO TALK TO YOUR LAWYER.

19 (COUNSEL AND DEFENDANT CONFER
20 OFF THE RECORD.)

21 THE COURT: WE ARE ON THE RECORD NOW. ALL PARTIES
22 ARE PRESENT AS PREVIOUSLY REPRESENTED. WE ARE OUTSIDE THE
23 PRESENCE OF THE JURY.

24 AND I THINK THAT WE FINALLY REACHED A
25 DISPOSITION IN THIS CASE.

26 MR. CHUNG: YES.

27 MR. BAKER: OFF THE RECORD BRIEFLY.

28 ///

1 (WHEREUPON A DISCUSSION WAS HELD
2 OFF THE RECORD.)

3 THE COURT: BACK ON THE RECORD NOW.

4 THE DEFENDANT WILL BE ENTERING A PLEA OF
5 GUILTY OR NO CONTEST TO COUNT 1. THE PEOPLE WILL STRIKE
6 THE PREMEDITATED AND DELIBERATE LANGUAGE, SO IT'LL BE JUST
7 ATTEMPTED MURDER.

8 AND IN EXCHANGE FOR HIS PLEA, THE DEFENDANT
9 WILL BE GETTING THE HIGH TERM, WHICH IS NINE YEARS IN STATE
10 PRISON.

11 HE WILL ALSO ADMIT THE GANG ALLEGATION
12 PURSUANT TO 186.22, FOR A CONSECUTIVE TEN YEARS.

13 AND HE WILL ADMIT THE G.B.I. ALLEGATION,
14 PURSUANT TO 12022.7, SUBDIVISION (A), WHICH WILL ADD THREE
15 MORE YEARS. AND THAT MEANS THAT THE BASE TERM AS TO
16 COUNT 1 WILL BE 22 YEARS.

17 IN ADDITION, THE PEOPLE AMEND THE INFORMATION
18 TO ADD A COUNT 5, AND THAT WILL BE A VIOLATION OF 245,
19 SUBDIVISION (B) OF THE PENAL CODE, ASSAULT WITH A
20 SEMI-AUTOMATIC FIREARM. DEFENDANT WILL ENTER A NO CONTEST
21 PLEA TO THAT.

22 WE WILL SELECT THE MID-TERM, SIX YEARS. AND
23 HE WILL GET ONE-THIRD OF THE MID-TERM, WHICH WOULD BE TWO
24 ADDITIONAL YEARS TO RUN CONSECUTIVE TO THE 22 YEARS.

25 THEREFORE, TOTAL TERM OF IMPRISONMENT WILL BE
26 24 YEARS.

27 THE RECORD SHOULD BE CLEAR, HE WILL ONLY BE
28 PLEADING TO COUNT 1 AS A STRIKE. COUNT 5, THE ASSAULT WITH

1 A SEMI-AUTOMATIC FIREARM, HE IS NOT ADMITTING TO PERSONALLY
2 USING THE FIREARM. SO ALL PARTIES AGREE THAT THAT IS NOT A
3 STRIKE.

4 IS THAT CORRECT, MR. CHUNG?

5 MR. CHUNG: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: AND MR. BAKER, THAT'S YOUR UNDERSTANDING?

7 MR. BAKER: CORRECT.

8 THE COURT: AND MR. ASHLEY, THAT'S WHAT YOU'D LIKE TO
9 DO. IS THAT CORRECT?

10 THE DEFENDANT: YES.

11 THE COURT: HAVE YOU HAD ENOUGH TIME TO SPEAK WITH
12 YOUR ATTORNEY ABOUT THIS CASE REGARDING ANY POSSIBLE
13 DEFENSES THAT YOU MIGHT HAVE?

14 THE DEFENDANT: YES.

15 THE COURT: ARE YOU PLEADING FREELY AND VOLUNTARILY,
16 BECAUSE IT IS IN YOUR BEST INTEREST TO DO SO?

17 THE DEFENDANT: YES.

18 THE COURT: HAS ANYBODY MADE ANY PROMISES OR THREATS
19 TO YOU, OTHER THAN WHAT WE HAVE SAID HERE IN COURT TODAY,
20 IN ORDER TO GET YOU TO CHANGE YOUR PLEA?

21 THE DEFENDANT: NO.

22 THE COURT: YOU HAVE A RIGHT TO A JURY TRIAL. YOU
23 HAVE A RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES AT
24 TRIAL. YOU HAVE A RIGHT TO PRESENT A DEFENSE ON YOUR OWN
25 BEHALF AND TO USE THE SUBPOENA POWER OF THE COURT AT NO
EXPENSE TO YOU. AND YOU HAVE AN A FIFTH AMENDMENT RIGHT
AGAINST SELF-INCrimINATION.

26
27
28 DO YOU UNDERSTAND THAT YOU HAVE THOSE RIGHTS?

1 THE DEFENDANT: YES.

2 THE COURT: DO YOU WAIVE AND GIVE THEM UP TODAY?

3 THE DEFENDANT: YES.

4 THE COURT: IF YOU ARE NOT A CITIZEN OF THE UNITED
5 STATES, YOUR PLEA TODAY WILL RESULT IN DEPORTATION, DENIAL
6 OF NATURALIZATION OR CITIZENSHIP AND/OR DENIAL TO RE-ENTER
7 THIS COUNTRY IF YOU LEAVE.

8 DO YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES.

10 THE COURT: IF YOU ARE CURRENTLY ON PROBATION OR
11 PAROLE ON ANY OTHER MATTERS, YOUR PLEA TODAY MAY RESULT IN
12 A VIOLATION.

13 DO YOU UNDERSTAND THAT?

14 THE DEFENDANT: YES.

15 THE COURT: WHEN YOU ARE RELEASED FROM STATE PRISON,
16 YOU WILL BE ON PAROLE. PAROLE USUALLY LASTS UP TO THREE
17 YEARS. AND YOU COULD GO BACK TO PRISON FOR UP TO ONE YEAR
18 FOR EACH VIOLATION OF PAROLE.

19 DO YOU UNDERSTAND THAT?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: THE FACT THAT YOU ARE GOING TO BE
22 CONVICTED TODAY MAY ALSO BE ALLEGED AGAINST YOU IN THE
23 FUTURE. IF YOU PICK UP ANY NEW CASES, IT MAY ACT TO
24 INCREASE OR ENHANCE ANY FUTURE SENTENCE AND/OR TO DENY
25 PROBATION.

26 DO YOU UNDERSTAND THAT?

27 THE DEFENDANT: YEAH.

28 THE COURT: AS I EXPLAINED BEFORE, BASED ON YOUR

1 PLEAS TODAY, YOU WILL HAVE ONE STRIKE FROM THIS CASE.

2 DO YOU UNDERSTAND THAT?

3 THE DEFENDANT: YES, SIR.

4 THE COURT: YOU WILL BE PROHIBITED FROM OWNING OR
5 POSSESSING FIREARMS OR LIVE AMMUNITION FOR LIFE.

6 AND YOU WILL BE ORDERED TO PROVIDE PRINT
7 IMPRESSIONS AND D.N.A. SAMPLES WHICH WILL BE MADE PART OF
8 THE CALIFORNIA STATE D.N.A. DATABASE.

9 DO YOU UNDERSTAND THAT?

10 THE DEFENDANT: YES.

11 THE COURT: I ALSO HAVE TO ORDER YOU TO PAY
12 RESTITUTION TO THE VICTIM.

13 IN ADDITION, I HAVE TO IMPOSE A MANDATORY
14 STATE RESTITUTION FINE BETWEEN \$200 AND UP TO \$10,000.

15 DO YOU UNDERSTAND THAT?

16 THE DEFENDANT: YES, SIR.

17 THE COURT: I ALSO HAVE TO IMPOSE A PAROLE REVOCATION
18 FINE, BUT IT WILL BE STAYED. YOU WON'T HAVE TO PAY IT IF
19 YOU SUCCESSFULLY COMPLETE PAROLE.

20 BUT IF YOU EVER VIOLATE PAROLE, YOU HAVE TO
21 PAY THAT ADDITIONAL FINE.

22 DO YOU UNDERSTAND THAT?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: ONE SECOND.

25 VERY GOOD. FIRST OF ALL, MR. CHUNG, IS THERE
26 A PEOPLE'S MOTION TO ADD A COUNT 5, A VIOLATION OF 245,
27 SUBDIVISION (B) OF THE PENAL CODE, ASSAULT WITH A
28 SEMI-AUTOMATIC FIREARM?

1 MR. CHUNG: THERE IS, YOUR HONOR.

2 THE COURT: VERY GOOD.

3 NO OBJECTION, MR. BAKER?

4 MR. BAKER: NO, SIR.

5 THE COURT: AND AS TO COUNT 1, FOR PURPOSES OF THE
6 PLEA, THE PEOPLE ARE STRIKING THE PREMEDITATED AND
7 DELIBERATE LANGUAGE. IS THAT CORRECT?

8 MR. CHUNG: THAT'S CORRECT, YOUR HONOR.

9 THE COURT: MR. ASHLEY, HOW DO YOU NOW PLEAD TO
10 COUNT 1, WHICH ALLEGES THAT ON OR ABOUT NOVEMBER 11TH OF
11 2006, YOU VIOLATED PENAL CODE SECTIONS 664/187(A), THAT IS
12 A FELONY KNOWN AS ATTEMPTED MURDER? HOW DO YOU PLEAD?

13 THE DEFENDANT: NO CONTEST.

14 THE COURT: DO YOU UNDERSTAND I'LL TREAT YOUR NO
15 CONTEST PLEA AS A GUILTY PLEA?

16 THE DEFENDANT: YES.

17 THE COURT: DO YOU FURTHER ADMIT THAT DURING THE
18 COMMISSION OF THE ATTEMPTED MURDER, AS ALLEGED IN COUNT 1,
19 THAT YOU VIOLATED PENAL CODE SECTION 186.22, SUBDIVISION
20 (B) (4), IN THAT THE OFFENSE WAS COMMITTED FOR THE BENEFIT
21 OF, AT THE DIRECTION OF, AND IN ASSOCIATION WITH A CRIMINAL
22 STREET GANG?

23 DO YOU ADMIT THAT'S TRUE AS IT PERTAINS TO
24 COUNT 1?

25 THE DEFENDANT: YES.

26 THE COURT: AND DO YOU ADMIT THAT YOU PERSONALLY
27 INFILCTED GREAT BODILY INJURY AS TO COUNT 1, WITHIN THE
28 MEANING OF PENAL CODE SECTION 12022.7, SUBDIVISION (A)?

1 OFF THE RECORD.

2 MR. BAKER: OFF THE RECORD.

3 (WHEREUPON A DISCUSSION WAS HELD

4 OFF THE RECORD.)

5 THE COURT: BACK ON THE RECORD.

6 DO YOU ADMIT THAT ALLEGATION, SIR?

7 THE DEFENDANT: YES.

8 THE COURT: AND AS TO THE ADDED COUNT 5, HOW DO YOU
9 PLEAD TO THE FOLLOWING, THAT ON OR ABOUT DECEMBER 8, 2006,
10 YOU VIOLATED PENAL CODE SECTION 245, SUBDIVISION (B), THAT
11 IS A FELONY KNOWN AS ASSAULT WITH A SEMI-AUTOMATIC FIREARM?
12 HOW DO YOU PLEAD TO THAT?

13 THE DEFENDANT: NO CONTEST.

14 THE COURT: AGAIN, YOU UNDERSTAND I'LL TREAT THAT AS
15 A GUILTY PLEA?

16 THE DEFENDANT: YES.

17 THE COURT: THANK YOU.

18 COUNSEL, JOIN IN THE WAIVERS, CONCUR IN THE
19 PLEAS AND ADMISSIONS AND STIPULATE TO A FACTUAL BASIS BASED
20 ON THE POLICE REPORTS AND THE INFORMATION, PURSUANT TO
21 PEOPLE VERSUS WEST AND PEOPLE VERSUS HOLMES?

22 MR. BAKER: YES, SIR.

23 THE COURT: THE COURT FINDS THE DEFENDANT HAS
24 EXPRESSLY, KNOWINGLY, UNDERSTANDABLY AND INTELLIGENTLY
25 WAIVED HIS CONSTITUTIONAL RIGHTS WITH FULL KNOWLEDGE.
26 CONSEQUENCES OF HIS PLEAS AND ADMISSIONS. THEY WERE FREELY
27 AND VOLUNTARILY MADE AND THERE IS A FACTUAL BASIS FOR EACH.
28 THE COURT ACCEPTS DEFENDANT'S NO CONTEST PLEAS TO COUNTS 1

1 AND 5, FINDS HIM GUILTY, FINDS HIS ADMISSION TO THE GANG
2 ALLEGATION TRUE AND THE GREAT BODILY INJURY ALLEGATION TRUE
3 BASED UPON HIS ADMISSION.

4 MR. BAKER, IS TIME WAIVED FOR SENTENCING?

5 MR. BAKER: YES, SIR.

6 THE COURT: LET ME JUST HAVE A MOMENT. I AM TRYING
7 TO FIND A PROBATION REPORT.

8 ALL RIGHT. I AM USING THE PROBATION REPORT
9 DATED FEBRUARY 18TH, 2009. HE HAS BEEN IN CONTINUOUS
10 CUSTODY SINCE THAT DATE.

11 NO OBJECTION, MR. BAKER?

12 MR. BAKER: NO OBJECTION.

13 THE COURT: NO OBJECTION, MR. CHUNG?

14 MR. CHUNG: NO, YOUR HONOR.

15 THE COURT: I WILL SIGN OFF ON THE DISPOSITION.

16 TIME IS WAIVED, NO LEGAL CAUSE, CORRECT?

17 MR. BAKER: THAT IS CORRECT.

18 THE COURT: PURSUANT TO THE AGREEMENT BETWEEN THE
19 PARTIES, ON COUNT 1, THE COURT SELECTS THE HIGH TERM, WHICH
20 IS NINE YEARS IN STATE PRISON.

21 BASED UPON THE DEFENDANT'S ADMISSION TO THE
22 GANG ALLEGATION, THE COURT WILL IMPOSE TEN YEARS TO RUN
23 CONSECUTIVE TO THE NINE FOR A TOTAL OF 19 YEARS.

24 AND PURSUANT TO THE DEFENDANT'S ADMISSION TO
25 THE GREAT BODILY INJURY ALLEGATION, THE COURT WILL ADD
26 ANOTHER THREE YEARS TO RUN CONSECUTIVE. TOTAL BASE TERM ON
27 COUNT 1 IS 22 YEARS.

28 IN ADDITION, AS TO COUNT 5, THE COURT SELECTS

1 THE MID-TERM, WHICH IS SIX YEARS. THE COURT WILL IMPOSE
2 ONE-THIRD THE MID-TERM, WHICH IS TWO YEARS, TO RUN
3 CONSECUTIVE TO THE 22 YEARS.

4 TOTAL TERM OF IMPRISONMENT IS 24 YEARS IN
5 STATE PRISON.

6 SIR, YOU ARE ORDERED TO PAY A \$4,800 STATE
7 RESTITUTION FINE.

8 IDENTICAL PAROLE REVOCATION FINE IS IMPOSED
9 BUT STAYED, PENDING YOUR SUCCESSFUL COMPLETION OF PAROLE.

10 DO YOU ALSO UNDERSTAND THAT YOU HAVE TO
11 REGISTER AS A GANG MEMBER UPON YOUR RELEASE FROM STATE
12 PRISON?

13 DO YOU UNDERSTAND THAT?

14 THE DEFENDANT: YES.

15 THE COURT: THANK YOU. AND I AM GOING TO ORDER YOU
16 TO DO SO, BECAUSE THAT'S REQUIRED BASED ON THE ADMISSION.

17 YOU ARE ORDERED TO PAY A \$30 COURT SECURITY
18 FEE, \$30 CRIMINAL COURT ASSESSMENT FINE.

19 YOU ARE ORDERED TO PAY RESTITUTION TO THE
20 VICTIM FOR ANY DAMAGES. THAT'LL BE SUBTRACTED FROM ANY
21 PRISON EARNINGS.

22 YOU ARE PROHIBITED FROM OWNING OR POSSESSING
23 FIREARMS OR LIVE AMMUNITION FOR LIFE.

24 AND YOU ARE ORDERED TO PROVIDE A D.N.A.
25 SAMPLE AND PRINT IMPRESSIONS PURSUANT TO PENAL CODE
26 SECTIONS 296 AND 296.1.

27 DO YOU WANT TO SET THIS FOR A RESTITUTION
28 HEARING AT SOME POINT OR NOT?

1 MR. BAKER: THERE WAS A -- I HAVE READ THE --

2 THE COURT: THERE'S SOMETHING IN THE PROBATION REPORT
3 ABOUT AN AMOUNT.

4 MR. BAKER: 300 BUCKS WAS THE ESTIMATE. I CAN LIVE
5 WITH THAT. IT WAS A WINDOW.

6 THE COURT: I THOUGHT I READ SOMETHING ABOUT MEDICAL.

7 MR. CHUNG: THERE ARE MEDICAL EXPENSES.

8 THE COURT: LET'S DO THIS. MR. ASHLEY, YOU HAVE A
9 RIGHT TO BE PRESENT IF WE HAVE A RESTITUTION HEARING IN
10 THIS CASE. THAT MEANS THE D.A. WILL HAVE TO HAVE THE
11 VICTIM COME TO COURT. A LOT OF TIMES, THEY DON'T EVEN
12 COME. IF THEY DO, WE WILL HAVE A HEARING AND YOUR LAWYER
13 CAN STAND IN FOR YOU TO REPRESENT YOUR INTERESTS.

14 SINCE YOU ARE GOING TO STATE PRISON, MOST
15 PEOPLE WAIVE THEIR RIGHT TO BE PRESENT. DO YOU DO SO?

16 THE DEFENDANT: YES.

17 THE COURT: COUNSEL, JOIN IN THE WAIVER, MR. BAKER?

18 MR. BAKER: YES, I DO.

19 THE COURT: WE WILL JUST SET A RESTITUTION HEARING
20 DATE WHEN THE PARTIES WANT TO SET IT.

21 VERY GOOD. THAT IS THE ORDER.

22 MR. CHUNG, PEOPLE'S -- CREDITS. I AM SORRY.

23 427 DAYS ACTUAL PLUS --

24 MR. BAKER: I TOOK MR. VINCENT'S WORD.

25 THE COURT: THAT'S OKAY. I TRUST THAT.

26 PLUS -- IT'S 427 ACTUAL PLUS 64 GOOD
27 TIME/WORK TIME. TOTAL CREDITS ARE 491.

28 MR. CHUNG: YOUR HONOR, AS FOR RESTITUTION, THERE ARE

1 TWO SEPARATE VICTIMS IN THIS CASE. MR. HAYES, WHO WAS
2 INJURED, WE ARE GOING TO GO AHEAD AND SET THAT FOR DOWN THE
3 LINE AT SOME POINT.

4 BUT THE \$300 GOES TO ALEXA MILA. IT WAS HER
5 VEHICLE THAT WAS DAMAGED. SO IF WE COULD JUST -- IF THEY
6 ARE AGREEABLE TO \$300, WE CAN STIPULATE TO THAT.

7 THE COURT: DO YOU WANT TO STIPULATE TO THE \$300 AS
8 TO THE DAMAGE TO THE VEHICLE?

9 MR. BAKER: SURE.

10 THE COURT: AND WE WILL DEAL WITH THE OTHER
11 RESTITUTION LATER.

12 IS THAT ALL RIGHT WITH YOU, MR. ASHLEY?

13 THE DEFENDANT: YES.

14 THE COURT: COUNSEL JOIN?

15 MR. BAKER: OF COURSE.

16 THE COURT: PEOPLE STIPULATE?

17 MR. CHUNG: YES, YOUR HONOR.

18 THE COURT: THAT JUST GOES TO THAT SECOND VICTIM.

19 ALL RIGHT. PEOPLE'S MOTION TO DISMISS
20 REMAINING COUNTS AND ALLEGATIONS ON THIS CASE?

21 MR. CHUNG: YES.

22 THE COURT: THAT'S GRANTED.

23 LET'S DEAL WITH YOUR OTHER MATTERS FOR A
24 SECOND.

25 HE HAS ANOTHER OPEN MATTER. MA044255.

26 PEOPLE'S MOTION TO DISMISS?

27 MR. CHUNG: PEOPLE WOULD SO MOVE.

28 THE COURT: THAT'S GRANTED PURSUANT TO 1385 IN THE

1 INTEREST OF JUSTICE.

2 AND LASTLY, YOU ARE ON PROBATION IN MA034150
3 FOR UNLAWFUL TAKING OR DRIVING OF A VEHICLE. IT'S A
4 FELONY.

5 I AM JUST GOING TO TERMINATE FELONY PROBATION
6 ON THAT. ALL FINES AND FEES IN THAT CASE ARE WAIVED.

7 ALL RIGHT, MR. ASHLEY. DO YOU HAVE ANY
8 QUESTIONS?

9 THE DEFENDANT: NO.

10 THE COURT: LET'S GO OFF THE RECORD.

11 MR. BAKER: FORTHWITH?

12 THE COURT: FORTHWITH.

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EXHIBIT I

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE KATHLEEN BLANCHARD, JUDGE PRESIDING
REPORTER'S TRANSCRIPT ON APPEAL

SEALED MARSEN MOTION PROCEEDINGS

MAY 29, 2009. PAGES A-6 THROUGH A-21

* CONFIDENTIAL - MAY NOT BE EXAMINED WITHOUT COURT ORDER *

APPEARANCES:

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LOS ANGELES, CALIFORNIA 90013

FOR APPELLANT: IN PROPRIA PERSONA

REPORTED BY: LIGIA DORAME, CSR NO. 12990
OFFICIAL REPORTER

VOLUME 1 OF 1

1	CASE NUMBER:	MA037159-02
2	CASE NAME:	PEOPLE VS. ASHLEY
3	LANCASTER, CALIFORNIA	MAY 29, 2009
4	DEPARTMENT NO. A-21	HON. KATHLEEN BLANCHARD, JUDGE
5	REPORTER:	LIGIA DORAME, CSR NO. 12990
6	TIME:	A.M. SESSION
7		

(THE FOLLOWING PROCEEDINGS WERE HELD
IN A CLOSED COURTROOM.)

10
11 THE COURT: WE'RE BACK ON THE RECORD IN PEOPLE VERSUS
12 EDDIE ASHLEY, CASES MA044255 AND MA037159. THOSE ARE THE
13 TWO OPEN CASES.

14 AT THIS POINT, WE ARE IN A CLOSED COURTROOM.
15 THE ONLY PEOPLE PRESENT ARE THE DEFENDANT, ATTORNEY LARRY
16 BAKER, AND COURTROOM PERSONNEL. THE PROSECUTING ATTORNEY
17 AND ALL LAW ENFORCEMENT PERSONNEL HAVE CLEARED THE
18 COURTROOM.

19 MR. ASHLEY, THIS IS A CLOSED HEARING. YOU
20 TOLD ME THAT YOU WISH TO HAVE YOUR COURT-APPOINTED ATTORNEY
21 REMOVED AND HAVE ANOTHER ATTORNEY APPOINTED INSTEAD. WHAT
22 YOU SAY TO ME DURING THIS CLOSED HEARING WILL BE HELD IN
23 CONFIDENCE, SO YOU CAN SPEAK FREELY TO ME. DO YOU
24 UNDERSTAND THAT?

25 THE DEFENDANT: YES, MA'AM.

26 THE COURT: AND AT THIS TIME, MR. ASHLEY, DO YOU
27 REQUEST THAT MR. BAKER BE RELIEVED AS YOUR ATTORNEY AND THAT
28 ANOTHER ATTORNEY BE APPOINTED TO REPRESENT YOU?

1 THE DEFENDANT: YES, MA'AM.

2 THE COURT: DO YOU FEEL THAT MR. BAKER HAS NOT
3 PROPERLY REPRESENTED YOU?

4 THE DEFENDANT: YES, MA'AM.

5 THE COURT: WHY DO YOU FEEL THAT WAY?

6 THE DEFENDANT: BECAUSE WHEN HE CAME TO ME IN THE
7 BACK AND TALKED TO ME --

8 THE COURT: TODAY?

9 THE DEFENDANT: NO, THE LAST TIME WHEN I CAME TO
10 COURT, MA'AM.

11 THE COURT: OKAY.

12 THE DEFENDANT: WHEN WE SPOKE, HE TOLD ME THAT HE
13 READ THE PAPERWORK. AND WHEN HE READ THE PAPERWORK, HE FELT
14 LIKE I DONE IT, THE STUFF THAT WAS -- I WAS BEING ACCUSED OF
15 DOING. SO IF HE FELT LIKE I DONE THE STUFF THAT THEY
16 THOUGHT I'VE BEEN ACCUSED OF DOING, WHY WOULD I HAVE HIM AS
17 MY ATTORNEY TO DEFEND ME IF HE'S NOT GOING TO DEFEND ME WITH
18 ALL POSSIBILITY? HE TOLD ME THAT HE WAS GOING TO COME VISIT
19 ME. HE TOLD MY FAMILY HE WAS GOING TO COME VISIT ME AND
20 GIVE ME SOME INSIGHT ON MY CASE AND FIND OUT MY ALIBI ABOUT
21 WHERE I WAS AT AT THE POINT IN TIME THIS CASE HAD OCCURRED.

22 BUT HE HASN'T CAME TO VISIT ME IN THE LAST ✓
23 TWO, THREE MONTHS. EVER SINCE HE'S BEEN MY PUBLIC DEFENDER,
24 HE HASN'T CAME AND SPOKE WITH ME AT ALL EXCEPT FOR THE FACT
25 THAT HE WAS ACCUSING ME OF THE CASE THAT IS AT HAND. THAT'S
26 ALL HE HAD DONE IS ACCUSE ME. WHY WOULD I WANT SOMEBODY
27 WHO'S GOING TO ACCUSE ME?

28 THE COURT: WELL, YOU RECOGNIZE THAT IT'S NOT THE JOB

1 OF YOUR DEFENSE ATTORNEY TO BELIEVE OR DISBELIEVE YOU. SO
2 IN TERMS OF APPOINTING YOU AN ATTORNEY, IF YOU HAVE A
3 MISCONCEPTION THAT IN ORDER TO EFFECTIVELY REPRESENT YOU AN
4 ATTORNEY HAS TO BELIEVE IN YOUR INNOCENCE, THEN I WANT TO
5 DISAVOW YOU OF THAT NOTION, SIR.

6 THE DEFENDANT: OKAY, MA'AM.

7 THE COURT: PART OF HIS JOB IS TO BE REALISTIC WITH
8 YOU, IS TO GO OVER THE REPORTS IN THE CASE WITH YOU, TO
9 BASICALLY EXPLAIN TO YOU WHAT THE EVIDENCE IS AGAINST YOU;
10 AND IN ORDER TO EVALUATE YOUR CASE, TALK WITH YOU ABOUT THE
11 STRENGTHS OR THE WEAKNESSES OF THAT EVIDENCE. AND BY WHAT
12 YOU'VE TOLD ME SO FAR, IT SEEMS TO ME THAT MR. BAKER'S
13 ACTING APPROPRIATELY IN THAT ROLE BY REVIEWING THE REPORTS,
14 GOING OVER THE STRENGTHS OF THE REPORTS WITH YOU.

15 I UNDERSTAND THAT AT SOME LEVEL, YOU MAY HAVE
16 AN EMOTIONAL FEELING THAT YOUR DEFENSE ATTORNEY'S SUPPOSED
17 TO WALK IN AND SAY I KNOW YOU'RE INNOCENT, AND WE'RE GOING
18 TO FIGHT THESE CHARGES. BUT IN THE REAL WORLD, THAT'S NOT
19 WHAT IT'S ABOUT. IT'S ABOUT HIM EVALUATING THE CASE AGAINST
20 YOU AND ADVISING YOU IN TERMS OF WHETHER AN OFFER FROM THE
21 PROSECUTION IS GOOD OR WHETHER IT'S WORTH YOUR WHILE TO GO
22 TO TRIAL; OR IF IN THE END YOU TAKE IT TO TRIAL, IF YOU'RE
23 GOING TO SPEND THE REST OF YOUR LIFE IN PRISON VERSUS TAKING
24 A DEAL WHERE YOU CAN GET OUT. THAT'S ALL PART OF HIS JOB.

25 DO YOU UNDERSTAND THAT?

26 THE DEFENDANT: YES, MA'AM. I UNDERSTAND THAT
27 COMPLETELY. IT'S JUST THE FACT THAT WHEN WE WENT TO
28 PRELIMINARY HEARING, HE HAD A CHANCE TO LOOK FOR THE WITNESS

1 FOR THE FIRST CRIME THAT SAID THAT IT WAS ONLY TWO PEOPLE
2 THAT CONTRADICT THE VICTIM'S STORY, BUT THERE'S NO WITNESS.
3 HE DIDN'T LOOK FOR THE PERSON TO COME AT ALL.

4 THE COURT: OKAY.

5 AND SO ONE OF YOUR COMPLAINTS IS THAT YOU FEEL
6 LIKE HE SHOULD HAVE PUT ON WITNESSES AT THE PRELIMINARY
7 HEARING?

8 THE DEFENDANT: YES, MA'AM.

9 THE COURT: OKAY.

10 AND DID HE EXPLAIN TO YOU THE PURPOSE OF A
11 PRELIMINARY HEARING?

12 THE DEFENDANT: NO, MA'AM.

13 THE COURT: DO YOU UNDERSTAND WHAT A PRELIMINARY
14 HEARING IS?

15 THE DEFENDANT: NO, MA'AM.

16 THE COURT: OKAY, BECAUSE, LET ME JUST EXPLAIN A FEW
17 THINGS TO YOU. A PRELIMINARY HEARING IS NOT YOUR TRIAL. A
18 PRELIMINARY HEARING A PROBABLE CAUSE HEARING. IN
19 CALIFORNIA, WITNESSES DON'T EVEN HAVE TO COME IN.
20 EYEWITNESSES DON'T HAVE TO COME IN. A POLICE OFFICER CAN
21 COME IN AND SAY THIS IS WHAT SOMEBODY TOLD ME, BECAUSE THE
22 THRESHOLD AT A PRELIMINARY HEARING IS BASICALLY JUST
23 PROBABLE CAUSE JUST MAKING SURE WE DON'T HAVE THE WRONG
24 PERSON IN CUSTODY FOR THIS. IT'S NOT A FULL-BLOWN TRIAL.

25 AGAIN, A LOT OF DEFENSE ATTORNEYS, THEIR BEST
26 TRIAL STRATEGY IS I'M NOT LAYING MY CARDS ON THE TABLE AT
27 PRELIM BECAUSE THIS IS JUST A PROBABLE CAUSE HEARING; NOT
28 LIKELY THAT I'M GOING TO WIN AT A PROBABLE CAUSE HEARING SO

1 I DON'T WANT THE PROSECUTION TO SEE WHAT THE STRATEGY IS.
2 SO, AGAIN, YOU MAY HAVE A MISCONCEPTION ABOUT WHAT A DEFENSE
3 ATTORNEY'S JOB IS, AND I JUST WANT YOU TO UNDERSTAND THAT HE
4 MAY HAVE TACTICAL REASONS FOR DOING THAT. IT DOESN'T MEAN
5 HE'S NOT REPRESENTING YOU WELL. HE KNOWS WHAT HE'S DOING.

6 DO YOU HAVE ANY OTHER SPECIFIC COMPLAINTS
7 ABOUT MR. BAKER'S REPRESENTATION, THINGS THAT YOU FEEL HE
8 SHOULD HAVE DONE BUT DIDN'T DO?

9 THE DEFENDANT: MOTION FOR A PITCHESS MOTION ON THE
10 COPS. HE DIDN'T DO THAT. HE SAID THAT HE DID IN DISCOVERY,
11 BUT I HAVE NO DISCOVERY MOTION YET.

12 THE COURT: WELL, DISCOVERY IN CALIFORNIA IS ACTUALLY
13 AN INFORMAL PROCESS. IT'S ONLY A FORMAL PROCESS WITH A
14 MOTION IF THE PROSECUTION ISN'T COMPLYING. SO AS LONG AS
15 THEY'RE GIVING HIM WHAT HE'S SUPPOSED TO, THE FACT THAT YOU
16 HAVEN'T SEEN A FORMAL DISCOVERY MOTION DOESN'T MEAN YOUR
17 COUNSEL'S NOT REPRESENTING YOU.

18 THE DEFENDANT: SO THE PITCHESS MOTION IS --

19 THE COURT: AND WHY DO YOU THINK THAT HE SHOULD HAVE
20 FILED A PITCHESS MOTION?

21 THE DEFENDANT: BECAUSE THE COP THAT WAS UP THERE ON
22 THE STAND WAS LYING, BASICALLY. AND THEN I HEARD MULTIPLE
23 COMPLAINTS AGAINST THAT COP AND I HAVE MY OWN COMPLAINTS
24 AGAINST THE COP. SO I MEAN --

25 THE COURT: OKAY.

26 SO ON YOUR PERCEPTION OF THE COP'S
27 CREDIBILITY, YOU THINK THAT A PITCHESS MOTION SHOULD BE
28 FILED?

1 THE DEFENDANT: YES, MA'AM.

2 THE COURT: YOU DISCUSSED THAT WITH MR. BAKER?

3 THE DEFENDANT: I MEAN, HE --

4 MR. BAKER: NO, MA'AM.

5 THE DEFENDANT: HE DOESN'T COME IN TO DISCUSS NOTHING
6 WITH ME, SO HOW WOULD I --

7 THE COURT: MINE'S A REALLY SIMPLE QUESTION,

8 MR. ASHLEY. HAVE YOU TOLD MR. BAKER THAT YOU'D LIKE HIM TO
9 FILE A PITCHESS MOTION AND THE REASON YOU THINK HE SHOULD?

10 THE DEFENDANT: NO, MA'AM.

11 THE COURT: ANYTHING ELSE THAT YOU WANT TO TELL ME IN
12 CONNECTION WITH YOUR REQUEST FOR A NEW ATTORNEY?

13 THE DEFENDANT: LIKE I SAID, HE HASN'T CAME TO VISIT
14 ME, SO I WOULDN'T BE ABLE TO SPEAK WITH HIM. HE LIED TO MY
15 FAMILY MEMBERS AND --

16 THE COURT: WAIT. WAIT. WAIT, MR. ASHLEY.

17 MR. BAKER: EXCUSE ME. THAT ONE --

18 THE COURT: MR. BAKER, I'M GOING TO LET YOU ADDRESS
19 ALL OF THIS IN A MOMENT. I JUST WANT TO FINISH WITH
20 MR. ASHLEY SO WE DON'T HAVE A BACK-AND-FORTH.

21 MR. ASHLEY, I NOTED THAT IN BOTH OF YOUR OPEN
22 CASES, YOU'VE MADE MULTIPLE COURT APPEARANCES. AT EACH OF
23 THOSE APPEARANCES, IS IT SAFE TO SAY THAT MR. BAKER HAS COME
24 AND TALKED TO YOU?

25 THE DEFENDANT: ONE TIME.

26 THE COURT: ONE TIME WHEN?

27 THE DEFENDANT: TWO COURT DATES AGO RIGHT BEFORE I
28 CAME BEFORE THEY SAY THAT HE WAS GOING TO GO OUT TO -- OUT

1 THE STATE OR COUNTRY, SOMETHING LIKE THAT.

2 THE COURT: YOU SAID TWO COURT DATES BEFORE. BUT
3 WHAT YOU TOLD ME EARLIER, YOU SAID SOMETHING ABOUT WHEN YOU
4 SPOKE TO MR. BAKER LAST TIME. I KNOW THAT HE SPOKE WITH YOU
5 TODAY. SO WHY DON'T YOU THINK ABOUT IT. EVERY TIME YOU'VE
6 COME TO COURT --

7 THE DEFENDANT: IT WAS THE TWO COURT DATES AGO.
8 THAT'S WHEN HE SAID HE WAS GOING TO -- BECAUSE I JUST
9 REMEMBERED THAT HE DIDN'T COME TO ONE OF THE COURT DATES
10 WHEN HE LEFT. I WAS -- THAT WAS MY MISTAKE.

11 THE COURT: HE SPOKE TO YOU TODAY WHEN YOU CAME IN.

12 THE DEFENDANT: YES.

13 THE COURT: AND HE SPOKE TO YOU BEFORE THE
14 PRELIMINARY HEARING.

15 MR. BAKER: TWO PRELIMINARY HEARINGS.

16 THE DEFENDANT: YES, HE DID. AS A MATTER OF FACT, HE
17 DID BEFORE THE PRELIMINARY HEARING. HE WAS TELLING ME ABOUT
18 GETTING THE DEAL BEFORE HE READ THE CASE.

19 THE COURT: OKAY.

20 SO HE HAD SPOKEN WITH YOU ABOUT AN OFFER FROM
21 THE PROSECUTION?

22 THE DEFENDANT: NO. HE SPOKE TO ME ABOUT GOING TO GO
23 GET AN OFFER.

24 THE COURT: ONE MOMENT.

25 (PAUSE IN PROCEEDINGS..)

26 THE COURT: I'M SORRY. I DIDN'T MEAN TO INTERRUPT
27 YOU. WHAT DID YOU SAY?

1 PRELIMINARY HEARINGS; RIGHT?

2 THE DEFENDANT: NO -- YES. IT WAS TWO SEPARATE
3 PRELIMINARY HEARINGS.

4 THE COURT: YOU SPOKE WITH HIM BEFORE EACH OF THOSE
5 PRELIMINARY HEARINGS; RIGHT?

6 THE DEFENDANT: YES.

7 THE COURT: OKAY.

8 ANYTHING ELSE THAT YOU WANT TO ADD?

9 THE DEFENDANT: NO, MA'AM.

10 THE COURT: OKAY.

11 AT THIS TIME, MR. BAKER, I WANT TO HEAR FROM
12 YOU. I JUST WANT TO ESTABLISH A COUPLE PRELIMINARY THINGS.
13 FIRST OF ALL, HOW LONG HAVE YOU REPRESENTED MR. ASHLEY? ARE
14 YOU APPOINTED ON BOTH CASES?

15 MR. BAKER: YES, MA'AM.

16 THE COURT: HOW LONG HAVE YOU BEEN REPRESENTING HIM?

17 MR. BAKER: SINCE THE INCEPTION. THIS MORNING AS I
18 EXPLAINED TO MR. ASHLEY, I HAD AN MRI YESTERDAY AFTERNOON.
19 I GOT HOME. I SPENT MOST OF THE EVENING WITH ICE ON MY LEG.
20 I DID NOT GO INTO THE OFFICE THIS MORNING TO PICK UP THE
21 FILE. IT'S APPROXIMATELY THE FIRST OF THE YEAR. IT TOOK ME
22 FEBRUARY -- I DON'T RECALL SPECIFICALLY.

23 THE COURT: BUT YOU WERE APPOINTED INITIALLY AT THE
24 ARRAIGNMENT?

25 MR. BAKER: CORRECT.

26 THE COURT: OKAY. THANK YOU.

27 AND CAN YOU JUST SUMMARIZE FOR ME FOR THE
28 RECORD YOUR CRIMINAL LAW EXPERIENCE, MR. BAKER. I KNOW IT'S

1 EXTENSIVE. BUT TO THE EXTENT YOU CAN SUMMARIZE IT, I'D
2 APPRECIATE IT.

3 MR. BAKER: I STARTED PRACTICE 33 YEARS AGO. I'VE
4 TRIED SOMEWHERE BETWEEN 100 TO 200 FELONIES. THAT INCLUDES,
5 I THINK, 23 HOMICIDES TO THIS POINT. I'M ON A GRADE FIVE
6 PANEL WHICH MEANS I'M APPROVED TO DO DEATH PENALTY CASES
7 THROUGH THE I.C.D.A. IT'S WHAT I DO.

8 THE COURT: AND HAVE YOU ALWAYS WORKED IN CRIMINAL
9 DEFENSE?

10 MR. BAKER: ALWAYS. BUT I USED TO DO DIVORCE BUT
11 THEN I WISED UP.

12 THE COURT: AND CAN YOU BRIEFLY STATE WHAT YOU'VE
13 DONE TO REPRESENT MR. ASHLEY IN THESE CASES.

14 MR. BAKER: WELL, MR. ASHLEY HAS TWO CASES. HE'S GOT
15 THE ONE CASE WHERE THERE ARE MULTIPLE COUNTS OF 664-187.
16 THE OTHER IS A NARCOTICS CASE. I DON'T -- THIS IS A CASE
17 THAT I HAVEN'T HAD A LOT OF CONTACT RECENTLY. AND TO THAT
18 EXTENT, HE'S ABSOLUTELY CORRECT AND TRUTHFUL. I DON'T
19 RECALL IF THERE'S BEEN ANY OUTSIDE INVESTIGATION TO THIS
20 POINT ON THIS CASE. AND TO THAT EXTENT, HE'S ALSO TRUTHFUL
21 WHERE WE COME INTO SOME CONFLICT WITH RESPECT TO TRUTH AND
22 FALSITY. I RESENT THE FACT THAT I WAS TOLD OR THE COURT WAS
23 JUST TOLD THAT I LIED TO HIS FAMILY.

24 THIS IS A COURT-APPOINTED CASE, I DON'T HAVE
25 TO SELL ANYTHING. AND I'LL BE STRAIGHT UP AND SAY THIS: YOU
26 WANT TO HIRE A LAWYER, YOU CAN GO INTO THE LAWYER'S OFFICE.
27 AND FOR THE RIGHT AMOUNT OF MONEY, HE'LL TELL YOU WHAT YOU
28 WANT TO HEAR. I DON'T PLAY THAT GAME. THE GAME IS WHATEVER

1 THE EVIDENCE IS, WHATEVER THE EVIDENCE IS. WHETHER IT'S
2 GOOD, BAD, OR INDIFFERENT, I'M GOING TO TELL YOU STRAIGHT
3 UP. PERIOD. IF I DON'T LIKE YOUR CASE, I'M GOING TO TELL
4 YOU. IF I LIKE YOUR CASE, I'M GOING TO TELL YOU. I'M NOT
5 GOING TO GO INTO WHAT SPECIFICALLY I SAID BECAUSE I DON'T
6 SPECIFICALLY RECALL.

7 BUT SOME CASES, THE EVIDENCE IS WHAT THE
8 EVIDENCE IS. IT'S LIKE A POKER HAND. THE CARDS GET DEALT,
9 THEY GET DEALT. AND IF IT LOOKS LIKE A LOSING HAND, I'M
10 GOING TO TELL A DEFENDANT BECAUSE I THINK A DEFENDANT HAS TO
11 KNOW THAT. IF THIS DEFENDANT OR ANY OTHER DEFENDANT IS
12 ACQUITTED, I GO HOME. AND IF THIS DEFENDANT OR ANY OTHER
13 DEFENDANT IS CONVICTED, I GO HOME. IT'S NOT MY JOB TO BE A
14 CHEERLEADER. IT'S NOT MY JOB TO BE A BAD OMEN. IT'S MY JOB
15 TO DO THE BEST I CAN TO GET HIM THE BEST WHATEVER IT MAY BE
16 OUT OF THE SYSTEM. AND IF IT'S TO GET HIM OUT OF THE
17 SYSTEM, TERRIFIC; IF IT'S NOT TENABLE AS THE FACT SITUATION
18 PRESENTS ITSELF, THEN TO GET THE BEST THAT YOU CAN AND GET
19 OUT OF DODGE. AND THAT'S WHAT I TRY TO DO WITH THIS
20 DEFENDANT AND EVERY OTHER DEFENDANT.

21 THE COURT: AND CONSISTENT WITH THAT PHILOSOPHY, AS
22 PART OF THAT, READING OVER THE POLICE REPORTS AND DISCUSSING
23 WITH HIM MAYBE THINGS HE DOESN'T WANT TO HEAR.

24 MR. BAKER: MOST DON'T WANT TO HEAR. MOST DON'T WANT
25 TO HEAR. ALL I'M GOING TO SAY, AGAIN, IN MY SITUATION IS --
26 AND ONE THING I THINK I HAVE TO SAY THIS FOR MR. ASHLEY'S
27 EDIFICATION, AND I WANT TO EXPAND ON SOMETHING THE COURT
28 SAID. BRINGING WITNESSES TO A PRELIMINARY HEARING IS NOT

1 ONLY NOT DONE, IT'S NOT ALLOWED UNLESS THERE'S SOMETHING
2 REFERRED TO AS AN AFFIRMATIVE DEFENSE. I'M NOT GOING TO GET
3 INTO THE WHOLE DEAL HERE. BUT A WITNESS TO TESTIFY TO
4 SIMPLY DENY FROM THE DEFENSE STANDPOINT IS NOT EVEN
5 ADMISSIBLE, OKAY. I WANTED TO SAY THAT.

6 THE SECOND THING I WANTED TO SAY IS LIKE A LOT
7 OF OTHER THINGS LIKE ALL LAWSUITS, CRIMINAL SUIT, CIVIL
8 SUIT, FAMILY LAW, IT DOESN'T MATTER. WORK IS DONE AT THE
9 BEGINNING. THERE'S SOME LULL ON THE ACTION AND EVERYTHING'S
10 STIRRED WITHIN A FEW WEEKS PRIOR TO THE TRIAL BECAUSE
11 THERE'S OTHER THINGS, OTHER CASES TO DO IN THE INTERIM. I
12 HAVE THAT ISSUE. I THOUGHT MR. MORSE WAS HERE. HE HAS THAT
13 ISSUE. EVERYBODY ELSE HAS THAT ISSUE. THIS IS NOT THE ONLY
14 CASE I HAVE FAR FROM IT, BUT HE GETS THE SAME AMOUNT OF
15 ATTENTION THAT EVERYBODY ELSE GETS.

16 THE COURT: AND, MR. BAKER, I DID WANT TO ASK YOU ON
17 THE -- IN THE TIMES THAT THE DEFENDANT HAS COME TO COURT,
18 HAVE YOU SPOKEN WITH HIM ABOUT HIS CASE MORE THAN THE ONE TO
19 THREE TIMES THAT HE CLAIMS?

20 MR. BAKER: HE'S PRETTY CLOSE. I'M NOT SAYING HE'S
21 DISHONEST ABOUT THAT. YOU KNOW, I HAVE NOT SEEN HIM IN THE
22 JAIL SYSTEM. I DON'T WANT TO GO OVER MY OTHER CALENDAR
23 SUFFICE TO SAY THAT -- AND THIS IS NO DISRESPECT TO
24 MR. ASHLEY, BUT I'VE GOT A FULL PLATE AND I HAVE TO TAKE IT
25 AS IT COMES. YOU TAKE THESE THINGS CHRONOLOGICALLY AS THE
26 CASE PRESENTS ITSELF. IF I'M SOMEWHAT REMISS OR SLIGHTLY
27 REMISS, SO BE IT. BUT I CAN ONLY BE AT ONE PLACE AT ONE
28 TIME. I'M ONLY A HUMAN BEING.

1 THE COURT: AND, MR. BAKER, I WANT TO ASK YOU, YOU
2 HAD REQUESTED A DATE MID JULY. AND I WAS INFERRING FROM
3 THAT, THAT ONCE YOUR SURGERY IS COMPLETED, YOU INTENDED TO
4 BASICALLY GEAR UP ON THIS TRIAL AND GET READY TO GO ON THIS
5 NEXT. IS THAT ACCURATE?

6 MR. BAKER: PRETTY ACCURATE.

7 HERE'S THE SITUATION: I HAVE A FULL PLATE IN
8 JUNE. WHEN I SAY A FULL PLATE, I DON'T EVEN KNOW WHERE TO
9 START. BUT WHAT'S HAPPENING WITH RESPECT TO THIS PARTICULAR
10 CASE, MY ONLY PHYSICAL ISSUE IS THAT IF I WERE TO HAVE
11 SURGERY TOWARD THE END OF NEXT WEEK, IT'S GOING TO PUSH
12 EVERYTHING BACKWARD, BECAUSE IT'S MINOR SURGERY. IT'S JUST
13 PUTTING A KNEE BACK TOGETHER. THE RECOVERY TIME ISN'T THAT
14 LONG, BUT IT PUSHES EVERYTHING ELSE THAT I -- THE REST OF MY
15 OBLIGATIONS BECOME --

16 THE COURT: RIGHT.

17 MR. BAKER: -- AND I CAN'T UNDO THAT.

18 THE COURT: RIGHT.

19 MR. BAKER: I CAN'T UNDO THAT. I LIKE TO WALK
20 NORMALLY AGAIN. I HAVE SOME TIME SCHEDULED TO BE TAKEN OFF
21 IN THE VERY FIRST PART OF JULY, AND I CAN BE PREPARED TO GO
22 ON THIS. IF YOU THINK ACTUAL TRIAL DATE -- I'M LOOKING AT
23 JULY'S CALENDAR RIGHT NOW ACTUALLY. AS A GO DATE -- WELL,
24 IT'S JUNE'S CALENDAR. EXCUSE ME. AS A GO DATE, SOMEWHERE
25 AROUND 16TH, 17TH, THAT DAY IN JULY.

26 THE COURT: THANK YOU.

27 MR. ASHLEY, IS THERE ANYTHING FURTHER THAT YOU
28 WISH TO SAY WITH REGARD TO THIS MOTION?

1 THE DEFENDANT: YES, MA'AM.

2 I HAD CALLED THIS MAN'S CELL PHONE. I CALLED
3 DOWN HERE TO THE GET HIS NUMBER WHICH WAS NOT GIVEN TO ME BY
4 HIM. I HAVE CALLED TO TRY TO GET IN CONTACT WITH THIS MAN
5 BUT NO ANSWERS. AND THE REASON WHY I WOULD LIKE TO HAVE HIM
6 REMOVED FROM MY CASE IS FOR THE SIMPLE FACT THAT THIS IS MY
7 LIFE THAT IS DEPENDING ON, YOU KNOW. I MEAN, BY HIM PUSHING
8 HIS DATE BACK, THAT PUSH MY DATE BACK. BUT I'M THE ONE
9 THAT'S IN JAIL. I'M DOING THIS FOR SOMETHING THAT I DID NOT
10 DO. SO, I MEAN, IF IT REQUIRES FOR HIM TO GET OFF MY CASE
11 SO I CAN HAVE MY CASE TO BE PUSHED --

12 THE COURT: IT WON'T BE PUSHED THOUGH. THAT'S WHAT I
13 TRIED TO EXPLAIN TO YOU IN OPEN COURT EARLIER, IS THAT IF I
14 WERE TO REMOVE MR. BAKER, THERE IS NO COMPETENT ATTORNEY WHO
15 IS GOING TO WALK IN HERE, PICK UP A CASE WHERE THERE'S THREE
16 COUNTS OF ATTEMPTED MURDER, A 246, MULTIPLE ALLEGATIONS, AND
17 SAY, OH, NO PROBLEM. I'LL GO NEXT WEEK. NO COMPETENT
18 ATTORNEY IS GOING TO COME IN HERE AND DO THAT; AND
19 CERTAINLY, NO COURT-APPOINTED ATTORNEY BECAUSE I KNOW HOW
20 OVERWORKED THESE GUYS ARE.

21 BECAUSE UP HERE IN ANTELOPE VALLEY WHEN THE
22 P.D. CONFLICTS OUT AND A.P.D. CONFLICTS OUT, THERE ARE A
23 HANDFUL OF ATTORNEYS WHO GET THESE APPOINTMENTS, AND THESE
24 GUYS RUN RAGID. THAT'S PROBABLY WHY HE NEEDS THE KNEE
25 SURGERY WITH ALL THE RUNNING AROUND MR. BAKER HAS TO DO WITH
26 ALL THE CASES THAT WE OVERLOAD HIM WITH. THE NEXT GUY IS
27 GOING TO BE JUST AS OVERLOADED. THE NEXT GUY IS GOING TO
28 HAVE HIS CALENDAR THERE WHERE HE'S GOT CASES THAT ARE AS OLD

AS YOURS, BUT YOUR CASE IS BRAND NEW TO HIM. SO HE'S GOING
ON THE MURDER TRIAL THAT'S TWO YEARS OLD, THREE YEARS OLD.
IF YOU'RE DOING THIS BECAUSE YOU THINK YOU'RE GOING TO PUSH
YOUR CASE TO TRIAL SOONER, THIS IS ABSOLUTELY THE WORST
THING YOU COULD DO TO GET YOUR CASE TO TRIAL SOONER.
MR. BAKER'S HAD THE CASES. HE'S DONE THE
PRELIMINARY HEARINGS. HE'S READ THE REPORTS. HE IS
BEST-SITUATED WITH IT. AND TO THE EXTENT THAT HE'S ASKING
FOR AN EXTRA TWO WEEKS, THAT'S NOTHING IN COMPARISON TO WHAT
SOMEBODY WHO PICKS UP THESE CASES COULD MILD NEED FROM YOU.
SO I DO THINK THAT THAT'S REALLY WHAT'S MOTIVATING THIS. I
THINK YOU'RE NOT HAPPY THAT HE'S ASKING FOR A COUPLE WEEKS
TO ACCOMMODATE HIS KNEE SURGERY. I THINK THAT'S WHY YOU'RE
RUNNING THE MARSDEN MOTION. YOU SAID IT IN OPEN COURT AND
YOU JUST SAID IT AGAIN HERE, AND IT IS A FOOLISH REASON TO
WANT YOUR ATTORNEY REMOVED. IT'S NOT GOING TO ACCOMPLISH
WHAT YOU THINK IT'S GOING TO ACCOMPLISH.

AT THIS POINT, I WILL MAKE MY FINDINGS AND
ORDER ON THE MARSDEN MOTION. I'VE LISTENED TO EVERYTHING
THAT THE DEFENDANT HAD TO SAY AS WELL AS WHAT MR. BAKER HAS
HAD TO SAY, AND I FIND THAT MR. BAKER NOT ONLY HAS PROPERLY
REPRESENTED MR. ASHLEY BUT THAT HE HAS DONE EVERYTHING THAT
I WOULD EXPECT A SIMILARLY SITUATED DEFENSE ATTORNEY TO DO.
I LISTENED TO THE COMPLAINTS OF MR. ASHLEY, AND I UNDERSTAND
EMOTIONALLY WHAT YOU FEEL. BUT HAVING A LOT OF EXPERIENCE
IN THE CRIMINAL LAW SYSTEM, I ALSO UNDERSTAND WHERE
MR. BAKER IS COMING FROM, AND I THINK THAT THE BEST DEFENSE
ATTORNEYS AREN'T THE ONES WHO TELL YOU WHAT YOU WANT TO HEAR

1 AND LIE TO YOU ABOUT HOW GOOD YOUR CASE IS OR TELL YOU THAT
2 THEY BELIEVE IN YOUR INNOCENCE. THE BEST DEFENSE ATTORNEYS
3 ARE ONES WHO CAN EVALUATE A CASE REALISTICALLY AND TRY TO
4 GET YOU TO UNDERSTAND THE GRAVITY OF WHAT IT IS THAT YOU'RE
5 FACING, AND I BELIEVE THAT MR. BAKER WILL CONTINUE TO
6 REPRESENT YOU IN AN EXEMPLARY MANNER.

7 I KNOW MR. BAKER PERSONALLY. I HAVE WORKED
8 WITH HIM NOT ONLY SINCE I'VE BEEN ON THE BENCH BUT WHEN I
9 WAS A PROSECUTOR. I HAD CASES AGAINST HIM. YOU HAVE ONE OF
10 THE FINEST ATTORNEYS IN THE COUNTY REPRESENTING YOU WHETHER
11 YOU REALIZE THAT OR NOT. YOU ARE NOT GOING TO FIND A BETTER
12 ATTORNEY. ALTHOUGH, IF YOU WANT TO GO OUT AND HIRE A
13 PRIVATE ONE AND YOU HAVE THE MEANS TO DO SO, YOU CAN DO
14 THAT. BUT I'M NOT GOING TO REMOVE THIS FINE COURT-APPOINTED
15 ATTORNEY SIMPLY BECAUSE YOU DON'T -- YOU THINK THAT HE
16 SHOULD BE DOING OTHER THINGS.

17 I DO NOT FIND THAT THERE HAS BEEN A BREAKDOWN
18 IN THE RELATIONSHIP BETWEEN THE ATTORNEY AND THE DEFENDANT
19 OF SUCH A KIND AS WOULD MAKE IT IMPOSSIBLE FOR MR. BAKER TO
20 REPRESENT THE DEFENDANT; THEREFORE, THE MARSDEN MOTION IS
21 DENIED. THE RECORDING OF THIS PROCEEDING WILL BE SEALED
22 UNLESS AND UNTIL FURTHER ORDER OF THE COURT.

23
24 (END OF MARSDEN MOTION PROCEEDINGS.)
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28

APPENDIX B THE L.A. SUPERIOR COURT DENIAL DECISION

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

FILED
Superior Court of California
County of Los Angeles
JUL 28 2020
By *Sherri R. Carter, Executive Officer/Clerk or Coun*
Elizabeth Furedi, Deputy

People of the State of California,)
Plaintiff) No. MA037159-02
)
vs.) ORDER DENYING
EDDIE ASHLEY,) MOTION FOR
Defendant) RESENTENCING
)
_____)

The court has read and considered the defendant's Motion to Correct Sentence Pursuant to Penal Code Section 1170.1 (a) & (f), filed on July 20, 2020. The Motion raises two grounds for relief, to wit: the enhancement pursuant to Penal Code Section 12022.7 should be stricken and the enhancement pursuant to Penal Code Section 186.22(b)(1)(C) should be 5 years, rather than 10 years.

Both grounds lack merit.

On February 10, 2010, Defendant entered in a negotiated disposition wherein he pled no contest to violating Penal Code Section 664/187. He admitted allegations that he personally inflicted great bodily injury (Penal Code Section 12022.7) and he committed the offense for the benefit of, at the direction of, or in association with a criminal street gang (Penal Code Section 186.22(b)(1)(C)). He also pled no contest to violating Penal Code Section 245(b). He received a total of 24 years in State Prison.

In his moving papers, Defendant cites the case of *People v. Rodriguez*, (2009) 47 Cal.4th 501. However, that matter pertained to the personal use of firearm, not the infliction of great bodily injury. In the present case, Defendant admitted that he personally inflicted great bodily injury within the meaning of Penal Code Section 12022.7. The cited case does not apply to the instant matter. The 3 year enhancement is correct and appropriate.

Further, Defendant claims that the court erred in sentencing him to 10 years for the Penal Code Section 186.22(b)(1)(C) enhancement. Defendant cites *People v. Navarro*, (2008) 161 Cal.App.4th 1100, for the proposition that a 5 year enhancement was appropriate. However, *Navarro* pertained to an enhancement attached to a violation of Penal Code Section 245(a)(2). In the instant matter, Defendant was convicted of violating Penal Code Section 664/187, which is clearly a "violent" felony within the meaning of Penal Code Section 667.5(c)(12). Thus, the enhancement pursuant to Penal Code Section 186.22(c)(1)(C) is correct. The 10 year enhancement will remain.

Based on the foregoing the Defendant's motion is DENIED.

Dated: 7/28/2020

D.H.

David Hizami
Judge of the Superior Court

A copy of this order is sent via US mail addressed as follows:

**EDDIE ASHLEY, AC-6361
KVSP B5-205
P.O. BOX 5102
DELANO, CA 93216**

**LA COUNTY DA'S OFFICE
42011 4TH STREET WEST
LANCASTER, CA 93534**

APPENDIX C PETITIONER'S WRIT OF MANDATE

1 Eddie Ashley AC-6361
2 KVSP B5-205
3 P.O.Box 5102
4 Delano, Ca 93216

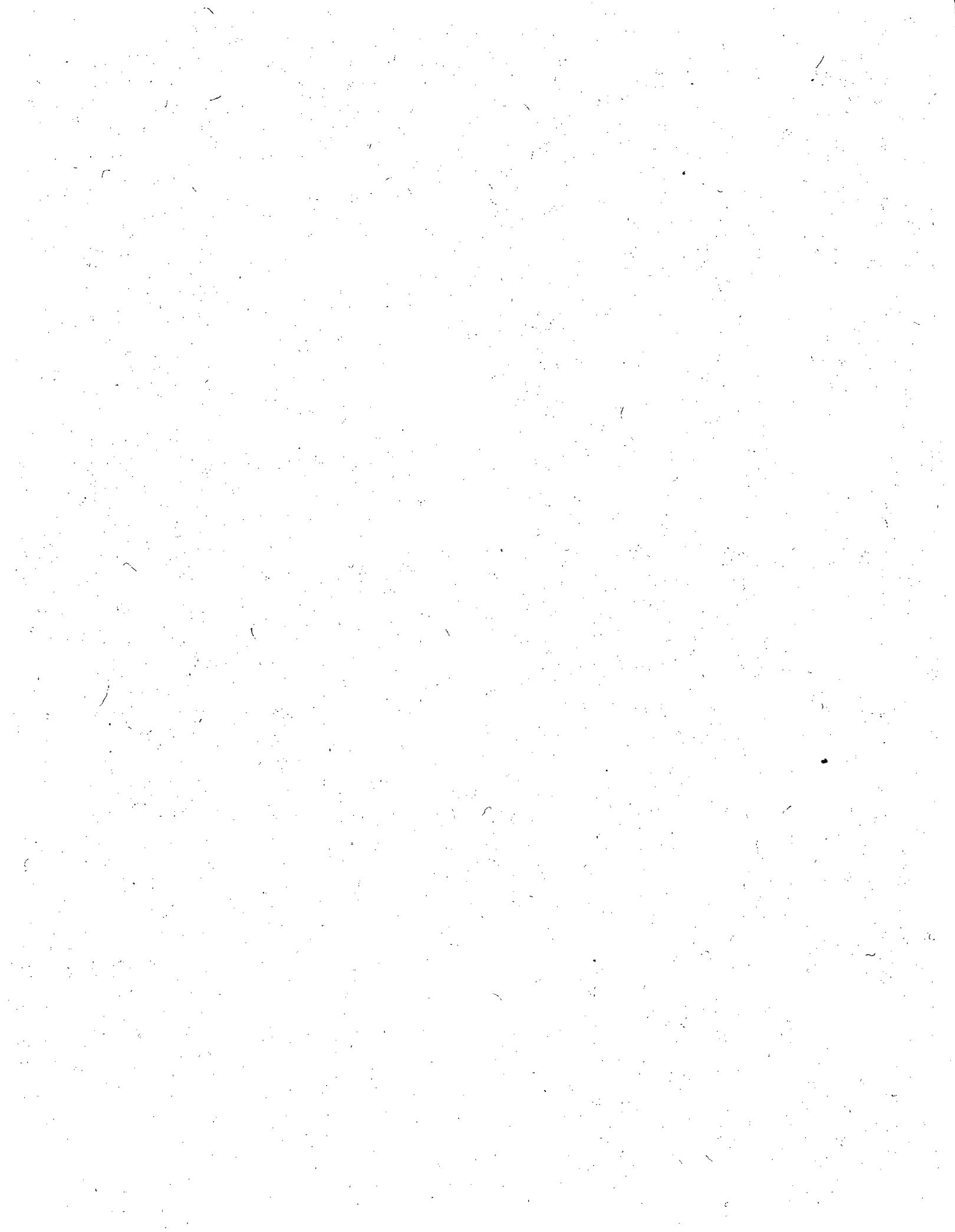
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8 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
9 SECOND APPELLATE DISTRICT
10 (Los Angeles)

11

12 EDDIE ASHLEY) Case No. _____
13 Petitioner,) (Sup.Ct. MA037159-02)
14 v.)
15 LOS ANGELES SUPERIOR COURT) PETITION FOR WRIT OF MANDATE
16 Respondent,) AND/OR OTHER APPROPRIATE RELIEF
17) Pursuant to CCP § 1085(a)
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1 file a Late Appeal," which was filed on July 9, 2010.

2 d). The Second Appellate District Court's "Order Granting
3 Right to File Late Appeal," which was filed on October 13, 2010.

4 e). The Attorney General's "Respondent Brief," which was filed
on July 19, 2011

5 f). Petitioner's Appellate Counsel's "Reply Brief," which
6 was filed on July 26, 2011

7 g). The Second Appellate District Court's "Order," which was
filed on October 26, 2011.

8 Therefore, Petitioner's motion to the Superior Court specific-
9 ally concerned the unauthorized plea/sentence, prohibited by
10 the California Supreme Court in People v. Rodriguez (2009) 47
11 Cal.4th 510; 98 Cal.Rptr.3d 108; 213 P.3d 647; and, People
12 v. Le (2005) 61 Cal.4th 416; 189 Cal.Rptr. 3d 166; 51 P.3d
13 295). While, in-addition, People v Navarro (2008) 161 Cal.App.4th
14 1100; 74 Cal.Rptr.3d 828.

16 2. On July 28, 2020, the Los Angeles Superior Court denied Peti-
17 tioner's motion based off a contrary interpretation of the Calif-
18 ornia Supreme Court's decision in People v. Rodriguez, *supra*;
19 and, People v. Le, *supra* (See Appendix B). Whereby, it was part-
20 ially stated: "Defendant cites the case of People v. Rodriguez...
21 However, that matter pertained to the personal use of firearm,
22 not the infliction of great bodily injury. In the present case,
23 Defendant admitted that he personally inflicted great bodily
24 injury with the meaning of Penal Code section 12022.7. The cited
25 case does not apply to the instant matter. The year enhancement
26 is correct and appropriate" (See Appendix B). For which, this
27 writ of mandate is filed.

28 ///

MEMORANDUM OF POINTS AND AUTHORITIES

1. The Abuse of Discretion Standard:

In People v. Carmony (2004) 33 Cal.4th 367; 14 Cal.Rptr.3d 880; 92 P.3d 369, the California Supreme Court described the standard review for an abuse of discretion, as followed:

"In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, 'the burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary... Second, a 'decision will not be reversed merely because reasonable people might disagree. An Appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial court. Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it" (33 Cal.4th at pp. 376-377)

Therefore, since the burden is on Petitioner to clearly show that the Superior Court's "Order" was issued arbitrarily. It was elaborated in Universal Home Improvement, Inc., v. Robertson Docket No. AI57067 (1st. App.Distr. June 24, 2020), the following guidelines:

"We elaborated on the concept of abuse of discretion in People v. Jacobs (2007) 156 Cal.App.4th 728. Holding that there was an abuse of discretion in denying a short continuance, we ended our discussion with this observation. "In Concord Communities v. City of Concord (2001) 91 Cal.App.4th 1407 our colleagues in Division four of this Court observed that: 'Abuse of discretion has at least two components: a factual component... and a legal component. This legal component of discretion was best explained long ago in Bailey v. Taaffe (1886) 29 Cal.422,424: The discretion intended, however, is not a capricious or arbitrary discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles. It is not a mental discretion, to be exercised *ex gratia*, but a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.'

"In Witkins... the author distills the principle as follows: 'Limits of Legal Discretion. The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal when no reasonable basis for the action is shown" (page ** 17-18).

1 a). The Factual Component:

2 On pages 4 through 5 of the attached "Motion to Correct
3 Sentence" (See Appendix A), the factual basis of Petitioner's
4 challenge is taken from the Trial Court's "Sentencing Transcripts"
5 (See Appendix A -Exhibit H)

6 THE COJRT: Back on the record now:

7 The Defendant will be entering a plea of guilty or no contest to
8 Count 1. The People will strike the premeditated and Deliberate
language, so it'll be just attempted murder.

9 An in exchange for his plea, the Defendant will be getting the
High Term, which is nine years in state prison.

10 He will also admit the gang allegation pursuant to 182.22, for a
consecutive ten years.

11 And he will admit the G.B.I. allegation, pursuant to 12022.7,
subdivision (A), which will add three more years. And the means
that the base term as to Count 1 will be 22 years.

12 So, although Petitioner does not challenge the validity of
13 Petitioner's plea, the factual dispute concerned the statutorial
14 prohibition that Petitioner could not be convicted or illegally
15 plea to an aggregated sentence beneath two sentence enhancements.

17 b). The Legal Component:

19 In People v. Rodriguez (2009) 47 Cal.4th 501; 98 Cal.Rptr.3d
20 108; 213 P.3d 647, the California Supreme Court had determined
21 a similar issue when determining -in Rodriguez case: "Because
22 two different sentence enhancements were imposed for defendant's
23 firearm use in each crime, section 1170.1's subdivision (f)
24 requires that 'only the greatest of those enhancements be imposed'
(47 Cal.4th at pp. 508-509).

26 This same ruling was determined by the California Supreme Court
27 in People v. le (2015) 61 Cal.4th 416; 189 Cal.Rptr.3d 166; 351
28 P.3d 295. But, nevertheless, the Superior Court opined that

1 Rodriguez's legal underpinning related "to the personal use of
2 a firearm," and not to the infliction of great bodily injury, i.e.,
3 Penal Code § 12022.7)(See Appendix B). When, the personal use
4 of a firearm was the proximate cause in inflicting great bodily
5 injury. So, the Court's ruling is not in "conformity with the
6 spirit of law and does not subserve... substantial justice" (See
7 Universal Home Improvement, Inc., v. Robertson, supra, p. *18).
8 (See also, People v. Panes G054857 (Cal.Ct.App. Aug. 14, 2018)
9 (Jnpub. Opn).

10
11 c). Second Factual Component:

12 On pages 6 of the attached "Motion to Correct Sentence" (See
13 Appendix A), the factual basis of Petitioner's challenge was
14 the 10-year imposition, rather then the Five years term that
15 should have been incorporated within Petitioner's negotiated plea
16 off the criminal street gang enhancement, i.e., PC § 186.22. Espe-
17 cially when Petitioner had tooken plea, and Petitioner was not
18 convicted -via jury trial- for Petitioner to plea to the upper
19 term, rather then the mid term, for the gang enhancement.

20
21 d). Second Legal Component:

22 In People v. Navarro (2008) 161 Cal.App.4th 1100; 74 Cal.Rptr.
23 3d 828, it was argued that: "the court committed an error of
24 law and an abuse of discretion by imposing a 10-year term, rather
25 than a five year term, on the criminal street gang enhancement"
26 (161 Cal.App.4th at p. 1102).

27 Within the Superior Court's "Order" (See Appendix B), the Lower
28 Court's ruling decided to differentiate between a Penal Code

1 § 245(a)(2), and, a Penal Code § 664/187. But without taking
2 into consideraion Alleyne v. Jnited States (2013) 570 J.S. 99;
3 133 S.Ct. 2151; 186 L.Ed.2d 314, whereby it was stated: "Because
4 the mandatory minimum sentences increase the penalty for a crime,
5 any fact that increases the mandatory minimum is an element that
6 must be submitted to the jury" (133 S.Ct. at p. 2153). So, without
7 a jury trial for the court's to have imposed the upper term sent-
8 enceof ten year, the mandatory sentence that should have been
9 negotiated should have been 5 years.

CONCLUSION

12 In accordance to the standard for an abuse of discretion, Peti-
13 tioner prays that Petitioner has bore his burden in clearly
14 showing before the Court's of Appeal, the Superior Court's arbit-
15 rary decision. And again, Petitioner does not challenge the
16 validity of Petitioner's plea, Petitioner only asked that the
17 Court correct the prohibitional or statutorially illegal component
18 that is attached to Petitioner's sentence. So, Petitioner requests
19 that a preemtory writ be issued to the Superior Court to correct
20 the illegal sentence, in accordance to Petitioner's Fourteenth
21 Amendment Due Process of Law.

I declare under penalty of perjury that the foregoing is true and correct.

Date: August 12, 2020

Eddie Ashley AC-6361

PROOF OF SERVICE

EDDIE ASHLEY

v.

Case No. _____

LOS ANGELES SUPERIOR COJRT

PROOF OF SERVICE

/

I am the above Petitioner in this proceeding. On August 12, 2020, I am depositing my WRIT OF MANDATE, in the mailbox at Kern Valley State Prison, in the State of California, to the below addresses:

2nd Appellate District, Division 1
300 S. Spring St/ Fl 2 North Tower,
Los Angeles, Ca 90013-1213

I declare under penalty of perjury that the foregoing is true and correct

APPENDIX D CALIF. 2ND APP. DISTRICT DENIAL DECISION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL - SECOND DIST.

F I L E D

Sep 09, 2020

DANIEL P. POTTER, Clerk

izelaya Deputy Clerk

EDDIE ASHLEY,

B307264

Petitioner,

(Super. Ct. L.A. County
No. MA037159)

v.

THE SUPERIOR COURT OF THE
COUNTY OF LOS ANGELES,

(DAVID E. HIZAMI, Judge)

Respondent;

ORDER

THE PEOPLE,

Real Party in Interest.

THE COURT*:

The petition for writ of mandate, filed August 28, 2020, has been read and considered.

The petition is denied.



*ROTHSCHILD, P. J.



CHANAY, J.



BENDIX, J.

APPENDIX E PETITIONER'S PETITION FOR REVIEW

1 Eddie Ashley AC-6361
2 KVSP B5-205
3 P.O.Box 5102
4 Delano, Ca 93216

5 In Pro Se

6

7 **IN THE CALIFORNIA SUPREME COURT**

8 EDDIE ASHLEY) Case No. _____
9 Petitioner,) (Sup.Ct.No. MA037159)
10 v.) (2nd App.Dt.No. B307264)
11 LOS ANGELES SUPERIOR COURT)
12 Respondent,) PETITION FOR REVIEW
13 _____)
14 THE PEOPLE OF THE STATE OF)
15 CALIFORNIA)
16 Real Party In Interest)
17 _____)

18 **TO: THE HONORABLE CHIEF JUSTICE AND HONORABLE ASSOCIATE JUSTICES**
19 **OF THE SUPREME COURT OF THE STATE OF CALIFORNIA**

20 **Summary of Proceedings**

21 1. On July 9, 2020, Petitioner had filed a "Motion to Correct
22 Sentence -Pursuant to PC § 1170.1(a)" (See Exh. A). Whereby,
23 Petitioner's motion to the Superior Court concerned an unauthorized
24 plea/sentence that was prohibited by the California Supreme Court
25 in People v. Rodriguez (2009) 47 Cal.4th 510; 98 Cal.Rptr.3d
108; 213 P.3d 647; and, People v. Le (2015) 61 Cal.4th 416; 189
Cal.Rptr.3d 166; 351 P.3d 295.

26 2. On July 28, 2020, the Los Angeles Superior Court had denied
27 Petitioner's motion based off a contrary interpretation by the
28 California Supreme Court's decision in Rodriguez, *supra*. When

1 stating in part this:

2 "Defendant cites the case of People v. Rodriguez... However, that
3 matter pertained to the personal use of a firearm, not the inflict-
4 ion of great bodily injury. In the present case, Defendant admitted
5 that he personally inflicted great bodily injury within the meaning
of Penal Code section 12022.7. The cited case does not apply to
the instant matter. The 3 year enhancement is correct and appropriate"
(See Exh. B).

6 3. On August 12, 2020, Petitioner had filed a "Writ of Mandate"
7 to the Second Appellate District Court (See Exh. C). Addressing
8 the "Abuse of Discretion Standard," and requesting for a preemptory
9 writ to the Superior Court to follow the California Supreme Court
10 decision.

11 4. On September 9, 2020, the Second Appellate District Court
12 denied Petitioner's mandate summarily (See Exh. D).

13 5. On September 17, 2020, Petitioner is filing this "Petition
14 for Review," and, "Application for Relief from Default" to the
15 California Supreme Court.

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MEMORANDUM OF POINTS AND AUTHORITIES

1. Does Petitioner Have A Federal Due Process Right to the Prohibition of the Imposition of Two Different Sentencing Enhancement

Petitioner's only question before the California Supreme Court is, whether the Supreme Court's decision in People v. Rodriguez, supra; and, People v. Le, supra; is equally applicable to the Firearm Enhancements under Penal Code § 12022.7? Because according to the Superior Court's decision, the California Supreme Court's ruling in the above cases does not apply to the "Personal Infliction of Great Bodily Injury" component that still results from the useage of a firearm.

So, Petitioner requests consideration due to the facts that Petitioner's plea negotiation incorporated an unauthorized sentence in Petitioner's accepting two different sentencing enhancements, i.e., a Firearm Enhancement (PC § 12022.7), and, Gang Enhancement (PC 186.22).

CONCLUSION

Petitioner requests that an "alternative writ" be issued and the Superior Court be ordered to remand Petitioner back before the Court for resentencing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Delano, Ca.

Date: September 17, 2020

Eddie Ashley
Eddie Ashley AC-6361

PROOF OF SERVICE

EDDIE ASHLEY

v.

Case No. _____

LOS ANGELES SUPERIOR COURT

PROOF OF SERVICE

I am the above Petitioner in this proceeding. On September 17, 2020, I am depositing my PETITION FOR REVIEW, in the mailbox at Kern Valley State Prison, in the State of California, to the below address:

California Supreme Court
350 McAllister St.
San Francisco, Ca 94102

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed at Delano, Ca.



Eddie Ashley

APPENDIX F CAL. SUPREME COURT DENIAL ORDER

SUPREME COURT
FILED

Court of Appeal, Second Appellate District, Division One - No. B307264 OCT 28 2020

S264646

Jorge Navarrete Clerk

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

EDDIE ASHLEY, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent;

THE PEOPLE, Real Party in Interest.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice