Filed 8/21/19 P. v. Davis CA4/1

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

THE PEOPLE,
Plaintiff and Respondent,

v.

GAVIN B. DAVIS,
Defendant and Appellant.

D074186
(Super. Ct. Nos. SCD266332, SCD273043)

APPEAL from a judgment of the Superior Court of San Diego County, Timothy R. Walsh, Judge. Affirmed.

John Lanahan for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General,

APPENDIX A

Charles C. Ragland, Craig H. Russell and Scott Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

[Petitioner] appeals the denial of his motion to withdraw his guilty plea. He claims that he was not advised about and did not understand his constitutional rights; his plea was involuntary because he made it in exchange for a promise that he would be released on bail; there was an insufficient factual basis for the crime of vandalism; and he was not advised of the collateral consequence of the possible loss of his professional license. We conclude none of [Petitioner's] arguments has merit. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In two consolidated cases (SCD266332 and SCD267655), [Petitioner] was charged with one count of vandalism over $400 (Pen. Code, § 594, subds. (a), (b)(1)); one count of resisting an officer (§ 148, subd. (a)(1)); ten counts of disobeying a court order to prevent domestic violence (§ 273.6, subd. (a)); six counts of willful disobedience of a process and order lawfully issued by a court (§ 166, subd. (a)(4)); and stalking (§ 646.9, subd. (a)).

On October 5, 2016, the court held a hearing regarding [Petitioner]'s bail status. [Petitioner]'s wife testified that [Petitioner] was threatening her and that [Petitioner] left a voicemail threatening to kill her father. The court found that [Petitioner] violated court orders, failed to appear at a forensic evaluation, and had threatened a protected person with great bodily injury. The court revoked [Petitioner]'s bail and remanded him into custody. [Petitioner] was

later released from custody after bail was reinstated.

On April 17, 2017, [Petitioner] failed to appear in court and the court issued a bench warrant. The prosecutor filed another case against [Petitioner], alleging his failure to appear. On July 6, 2017, the bail forfeiture order was set aside, and [Petitioner] was released from custody. On October 10, 2017, [Petitioner] failed to appear in court after the trial court denied a motion to continue his trial. The court forfeited bail and issued another bench warrant. [Petitioner] was arrested and remained in custody until he pled guilty on April 23, 2018.

At [Petitioner]'s change of plea hearing, [Petitioner] indicated to the court that he wished to change his plea. After swearing in [Petitioner], the court asked [Petitioner] whether he had read and understood all the plea forms. [Petitioner] admitted that his attorney "went through the forms" with him, including reading them to him. The court then asked [Petitioner] if he "thoroughly discuss[ed] all the contents with" his attorney. [Petitioner] responded that he believed his conversations with his attorney were privileged. The court pressed [Petitioner] on this point, explaining that it needed to know whether [Petitioner] thoroughly discussed the forms with his attorney, not the substance of the conversation. [Petitioner] told the court that his attorney "answered my question[.]"

The court then discussed portions of the change of plea forms, asking if [Petitioner] understood what he was pleading guilty to. [Petitioner] responded in the affirmative. The court explained that the forms stated that in

exchange for his guilty plea, [Petitioner] was agreeing to probation. And if he successfully completed probation, then the felony vandalism count would be reduced to a misdemeanor and the other charges would be dismissed upon a motion by [Petitioner]. [Petitioner] indicated that his attorney had advised him consistent with what the court stated. The court asked [Petitioner] if there had been any other promises made to him or any threats made against him that caused him to plead guilty. [Petitioner] stated there had been no threats, but informed the court that he "was promised a return to my liberty today, had bail review pushed off three times." The court then added to the plea agreement that [Petitioner] was to be released after the change of plea hearing pending sentencing.

The court and [Petitioner] then engaged in the following exchange:

"THE COURT: All right. On both forms, do you understand all of your constitutional rights to a jury trial?

"[[Petitioner]]: Your honor, I understand the rights by the California Constitution and the jurisdiction of this court.

"THE COURT: I'm asking you if you understand all of the rights as indicated that you have to a jury trial on your forms.

"[[Petitioner]]: Yes, you[r] honor.

"THE COURT: And do you give up those rights to a jury trial and all of the related rights in order to plead guilty at this time?

"[[Petitioner]]: In the state of California, San Diego County, yes, your honor."

The court later asked [Petitioner] if he understood all of the other potential consequences of his plea as indicated on the forms. [Petitioner] said that he did "to the best of my ability and resources." [Petitioner] then pled guilty to five counts, including felony vandalism. Regarding the felony vandalism offense, the court and [Petitioner] engaged in the following exchange:

"THE COURT: Okay. And then on case ending 655, it says that on July 1st of 2015, you damaged property not your own in value in excess of $400, count one, on March 13th of 2016 and on—is it January?

"[[Petitioner]]: Those dates are incorrect.

"THE COURT: Okay. Well, it's on or around these dates.

"[[Petitioner]]: There was only one incident and it was my own real property."

On June 7, 2018, [Petitioner] appeared at his sentencing hearing. There, his counsel indicated that [Petitioner] wanted to withdraw his guilty plea. In response to questioning by the court, [Petitioner]'s counsel represented that he was prepared to go forward with sentencing and

did not agree with [Petitioner] about withdrawing his guilty plea. [Petitioner], however, attempted to address the court, which lead to the following discussion among the court, [Petitioner], and [Petitioner]'s trial counsel:

"THE COURT: Okay. Mr. [Petitioner], you know, I know you want to address the court and are anxious to address the court. You have no right, on this issue, to address the court as you're being represented by your lawyer.

"[[Petitioner]]: I'm represented horizontally, your honor.

"THE COURT: There's no such thing. [¶] And as such, you've relayed to your attorney the basis for which you might want to withdraw your plea. He has an ethical obligation as an attorney, and because there's ethics that apply to his practice of law, to evaluate that. He cannot file frivolous motions legally or ethically, and has, based on his conversations with you, determined there's no basis for which you can withdraw your plea.

"[[Petitioner]]: I object to that. We have not discussed it.

"THE COURT: Okay. This is the deal. You can't object to it. You're not a lawyer. You're not representing yourself in this case. Your lawyer's representing yourself in this case. Your lawyer's representing yourself—you. So this idea that you feel like somehow you are representing yourself along with your lawyer, there's no such thing. So

at least in the capacity that you're here, you're not doing—I guess there is such a thing, but it's not set up that way. [¶] So do you want to be heard on this issue, defense, or do you want to proceed with sentencing?

"[[Petitioner]'s counsel]: Are you referring to me, your honor? Excuse me.

"THE COURT: Yes.

"[[Petitioner]'s counsel]: I'm prepared to proceed."

After the prosecutor stated he did not need to be heard on this issue, the court sentenced [Petitioner] to 365 days in local custody and three years-probation.

[Petitioner] obtained a certificate of probable cause and filed a timely notice of appeal.

DISCUSSION

A guilty plea must be knowing, voluntary, and intelligent under the totality of the circumstances. (*People v. Farwell* (2018) 5 Cal.5th 295, 301-302.) Upon a showing of good cause, the court may allow a defendant to withdraw a plea of guilty at any time before judgment. (§ 1018.) To establish good cause, it must be shown that defendant was operating under mistake, ignorance, or any other factor overcoming the exercise of his free judgment. (*Ibid.; People v. Sandoval* (2006) 140 Cal.App.4th 111, 123.) The defendant must also show prejudice in that he would not have accepted the plea bargain had it not been for the error. (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1416.) On appeal, we affirm the trial court's ruling on a

motion to withdraw the plea unless the defendant shows a clear abuse of the trial court's discretion. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.) In evaluating challenges to the court's ruling, we "must adopt the trial court's factual findings if substantial evidence supports them." (*Ibid.*; *Breslin*, at p. 1416.) We are bound by the trial court's credibility determinations. (See *Fairbank*, at p. 1254.)

Here, [Petitioner] claims the trial court abused its discretion in denying his motion to withdraw his guilty plea because: (1) the record does not indicate that he knowingly waived his constitutional rights, (2) the plea was made in exchange for a promise that he would be released on bail, (3) there was an insufficient factual basis for the crime of vandalism, and (4) [Petitioner] was not advised of the collateral consequence of the loss of a professional license. We conclude that these arguments lack merit.

[Petitioner] first argues that he did not knowingly waive his constitutional rights. To this end, he points out that during his change of plea hearing, the court only explicitly identified the right to trial by jury. He therefore claims the record does not indicate that he was apprised of his constitutional rights and then knowingly waived them. We disagree.

There is no requirement for a talismanic recitation of the right being waived. (*People v. Howard* (1992) 1 Cal.4th 1132, 1180 (Howard).) Instead, the knowing nature of the waiver must be determined from the totality of the circumstances. (*People v. Davis* (2009) 46 Cal.4th 539, 586; *People v. Mosby* (2004) 33 Cal.4th 353, 361 (Mosby); *Howard*, at pp. 1177-1178.) Explicit

advisal of the right being waived is not necessary for a knowing and voluntary plea. (*Howard*, at pp. 1177-1178 [plea valid even though no explicit advisal of constitutional right].)

Further, the court may rely on a validly executed waiver form as a sufficient advisal of rights. (*People v. Cisneros-Ramirez* (2018) 29 Cal.App.5th 393, 402-403; *Mosby, supra*, 33 Cal.4th at pp. 360-361.) The court need not specifically review the waiver with the defendant when both the "defendant and his attorney have signed a waiver form, both have attested to defendant's knowing and voluntary relinquishment of his rights, and the trial court's examination of the defendant and his attorney raised no questions regarding the defendant's comprehension of his rights or the consequences of his plea." (*Cisneros-Ramirez*, at p. 402; *People v. Panizzon* (1996) 13 Cal.4th 68, 83-84.)

We independently examine the entire record to determine whether the defendant knowingly and voluntarily waived his rights. (*People v. Elliott* (2012) 53 Cal.4th 535, 592.)

[Petitioner]'s waiver of his constitutional rights was intelligent and voluntary. The language of the change of plea form was clear. The form stated that [Petitioner] had "the right to a speedy and public trial by jury[,]" "the right to confront and cross-examine all the witnesses against" him, "the right to remain silent[,]" and "the right to present evidence in [his] behalf." After each recitation of the specific right, the form indicated, in bold, "I now give up this right" with a box for [Petitioner]'s initials. [Petitioner] initialed every box and then signed the form

under penalty of perjury. The form also contained the following paragraph:

"I, the attorney for the defendant in the above-entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges and possible defenses with the defendant, and the consequences of this plea. I have asked the defendant about his/her immigration status, advised defendant of the immigration consequences of this plea to the best of my ability, and advised defendant of the right to additional time to discuss this matter with an immigration attorney. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his/her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights."

[Petitioner]'s attorney signed the form after that paragraph.

In addition to being advised of his constitutional rights in writing, the court asked [Petitioner] if he understood his constitutional rights and whether he was waiving them. [Petitioner] answered both questions in the affirmative. Further, [Petitioner] does not argue that he did not read or understand the change of plea form. Nor is there any indication in the record that [Petitioner] suffered from some impairment that limited his ability to understand what he was signing or agreeing to. In contrast, the record indicates that [Petitioner] was an Ivy League educated person with extensive business experience. Against this backdrop, the totality of

the circumstances strongly supports the conclusion that [Petitioner] knowingly and intelligently waived his constitutional rights. (See *People v. Davis, supra*, 46 Cal.4th at p. 586; *Mosby, supra*, 33 Cal.4th at p. 361; *Howard, supra*, 1 Cal.4th at pp. 1177-1178.)

[Petitioner] next argues his plea was not voluntary because he claims he pled guilty based on the promise that he would be released on bail if he did so. He claims that the "real" reason he pled guilty was to be released on bail. [Petitioner] argues that he tried unsuccessfully to get a bail review calendared three times in six months, and thus, he believed pleading guilty was the only way he would be released from jail. We disagree.

During the change of plea hearing, [Petitioner] indicated that the prosecutor had agreed that he was to be released, after pleading guilty, "pending sentencing." The court then added this agreement to the change of plea form. Moreover, [Petitioner] indicated to the court that he was not pleading guilty in response to any threats. And, on the change of plea form, [Petitioner] initialed in the box next to the statement, "I am entering my plea freely and voluntarily, without fear or threat to me or anyone closely related to me." Based on the prosecution's offer to release [Petitioner] after he pled guilty pending sentencing, [Petitioner] maintains that his plea was involuntary under *People v. Collins* (2001) 26 Cal.4th 297 (Collins).

In *Collins*, after the trial court learned the defendant might waive a jury trial, the court informed defense counsel " 'there might well be a benefit in it,' because 'just by having waived jury' and thus not taking two weeks' time to try the

case, 'that has some effect on the court.' " (*Collins, supra*, 26 Cal.4th at p. 309.) The court then informed the defendant he would receive a benefit of an unspecified nature if he waived his right to a jury trial. The court secured the defendant's response that he understood the court's comments. (*Ibid.*)

The California Supreme Court observed "[t]he trial court, by following that procedure while announcing its intention to bestow some form of benefit in exchange for defendant's waiver of that fundamental constitutional right, acted in a manner that was at odds with its judicial obligation to remain neutral and detached in evaluating the voluntariness of the waiver." (*Collins, supra*, 26 Cal.4th at p. 309.) The court determined "[t]he form of the trial court's negotiation with defendant presented a 'substantial danger of unintentional coercion.' " (Ibid.) The court further noted the waiver of the fundamental right of a jury trial is not by itself subject to negotiation by the trial court. "In effect, the trial court offered to reward defendant for refraining from the exercise of a constitutional right." (*Ibid.*) The court concluded the error was structural error, not subject to harmless error analysis and compelled reversal of the judgment. (*Id.* at pp. 310-313.)

In *Collins*, unlike in the present case, the trial court offered the defendant a vague promise of leniency to induce a waiver of the defendant's right to a jury trial to save judicial resources. (*Collins, supra*, 26 Cal.4th at pp. 300, 309, 312.) Here, the trial court did not make any offer or promise of leniency to entice [Petitioner] to plead guilty. Glossing over this distinction, [Petitioner]

focuses on the prosecutor's offer to release him from custody pending sentencing. [Petitioner] now claims that he only agreed to this offer because he believed it was the only way he would be released. To this end, he tries to paint his three unsuccessful attempts to schedule bail review as a nefarious plot to coerce him to plead guilty. However, there is no support in the record for this assertion. [Petitioner] points to nothing in the record explaining why his attempts to schedule a bail review were not successful. Additionally, [Petitioner]'s argument ignores his role in the court revoking his bail: he did not comply with certain court orders, including failing to appear in court. In short, the prosecutor's offer to allow [Petitioner] to be released from custody pending sentencing is nothing like the trial court's vague offer of leniency our high court found improper in *Collins, supra,* 26 Cal.4th 297.

Here, [Petitioner] was represented by counsel and knew of the charges against him. There is no indication in the record that his plea was induced by harassment, threats of physical harm, coercion, or misrepresentation. He admitted as much during his change of plea hearing and when he initialed and signed his change of plea form. The prosecutor's offer to allow [Petitioner] to be released from custody after the change of plea hearing did not render [Petitioner]'s guilty plea involuntary.

[Petitioner] also contends his plea should be vacated because the trial court failed to establish an adequate factual basis for the plea. We disagree.

"[T]he trial court is required by statute to conduct an inquiry to establish the existence of a

factual basis for a conditional plea of guilty or no contest." (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1365 (Voit).) " 'While there is no federal constitutional requirement for this factual basis inquiry, the statutory mandate of section 1192.5 helps ensure that the "constitutional standards of voluntariness and intelligence are met." [Citation.]' [Citation.] The inquiry also protects against an innocent person entering a guilty plea and creates a record against possible appellate or collateral attack. [Citation.]" (*Voit*, at p. 1365, fn. omitted.)

"However, a plea of guilty . . . waives an appellate claim of the nature 'there is insufficient evidence supporting my plea.' " (*Voit, supra*, 200 Cal.App.4th at p. 1365.) "[A] plea of guilty . . . forecloses an appellate challenge that the plea lacks a factual basis. Section 1192.5 requires a factual inquiry by the trial court, not by the appellate court. Particularly where a defendant not only personally pleads . . . but also personally or through counsel concedes the existence of a factual basis for his or her pleas . . . ." (*Voit*, at p. 1366.) A defendant is estopped from arguing on appeal what he has already conceded below, that there is a factual basis for his plea. (*Id.* at p. 1359.)

" 'As to the merits, the plea is deemed to constitute a judicial admission of every element of the offense charged. [Citation.] Indeed, it serves as a stipulation that the People need introduce no proof whatever to support the accusation: the plea ipso facto supplies both evidence and verdict. [Citation.]' " (*Voit, supra*, 200 Cal.App.4th at p. 1363.) " 'A guilty plea "admits every element of the crime charged" [citation] and "is the 'legal

equivalent' of a 'verdict' [citation] and is 'tantamount' to a 'finding' [citations]" [citation].' [Citation.]" (*Id.* at p. 1364.) " ' "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." [Citation.]' " (*Id.* at pp. 1363-1364.) "Issues concerning the defendant's guilt or innocence are not cognizable on appeal from a guilty plea. [Citations.] By admitting guilt a defendant waives an appellate challenge to the sufficiency of the evidence of guilt. [Citations.]" (*Id.* at p. 1364.)

"It is our position that an appellate court should not engage in a substantive review of whether there is an evidentiary or factual basis for a defendant's . . . plea simply because the defendant contradicts on appeal what he admitted in the trial court. The doctrine of judicial estoppel appears apt." (*Voit, supra*, 200 Cal.App.4th at p. 1370 [declining to review the preliminary hearing transcript and police report, to which defendant stipulated would provide the factual basis for the plea, to determine whether there was sufficient evidence to support the crimes to which defendant pled no contest]; *People v. Nitschmann* (2010) 182 Cal.App.4th 705, 709 ["Appellant is estopped from attacking a procedure to find a factual basis for the plea that he agreed could be utilized."]; *People v. Borland* (1996) 50 Cal.App.4th 124, 127 ["Appellant may not enter into a negotiated disposition for an offense with a specified charging date, enjoy the fruits thereof, and then challenge the factual basis for the plea on appeal."].)

The court in *Voit* recognized that the court in *People v. Marlin* (2004) 124 Cal.App.4th 559, cited by [Petitioner] in his reply brief, provided contrary authority. However, the *Voit* court rejected *Marlin* on several bases: *Marlin* was dictum because the People did not contend the appellate court was precluded from considering the factual basis for the plea, the issue was not contested, there was no attempt to distinguish authority holding that the sufficiency of the evidence of guilt was cognizable on an appeal, and that *Marlin's* determination that holding otherwise would make the issue unreviewable was inconsequential considering the same could be said of any issue which courts have determined a defendant can waive or forfeit. (*Voit, supra*, 200 Cal.App.4th at p. 1368.) We agree with the court in *Voit* that *Marlin* consists largely, if not wholly, of distinguishable dictum and is therefore not persuasive.

Yet, even if we did reach the merits of [Petitioner]'s claim, we would find his position not well taken. [Petitioner] relies entirely on his exchange with the trial court wherein the court asked him if he damaged property not his own in excess of $400, and [Petitioner] responded, "There was only one incident and it was my own real property." [Petitioner] ignores the change of plea form where he initialed a box next to the admission that he damaged property not his own in excess of $400. Thus, at most, his statement to the trial court might be considered a contradiction of the signed change of plea form.

However, it is clear from the record that [Petitioner]'s statement is not inconsistent with the vandalism offense. The prosecution's theory

of the case was that [Petitioner] and his wife jointly owned the damaged property (their home). And the probation report indicates that the vandalism offense was based on [Petitioner] damaging portions of his home that he owned with his ex-wife. Each community property owner has an equal ownership interest and, although undivided, one which the criminal law protects from unilateral nonconsensual damage or destruction by the other marital partner. (*People v. Kahanic* (1987) 196 Cal.App.3d 461, 466.) [Petitioner] may have damaged his "own real property" but, at the same time, he also damaged his wife's interest in that property. Thus, the statement he made during his change of plea hearing did not negate the factual basis of the vandalism offense. We therefore are satisfied that there existed an adequate factual basis for [Petitioner]'s guilty plea.

Finally, [Petitioner] claims that the trial court should have allowed him to withdraw his guilty plea because he was unaware a felony conviction might preclude him from renewing his real estate license. [Petitioner] concedes that a loss or suspension of his professional license would be a collateral consequence of his guilty plea. Thus, he argues his guilty plea should not stand because he was not advised of a potential collateral consequence of pleading guilty.

In a guilty plea case, the defendant must be advised of all direct consequences of conviction. (*Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605.) This requirement relates to the primary and direct consequences involved in the criminal case itself and not to secondary, indirect or collateral consequences. (*People v. Gurule* (2002)

28 Cal.4th 557, 634; *People v. Harty* (1985) 173 Cal.App.3d 493, 504.) A consequence is " 'direct' " if it has a definite, immediate and largely automatic effect on the range of the defendant's punishment. (*People v. Moore* (1998) 69 Cal.App.4th 626, 630.) Direct consequences include the permissible range of punishment provided by statute, imposition of a restitution fine, probation ineligibility, the maximum parole period, and registration requirements. (*Ibid.*)

"A collateral consequence is one which does not 'inexorably follow' from a conviction of the offense involved in the plea." (*People v. Crosby* (1992) 3 Cal.App.4th 1352, 1355.) Collateral consequences include the possibility of enhanced punishment upon a future conviction, the possibility of probation revocation in another case, and limitations on the ability to earn conduct and work credits while in prison. (*People v. Moore, supra*, 69 Cal.App.4th at p. 630.)

Here, [Petitioner] acknowledges the loss of his real estate license would be a collateral consequence of his guilty plea. We agree. The California Real Estate Commissioner may suspend, revoke, or delay the renewal of a license of a real estate licensee who has entered a plea of guilty of "a felony, or a crime substantially related to qualifications, functions, or duties of a real estate licensee . . . ." (Bus. & Prof. Code, § 10177, subd. (b)(1).) [Petitioner] concedes that it is unknown whether his conviction would delay the renewal of his license. Further, [Petitioner] cannot point to any authority that would require that he be advised of the potential of losing a professional license before a guilty plea can be knowing and intelligent. He cites *Padilla v.*

Kentucky (2010) 559 U.S. 356 (*Padilla*) in arguing that the effect of losing his professional license and thus losing his primary means of earning a livelihood is so severe that the direct/collateral consequences distinction does not matter. That case does not help [Petitioner].

In *Padilla*, the court determined that a criminal defense counsel's Sixth Amendment obligation include properly advising his or her client of the immigration consequences of a guilty or no contest plea. The court recognized that federal immigration law is often complex; thus, at times, deportation as a consequence of a conviction is neither clear nor certain. In those cases, the court concluded, the most the Sixth Amendment may require of defense counsel concerning immigration consequences is a warning that a criminal conviction may have adverse immigration consequences. (*Padilla, supra*, 559 U.S. at p. 369.) However, when, as was the case in *Padilla*, federal immigration law specifies in "succinct, clear, and explicit" terms that a conviction will result in deportation, the Sixth Amendment requires the criminal defense attorney to accurately advise his or her client of that consequence before the client enters a guilty plea. (*Padilla*, at pp. 368-369.) [Petitioner] is not claiming that his attorney did not advise him of the potential immigration consequences of pleading guilty. Instead, he is claiming his attorney should have advised him of the possibility that he may lose his real estate license if he pled guilty. *Padilla* does not establish any such requirement.

[Petitioner] also claims his trial counsel was constitutionally ineffective because he did not

advise him of the possibility that he would not be able to renew his real estate license if he pled guilty. To show that trial counsel's performance was constitutionally defective, an appellant must prove: (1) counsel's performance fell below the standard of reasonableness, and (2) the "deficient performance prejudiced the defense." (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688.) Competency is presumed unless the record affirmatively excludes a rational basis for trial counsel's choice. (*People v. Ray* (1996) 13 Cal.4th 313, 349; *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1260.)

An appellate court generally cannot fairly evaluate counsel's performance at trial based on a silent record. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) In many instances, like here, evaluation of a claim of ineffective assistance of counsel will have to await a petition for habeas corpus, should the defendant believe there is a viable claim that can be pursued. (*Ibid.*) [Petitioner] has not provided any authority establishing that an attorney has the obligation to advise his or her client that the client may lose or not be able to renew a professional license if the client pleads guilty to a felony. Moreover, there is no evidence in the record establishing that the giving of such advice was the custom, habit, or practice of defense counsel in San Diego county. Accordingly, we conclude that [Petitioner]'s claim of ineffective counsel is without merit.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

O'ROURKE, J.
DATO, J.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101

FOR COURT USE ONLY
F I L E D
June 07, 2018
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PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff
Vs.
GAVIN DAVIS
Defendant

PROB ID # 21411501
P.O. NAME: CHRISTINE FORD
CASE # SCD266332
CII # A25398240
WORK LOCATION: Hall of Justice
DA # ADZ96401
BK # 16113545A
MAIL STATION: C-96
DEPT# 1102

ORDER GRANTING FORMAL PROBATION

The defendant having been convicted of violating & PC273.6(a) (misd), PC653M (misd), PC166(a)(6), it is ordered that imposition of sentence be suspended for 3 years, and the defendant be granted formal probation;

The following are the terms and conditions of probation.

1. COMMITMENT:

a. To Sheriff for 365 day(s), with credit for: 201 local day(s), 200 PC4019 days [2/2], for a total of 401 day(s) credit for time served.

2. THE DEFENDANT SHALL PAY:
TOTAL DUE $1,623.00, comprised of the following:

a. FINE of $820 PLUS:

b. Court Operations Assessment* (PC1465.8) $160.00

c. Criminal Conviction Assessment" (GC70373) $120.00

d. Criminal Justice Admin. Fee (GC29550 et seq.) $154.00

p. Theft Fine (PC1202.5) incl. PA$ 39.00 (LEA SDPD)

r. Restitution Fine (PC1202.4(b)) $300.00 ■ plus 10% (PC1202.4(I) [county collection feel) $30.00"

s. Probation Revocation Restitution Fine (PC1202.44) $300.00 SUSPENDED unless probation is revoked.

w. All fines and restitution are to be paid to Probation through Revenue & Recovery of $50 per month. Payments are to start on 08/07/2018

4. EXTRADITION WAIVER: Deft. waives extradition and agrees NOT to contest any extradition to California.

5. PROBATION DEPARTMENT PUBLIC SERVICE PROGRAM (PSP) / VOLUNTEER WORK:

c. Complete up to 20 days PSP, if directed by the P.O.

6. THE DEFENDANT SHALL:

a. Obey all laws. Minor traffic infractions will not affect probation status.

b. Follow such course of conduct that the P.O. communicates to defendant.

d. Not knowingly possess a firearm, ammunition, or deadly weapon.

e. Comply with a curfew if so directed by the P.O.

f. Have a photo ID card on his/her person at all times.

h. Provide DNA samples as directed by Sheriff or P.O. (PC296).

i. Report to the P.O. as directed / within 72 hours of any release from custody. If homeless, report to the nearest probation office in San Diego County within 72 hours. Thereafter, report in person the first day of each month until directed to do otherwise.

j. Report any change of address or employment to the P.O. and Revenue & Recovery/ Court Collections within 72 hours.

k. Provide true name, address, and date of birth if contacted by law enforcement. Report contact or arrest in writing to the P.O. within 7 days. Include the date of contact/arrest, charges, if any, and the name of the law enforcement agency.

l. Obtain: P.O.'s consent before leaving San Diego county. court's and P.O.'s written consent before moving out of state.

m. Be permitted to travel to or reside in Texas if approved by interstate compact.

n. Submit person, vehicle, residence, property, personal effects, computers, and recordable media including electronic devices to search at any time with or without a warrant, and with or without reasonable cause, when required by P.O. or law enforcement officer.

o. Seek and maintain full-time employment, schooling, or a full-time combination thereof if directed by the P.O.

r. Participate and comply with any assessment program if directed by the P.O.

s. Any contraband seized by Probation Dept. to be destroyed or retained by Probation for education purposes, at their discretion.

CONDITIONS LISTED IN SECTIONS 7, 8, 9, 10, 11, 12, AND 13 ARE NORMALLY IMPOSED IN CASES INVOLVING SPECIFIED OFFENSES, E.G., DRUGS, ALCOHOL, ETC., BUT MAY BE IMPOSED FOR OTHER OFFENSES IF REASONABLE AND LAWFUL.

7. TREATMENT, THERAPY, COUNSELING:

a. Take psychotropic medications if prescribed/ ordered by doctor.

b. Participate in treatment, therapy, counseling, or other course of conduct as suggested by validated assessment tests.

c. Provide written authorization for the P.O. to receive progress and compliance reports from any medical/mental health care provider, or other treatment provider rendering treatment / services per court order under the terms of this grant of probation.

d. Attend and successfully complete Psychiatric Substance AS Abuse-IF _____ _ counseling program approved by the P.O., as / if directed by the P.O. Authorize the counselor to provide progress reports to the probation officer or court when requested; all costs to be borne by defendant.

8. ALCOHOL CONDITIONS:

b. Do not knowingly use or possess alcohol if directed by the P.O.

c. Attend 'Self-help' meetings if directed by the P.O.

f. Submit to any chemical test of blood, breath, or urine to determine blood alcohol content and authorize release of results to P.O. or the court whenever requested by the P.O., a law enforcement officer, or the court ordered treatment program,

h. Do not be in places, except in the course of employment, where you know, or a P.O. or other law enforcement officer informs you, that alcohol is the main item for sale.

9. DRUG CONDITIONS:

a. Complete a program of residential treatment and aftercare if directed by the probation officer.

c. Do not knowingly use or possess any controlled substance without a valid prescription

and submit a valid sample for testing for the use of controlled substances/alcohol when required by the P.O., law enforcement officer, or treatment provider

10. VIOLENCE AND SEX CONDITIONS:

a. Do not unlawfully use force, threats, or violence on another person.

c. Submit to service and comply with any order of the Superior Court, including restraining orders.

d. Comply with any protective order issued pursuant to PC136.2 / PC1203.097(a)(2).

g. Obtain P.O. approval as to ■ residence ■ employment.

j. Do not knowingly contact or attempt to contact ' annoy, or molest, either directly or indirectly Lindsay Unruh, Greg Unn,h, Melissa Johnson (McArthur) .

11. CONTINUOUS ELECTRONIC MONITORING/GPS:

a. Participate in Global Positioning System (GPS) monitoring Das mandated by PC1202.8(b) ■ if directed by a P.O.

b. Comply with all zone and curfew restrictions, GPS charging requirements and equipment care if participation directed by P.O.

c. Reimburse the Probation Department$ 2,500 (up to $2500.00) to cover replacement costs in the event that the GPS equipment is not returned, is lost, stolen, or damaged in any manner.

12. OTHER CONDITIONS:

f. Do not knowingly own, transport, sell, or possess any weapon, firearm, replica firearm or weapon, ammunition, or any instrument used as a weapon.

14. FURTHER CONDITIONS:

a. No marijuana use at all "if" directed by PO.

15. ORDER RE PROBATION COSTS:

You are ordered to cooperate with the probation officer or their authorized representative as directed, in the completion of the financial evaluation required under PC1203.1b. If it is determined that you have the present ability to repay the county for all or any part of the costs of the pre-sentence investigation and/or costs of probation supervision, the county will request that a judgment be issued against you for these amounts. If you do not agree with the determination, you have a right to a hearing before the court for a decision on your present ability. Failure to report and cooperate in the financial evaluation within 180 days of the date of this order will be deemed a waiver of your right to such a hearing, and a civil judgment will be entered against you for the amount of the funds expended for the above services. These costs are presently set at $1,433 for the pre-sentence investigation and up to $176 per month for probation supervision. Payment of any costs so determined shall be to Revenue and Recovery.

Payment is not a condition of probation but any judgment obtained may be enforced in the manner of any civil judgment.

17. REPORT TO REVENUE AND RECOVERY (R&R):

You are ordered to report to R&R within 20 days of the date of this order for a determination of your present ability to pay the cost of your court appointed attorney (PC987.8). Revenue and Recovery has an office at each of the following locations: Hall of Justice Room 454 330 W. Broadway San Diego, CA

If it is determined that you have the present ability to pay all or any part of the costs incurred, the county will request that a judgment be issued against you for this amount. If you do not agree with this determination, you have the right to a hearing before the court for a decision on your present ability. Failure to report within the 20 days will be deemed a waiver of your right to such a hearing, and a civil judgment will be entered against you for the amount of costs incurred. Payment of any costs so determined shall be to Revenue and Recovery. Payment is not a condition of probation but any judgment obtained may be enforced in the manner of any civil judgment.

REFERRAL TO THE DEPARTMENT OF REVENUE AND RECOVERY / COURT COLLECTIONS:

Defendant's Address: WITHHELD
Phone Number: (858)876-4346
DOB: [WITHHELD]

In open court on: June 07, 2018

Timothy Walsh
Judge of the Superior Court

SUPREME COURT
STATE OF CALIFORNIA

THE PEOPLE,
Plaintiff and Respondent,

v.

GAVIN B. DAVIS,
Defendant and Appellant.

S258194

(Fourth Appellate District, Division One,
D074186)
(Super. Ct. Nos. SCD266332, SCD273043)

11/26/2019 Petition for review denied

APPENDIX C

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

THE PEOPLE,
Plaintiff and Respondent,

v.

GAVIN B. DAVIS,
Defendant and Appellant.

D074186
(Super. Ct. Nos. SCD266332, SCD273043)

09/10/2019
Order denying rehearing petition filed.
The Petition for Rehearing is Denied.

APPENDIX D

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff and Respondent,
v.
GAVIN B. DAVIS,
Defendant, Appellant and Petitioner.

Supreme Court
Case No. _____

Appeal Court (4th Dist., Div. 1)
Case No. D074186

Superior Court
Case No.: SCD266332, SCD273043

APPEAL FROM THE SUPERIOR COURT OF SAN DIEGO COUNTY
Honorable Timothy Walsh, Judge

PETITION FOR REVIEW

GAVIN DAVIS
625 "C" St., #325
San Diego, CA 92101
(858) 876-4346
gavinprivate96@gmail.com
Pro per seeking Counsel

APPENDIX E

TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner, Mr. Gavin B. Davis, Pro Per, timely petitions this Court for review of the Opinion of the Court of Appeal, Fourth Appellate District, Division One (case no.: D074186), issued by that court on August 21, 2019 (Exhibit A). Petitioner's retained attorney, Mr. John O. Lanahan (CSBN# 133091), briefed such matter for the Petitioner, including filing a Petition for Rehearing on September 5, 2019, as denied September 10, 2019; and, finding, in part, that the Court of Appeal has errored in relying on an incomplete and inaccurate fact pattern and procedural background of this controversy.

QUESTIONS PRESENTED

Did the Court of Appeal err in its (a) inquiry and (b) application of *Boykin / Tahl*[23] analysis under its (c) "totality of circumstances" standard of review in relying on an (d) incomplete and erroneous factual record[24] in denying Appellant's appeal of his timely and diligent Withdraw of Plea (April 23, 20198) efforts prior to Sentencing (June 7, 2018); where, Petitioner states that (e) there is substantially more than a

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[23] See *Boykin v. Ala.* (1969) 395 U.S 238, 243; *In re Tahl* (1969) 1 Cal.3d 122, 132.

[24] See fn 10 for detail.

reasonable probability[25] had Petitioner (i) been at liberty[26] subject to (f) reasonable and flexible bail[27]; or, (ii) been presented with the alternative to the Plea Hearing (i.e. a bail review hearing, as had been calendared three (3) times); he would have continued to trial on all matters (as still sought) and not entered into any Plea Agreement[28], as entered into involuntary / coerced in direct exchange for that which he was already awaiting: his pre-trial liberty; meeting the requisite standard of review under the proper

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[25] A low threshold without substantial burden of proof

[26] Petitioner had: (a) made twenty-seven (27) non-duplicative court appearances while at liberty

[27] Petitioner was held in pre-trial detention and custody for approximately six (6) months awaiting three (3) bail review motions calendared without filing or argument thereupon, on excessive, and punitive bail of One Million Dollars ($1,000,000), believe to be the highest monetary bail in the history of California for one (1) felony charge, a non-violent Ca PC § 594(a) for property damage on his wholly-owned (i.e. non-communal) Recorded Homestead

[28] A coerced and involuntary plea, April 23, 2018 (see D074186 Briefing) application of *Boykin / Tahl*), which is a fundamental error in the opinion skewing the analysis and result of the proceedings under such totality of the circumstances[28] and having a "substantial and injurious effect or influence in determining the jury's verdict [or in this case the prejudice of a non-satisfactory verdict absent the benefit of a jury trial as afforded, a priori, under the Seventh Amendment,] ...," prima facie (see also Petition for Rehearing, Basis for Rehearing)

REASONS FOR GRANTING REVIEW

(1) The Court's Opinion (August 21, 2019) in not liberally allowing for and granting a Withdraw of the April 23, 2018 Plea, as sought, after being held on excessive, punitive and unreasonable bail of One Million Dollars ($1,000,000), several magnitudes of order off the bail schedule, while facing one non-violent felony charge for property damage on Petitioner's wholly-owned Record Homestead is (a) an error that has a "substantial and injurious effect or influence in determining the jury's verdict [or the prejudice of a non-satisfactory verdict / judgment absent the benefit of a jury trial in the form of a plea agreement, prima facie] . . .," ; and, (b) is contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; where Petitioner had, in priority, his: Fourth (pre-trial liberty), Eighth (non-Excessive or Punitive bail), Fifth (Due Process), Fourteenth (Due Process), Seventh (Jury Trial) and even Ninth Amendment, rights violated. (28 U.S.C. § 2254(d)(1))

(2) Also of note, a priority issue in the overall controversy involves the misuse of monetary bail, and pre-trial detention and custody. In California, as well as in other states and before the federal court system, such issues, are of Constitutional dimension (e.g. 4th and 8th Amendments) and great importance (Rule 8.500 (b),(c)); and, in California existing law has been approved for change (see e.g. Ca SB 10) (*People v. Feggans*, supra, 67 Cal.2d 444, 447; attorneys have a duty to advocate for changes in the law).

Petitioner finds that this controversy would be additive to pending California Supreme Court case, *In re Humphrey*, S247278. (A152056; 19 Cal.App.5th 1006; San Francisco County Superior Court; 17007715)(in collecting cases, and a Petition for Review may be Granted a grant and hold," pending the Court's decision of the lead case. (Cal. Rules of Court, rule 8.512(d)(2))) as a priori, the Issue is the same: monetary bail, excessive bail, punitive bail, pre-trial liberty, 4th Amendment, 8th Amendment (Constitutional Rights) – in this case, have direct application before and after CA SB 10, the Bail Money Reform Act8. (also, exhausting state remedies is a priority in this movement to preserve federal rights, *O'Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999), where Rehearing was first sought (September 5, 2019), as the California Supreme Court can, and normally will, refuse to reach an issue because of the failure to petition for rehearing. (See, e.g., *People v. Peevy* (1998) 17 Cal.4th 1184, 1205-1206; and, *People v. Bransford* (1994) 8 Cal.4th 885, 893, fn. 10.) If the Supreme Court declines to reach an issue because of this procedural default, there's a good chance a federal court will refuse to consider the issue on federal review based on the fact that it was decided on "independent and adequate state procedural grounds." (See, e.g., *Wainright v. Sykes* (1977) 433 U.S. 72.)(also see *Jackson v. Virginia* (1979) 443 U.S. 307 and *Estelle v. McGuire* (1991) 502 U.S. 62, 69, regarding federal constitutional claims (e.g. bail, and Fourth and Eighth Amendment right violations, a priori to this appeal, without prejudice to any factual basis, substantive due process, etc.)

DID THE COURT OF APPEAL ERR IN ITS (A) INQUIRY AND (B) APPLICATION OF BOYKIN / TAHL[29] ANALYSIS UNDER ITS (C) "TOTALITY OF CIRCUMSTANCES" STANDARD OF REVIEW IN RELYING ON AN (D) INCOMPLETE AND ERRONEOUS FACTUAL RECORD[30]; WHERE, PETITIONER STATES THAT (E) THERE IS SUBSTANTIALLY MORE THAN A REASONABLE[31] PROBABILITY[32] HAD

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[29] 9 See *Boykin v. Ala.* (1969) 395 U.S 238, 243; *In re Tahl* (1969) 1 Cal.3d 122, 132.

[30] See e.g., D074186, Petition for Rehearing, "the Court overlooked his statements in open court that contradicted, rather that supplemented, the waiver of rights he had initialed on the change of plea form" (pg. 5-6) and "minute orders and his own statements at the change of plea hearing show that he believed the only way he would be released was if he pleaded guilty," (*Id.*, pg. 6) in support that the factual basis and procedural background presented in the opinion are inaccurate including but not limited to overlooking such minute orders, actions and intent, and oral dialogue, where Petitioner at many instances in the record raised considerable doubt as to what rights he was waiving in exchange for his immediate (i.e. same day) own recognizance return to pre-trial liberty while not being provided the alternative (i.e. a bail review motion as previously repeatedly calendared); and, therefore, reliance on a partial and/or incorrect fact pattern.

[31] Act is an Amendment to Section 27771 of the California Government Code, and to add Section 1320.6 to, to add Chapter 1.5 (commencing with Section 1320.7) to Title 10 of Part 2 of, and to repeal Chapter 1 (commencing with Section 1268) of Title 10

PETITIONER (I) BEEN AT LIBERTY[33] SUBJECT TO (F) REASONABLE AND FLEXIBLE BAIL[34]; OR, (II) BEEN PRESENTED

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of Part 2 of, the Penal Code, relating to pretrial release, and detention

[32] A low threshold without substantial burden of proof

[33] Petitioner had: (a) made twenty-seven (27) non-duplicative court appearances while at liberty (4/14/16; 6/16/16; 7/7/16; 7/13/16; 7/21/16; 8/11/16; 8/24/16; 8/25/16; 10/5/16; 11/3/16; 11/14/16; 11/16/16; 1/27/17; 1/30/17; 2/14/17; 2/28/17; 3/17/17; 3/29/17; 4/5/17; 4/6/17; 4/14/17; 7/6/17; 7/28/17; 8/15/17; 8/29/17; 9/21/17; 10/10/17 (am) in these cases; and, (b) missed court on three (3) occasions, each with good cause: (i) Defendant's Pro Per Ex Parte on February 7, 2017 (not noticed); (ii) April 17, 2018 (requested each of: attorney through OAC; waiver of conflict with prior attorney; and, continuance for an attorney (i.e. good cause); and, (iii) one of two (1 of 2) court appearances on October 10, 2017 (when his bail was raised to an unconscionable One Million Dollars), for an unavoidable medical issue, also representing Good Cause. Defendant has also several times flown several thousand miles to appear at court, at liberty; including on only 24 hours notice." (ASP AB, pg. 6, ¶ 9); and, (b) as indicated, Petitioner had pending bail review motion on calendar at least three (3) times during his pre-trial detainment, which was removed by his defense counsel without notice, filing any form of motion or otherwise (note: D074186, R. at 725., one of several reasons Declared pursuant to Ca PC § 1018, "the Bail Review Motions were never filed, could have grounds, on this alone, of the ineffective assistance of counsel, a common legal ground for filing a Motion to Withdraw a Plea (failure to file and argue the appropriate motions)

[34] Petitioner was held in pre-trial detention and custody for approximately six (6) months awaiting

WITH THE ALTERNATIVE TO THE PLEA HEARING (I.E. A BAIL REVIEW HEARING, AS HAD BEEN CALENDARED THREE (3) TIMES); HE WOULD HAVE CONTINUED TO TRIAL ON ALL MATTERS (AS STILL SOUGHT) AND NOT ENTERED INTO ANY PLEA AGREEMENT[35], AS ENTERED INTO INVOLUNTARY / COERCED IN DIRECT EXHANGE FOR THAT WHICH HE WAS ALREADY AWAITING: HIS PRETRIAL LIBERTY; MEETING THE REQUISITE STANDARD OF REVIEW UNDER THE PROPER APPLICATION OF BOYKIN / TAHL), WHICH IS A FUNDAMENTAL ERROR IN THE OPINION, SKEWING THE ANALYSIS AND RESULT OF THE PROCEEDINGS UNDER SUCH TOTALITY OF THE CIRCUMSTANCES[36] AND HAVING A "SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT [OR IN THIS CASE THE PREJUDICE OF A NON-SATISFACTORY VERDICT ABSENT THE BENEFIT OF A JURY TRIAL AS AFFORDED, A

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three (3) bail review motions calendared without filing or argument thereupon, on excessive, and punitive bail of One Million Dollars ($1,000,000)

[35] A coerced and involuntary plea, April 23, 2018 (see D074186 Briefing)

[36] Given factual errors and omissions (see e.g. Petition for Rehearing, as well as brought forth herein), it is impossible to, a priori, view the situation under the standard of review: i.e. what would the party have done with a reasonable probability when presented with the alternatives to plea (e.g. in this situation, bail review hearing and substantive movement, e.g. as evidenced via three (3) calendared hearings)

PRIORI, UNDER THE SEVENTH AMENDMENT,] ...," PRIMA FACIE (SEE ALSO PETITION FOR REHEARING, BASIS FOR REHEARING) *BOYKIN / TAHL* DISCUSSION

The Court's Opinion indicates that, "a guilty plea must be knowing, voluntary, and intelligent under the totality of the circumstances. (*People v. Farwell* (2018) 5 Cal.5th 295, 301-302.) Upon a showing of good cause, the court may allow a defendant to withdraw a plea of guilty at any time before judgment. (Ca PC § 1018.) To establish good cause, it must be shown that defendant was operating under mistake, ignorance, or any other factor overcoming the exercise of his free judgment. (*Ibid.*; *People v. Sandoval* (2006) 140 Cal.App.4th 111, 123.)" (Opinion, Discussion, pg. 6). As noted in the factual section of this filing, hereafter, the Court of Appeal did not adequately review and incorporate Petitioner's actions in regard to his diligent and timely efforts to withdraw his plea.

The Court's Opinion continues, "Davis claims the trial court abused its discretion in denying his motion to withdraw his guilty plea because: (1) the record does not indicate that he knowingly waived his constitutional rights, (2) the plea was made in exchange for a promise that he would be released on bail, (3) there was an insufficient factual basis for the crime of vandalism, and (4) Davis was not advised of the collateral consequence of the loss of a professional license. We conclude that these arguments lack merit." (Opinion, Discussion, pg. 7)

"Davis first argues that he did not knowingly waive his constitutional rights. To this

end, he points out that during his change of plea hearing, the court only explicitly identified the right to trial by jury.5 He therefore claims the record does not indicate that he was apprised of his constitutional rights and then knowingly waived them. We disagree. (fn 5, Davis argues that he must b informed of and then knowingly and intelligently waive the right against selfincrimination, the right to trial by jury, and the right to confront one's accusers. (See *Boykin v. Ala.* (1969) 395 U.S 238, 243; *In re Tahl* (1969) 1 Cal.3d 122, 132.) (Id.)

Operative to the Court's reasoning is the concept of "totality of the circumstances," yet in a closer purvey of case law history surrounding precedential authority under such notion, the totality of the circumstances weigh decidedly in favor of the Appellant, and the withdraw of his plea.

Appellant, in review of the Court's authority found in the Opinion, *People v. Howard* (1992) 1 Cal.4th 1132, 1180, Appellant, notes the following in part: (a) "Nor should the trial court blind itself to everything except defense counsel's presentation. Indeed, we have emphasized that such rulings require trial judges to consider "all the circumstances of the case" (*Wheeler*, supra, 22 Cal.3d at p. 280) and call upon judges'" 'powers of observation, their understanding of trial techniques, and their broad judicial experience.'" (*People v. Bittaker* (1989) 48 Cal. 3d 1046, 1092 [259 Cal. Rptr. 630, 774 P.2d 659] (Bittaker), quoting *Wheeler*, supra, 22 Cal.3d at p. 281; see also *Batson*, supra, 476 U.S. at p. 97 [90 L.Ed.2d at p. 88].)"

(i) In SCD266332, Appellant made an automatic peremptory challenge (a prima facie showing is evidenced in the Record (or if not, purposefully omitted (e.g. transcript) requiring augmentation) of Judge Jeffrey F. Fraser on April [6], 2017, which was unlawfully denied—a [structural] defect rendering all such future findings in the case(s) as reversible

(ii) Appellant's trial attorneys filed no pre-trial motions, and did not advance the proceedings, denying the Appellant due process, prima facie—failing to timely file and argue motions (including but not limited to the three (3) bail review motions) is common grounds for an ineffective assistance of counsel (IAC) claim, a common reason for withdrawing a plea, which can be raised via habeas relief.

(iii) "We expressly based our decision in *Yurko* on the interpretations of federal law set out in *Boykin* and *Tahl*. (See *Yurko*, supra, 10 Cal.3d at p. 863.) However, the overwhelming weight of authority no longer supports the proposition that the federal Constitution requires reversal when the trial court has failed to give explicit admonitions on each of the so-called *Boykin* rights. Accordingly, we have no choice but to revisit our prior holdings. "The question of an effective waiver of a federal constitutional right in a proceeding is of course governed by federal standards." (*Boykin*, supra, 395 U.S. at p. 243 [23 L.Ed.2d at p. 279].)" "As discussed below, we now hold that *Yurko* error involving *Boykin/Tahl* admonitions should be reviewed under the test used to determine the validity of guilty pleas under the federal Constitution. Under that test, a plea is valid if the record affirmatively shows that

it is voluntary and intelligent under the totality of the circumstances. (See *North Carolina v. Alford* (1971) 400 U.S. 25, 31 [27 L. Ed. 2d 162, 167-168, 91 S. Ct. 160]; *Brady v. United States* (1970) 397 U.S. 742, 747-748 [25 L. Ed. 2d 747, 755-756, 90 S. Ct. 1463]; see also the cases cited in fn. 18, post.) In the exercise of our supervisory powers, we shall continue to require that trial courts expressly advise defendants on the record of their *Boykin/Tahl* rights. However, errors in the articulation and waiver of those rights shall require the plea to be set aside only if the plea fails the federal test."

""In the 22 years since *Tahl*, our interpretation of federal law in that opinion has not garnered significant support in the federal courts. Indeed, the high court has never read *Boykin* as requiring explicit admonitions on each of the three constitutional rights. Instead, the court has said that the standard for determining the validity of a guilty plea "was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." (*North Carolina v. Alford*, supra, 400 U.S. at p. 31 [27 L.Ed.2d at p. 168], citing *Boykin*, supra, 395 U.S. at p. 242 [23 L.Ed.2d at p. 279]; see also *Brady v. United States*, supra, 397 U.S. at pp. 747-748 [25 L.Ed.2d at pp. 755- 756].)" *People v. Howard* (1992)

In this case, the alternative course of action to the defendant was a bail review motion; and after awaiting one for six months, being calendared three (3) times with no filing or argument thereupon, Appellant felt the only way he could obtain his pre-trial liberty given that his trial counsel was clearly ineffective in doing such,

was to enter the plea – doing so in direct exchange for his freedom on his Own Recognizance on such day, and then immediately moving to withdraw the plea. The Record of April 23, 2018, does not indicate that defendant was apprised of his alternatives to the plea by any party (i.e. counsel, opposition or the court) (i.e. namely having a bail review motion, as he sought and was unconstitutionally denied).

In *Howard*, the court goes on in commenting from "*People v. Bloom* (1989) 48 Cal. 3d 1194, 1219 [259 Cal. Rptr. 669, 774 P.2d 698] (*Bloom*), in which we analyzed another defendant's request to control the presentation of his case as a motion for [1 Cal. 4th 1186] self representation. Unlike the defendant in *Bloom*,, however, defendant here did not seek to " 'go pro. per.,' " to assume the role of " 'co-counsel,' " to call witnesses, or to participate in their examination. (*Id.*, at p. 1219.) In the case before us, to be sure, defendant's wishes severely limited what counsel might do on his behalf. However, defendant was entitled to place such limits, and counsel could properly choose to respect them. (See *Deere II*, supra, 53 Cal.3d at pp. 713-717; *Lang*, supra, 49 Cal.3d at p. 1031.)" Yet, in this case, Appellant had done precisely this, and was denied (April 23, 2019, Transcript reflects such notion).

"For its part, *Alford* states that *United States v. Jackson* (1968) 390 U.S. 570 [20 L. Ed. 2d 138, 88 S. Ct. 1209], "established no new test for determining the validity of guilty pleas. The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." (400 U.S. at p. 31 [27 L.Ed.2d at

pp. [1 Cal. 4th 1200] 167- 168].)" Jackson dealt only with the question whether a guilty plea entered to avoid the death penalty was" voluntary. Here too, the quoted statement does not bear on the issue of express admonitions and waivers.

"For example, in many cases a reviewing court may perhaps be able to declare the error harmless by finding that the trial court substantially complied with its obligations. The standard, suggested by the case law, is whether "the record ... affirmatively disclose[s]" (*Brady v. United States*, supra, 397 U.S. at p. 747, fn. 4 [25 L.Ed.2d at p. 756]) that the guilty plea or admission in question "represents a voluntary and intelligent choice among the alternative courses of action open to the defendant" (*North Carolina v. Alford*, supra, 400 U.S. at p. 31 [27 L.Ed.2d at p. 168]). That is to say, does the record show on its face that the guilty plea or admission amounts to a knowing and voluntary decision to exercise or abandon the three basic trial rights? The relevant choice-trial or no trial-can be knowing and voluntary if and only if what is chosen thereby-trial rights or no trial rights-is itself understood and intended. fn. 5"

"In other cases, in which substantial compliance cannot be found, the reviewing court may simply vacate the judgment in pertinent part and remand the cause to the trial court for a limited evidentiary hearing. At such a hearing, the court would determine whether the defendant's guilty plea or admission was in fact knowing and voluntary. If yes, it would reinstate the judgment. If no, it would strike the guilty plea or admission and allow the defendant to respond

to the charge anew." (*People v. Guzman* (1988) 45 Cal. 3d 915, 968 [248 Cal. Rptr. 467, 755 P.2d 917], which holds that such an error on an admission is subject to harmless-error analysis under what is evidently the "reasonable probability" standard of *People v. Watson* (1956) 46 Cal. 2d 818, 836 [299 P.2d 243]; *People v. Wright* (1987) 43 Cal. 3d 487, 493-495 [233 Cal. Rptr. 69, 729 P.2d 260], which holds that such an error on a submission that is not tantamount to a guilty plea is subject to harmless-error analysis under the *Watson* "reasonable probability" standard; *In re Ibarra* (1983) 34 Cal. 3d 277, 283, footnote 1 [193 Cal. Rptr. 538, 666 P.2d 980], which states in dictum that such an error on a guilty plea is automatically reversible; *In re Ronald E.* (1977) 19 Cal. 3d 315, 320-321 [137 Cal. Rptr. 781, 562 P.2d 684], which makes the same statement in dictum; *People v. Johnson* (1989) 212 Cal. App. 3d 1179, 1182 [261 Cal. Rptr. 159], which holds that such an error on a guilty plea or an admission is automatically reversible; *People v. Shippey* (1985) 168 Cal. App. 3d 879, 889 [214 Cal. Rptr. 553], which holds that such an error on an admission is subject to harmless-error analysis under the *Watson* "reasonable probability" standard; and *People v. Prado* (1982) 130 Cal. App. 3d 669, 675 [182 Cal. Rptr. 129], which makes the same holding). The mere calendaring of the three (3) bail review motions over such a lengthy period of time, is prima facie evidence, that there is a reasonable probability Petitioner would unequivocally have not entered into the plea had the bail review motions been filed in writ, and argued upon before the court. Therefore, the plea is automatically reversible.

The Court's Opinion indicates that, "further, the court may rely on a validly executed waiver form as a sufficient advisal of rights. (*People v. Cisneros-Ramirez* (2018) 29 Cal.App.5th 393, 402-403 *Mosby*, supra, 33 Cal.4th at pp. 360-361.) The court need not specifically review the waiver with the defendant when both the "defendant and his attorney have signed waiver form, both have attested to defendant's knowing and voluntary relinquishment of his rights, and the trial court's examination of the defendant and his attorney raised no questions regarding the defendant's comprehension of his rights or the consequences o his plea." (*Cisneros-Ramirez*, at p. 402; *People v. Panizzon* (1996) 13 Cal.4th 68, 83-84.)"

The Court's Opinion adds, "We independently examine the entire record to determine whether the defendant knowingly and voluntarily waived his rights. (*People v. Elliott* (2012) 53 Cal.4th 535, 592.)" (*Id.*) Yet, it is clear that the Court did not review the entire record de novo, or it would have found that Appellant at many instances in the Record raised considerable doubt as to what he was waiving in exchange for his return to pre-trial liberty (see factual omissions brought forth further in this filing in support) ("Absent something in the record raising a doubt defendant understood and knowingly waived his appeal rights, a written waiver of those rights by defendant, coupled with defendant's and his attorney's attestations to the court that defendant understood and voluntarily relinquished each right, is sufficient to establish a defendant's waiver of his right to appeal was knowingly, voluntarily, and intelligently made."

(*Panizzon*, supra, 13 Cal.4th at pp. 83-84.) Therefore, Appellant has met this burden as the records shows in numerous instances he has met the low burden of expressing and raising doubt, prior to the Court propounding him into clear submission. It is also noteworthy that in *Panizzon* (which the Court's Opinion relies upon and brings forth), the crimes were of grotesque moral turpitude (as opposed to this controversy), and also such appeal there was no probable cause found pursuant to Ca PC § 1237.5 (as opposed to this controversy, where on June 8, 2018, after being denied an oral withdraw of plea at Sentencing of June 7, 2018, Petitioner, moving Pro Per, filed his own Notice and Statement of Appeal and requesting that the trial court issue a certificate of probable cause for the appeal pursuant to 1237.5, which the trial court did (June 19, 2018), rendering the application of *Panizzon* to this controversy not highly relevant – *Panizzon* didn't have probable cause for the appeal, which this Petitioner did and does in continuing to seek equitable redress and the upholding of his Constitutional rights.).

FACTUAL BASIS AND PROCEDURAL BACKGROUND PRESENTED IN THE OPINION ARE INACCURATE

The Opinion, notes that "[o]n October 5, 2016, the court held a hearing regarding [Appellant's] bail status. [Appellant's] wife testified that [Appellant] was threatening her and that [Appellant] left a voicemail threatening to kill her father. The court found that [Appellant] violated court orders, failed to appear at a

forensic evaluation, and had threatened a protected person with great bodily injury. The court revoked [Appellant's] bail and remanded him into custody. [Appellant] was later released from custody after bail was reinstated." (Opinion at pg.

2) In response thereto, Appellant (Davis) notes, in part, that:

(a) a priori, the Court is referencing information from MH112708, a special civil hearing inside of a criminal proceeding (i.e. CA SDC 266332), and therefore is inadmissible, other than IF (solely) Appellant is, or is not, competent to stand trial (a binary, in the absolute, admission for reliance to the criminal proceeding(s); and, further

(b) this was disputed, as follows:

(i) Appellant had in fact noted that he would in fact report, or appear, for the evaluation, or otherwise so as to show respect for the court, but did not need to consent and could and would decline the evaluation, itself, as a defendant is not legally required to undergo a "same" evaluation, or separately, "treatment" before IST proceedings can begin; finding authority in *Pederson v. Superior Court* (2003), 130 Cal. Rptr. 2d 289. [105 Cal. App. 4th 931.]

(ii) In the Supreme Court of *Estelle v. Smith*, supra, (1981) 451 U.S. 454, the United States Supreme Court ruled that an accused need not submit to a custodial mental competency examination unless he has been informed of and waived his *Miranda* rights. Appellant had not waived any rights—and therefore, the custody on October 5, 2016 in MH112708, was illegal, on this

grounds alone, not requiring to reach any argumentation on the merits.

(iii) Appellant had evidenced he would legally appear for the court appeared examination, to show respect of the court and the order and has rightfully afforded and intended to decline the evaluation upon such appearance. Appellant indicated that as the private doctor, Glassman, had been unable to be located for third party service of process of cross-litigation against parties accused of initiating the sham proceeding on three attempts, he would be provided them in person on October 17, 2016, upon which he would promptly leave thereafter, and as indicated no party is able to take Appellant into custody in violation of his Constitutional rights.

(iv) Also on Record on October 5, 2016, "In response, Ms. Ramirez to the court, "your Honor, in regard the evaluation issue, Mr. Davis has unequivocally indicated that he will not participate in any 1368 evaluation." Once again seeking to clarify each of his unilateral right to appear and not participate in the evaluation Davis entered the record, "Objection." Continuing, and more fairly, Ms. Ramirez, "he will appear, physically be present, but he will not participate. He believes that he has that right and is calling this a civil hearing to that extent. I'm not sure that Mr. Davis appreciates or understands that while there can be a trial by jury as to the issue of competency, first, as the court indicated, we have to start with an actual evaluation. Once that report comes back, then he can disagree with the results, if it is a finding of incompetent, and experts can be appointed, and he can have a trial."

(v) in regard to allegations of threats and Ms. Unruh's comments, they were disputed, "Ms. Ramirez offered the opportunity to cross-examine Ms. Unruh who has been sworn in. "Ma'am, has there been any face-to-face contact between you and Mr. Davis since the order was in place?" "No, not except the couple of times I've seen him in court." "Is there any threats of violence to you in those e-mails?" "There has been. In -- I guess there's been so many e-mails over the last year. I have seen e-mails this year where he's referenced shoes that OJ Simpson in"

In utter disbelief having sent an email requesting the location of some of his belongings from the parties formerly joined household, "I'm wearing them. It's a type of shoe," in reference to his black Bruno Magli's. "You know, he called my dad and left a voice mail saying he's going to kill my dad." Once again in objection, "I did not." Judge Stone inquiring, "were the threats part of any of the charges?" In response, DDA Trinh, "not as it relates to Lindsay. But as it relates to her father, which is the second case, he contacted him in the middle of the night, and then also issued a threat to him via voice mail. And we're still awaiting to arraign Mr. Davis on that second case." Judge Stone, "and criminal proceedings have not been suspended on that case.

That case is not before me." DDA Trinh, "No." Davis on record, "they had been suspended."

Judge Stone, now passively aggressive and wishing to remand the defendant to custody, stating and inquiring at once "for purposes of bail argument." Taking the cue in stride, DDA Trinh, "that's correct. Judge McGuire was hesitant to proceed, given the status of this case." This was

actually an outright lie by DDA Trinh. The fact remains, the defendant had already posted a $50,000 bail bond for the matter—and there was no bail review provided for either the State of California or for consideration of reduction by the defendant—so this was a clear lie intended to deceive Judge Stone and support DDA Trinh's ulterior motive in calling the ex parte hearing. Judge Stone, in fairness, "okay, and are you aware of any criminal history for the defendant?" DDA Trinh in response, "No." Further, the Ca PC § 422 charge was outright dropped, pre-trial (August 2017) with no lesser charge in its place (as reflected in the Record Minute Orders and Prosecutorial Complaints).

(vi) Ms. Ramirez, also on Record on October 5, 2016, "Yes, your Honor. I do want to make some points for this record. As to the request to remand Mr. Davis, the Court has in its possession e-mails, so I don't need to discuss that. Those e-mails have numerous parties, including the subject of today's hearing, Lindsay Davis, also Unruh. And the conditions of his OR happened, as Counsel explained, back in April of this year. Any subsequent contacts were in the context of Mr. Davis having complaints or disagreements with what is occurring in the family law case. They do have a family law case pending. As is common in those types of cases, the relationship ended on terms that were not amicable. Ms. Davis and her father are a source of emotional distress to Mr. Davis, and he has expressed that quite openly. He has attempted to litigate the matter beyond family court into federal court, and there are some issues with family court limiting his

ability to file motions or make contact with the attorney that was representing his ex."

(vii) there is a specific procedure to be followed regarding the ordering of a 1368 Evaluation pursuant to C.C.P. §§ 2032 (b)(d)(and otherwise), which requires that Ms. Victoria Ramirez provide a Declaration, stating facts showing a reasonable and good faith attempt to arrange for of such examination by an agreement—what cannot lawfully happen is the oral request and grant of a 1368 hearing outside of all formalities of C.C.P. § 2032. Further, in *Baqleh v. Superior Court (People)* (2002), "though not constitutionally defective, the order directing petitioner to submit to a mental examination by one or more experts designated by the [100 Cal. App. 4th 506] prosecution does not comply with the Civil Discovery Act and, accordingly, must be vacated

(viii) In *United States v. Wade* 388 U.S. 218, 226-227 (1967) it is stated that "it is central to [the Sixth Amendment] principle that in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." The right to counsel clearly applies to the type of competency proceedings with which we are here concerned. In *Estelle v. Smith*, supra, 451 U.S. 454 the Supreme Court found that the defendant's right to counsel attached at the time the trial judge informally ordered the state's attorney to arrange a psychiatric examination to determine whether he was competent to stand trial, which the court

described as a " 'critical stage' of the aggregate proceedings" against him. (*Id.* at p. 470.). Yet in this case and instance, there was a clear conflict between Davis and his counsel, Ms. Ramirez; therefore, a priori (i.e. in priority), the first manner is not whether Davis is competent to stand trial, withstanding that merely discussing such notion intelligently holds such as self-evident in a court of law, but whether Ms. Ramirez should be subject to either or both of a *Mardsen* Motion or a *Faretta* Motion, which is held as true in procedural priority. Due process violations of this magnitude run far afield of abuse of discretion and create substantial harm and injury.

(ix) From the Court's own authority, *People v. Howard* (1992) 1 Cal.4th 1132, 1180 (Opinion at pg. [x]) "a trial court is required to conduct a competence hearing, sua sponte if necessary, whenever there is substantial evidence of mental incompetence. (*Pennington*, supra, 66 Cal.2d at p. 518; *People v. Stankewitz* (1982) 32 Cal. 3d 80, 93 [184 Cal. Rptr. 611, 648 P.2d 578, 23 A.L.R.4th 476]; see also *Pate v. Robinson*, supra, 383 U.S. at p. 385 [15 L.Ed.2d at p. 822].) Substantial evidence for these purposes is evidence that raises a reasonable doubt on the issue. (*People v. Jones* (1991) 53 Cal. 3d 1115, 1152 [282 Cal. Rptr. 465, 811 P.2d 757] (*Jones*).) In this case and controversy, there is no evidence, let alone substantial evidence, from the record of Appellant's "mental incompetence," once again rendering the custody of October 5, 2016 in MH112708 as unlawful, prima facie.

The Opinion states that, "on April 17, 2017, Davis failed to appear in court and the court

issued a bench warrant. The prosecutor filed another case against Davis, alleging his failure to appear. On July 6, 2017, the bail forfeiture order was set aside, and Davis was released from custody." (Opinion at pg. 2). Appellant (Petitioner below) notes that he was already at liberty and not "released from custody," which is factually incorrect and important to distinguish.

(a) "Respondent indicates that on April 14, 2017 and April 17, 2017, Petitioner willfully failed to appear while released from custody on bail, which is disputed. Of note, in part:

(a) Petitioner was at Court on April 14, 2017 (see e.g. Motion for Continuance, D074186, Vol. 3, R. at 561-568., as filed on April 12, 2017, and D074186, Minute Order, Vol. 3, R. at 773.)(Respondent has made an outright invalid statement, which given access to the Minute Orders (as well as citations thereof, and attempts to lodge them without seeking approval of Court), is therefore perjury) (b) On April 12, 2017, in SCD266332, Petitioner filed a Motion to Waive a Conflict (D074186, Vol. 3, R. at 569-587.), as filed on April 12, 2017 with attorney, Mr. Patrick J. Hennessy, Jr. (CSBN #47993), who withdrew from SCD266332 / SCD267655 on January 27, 2017, against the express objections of the Petitioner on such day, and in violation of "each of C.C.P. § 284 and grossly [failing] each of Ca. Rules of Court, Rule 3.1362(a), (b), (c), (d) and (e)" in such improper withdraw. (c) On April 12, 2017, Petitioner filed a Motion for appoint of counsel through the Office of Assigned Counsel (OAC) as previously GRANTED (see e.g. SCD266332, Oral Record 1/27/17. Legal ancillary services were also granted on this day (see Minute Order of 1/27/17

for evidence of same, D074186, Vol. 3, R. at 747.) (d) On April 14, 2017, Petitioner file a Motion for a Continuance, as Mr. Hennessy was on vacation and for other reasonable reasons (e.g. to obtain an attorney) (D074186, Vol. 3, R. at 588-596.) (e) On April 17, 2017, Petitioner filed a Notice of Availability, that he would be unavailable until he obtained counsel per the pending Motions and requests. (D074186, Vol. 3, R. at 597-600. Petitioner was clearly engaged with the process of the law, and not evading it, the legal standard for a failure-to-appear charge. Petitioner had good cause for missing court on April 17, 2017, and had moved in good faith, prima facie. There is no other inference that any reasonable person of a jury could draw." (Appellant's Pro Per Petition for a Writ of Habeas Corpus, HC23597, Reply, pg. 8-9, ¶ 10, as procedurally defaulted with the trial court)

b) On his first court appearance before Judge Jeffrey F. Fraser who issued the Bench Warrants of April 17, 2017 and also October 10, 2017, Appellant had made an automatic uncontestable Peremptory Challenge, which was unlawfully denied.

(c) Apprehended in May 2017 in Vermont where on work assignment, the SDDA aggressively sought the extradition of Appellant in order to continue its unlawful "framing". In lieu thereof, Appellant posted One Hundred Thousand Dollars ($100,000) of bail in Vermont, Fifty Thousand Dollars ($50,000) of bail in California and then flew himself, at liberty back to San Diego to continue addressing the disputed charges. Further, Appellant has had been rightfully sought in April, had now obtained

criminal defense counsel and the professional law firm of Ronis & Ronis (San Diego, California). On July 6, 2018, Mr. Jason A. Ronis (CSBN #229628), made an appearance on behalf the Appellant; and, despite the Plaintiff having just posted a combined One Hundred Fifty Thousand Dollars ($150,000) of combined bail and flown himself at liberty to San Diego, SDDA DDA Leonard Nyugen Trinh, Vindictively and Maliciously requested yet more bail, an additional One Hundred Thousand Dollars ($100,000). On such day the Court provided Appellant two hours to post bail or be booked into custody. Despite such clear burden, Appellant posted the bail and remained at liberty.

(d) "The granting or denial of a continuance during trial traditionally rests within the sound discretion of the trial judge. (*People v. Laursen* (1972) 8 Cal. 3d 192, 204 [104 Cal. Rptr. 425, 501 P.2d 1145]; see also *People v. Grant* (1988) 45 Cal. 3d 829, 844 [248 Cal. Rptr. 444, 755 P.2d 894].) [20b] To establish good cause for a continuance, defendant had the burden of showing that he had exercised due diligence. (*Owens v. Superior Court* (1980) 28 Cal. 3d 238, 250-251 [168 Cal. Rptr. 466, 617 P.2d 1098]; see also § 1050.)" In this case, Appellant clearly had good cause for a Continuance, and, separately, had also demonstrated considerable due diligence in obtaining an attorney in three different manners (i.e. requesting one via OAC, filing a motion to waive the undisclosed conflict with attorney Hennessy, and requesting a continuance to obtain private counsel (ultimately obtained, Ronis & Ronis); as well as being clearly engaged with the process of the law (e.g. the filing of motions,

including a Notice of Availability) and not evading it (e.g. letting all parties know how and where to reach him even during his work travel).

The Opinion states that, "on October 10, 2017, Davis failed to appear in court after the trial court denied a motion to continue his trial. The court forfeited bail and issued another bench warrant. Davis was arrested and remained in custody until he pled guilty on April 23, 2018." (Opinion at pg. 2-3) In response thereto, Appellant notes the following:

(a) Appellant had Good, and Sufficient, Cause for missing one of two (1 of 2) court hearings on October 10, 2017 under Ca PC § 1281. Appellant is still seeking to move against a prior FTA charge (SCD273043). Appellant is not a flight risk, and is clearly "engaged with the process of the law," prima facie. The Court's finding is conclusory and violates procedural due process with an inference beyond that what is supported in the record.

(b) The SDDA, inclusive of 4/23/18 (Dept. 11) conditions of release, had allowed Appellant to appear OR at his last two court appearances, and such precedent has been set and itself is subject to Ca PC § 1319.5.

(c) See authority, *People v. Gillman*, 41 CA3d 181, 191 CR317 (1974), regarding Punitive Bail; and, whereby One Million Dollars ($1,000,000) of bail was clearly excessive and punitive.

(d) See also, Ca PC § 1275(c), and where the Record of October 10, 2017 Record does not indicate that this required statutory provision was properly complied with.

(e) See authority, *In re Aydelotte*, 97 CA 165, 275 D 510 (1929), regarding what constitutes "good cause" (Appellant had missed one of two appearances on such day for an emergency doctor appointment, prima facie good cause)

(f) See authority, *In re McSherry*, supra, 112 CA 4th 860-863, 5 CR3d 497 (2003), in noting that conditions of bail must be reasonable and related to public safety (which the October 10, were, de facto not, especially in light of the most recent OR grants)

(g) See authority, *Gray v. Superior Court*, 125 CA 4th 629, 636-643, 23 CR3d 50 (2015), and an imposition of a bail condition may not violate a defendant's due process rights, which clearly such did.

(h) California Const. (Art. I, sec. 12) guarantees a right to pre-trial release on nonexcessive bail

(i) No opportunity to review the Court's (Fraser, Dept. 37) "specific grounds in support of its decision to set bail in excess of the bail schedule on October 10, 2017, as held as prerequisite, on record in *In re Christian*, 92 CA 4th 1105, 1109-1110, 112 CR2d 495 (2001)"

(j) "Stay Away Orders" themselves are sufficient by case law authority to ensure the protection of an alleged victim (*In re York*, supra, 9 C4th 1145, 40 CR2d 308 (1995)) (i.e. not requiring custody on October 10, 2017, or anytime thereafter, supported by the April 23, 2018 release O/R)

(k) A defendant, such as the Appellant, who is not advised of the consequence and penalties of violating the conditions of release and penalties of violating the conditions of release and

who fails to appear in court cannot be found to have "willfully" failed to do so (*People v. Jenkins*, 146 CA3d 22, 27, 193 CR 854 (1983)

(l) A representation by defense counsel that the defendant had good reason to not be present will support an implied finding that sufficient excuse exists (*People v. Amwest Sur. Ins. Co.*, supra, 56 CA 4th at 925 (1997); also *People v. Surety Ins. Co.*, 55 CA 3d 197, 201, 127 CR 451 (1976)

(m) See rights of O.R. release, and continued O.R. unless missing three (3) court dates thereafter (Ca PC § 1319.5), as Granted in August 2018.

(n) Prosecution failed to timely (i.e. within fourteen (14) days, and there is no implied or express finding of such against a defendant, any defendant (see e.g. *People v. Forrester*, 30 CA 4th 1697, 37 CR2d (1994)) produce any proof that Defendant (Appellant) "willfully" failed to appear (not implied in fact pursuant to Ca PC §§ 1320, 1320.5); Defendant (Appellant's) actions are the opposite of "evasion" of the law," prima facie

(o) Subsequent to Appellant's Grant of O.R. release (August 2017), prosecution was procedurally defaulted from making any argument, or presenting any facts prior to October 10, 2017, in suggesting or requesting grounds for increased bail for the Court's consideration (see case law authority on such estoppels, *In re Berman*, 105 Cal. App. 270, 271-272 (1930); as held in *In re Alberto*, 2nd Dist., Div. Eight, (9/25/02, 9/30/02))

(p) See also, Ca PC § 1281

In regard to the Opinion discussing the April 23, 2018 Plea Hearing (pg. 3-4), the Court

does not indicate (though should), as is highly relevant, that:

(a) upon being sworn in, Appellant indicated that, "I can['t] swear to that statement other than the fact that a plea bargain does not allow full due process; therefore, the full truth cannot be disclosed," alluding to the elephant-in-the room, namely being held on off-schedule bail of One Million Dollars and having had three (3) bail review hearing motions scheduled without any associated filings or argument regarding same, viewing such as a violation of his due process rights, and separately violating his Fourth and Eighth Amendment rights (R. at 1303, ln 20-22)

(b) Appellant, attempting to explain the situation in greater context was [admonished] by the court to, "Mr. Davis, I just want you to answer yes or no when I ask you a question. Okay?" (R. at 1304-1305, ln 28-1), which is a violation of due process and clear abuse of discretion subject to reversal.

(c) Appellant indicates the direct exchange for his pre-trial liberty in regard to entering the plea, "there was that additional promise that i would be -- subject to the pleas, my liberty would be returned today 10 April 23rd. If not, then the pleas in their entirety are null and void, " (R. at 1306, ln 6-11)

(d) Appellant indicates the immediate intention of moving on cross-action, "if I could get a copy [of the plea agreement] today, it will be filed in a federal cross action tomorrow," (R. at 1306, ln 15-17)

(e) Appellant willfully and wisely only concedes his Constitutional rights in the State of

California, knowing that his Constitutional rights are clearly being violated:

THE COURT: AND DO YOU GIVE UP THOSE RIGHTS TO A JURY TRIAL AND ALL OF THE RELATED RIGHTS IN ORDER TO PLEAD GUILTY AT THIS TIME?

THE DEFENDANT: IN THE STATE OF CALIFORNIA, SAN DIEGO COUNTY, YES, YOUR HONOR

Given his view that, a priori, his Fourth and Eighth Amendment rights were being egregiously and unlawfully violated; and, secondarily, therefore, his Due Process rights under the Fifth and Fourteenth Amendments.

(f) when asked if appellant understood, "all of the other potential consequences of your plea as indicated on the [standardized] forms?" Appellant responded that, "as they are stated on the forms, I believe that I understand those to the best of my ability and resources," (R. at 1310, ln 4-9) implying, again (i) that counsel had not fully explained matters to him; and, (ii) that he was not provided with the proper time or resources (e.g. legal materials, a law library) to understand the potential consequences of the plea, seeking merely to be released from pre-trial detention, withdraw his plea and move right back into contesting all charges.

(g) in regard to the Court's inquiry into a Failure-to-Appear charge (R. at 1311, ln 2-17):

THE COURT: ALL RIGHT. NOW, ON THE FAILURE MISDEMEANOR TO APPEAR IT

SAYS AFTER HAVING BEEN ORDERED TO APPEAR IN COURT, YOU FAILED TO APPEAR ON ANOTHER CRIMINAL CASE. THAT'S WHAT I'M WRITING THERE. IS THAT WHAT HAPPENED, SIR?

THE DEFENDANT: YES, THE SAME PLACE. I ASKED -- MAYBE, MR. TRINH, IF I'M INCORRECT –

THE COURT: OKAY. I JUST WANT TO KNOW IF THAT'S TRUE OR NOT?

THE DEFENDANT: I WAS SELF-REPRESENTED, AND THEN I FILED A NOTICE OF AVAILABILITY AND OBTAINED RONIS AND RONIS.

THE COURT: OKAY. I JUST WANT TO KNOW IF YOU FAILED TO APPEAR AS IT'S ALLEGED?

THE DEFENDANT: I WAS NOT THERE ON THE DATE AS ALLEGED, YES

Appellant attempts to show and establish his grounds for missing court, the factual findings of the case fail to provide for the opportunity to show, or dispute, Appellant's steadfast contention that he had good cause and was clearly engaged with the process of the law, prima facie.

In the Opinion, the Court comments, partially, on the June 7, 2018 Sentencing Hearing, however:

(a) the Court does not indicate that, Appellant requests to go on record at the outset of the hearing (R. 1404, ln 13-14), which the Court denies. Thereafter, Appellant indicates that he is, "represented horizontally [i.e. as co-counsel], your Honor," which the Court immediately quashes, "there's no such thing," (R. at 1404-5, ln 27-1)(see also, Court denying Appellant [ ] R. at 1406, ln 16-21)

(b) the Court's Opinion does not indicate that Appellant objects to the Court's acceptance of trial counsel's view that, "based on his conversations with you, determined there's no basis for which you can withdraw your plea," (R. at 1405, ln 7-21)

(c) the Court's Opinion does not indicate that Appellant attempted to diligently filed a Ca PC § 1018 Declaration in regarding to Withdraw of the Plea on (and before) June 7, 2018 (R. at 1406, ln 6-12)

(d) the Court's Opinion does not indicate the Trial Court makes an overtly stronghanded [ ] directed at the Appellant to accept the terms and conditions of probation "[Appellant's] exposed to prison. And in the event he doesn't accept those conditions, or for whatever reason demonstrates to me that he has an inability to comply with them, which he's already kind of started to do, the --," Appellant, commenting, "your Honor --," and the Court stringently and overridingly interjecting, "you're continuing to do it. -- the remedy that the court has available in terms of a sanction is to sentence him to prison. so you might want to take the time to talk to him carefully about those realities." (R. at 1407, ln 1-10)

(e) the Court's Opinion does not indicate that the Appellant via his trial attorney requests to trail review of the terms and conditions of probation, importantly something that cannot be known at the time of entering into a plea, and therefore, rendering any and all withdraw of a plea prior to receipt and substantive review of such terms and conditions of bail as automatic: "your Honor, for the record, I [Jan E. Ronis] had previously sent to Mr. Davis the probation report with the terms and conditions that were attached, and we also met yesterday. He feels as though he does not have enough time to review those this afternoon and would like to trail this until Monday so he'll have adequate time to review those terms and conditions," which the court denies, "okay. Mr. Davis, I'm not -- I'm not inclined to continue the case to give you additional time to go over these conditions. this court is familiar with your lawyer. I've been around in these courts for a period of time that he's been around in these courts." (R. at 1408, ln 5-10; R. at 1409, ln 6-10)

(f) affirms that Appellant does not wish to accept the terms and conditions of the plea, "we already took a break for about 10 minutes to go over these, but I'm not inclined to just push this down range because you don't want to accept the conditions today," and in doing so doubt is raised, prima facie. (R. at 1409, ln 19-22)

(g) Appellant indicates that if the trial court will not accept his timely withdraw of plea then he has no choice but to immediately file an appeal, "your Honor, if I cannot have at least the full business day, then i just have to file an

appeal of what's handed out to me today with the fourth -- with the fourth appellate court.

The Court: Well, you're invited to do that --

The Defendant: And I will.

The Court: -- if you want to do that.

The Defendant: Sure.

The Court: I mean, I have no problem with

The Defendant: That's my only option at this point.

The Court: Well, it's not your only option. Your option is, if you want to trail this --

The Defendant: Your Honor, may we have at least 24 hours, please (R. at 1409-10, ln 26-11)

(h) In the closed session (R. at 1412-1426, the following is Noted as relevant:

(i) Court: "So it's not just today that he's expressing discomfort with his situation or his desire to withdraw his plea," again evidencing doubt as to the plea and desire to timely withdraw." (R. at 1416., ln 3-4)

(ii) Commentary (R. at 1416., ln 19-20; 22-25)

(iii) Commentary (R. at 1417, ln 14-19)

(iv) Commentary regarding the involuntary and coerced nature of the plea (R. at 1418, ln 7-14)

(v) Trial counsel indicating that in exchange for a guilty plea (being held on $1,000,000 of bail ("sizable") he would be released 'OR' (i.e no other terms and conditions – it supports the notion that bail was used unlawfully) (R. at 1420, ln 11-20) The Court's Opinion indicates that, "except for the felony vandalism offense, Davis does not challenge the factual basis for his plea As such, we omit any further discussion regarding the other offenses,

which" (Opinion, pg. 4, fn 3) is disputed. Everything beyond the priority of withdrawing the plea, is secondary in the Appeal and expressly reserved. Any omissions should not be treated with prejudice, or the Appeal would have been overly burdensome for appellate review.

Appellant attempted to file a Ca PC § 1081 Declaration as grounds for Withdraw of the Plea on June 7, 2018. (RT 13 at pg. 6, ln 11-12, 1406), and was not allowed to. Also, the Court indicated that, "THERE'S A PROCEDURAL PATH THAT A CASE TAKES, AND YOU'RE AT A SITUATION NOW WHERE YOU STAND CONVICTED OF A CHARGE AND IT'S TIME FOR SENTENCING. SO YOU CAN'T – YOU CAN'T JUST TAKE THE FLOOR AND PRESENT A BUNCH OF INFORMATION AND GIVE SPEECHES OR FILE MOTIONS."

Again, Appellant clarifying, "IT'S A DECLARATION, YOUR HONOR, BUT I UNDERSTAND YOUR POSITION."

The trial court inquired if the Terms of Probation had been reviewed by the Appellant's attorney with him, to which he responded, "No, your Honor." (RT 13 at pg. 6, ln 19-21, 1406) If a defendant does not know the terms and conditions of probation until Sentencing, or sometime after entering a Plea, a Withdraw of Plea should be deemed, as moved, timely and automatic.

These are clear indications of "not knowingly" entering into a plea; doing so "involuntary;" doing so under "coercion;" doing so while seeking supplemental "intelligence" and advice; expressing considerable doubt, and otherwise; while not being provided any

alternatives other than explicitly custody per the April 23, 2018 exchange with the justice despite seeking bail review.

PETITIONER AWAITED BAIL REVIEW FOR SIX (6) MONTHS WITHOUT DUE PROCESS

The Ninth Cir. in *Mackey v. Hoffman* (2012) held that in a habeas petition situation, attorney abandonment (i.e. the removal or foregoing of a protected right under the 6th Amendment) was an extraordinary circumstance that justified relief. Petitioner has demonstrated that he was awaiting the preparation, filing, and hearing of Bail Review, to be returned to his pretrial liberty, and move to trial (still sought, per 4th Dist., Div. 1, case no.: D074186), and had, prima facie, ineffective assistance of counsel, in not being afforded such; which in this capacity; is almost identical to attorney abandonment justifying the equitable relief sought herein this habeas petition. Also, An imposition of a bail condition may not violate a defendant's procedural due process rights *Gray v. Superior Court*, 125 CA 4th 629, 636-643, 23 CR3d 50 (2005)).

Petitioner, would assert, that denying a stay of probation during the pendency of appeal, where sought, such as here, is a violation of due process and restraint on one's liberty (e.g. most commonly it includes a Fourth Amendment right waiver; yet, in this case, Defendant has not even been afforded a trial in the underlying Superior Court cases; which he is actively seeking. (ASP PB, pg. 7-8, pp 19) (an ineffective assistance of counsel claim can be made in a habeas corpus

petition even such argument is not made argument in a criminal appeal. *People v. Jackson*, 10 Cal.3d 265, 268 (1973) "Denial of the right to effective assistance of counsel is one trial error which is cognizable on collateral review whether or not it was raised on appeal.")"

"In *Sheppard v. Rees*, 909 F.2d 1234, 1236 (9th Cir. 1989), a California case, the court in granting habeas relief (and reversing a conviction predicated on premeditated murder), the appellate court held that "a pattern of government conduct affirmatively misled the defendant, denying him an effective opportunity to prepare a defense." By way of direct parallel and analogy, in this situation, "[Petitioner ... stated, both in his written motion to withdraw his guilty plea and before the trial court at sentencing, that the reason he agreed to plead guilty was because he had tried unsuccessfully to get a bail review calendared three times in the last six months and a guilt plea seemed the only way to be released from jail. [13a1418, 3CT 719]." (D074186, AOB, pg. 18, "Involuntary Nature of the Guilty Plea") Further, whether, by each standing on its own, or constructively, Petitioner, notes that: (a) the prosecution had repeatedly attempted to (unlawfully) remand him to pre-trial detention and custody (e.g. pending federal 42 U.S.C. § 1983 cross-action, 9th Cir., 18-56202), despite clearly, beyond any reasonable doubt being "engaged with the process of the law" (e.g. SCD266332, "Pocket Brief" as filed for October 1, 2018 Application to Stay Probation (ASP) on September 18, 2018 ("ASP PB"), "As evidence of Defendant's [Petitioner herein] engagement with the process of the law; consider, that, he has:

(a) made twenty-seven (27) non-duplicative court appearances while at liberty (4/14/16; 6/16/16; 7/7/16; 7/13/16; 7/21/16; 8/11/16; 8/24/16; 8/25/16; 10/5/16; 11/3/16; 11/14/16; 11/16/16; 1/27/17; 1/30/17; 2/14/17; 2/28/17; 3/17/17; 3/29/17; 4/5/17; 4/6/17; 4/14/17; 7/6/17; 7/28/17; 8/15/17; 8/29/17; 9/21/17; 10/10/17 (am) in these cases; and, (b) missed court on three (3) occasion, each with good cause: (i) Defendant's Pro Per Ex Parte on February 7, 2017 (not noticed); (ii) April 17, 2018 (requested each of: attorney through OAC; waiver of conflict with prior attorney; and, continuance for an attorney (i.e. good cause); and, (iii) one of two (1 of 2) court appearances on October 10, 2017, for an unavoidable medical issue, also representing Good Cause. Defendant has also several times flown several thousand miles to appear at court, at liberty; including on only 24 hours notice." (ASP AB, pg. 6, ¶ 9); and, (b) as indicated, Petitioner had pending bail review motion on calendar at least three (3) times during his pre-trial detainment, which was removed by his defense counsel without notice, filing any form of motion or otherwise (note: D074186, R. at 725., one of several reasons Declared pursuant to Ca PC § 1018, "the Bail Review Motions were never filed, could have grounds, on this alone, of the ineffective assistance of counsel, a common legal ground for filing a Motion to Withdraw a Plea (failure to file and argue the appropriate motions).""
"Constructively, from an argument standpoint, Petitioner also notes that "ineffective assistance of counsel" is a Sixth Amendment violation. For example, in urging a federal speedy trial claim the defendant must first experience a delay long

enough to justify an analysis into whether the Sixth Amendment has been violated. Not every delay, even if prejudicial, is a violation if the case has been prosecuted with "customary promptness" (*Doggett v. U.S.*, 505 U.S. 647, 652, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992)). However, if the delay is "uncommonly long," it will be presumed that the defendant has been prejudiced in ways that cannot be demonstrated, and in the absence of justification for the delay, dismissal is required (*Doggett v. U.S.*, 505 U.S. 647, 656, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992)). In *Serna v. Superior Court*, 40 Cal. 3d 239, 219 Cal. Rptr. 420, 707 P.2d 793 (1985), as modified on denial of reh'g, (Dec. 19, 1985), the court held that a misdemeanor defendant need not establish "actual prejudice" if the delay between filing a complaint and arrest exceeded one year. As a result, despite the Appeal (D074186) moving, a priori, under an abuse of discretion standard, Petitioner has also experienced substantial prejudice (and clear harm (moved separately under crossaction). (D074186, AOB, Prejudice, discussed in part, at pg. 20-21)"

RELEVANT CA SB 10 COMMENTARY

"The ability to be out of custody while facing criminal charges carries a number of inherent advantages. A defendant who is released on bail is able to carry on with their life while awaiting the disposition of the criminal case. For instance, criminal defendants who are out on bail are able to maintain employment." (citation omitted)

California Senate Bill No. 10 "creates a presumption that the court will release the defendant on his or her own recognizance at arraignment with the least restrictive nonmonetary conditions that will reasonably assure public safety and the defendant's return to court." The Appeal Opinion erroneously indicates that the "[Appellant's] plea was involuntary because he made it in exchange for a promise that he would be released on bail," (pg. 1-2) Appellant was released on April 23, 2018, having had three (3) bail review motions on and off calendar, without the filing or argument of such motions, on his Own Recognizance (i.e. no bail) with no other terms and conditions of bail, freely traveling outside San Diego County and the State of California, prior to Sentencing on June 7, 2018, and also actively seeking to timely Withdraw his Plea, a liberal standard, during and after this period. Appellant had made twenty-seven (27) court appearances at liberty including one on the morning of October 10, 2017, prior to missing an afternoon court session on such day for good cause, and was clearly engaged with the process of the law, prima facie.

"States legislative intent to permit preventative detention of pretrial defendants only in a manner that is consistent with the United States (U.S.) Constitution as interpreted by the U.S. Supreme Court, and only to the extent permitted by the California Constitution as interpreted by the state Courts of Appeal and Supreme Court." (California State Assembly Floor Analyses, SB 10, Senate Third Reading, as Amended August 20, 2018, pg. 1). "Standard of proof of clear and convincing evidence," on the

prosecution if seeking pre-trial detention. (Id. at pg. 4)

"EXISTING LAW...Prohibits excessive bail" (*Id.* at 4). "States that a person shall be granted release on bail except for the following crimes when the facts are evident or the presumption great...Felonies where the court finds by clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released." (*Id.* at 4-5). In this case, the only felony charge which the Appellant faced as of October 10, 2017, was one (1) Ca PC § 594, Vandalism; not classified as a "serious violent" felony, and separately where, also there had been no establishment of probable cause, or any due process presenting evidence in the trial proceeding. "SB 10 will completely eliminate money bail in California. The current system is both unsafe and unfair. Detention decisions that are based on money and personal wealth are inherently inequitable and does nothing to keep us safer. Right now, release decisions are based solely on your personal wealth, not on whether you are a public safety risk or a flight risk. SB 10 resolves this in our justice system and replaces it with one that will keep us safer and treat individuals more fairly." (*Id.* at pg. 6) There can be no disputing the fact that Appellant was, a priori, actively seeking his pre-trial release (e.g. the prior court hearings, vacated, were each for bail review), was clearly engaged with the process of the law (from the totality of the circumstances, see and weigh the significant number of pre-trial hearings Appellant made at liberty) and that the

substantial increase of monetary bail to One Million Dollars ($1,000,000) was unfair, and alleged as each of Excessive and Punitive.

"Existing Law. Prohibits excessive bail." (Senate Rules Committee, SB 10, August 21, 2018, Analyses)." SB 10, "[p]rovides that if either party flies a writ challenging the preventative detention hearing the appellate court shall expeditiously consider that writ." (*Id.* at pg. 5, #18) In effect, the Rehearing Petition as a Supplemental Brief, accomplishes the same while being focused on the Appellant's Constitutional rights summarily abridged, also violating the Due Process clauses of the 5th and 14th Amendments in such process and past procedure.

Opposing the Amended SB 10, California Attorneys for Criminal Justice, note, "getting rid of money bail is meritorious; however, doing so by potentially expanding pretrial incarceration is unacceptable. We know too well how often individuals are arrested without proper justification...We fight for them in courtrooms daily to ensure their due process rights, and to preserve their right to be "presumed innocent" even when it may not be popular..." (Id. at pg. 8-9).

"CA SB 10 requires a person arrested or detained for a misdemeanor, except as specified, to be booked and released without being required to submit to a risk assessment by Pretrial Assessment Services, thereby ending monetary bail for these individuals absent extraordinary circumstances. A person arrested or detained for a misdemeanor, other than a misdemeanor listed in subdivision (e) of Ca PC § 1320.10, may be booked and released without being taken into

custody or, if taken into custody, shall be released from custody without a risk assessment by Pretrial Assessment Services within 12 hours of booking. This section shall apply to any person who has been arrested for a misdemeanor other than those offenses or factors listed in subdivision (e) of Section 1320.10, whether arrested with or without a warrant." "The bill authorizes Pretrial Assessment Services to release a person assessed as being a low risk, as defined, on his or her own recognizance, as specified." "CA SB 10 requires a superior court to adopt a rule authorizing Pretrial Assessment Services to release persons assessed as being a medium risk, as defined, on his or her own recognizance. Appellant notes that therefore, "lowrisk" persons shall be provided significant liberty without impediment; as even medium risk are released on their own recognizance." (Ca PC § 1320.7, see August 28, 2018, Cal. Senate Bill No. 10, defines "High Risk," "Medium Risk", "Low Risk," and otherwise for additional reference)

Only, if the court determines that there is a substantial likelihood that no conditions of pretrial supervision will reasonably assure the appearance of the defendant in court or reasonably assure public safety, the bill would authorize the court to detain the defendant pending a preventive detention hearing and require the court to state the reasons for the detention on the record. The bill would prohibit the court from imposing a financial condition. In this case and controversy, Appellant's engagement with the process of the law and record of court appearances provides an abundance of evidentiary support that he will "reasonably" appear at court while not being a

safety threat, prima facie; Appellant was in fact, entitled to each of release (i.e. Fourth and Eighth Amendments) and a Trial (Seventh Amendment) as sought and still desired. Denying such, also violated his rights to Due Process (Fifth and Fourteenth Amendments).

CA SB 10 requires that in cases in which the defendant is detained in custody, the bill would require a preventive detention hearing to be held no later than three (3) court days after the motion for preventive detention is filed. The bill would grant the defendant the right to be represented by counsel at the preventive detention hearing and would require the court to appoint counsel if the defendant is financially unable to obtain representation. However, in this case, Appellant has raised an Ineffective Assistance of Counsel (IAC) claim, a very common reason for the withdraw of a plea, in that his trial attorney did not file or argue the bail review motions as calendared (add citation). Petitioner should not have to suffer the consequences, including collateral consequences, of his rights being violated while doing everything in his power to go to trial on the allegations—matters that CA SB 10 seeks to address, in part.

As proposed to take effect, Ca PC §§ 1320.10(e)(7), per California Senate Bill No. 10 shall read, "Notwithstanding subdivisions (a) and (b), Pretrial Assessment Services shall not release...A person who has three or more prior warrants for failure to appear [(FTA)] within the previous 12 months." Appellant has not had three or more warrants issued for failure to appear.

Appellant notes two instances of bench warrants being issued; each faulty warrants and

contested. The People have brought an FTA charge, which Appellant contests; and, is eager to no longer waives time on this charge and proceed to trial within the time period afforded in the State of California proceedings. Appellant also notes that CA SB 10 does not consider if such warrants were attempted to be Quashed; or, such charges are the subject of appeal.

Ca PC §§ 1320.10(f), per California Senate Bill No. 10 shall read, "review of the person's custody status and release pursuant to subdivision (b) or (c) shall occur without unnecessary delay, and no later than 24 hours of the person's booking. The 24-hour period may be extended for good cause, but shall not exceed an additional 12 hours supervision other than informal probation or court supervision."

For the aforementioned California state, and national issues regarding pre-trial liberty, bail and the move towards the elimination of monetary encumbrances, a Published Opinion by the Appellate Court based on an accurate fact pattern and procedural background; and, proper application of *Boykin / Tahl*; as well as review by the highest court in the state is of paramount importance, with close review of this case and controversy a highly suitable opportunity to do so.

CONCLUSION AND REQUEST FOR ORDER

"The Supreme Court does not defer to the court of appeal's analysis or decision." (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 146.)." Clearly, the Court of Appeal has relied on an inaccurate, and/or partial factual and procedural background, supported herein (as well as in the Petition for

Rehearing). Once established, or in reasonable question, as Petitioner posits, Petitioner, now herein, requests that the Supreme Court independently examine the record, in its entirety for arguable issues (*Smith v. Robbins* (2000) 528 U.S. 259, requesting that the court independently examine the record for arguable issues is sufficient to appoint counsel)("In California, however, once the court has "gone through" the record and denied counsel, the indigent has no recourse but to prosecute his appeal on his own, as best he can, no matter how meritorious his case may turn out to be." However, that is not the case here, as the Appellate Court has not in fact, gone through the Record, (*Douglas v. California*, 372 U.S. 353 (1963)), as put forth herein, as well as in the Petition for Rehearing citing to clear and glaring factual errors and other omissions with the Court of Appeal Opinion.

Petitioner has brought forth the actual intentions of a *Boykin / Tahl* analysis when viewed under the "totality of circumstances" standard of review; which, a priori, inherently requires a proper factual and procedural history for reliance in formulating and issuing an opinion. The Court of Appeal has failed in such regard. Defendant-Appellant has not been afforded a tribunal (as protected by the 7th Amendment), and had his numerous calendared Bail Review Motions been timely filed in Writ and argued, the reasonable probability standard of review under *Boykin / Tahl* clearly supports upholding his attempts at withdrawing his coerced and involuntary plea of April 23, 2018 entered for the sole purpose to be returned to his pre-trial liberty, which he was on such day, and

done so on his Own Recognizance with no other terms and conditions, being allowed to leave the State of California even, and return for Sentencing.

Petitioner graciously requests that this Court overturn the Court of Appeal Opinion and find in favor of the Petitioner, with a (b) full remand to the trial court for pre-trial matters, or, (in priority) (a) outright dismissal for circumstances including but not limited to (i) length of time since criminal complaints and plea and, also (ii) probation conditions are nearly entirely satisfied as of the date of the filing of this Petition for Review), nullifying all proceedings to date.

If this filing is deficient in any manner with any court rule requirements, (e.g. such as mailing the necessary, number of filing or service copies), Petitioner graciously requests that the Supreme Court issue an order with relative waiver(s) for each of any and all such items).

In the opening of this case in seeking a formal Petition for Review, the Supreme Court has jurisdiction with this filing.

Dated: September 26, 2019

Respectfully submitted,
/s/ Gavin B. Davis

Gavin B. Davis, Pro Per
Petitioner and Federalist

CERTIFICATION OF WORD COUNT [omitted]
PROOF OF SERVICE [omitted]

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

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff-Respondent,

v.

GAVIN BLAKE DAVIS,
Defendant-Appellant.

Appeal No. D074186
Sup. Ct. Nos. SCD266332
SCD273043

APPEAL FROM THE SUPERIOR COURT OF
SAN DIEGO COUNTY

Honorable Timothy Walsh, Judge

PETITION FOR REHEARING

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APPENDIX F

INTRODUCTION

Gavin Blake Davis, the petitioner, files this petition for rehearing, pursuant to Rule 8.268 of the California Rules of Court for the following reasons: (1) in finding that Mr. Davis understood the constitutional rights he was waiving by pleading guilty, the Court overlooked his statements in open court that contradicted, rather that supplemented, the waiver of rights he had initialed on the change of plea form, and (2) the Court finds no factual support for Mr. Davis's claim that his guilty plea was involuntary because he believed it was the only way he could released in bail, where minute orders and his own statements at the change of plea hearing show that he believed the only way he would be released was if he pleaded guilty.

FACTS OVERLOOKED BY THE COURT

In finding sufficient facts to support the trial court's denial of Mr. Davis's motion to withdraw his guilty plea, the Court gleaned facts that would support a clear and unequivocal waiver of Mr. Davis's constitutional rights. Although the Court relied upon caselaw that holds a guilty plea colloquy need not recite the three constitutional rights required by *Boykin v. Alabama* (1969) (1969) 395 U.S. 238 [89 S.Ct. 1709, 23 L.Ed.2d 274] and *In re Tahl* (1970) 1 Cal.3d 122, which are (1) the right against self-incrimination, (2) the right to confront and cross examine witnesses, and (3) the right to a jury trial, Mr. Davis's answers during the change of plea colloquy were often unresponsive.

For example, when asked about his constitutional rights, the trial court noted only the right to a jury trial. Mr. Davis answered that he understood his rights "by the California Constitution and the jurisdiction of this court." That unresponsive answer did not affirm that he was aware of the rights he was waiving, yet the trial court once again referred only to the right to a jury trial in the change of plea form and did not mention the other two. This was more than a simple omission. Mr. Davis's unresponsive answers could have indicated many possible things, such as a misunderstanding or a deliberate evasion of understanding his rights, either one of which required further clarification by the trial court. That was missing, and was error.

Concerning Mr. Davis's second claim of error that his guilty plea was involuntary, the Court mistakenly finds no coercion from Petitioner's statement at the time of the guilty plea that he had not been threatened. The coercion in this case arose not from direct or indirect threats, but from being denied his liberty for an extended period of time on excessive bail and attempting to regain that liberty via a bail hearing, calendared three times but then taken off calendar, thereby supporting his claim that the only way he could be released from jail was to plea guilty. There is more than a reasonable probability had Petitioner been presented with the alternative of a bail review to regain his liberty, he would have chosen that as the means to be released from jail, in order to be at liberty and still able to contest his case. What was presented, however, was a desperate man who

pleaded guilty only because that was the only way he could get

The Court's opinion focuses on Mr. Davis's statements that he desired to plead guilty, but overlooks his statements as to why he agreed to plead guilty. Mr. Davis stated at the time he pleaded that as part of the plea agreement, he had been "promised a return to my liberty today," to which the prosecutor added that he had no opposition to Mr. Davis's release on bail [12RT 1306-07]. The trial court agreed it would release Mr. Davis as part of the plea agreement. [12RT 1306]. Mr. Davis reinforced that claim on June 7, 2018, that he was induced to plead guilty in order to be released from jail. (Declaration in Support of motion to Withdraw Guilty, pursuant to Penal Code § 1018, 3CT 813.)

The facts supported his claim were that he had unsuccessfully attempted to be released on bail for three times prior to his guilty plea, but the bail reviews had been taken off calendar, and are corroborated by the Clerk's Transcript. The first bail review was set for November 27, 2017; then continued to December 1, 2017, then taken off calendar [3CT 787-789.] On January 10, 2018, the bail forfeiture ordered on October 10, 2017, was set aside and the previous bail of $1,000,000 on case number SCD266332 was reinstated. [3CT 790.] On February 26, 2018, another bail review was ordered for March 2, 2018, and a Pre-trial Services Report ordered, then taken off calendar. [3CT 791-792.] On March 2,2018, that bail review was taken off calendar [3CT 792.].

The Courts mistaken finds no coercion from Mr. Davis's statement at the time of the guilty plea that he had not been threatened. The

coercion in this case arose not from threats, but from being in jail, and supports his claim that the only way he could be released from jail was to plea guilty. The Court distinguished this case from the vague offer of leniency in *People v. Collins* (2009) 26 Cal.4th 297, where the trial court a jury waiver would be looked upon favorably at sentencing by noting there was no such statement in this case. The effect of Mr. Davis's guilty plea, however, was far from vague: his immediate release from jail on his own recognizance. Given Mr. Davis's prior performance while on bail, bail does not seem to have been the reason for his release. Had the prosecutor added that he no longer opposed Mr. Davis's release, given that the jail time Mr. Davis had served by the time he pleaded guilty was sufficient to support a probationary sentence, Mr. Davis's actions could have been construed as accepting a revised offer from the prosecutor that would result in this immediate release if he pleaded guilty. No such reason was given, however, when the prosecutor was asked by the trial court if he agreed to Mr. Davis's release. The record as it is raises more than a reasonable probability that Mr. Davis pleaded guilty because that appeared to be tho nly way he would be released from jail.

The Court mistakenly characterizes Mr. Davis's claim that he was coerced into pleading guilty as a result of a "nefarious plot," one that has no factual support. [Opinion at p. ***] Whether such a plot existed is not the basis for his motion to withdraw his guilty plea. Instead, it was that as a result of never going to court to have his bail reinstated despite three attempts to

do so, he believed that the only way to get out of jail was to plea guilty. The Court notes that Mr. Davis never stated why his three prior attempts to have his bail reinstated were taken off calendar, but that does not contradict this claim that the only way he thought he could get to court and get out of jail was to plead guilty. That resulted in a guilty plea not because he was guilty, or because he was pleading guilty because it would result in a probationary sentence, but because it was the only way he could get out of jail. That's an involuntary guilty plea, a constitutional and structural error, and his motion to withdraw his guilt plea should have been granted.

CONCLUSION

For the reasons set forth in this petition, Gavin Blake Davis petitions the Court to withdraw its opinion of August 21, 2019.

DATED: September 5, 2019

Respectfully submitted,

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CERTIFICATION OF WORD COUNT [omitted]
PROOF OF SERVICE [omitted]

IN THE COURT OF APPEAL OF THE STATE
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APPEAL FROM THE SUPERIOR COURT OF
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Honorable Timothy Walsh, Judge

APPELLANT'S OPENING BRIEF

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APPENDIX G

STATEMENT OF APPELLATE JURISDICTION

This appeal is from the denial of a motion to withdraw a guilty plea to, and the convictions and sentence of probation imposed on, one count of Vandalism over $400, in violation of Penal Code § 594, subdivisions (a) and (b)(1); one count of willful disobedience of a court order, in violation of Penal Code § 166, subdivision (a)(4); one count of contact by and electronic communication device with the intent to annoy, in violation of Penal Code § 653m; and one count of Intentional and knowing violation of a court order, in violation of Penal Code § 273.6 in consolidated cases SCD266332 and SCD266665; and one cont of failure to appear while on bail, in violation of Penal Code § 1320.5 in case number SCD273403 [3CT 694, 712.843]. This appeal is authorized under Penal Code § 1237.5 and Rule 8.304, subdivision (b) of the California Rules of Court.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred in denying Mr. Davis's motion to withdraw his guilty plea where (a) the plea colloquy failed to establish a knowing waiver the constitutional rights under *Boykin v. Alabama* and *In re Tahl* (b) the plea colloquy failed to establish a factual for the crime of vandalism, and (c) Mr. Davis not adequately advised as to the collateral consequences of a felony prior to pleading guilty?

STATEMENT OF THE CASE

Gavin Blake Davis was charged in an amended information in consolidated case

numbers SCD266332 and SCD267655, with one count of vandalism over $400, in violation of Penal Code § 594, subdivision (a) and (b)(1); one count of resistence of a police officer, in violation of Penal Code § 148, subdivision (a)(1); ten counts of intentional and knowing violation of a court order, in violation of Penal Code § 273.6, subdivision (a); six counts of willful disobedience of a court order, in violation of Penal Code § 166, subdivision (a)(4); and one count of stalking, in violation of Penal Code § 646.9, subdivision (a). [1CT 38-43]. He was charged in case number SC273043 with two counts of failure to appear while on bail, in violation of Penal Code § 1320.5 [3CT 797-799].

He pleaded guilty to one count of vandalism over $400, in violation of Penal Code § 594, subdivision (a) and (b)(1); one count of intentional and knowing violation of a court order, in violation of Penal Code § 273.6, subdivision (a); one count of willful disobedience of a court order, in violation of Penal Code § 166, subdivision (a)(4); one count of telephone calls or contact by electronic communication device with intent to annoy, im violation of Penal Code § 653m, and one count of failure to appear while on bail, in violation of Penal Code § 1320.5 [3CT 662-665, 800-803; 12RT 1310-11]. He later moved to withdraw his guilty pleas, on June 7, 2018 [13RT 1402-1405, 8CT 809-816].

That motion was denied, and Mr. Davis was sentenced to three years formal probation on vandalism, and time served of the failure to appear [13RT 1405-06, 1430-31, 3CT 796, 843]. Notice of appeal was filed in both cases on June 8, 2018 [8CT716, 804]. The trial court granted a

certificate of probable cause on each case on June 19, 2018 [8CT 729, 817].1

STATEMENT OF FACTS

The guilty plea

Gavin Davis, the appellant, was charged with multiple offenses alleging he damaged a house that had been jointly owned by him and his ex-wife. He was charged in consolidated case numbers SCD266332 and SCD267655, with one count of vandalism over $400, in violation of Penal Code § 594, subdivision (a) and (b)(1); one count of resistence of a police officer, in violation of Penal Code § 148, subdivision (a)(1); ten counts of intentional and knowing violation of a court order, in violation of Penal Code § 273.6, subdivision (a); six counts of willful disobedience of a court order, in violation of Penal Code § 166, subdivision (a)(4); and one count of stalking, in violation of Penal Code § 646.9, subdivision (a). [1CT 38-43]. He was charged in case number SC273043 with two counts of failure to appear while on bail, in violation of Penal Code § 1320.5 [3CT 797-799].

The cases went on for months of pre-trial proceedings, but after Mr. Davis's bail was revoked for a failure to appear for trial [11RT 1218], and he was in jail for over 200 days, he agreed on April 23, 2018 to plead guilty to one count of vandalism over $400, in violation of Penal Code § 594, subdivision (a) and (b)(1); one count of intentional and knowing violation of a court order, in violation of Penal Code § 273.6, subdivision (a); one count of willful disobedience of a court order, in violation of Penal Code § 166, subdivision (a)(4); one count of telephone calls or

contact by electronic communication device with intent to annoy, in violation of Penal Code § 653m, and one count of failure to appear while on bail, in violation of Penal Code § 1320.5 [3CT 662-665, 800-803; 12RT 1310-11].

During the guilty plea colloquy, Mr. Davis was asked is had discussed the plea agreement with his lawyer [12RT 1304]. He answered that he thought those discussions were privileged communications, but then states his lawyer had answered all of his questions. [12RT 1304]. Mr. Davis also stated that as part of the plea agreement, he had been "promised a return to my liberty today, to which the prosecutor added that he had not opposition to Mr. Davis's release on bail [12RT 1306-07]. The trial court agreed that it would release Mr. Davis as part of the plea agreement. [12RT 1306].

Mr. Davis was also asked if he understood "all of your constitutional rights to a jury trial?" The following colloquy occurred:

THE DEFENDANT: You honor, I understand the rights by the California Constitution and the jurisdiction of this court.

THE COURT: I'm asking you if you understand all of the rights as indicated that you have a jury trial on your forms?

THE DEFENDANT: Yes, your honor.

THE COURT: And do you give up those rights to a jury trial and all of the related rights in order to plead guilty at this time?

THE DEFENDANT: In the State of California, San Diego County, yes, your honor. [12RT 1306-07].

Advice on collateral consequences

Also during the plea colloquy, Mr. Davis was asked if he understood "all the other potential consequences of your plea as indicated on the forms," to which he responded, "[a]s they are stated on the forms, I believe that I understand those to the best of my abilities and resources." [12RT 1310]. The change of plea form contained an advisal of immigration consequences if Mr. Davis was not a United States citizen, as well as a number of other collateral consequences that were listed on the form. These were: consecutive sentences, a prohibition to possess firearms or ammunition, the offense could be used to increase a future sentence, and it could be a prison prior. [3CT663].

Factual bases for the plea of guilty

Concerning the factual basis for the failure to appear, Mr. Davis admitted that he "was not [in court] on the date as alleged" after being ordered to appear in court [12ERT 1311]. Concerning facts in support of the charge of vandalism, when he was asked if on July 1, 2015, he "damaged property not your own in a value in excess of $400," he replied, "those dates are incorrect," and added, "there was only one incident and it was my own real property." [12RT 1311]. He also admitted he violated a court order by contacting a person he was ordered not to contact, and that between March 1, 2016; and

June 17, 20916, he made a harassing telephone call. [12RT 1311-12].

Motion to withdraw the guilty plea.

Prior to the sentencing, Mr. Davis filed a written motion to withdraw is guilty plea, in which he alleged that he had not been aware of the collateral consequences of is guilty plea, in particular that he would be ineligible for a real estate license. [3CT 723-24, 811-812]. Prior to the sentencing in open court, Mr. Davis also moved to withdraw his guilty plea. [13RT 1404]. The court proceeded to sentencing without ruling on the motion, on the basis that Mr. Davis's counsel was not moving to withdraw the guilty plea, despite Mr. Davis's clear intent that he wanted the plea withdrawn.

The trial court later held a *Marsden* hearing to determine if there was a conflict between Mr. Davis and his counsel of the issue of the guilty plea [13RT 1410-11]. Counsel stated that he had advised Mr. Davis it was in his best interest to plead guilty, and that he has advised Mr. Davis of all the consequences that could flow from a plea of guilty. [13aRT 1415].

The court then asked Mr. Davis why he wanted to withdraw his guilty plea. He answered that he had not knowingly and intelligently waived his constitutional rights.[13aRT 1416]. He also stated he had not be aware of all the consequences of a guilty plea, but that he since learned he could lose his real estate license in California and other states as the result of a felony conviction. [13aRT 1416]. He claimed his guilty plea was involuntary because he had been promised he would be released from jail if he

pleaded guilty [13a RT 1418]. The trial court indicated its concerns over Mr. Davis's claim that he had not been advised of the consequences of his guilty plea, and Mr. Davis's lawyer noted that the change of plea form does not state that a felony conviction could have an effect on certain professional licenses. [13Art 1421]. Counsel did not state that he had informed Mr. Davis of any collateral consequence not listed on the change of plea form. Concerning Mr. Davis's claim that his guilty plea was not voluntary, Mr. Davis's lawyer stated it was part of the plea agreement that he would be released be released from jail if he pleaded guilty. [13aRT 1421]. Counsel also stated that if Mr. Davis successfully completed probation after eighteen months, he would be able to withdraw his guilty plea to the sentencing date, thereby restoring his rights that had been impacted by the result of a felony conviction. [13a RT 1421].

The trial court found there was no conflict between Mr. Davis and his lawyer as a result of the guilty plea that Mr. Davis sought to withdraw. [13a RT1424]. Mr. Davis agreed that he had done some of the things to which he pleaded guilty, "[b]ut not all of the things I have been accused of." [13aRT 1425].

The court resumed the sentencing hearing, stating it had found no conflict and that Mr. Davis's lawyer would continue to represent him. [13RT 1427]. On case numbers SCD266332 and SCD267655, the court imposed a sentence of three years, imposition of sentence suspended, with the condition that Mr. Davis spend 365 days in jail, all of which had already been served.

[13RT 1428]. It imposed a sentence of time served in case number SCD273043. [13RT 1428].

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING MR. DAVIS'S MOTION TO WITHDRAW HIS GUILTY PLEA WHERE(A) THE RECORD FAILS TO REVEAL THAT MR. DAVIS WAS ADVISED AND UNDERSTOOD HIS CONSTITUTIONAL RIGHTS, (B) THE PLEA WAS INVOLUNTARY BECAUSE IT WAS MADE IN EXCHANGE FOR A RECOMMENDATION THAT MR. DAVIS BE RELEASED FROM JAIL, (C) THERE WAS AN INSUFFICIENT FACTUAL BASIS FOR THE CRIME OF VANDALISM AND (D) MR. DAVIS WAS NOT ADVISED OF THE COLLATERAL CONSEQUENCE OF THE LOSS OF A PROFESSIONAL LICENSE

A. Standard of Review
B. Applicable facts

1. Guilty plea was made based upon the promise

Mr. Davis would be released from jail Mr. Davis entered a guilty plea more than six months after his bail was revoked for a failure to appear for trial. [11 RT 1218, 12RT 1303]. During the guilty plea colloquy, Mr. Davis was asked is had discussed the plea agreement with his lawyer [12RT 1304]. Mr. Davis stated that he had had his bail review pushed off three time but that as part of the plea agreement, he had been "promised a return to my liberty today, to which the prosecutor added that he had not opposition

to Mr. Davis's release on bail [12RT 1306-07]. The trial court agreed that it would release Mr. Davis as part of the plea agreement. [12RT 1306].

Insufficient advice of constitutional rights under *Boykin/Tahl*

Mr. Davis was also asked if he understood "all of your constitutional rights to a jury trial?" The following colloquy occurred:

THE DEFENDANT: You honor, I understand the rights by the California Constitution and the jurisdiction of this court.

THE COURT: I'm asking you if you understand all of the rights as indicated that you have a jury trial on your forms?

THE DEFENDANT: Yes, your honor.

THE COURT: And do you give up those rights to a jury trial and all of the related rights in order to plead guilty at this time?

THE DEFENDANT: In the State of California, San Diego County, yes, your honor. [12RT 1306-07].

Failure to advise on collateral consequences

Also during the plea colloquy, Mr. Davis was asked if he understood "all the other potential consequences of your plea as indicated on the forms," to which he responded, "[a]s they

are stated on the forms, I believe that I understand those to the best of my abilities and resources." [12RT 1310]. The change of plea form contained an advisal of immigration consequences if Mr. Davis was not a United States citizen, as well as a number of other collateral consequences that were listed on the form. These were: consecutive sentences, a prohibition to possess firearms or ammunition, the offense could be used to increase a future sentence, and it could be a prison prior. [3CT663].

Insufficient factual bases for the charge of vandalism

Concerning the factual basis in support of the charge of vandalism, when he was asked if on July 1, 2015, he "damaged property not your own in a value in excess of $400," he replied, "those dates are incorrect," and added, "there was only one incident and it was my own real property." [12RT 1311].

Reasons to withdraw the pleas stated prior to sentencing

Prior to sentencing, during a hearing pursuant to *People v. Marsden* (1970), Mr. Davis stated his reasons to withdraw his guilty plea. The first was that he had not knowingly and intelligently waived his constitutional rights. [13aRT 1416]. He also stated he had not be aware of all the consequences of a guilty plea, but that he since learned he could lose his real estate license in California and other states as the result of a felony conviction. [13aRT 1416]. The trial

court indicated its concerns over Mr. Davis's claim that he had not been advised of the consequences of his guilty plea, and Mr. Davis's lawyer noted that the change of plea form does not state that a felony conviction could have an effect on certain professional licenses. [13aRT 1421]. Counsel did not state that he had informed Mr. Davis of any collateral consequence not listed on the change of plea form.

Mr. Davis also claimed his guilty plea was involuntary because he had been promised he would be released from jail if he pleaded guilty, and also noted in his written motion to withdraw his guilty plea that he agreed to plead guilty on after his repeated attempts to review his bail after it had been revoked were never calendared [13a RT 1418, 3CT 726, 813]. Mr. Davis's lawyer stated it was part of the plea agreement that he would be released be released from jail if he pleaded guilty. [13aRT 1421].

C. The trial court erred in refusing to allow Mr. Davis to withdraw his guilty plea

1. Inadequate waiver of constitutional rights

During the change of plea colloquy, Mr. Davis was also asked if he understood "all of your constitutional rights to a jury trial?" The following colloquy occurred:

THE DEFENDANT: You honor, I understand the rights by the California Constitution and the jurisdiction of this court.

THE COURT: I'm asking you if you understand all of the rights as indicated that you have a jury trial on your forms?

THE DEFENDANT: Yes, your honor.

THE COURT: And do you give up those rights to a jury trial and all of the related rights in order to plead guilty at this time?

THE DEFENDANT: In the State of California, San Diego County, yes, your honor. [12RT 1306-07].

This failed to demonstrate that Mr. Davis was aware of and knowingly and intelligently waived the constitutional rights he has, as stated first by the United States Supreme Court in *Boykin v. Alabama*, 395 U.S. 238 (1969); and subsequently adopted by the California Supreme Court in *In re Tahl* (1970) 1 Cal.3d 122. These are (1) the privilege against self-incrimination, (2) the right to trial by jury, and (3) the right to confront one's accusers. *Boykin*, supra, at p. 242; Tahl, supra, at p, 132. In *Boykin*, the Supreme Court stated it would not find a valid waiver of those rights from a silent record, and in *Tahl* the California Supreme Court required the record reflect that the accused was informed of and waived those rights.

The requirement that the waiver of these three rights had to explicit on the record was later relaxed by Supreme Court in *In re Howard* (1992) 1 Cal4th 1132, in which the California Supreme Court noted that later decisions of the United States Supreme Court have not stated the

constitution requires explicit waivers of the three constitutional rights on the record, but the record of the guilty plea must show that the waiver of the three rights was knowing and voluntary. *Id.* at p. 1179. In *Howard*, the issue was whether the waiver of a trial by jury on the validity of prior convictions must comply with the waivers required for a guilty plea under *Boykin* and *Tahl.* The Court found that where the defendant had been informed of and waived the right to trial by jury and his right to confront his accusers, but not explicitly told of the privilege against self-incrimination, the record was sufficient to show a knowing and voluntary waiver. *Id.*, at p. 1180.

In this case, however, the only right that was identified and waived was the right to trial by jury. [12RT 1307]. The trial court referred to Mr. Davis's "your constitutional rights to a jury trial" and "all of the rights as indicated that you have to a jury trial on your [change of pleas] forms," but the trial court left out the right to confront his accusers and the privilege against selfincrimination.

Mr. Davis's answers did not indicate that the waiver of those rights was knowing and voluntary. He first indicated that he the rights "by the California constitution and the jurisdiction of the court," which the trial court took as unresponsive. [12RT 1307. When he was asked if he gave up "those rights to a jury trial and all of the related rights to plea guilty," Mr. Davis's answer "in the state of California, San Diego County," was a non sequitur. This failed to establish a knowing and voluntary waiver of rights as required by *Boykin* and *Tahl.*

2. Failure to advise of collateral consequences

At motion to withdraw his guilty plea, Mr. Davis stated that a the time of his guilty plea, he was unaware the effect a felon conviction would have on his ability to renew is real estate license. His lawyer stated that he had advised Mr. Davis of the collateral consequences on the change of plea form, which made no mention of the effect of a felony conviction wold have on a professional license. [13aRT 1421]. The trial court denied this as a basis to withdraw the guilty plea, because the effect on a professional license is a collateral, not direct consequence. [13aRT 1424]. The court also found a felony conviction would not necessarily result in a denial of the renewal of his real estate license, because "a whole other organization" evaluates that. [13aRT 1424].

It was unrebutted that Mr. Davis was not advised that as a result of his guilty plea t a felony, he would not be able to renew his real estate license.

Although it was not certain that he would be denied renewal, under Business and Professional Code § 10177, subdivision (b), the Real Estate Commissioner may delay the renewal of a real estate license of anyone who has [e]ntered a plea of guilty or no contest to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing

that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

The power to do so, as the statute makes clear, survives long after the direct consequences of the criminal conviction are over, enduring even a successful motion to withdraw the plea, which was an option under Mr. Davis's plea agreement. [13aRT 1421] Professional license bars frequently persist long after the other consequences of the underlying offense. (*People v. Villa* (2009) 45 Cal.4th 1066, 1071.) The effect of the professional license bar, as it directly places a permanent bar to Mr. Davis's possible livelihood, is so severe that the direct/collateral consequences distinction relied upon by the trial court in denying Mr. Davis's motion to withdraw his guilty pleas, like the formerly "collateral" consequence of deportation for non-citizens, should not apply. (*Padilla v. Kentucky* (2010) 559 U.S. 356, 365.)

3. Involuntary nature of the guilty plea

At the guilty plea colloquy, Mr. Davis stated that another reason he was pleading guilty was to that he could be released on bail [12RT 1305]. The trial court as the prosecutor of that was part of the plea agreement, and when the prosecutor stated it was, the trial court agreed make it part of the plea agreement. [12RT 1306.] Mr. Davis later stated, both in his written motion to withdraw his guilty plea and before the trial court at sentencing, that the reason he agreed to plead guilty was because he had tried unsuccessfully to get a bail review calendared three times in the last six months and a guilt plea

seemed the only way to be released from jail. [13a1418, 3CT 719].

In addition to the requirement that a guilty plea should show an knowing and intelligent waiver of constitutional right to a jury trial, the ability to confront witnesses, the privilege against self incrimination, the guilty plea should reflect that the guilty plea is freely and voluntarily made. Penal Code § 1192.5 also requires that the guilty plea be "freely and voluntarily made."

In this case, it was not. There was no question that Mr. Davis wanted to plead guilty, but the problem was why. It was not because he wanted to admit his guilt, or that he was motivated to receive a lesser sentence, but because he wanted to get out of jail and thought a guilty plea was the only way to do it. The circumstances indicate that the motivating factor to cause Mr. Davis to plea guilty was is belief that the other way he has could get out of jail, a bail review, was constantly thwarted. That belief was confirmed when the prosecutor stated he would not oppose Mr. Davis's release on bail if he pleaded guilty, and the judge agreed to make it part of the plea agreement. His belief that a guilty plea was the only way to get out proved correct, and he was released.

What this shows is that Mr. Davis pleased guilty in exchange for a promise of some tangible benefit. His guilty plea was knowing because he recognized it was the way to get out of jail; but it was involuntary because he pleaded guilty because he thought it was the only way he could get out of jail.

As such, it violated federal and California Due Process. (*People v. Collins* (2009) 26 Cal.4th

297, 302, 307-308.) A guilty plea obtained by a promise of benefit or leniency is a structural error that requires no showing of prejudice. (*Collins*, supra, at pp. 311-312.)

Failure to obtain a factual basis

Penal Code § 1192.5 also requires that the trial court have a "factual basis for the plea." In this case, in an effort to have a factual basis for the guilty plea to count one of case number SCD266322 and SCD267655, felony vandalism, the trial court asked Mr. Davis if, on July 1, 2015, he damaged property not his own in excess of $400. [12RT 1311]. Mr. Davis responded, "there is only one incident and it was my own real property." [12RT 1311].

This statement, which negates on of the elements of felony vandalism, failed to provide a factual basis for the guilty plea to the only felony charged, and the guilty plea to that offense should be vacated.

CONCLUSION

For the reasons set forth in this brief, Gavin Blake Davis asks his Court to vacate his guilty pleas and remand the case for further proceedings.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT (omitted)
PROOF OF SERVICE (omitted)

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

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff-Respondent,

v.

GAVIN BLAKE DAVIS,
Defendant-Appellant.

Appeal No. D074186
Sup. Ct. Nos. SCD266332
SCD273043

APPEAL FROM THE SUPERIOR COURT OF
SAN DIEGO COUNTY

Honorable Timothy Walsh, Judge

APPELLANT'S REPLY BRIEF

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APPENDIX H

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING MR. DAVIS'S MOTION TO WITHDRAW HIS GUILTY PLEA WHERE (A) THE RECORD FAILS TO REVEAL THAT MR. DAVIS WAS ADVISED AND UNDERSTOOD HIS CONSTITUTIONAL RIGHTS, (B) MR. DAVIS WAS NOT ADVISED OF THE COLLATERAL CONSEQUENCE OF THE LOSS OF A PROFESSIONAL LICENSE (C) THE PLEA WAS INVOLUNTARY BECAUSE IT WAS MADE IN EXCHANGE FOR A PROMISE MR. DAVIS BE RELEASED ON BAIL, AND (D) THERE WAS AN INSUFFICIENT FACTUAL BASIS FOR THE CRIME OF VANDALISM

Introduction:

Respondent's brief (hereafter referred as "RB") lists in its "Statement of Facts" a report of the offenses allegedly committed by Mr. Davis. (RB, p. 7.) These alleged "facts" are irrelevant to the claim raised on appeal, which is not whether Mr. Davis committed the offenses charged, but whether his guilty plea was properly taken by the trial court.1 Respondent relies upon these "facts" evidence to bolster his claim that the failure to obtain a factual basis for Mr. Davis's guilty plea was harmless. (RB, p. 20.) These factual allegations are unverified, and therefore may not be relied upon, because they were neither admitted to by Mr. Davis nor presented to a Grand Jury or at a Preliminary Hearing, which had been waived. (1CT 50.) Mr. Davis had also disputed the accuracy of the probation report prior to sentencing as, "having numerous falsehoods in it, as well as terms and conditions,

themselves that are unacceptable to the Defendant." (3CT 811-812, Declaration in Support of Motion to Withdraw Guilty Plea, pursuant to Penal Code § 1018, dated June 7, 2018.)

Of the facts that are relevant to this to this appeal, the Respondent notes that on October 10, 2017, Mr. Davis's bail was forfeited and a warrant was issued for his arrested. (RB, p. 9.) He remained in custody until April 23, 2018. (RB, p. 9.) The Respondent does not dispute that between the time the warrant issued on October 10, 2017; to the time he was released on his own recognizance (O/R) on April 23, 2018, he made numerous attempts to review his bail, which was effectively mooted by his release O/R after he pleaded guilty. The first bail review was set for November 27, 2017; then continued to December 1, 2017, then taken off calendar [3CT 787-789.] On January 10, 2018, the bail forfeiture ordered on October 10, 2017, was set aside and the previous bail of $1,000,000 on case number SCD266332 was reinstated. [3CT 790.] On February 26, 2018, another bail review was ordered for March 2, 2018, and a Pre-trial Services Report ordered, then taken off calendar. [3CT 791-792.] On March 2, 2018, that bail review was taken off calendar [3CT 792.]

On April 23, 2018, the date of the guilty plea, the court inquired, "have there been any other promise made to you of have there been any threats made to you to get you to plead guilty?" Mr. Davis responded, "I was promised a return to my liberty today, had bail review pushed off three times . . . there was that additional promise that I would be – subject to the pleas, my liberty would be returned today, April 23rd, if not, then the

pleas in their entirety are null and void." (12 RT 1305-1306.) This is clear and convincing "prima facie evidence that proves that Mr. Davis was induced to enter into the Plea in direct exchange for his pre-trial liberty. (3CT 815.)

A. Insufficient advice of constitutional rights under *Boykin/Tahl*

The Respondent argues that because Mr. Davis initialed the change of plea form which listed the right to a jury trial, the right to confront an crossexamine witnesses, and the right to remain silent during a trial; and that his lawyer stated he had reviewed the form with Mr. Davis, there was an adequate record to show that he understood an waived those rights. (RB, pp. 10-11.)

Whatever inference these may have been created to support a finding of an adequate advisal of right was dispelled, however, by the following colloquy:

THE DEFENDANT: You honor, I understand the rights by the California Constitution and the jurisdiction of this court.

THE COURT: I'm asking you if you understand all of the rights as indicated that you have a jury trial on your forms?

THE DEFENDANT: Yes, your honor.

THE COURT: And do you give up those rights to a jury trial and all of the related rights in order to plead guilty at this time?

THE DEFENDANT: In the State of California, San Diego County, yes, your honor. [12RT 1306-07].

That answer is, at best, ambiguous. It can be construed as his knowing waiver of his right to a jury trial and other "related" (but unspecified) rights in San Diego County, but not what those other "related"rights were. Even assuming Mr. Davis was being deliberately obfuscatory, this is precisely why the trial court should have clarified his answers by a recitation of the enumerated constitutional rights he was waiving by pleading guilty. Contrary to the Respondent's claim that "[t]here is nothing in the record suggesting he did not understand those rights," there was a failure of the trial court to explain the rights Mr. Davis was waiving and whether he understood them. The burden was on the trial court to advise Mr. Davis of the rights he was waiving and whether he understood them prior to taking the guilty plea, and the record fails to do that.

Although there is no formula for advising a defendant of constitutional rights (*People v. Wharton* (1991) 53 Cal.3d 522, 582.), the record must show direct evidence, given the totality of the circumstances, that Mr. Davis was fully aware of his rights. (*People v. Murillo* (1995) 39 Cal.App.4th 1298, 1303-1304.) In this case Mr. Davis's response to the trial courts questions, and the trial court's failure clarify those answers, are insufficient to show a knowing and voluntary waiver.

B. Failure to advise on collateral consequences

Respondent relies upon pre-Padilla cases to argue that the trial counsel was under no duty to inform Mr. Davis that a collateral consequence of his guilty plea would be a delay of the renewal of his real estate license. The United States Supreme Court in *Padilla v. Kentucky*, (2010) 559 U.S. 356, 365 [130 S.Ct. 473, 176 L.Ed.2d 284], refused to apply the direct/collateral consequence distinction in determining "reasonable professional assistance" as required by the Sixth Amendment. Claim of ineffective assistance in *Padilla* arose from trial counsel's misadvise that a plea of guilty to an aggravated felony under 8 U.S.C. § 1101(a)(43) would subject *Padilla* to deportation without cancellation of removal. In *Padilla*, the Court noted there was a close connection with the criminal process for the non citizen, and from that the

Respondent argues that immigration consequences must be explained prior to a guilty plea because deportation is an "inexorable or automatic" consequence, but the loss of a real estate license as a result of a felony conviction is not because that loss is triggered by the actions of the Real Estate Commissioner. (RB, p. 14.) In either case, however, the uniformed consequence of the felony conviction is not automatic. It is based instead upon the actions of another entity, U.S. Immigration and Customs Enforcement (ICE) or the Real Estate Commissioner, in response to that felony conviction.

In essence, the Respondent distinguishes this case from *Padilla* because the consequence, loss of residency status, is more severe the loss of livelihood as a result of the loss of a real estate license. In either case, however the effect is

severe, and the result of conduct by trial counsel that fell below the minimum level of professional conduct under *Strickland v. Washington* (1984) 466 U.S. 668, 689 [104 S.Ct. 2052, 80 L.Ed.2d 674]. (*Padilla, supra*, 559 U.S. at p. 365.) The Respondent argues there was no prejudice from trial counsel's failure to advise Mr. Davis of this consequence, because Mr. Davis could have researched and found it out for himself. (RB, p, 15.) This transfers the duty advise a client of the legal consequences of a felony conviction from the lawyer to the client, contrary to *Padilla* or any other case arising from either misadvise by counsel or the failure to advise. See *Lafler v. Cooper* (2012) 566 U.S. 156 [132 S.Ct. 1376, 132 L.Ed.2d 398]. Under such a theory, trial counsel would never be found ineffective for failing to advise a client of a severe collateral consequence, because the client could have found for her/himself that consequence.

C. Involuntary nature of the guilty plea

Respondent argues that Mr. Davis's plea of guilty of guilty was voluntary "under the totality of the circumstances." (RB, p. 16.) Respondent relies upon Mr. Davis's expressed desire the plea guilty on April 23, 2018, as an indication his guilty plea was voluntary. (Respondent's Brief, p. 16.) As noted in Mr. Davis's opening brief, however, the question was why he was willing to plead guilty, based upon his belief that the only way he could be released on bail was to plead guilty, given that his numerous attempts to appear for a noticed bail review hearing had been unsuccessful. Mr. Davis acknowledged on April

23, 2018, and again on June 7, 2018, that he was induced to plead guilty in order to be released from jail. (Declaration in Support of motion to Withdraw Guilty, pursuant to Penal Code § 1018, 3CT 813.) Respondent argues that Mr. Davis should have known he would not be released from custody "until the case was resolved," and the his custodial status was "a circumstance entirely of his own making." This argument, however, reinforces Mr. Davis's claim that his guilty plea was coerced.

The supposed concern that Mr. Davis would fail to appear would not have been alleviated by him pleading guilty, but instead would likely his motive for not appearing for sentencing. Any remaining concern that he would fail to appear after his release on April 23, 2018, is dispelled not only by his release O/R, but also that the court allowed him to travel to Texas while the case was travel to Texas while the case pending. (12RT 1313, 3CT 841.)

Instead of arguing that Mr. Davis be released on an increased bail to insure he appeared for sentencing, the prosecutor agreed, and the trial court allowed him, to be released O/R if he pleaded guilty. The effect of such a bargain was to condition his release solely upon his guilty plea, unrelated to the reasons why his bail had been revoked. It was intended to coerce him to plead guilty so he could get out of jail, and it succeeded.

Respondent seeks to distinguish this case from the implied leniency in *People v. Collins* (2009) 26 Cal.4th 297, 302, 307-308, where the trial court indicated that the jury waiver would be considered favorably at sentencing. (RB, pp. 17-

18.) The effect, however, of premising Mr. Davis's liberty upon a guilty plea, was the same. Unlike the bargaining allowed during plea negotiations, where the prosecutor can make a more favorable offer, recommend a lower sentence, or dismiss or not file more serious charges in exchange for a plea of guilty, in this case the only thing that caused Mr. Davis to plead guilty was not a different offer, or reduced charges even, but this freedom. His release O/R was conclusive proof that his decision to plead guilty was on the promise that he would regain his liberty if he did so. This rendered his guilty plea involuntary, a structural defect that requires no showing of prejudice. (*Collins, supra,* at pp. 311-312.) As noted in Mr. Davis's opening brief, "guilty pleas obtained through 'coercion, terror, inducements, subtle or blatant threats' . . . are involuntary and therefore illegal." (*People v. Sandoval*)

D. Failure to obtain a factual basis

Respondent argues that the written plea agreement supports a factual basis where it states that Mr. Davis "damaged property not his own in a value in excess of $300." (RB, p. 18.) That written statement was insufficient, however, because it failed to state when the crime occurred, a fact the trial court clarified during the change of plea colloquy. (12RT 1311.) Mr. Davis, however, admitted to only one incident when he damaged "my own personal property." (12RT 1311.) The charge in this case alleged that Mr. Davis damaged community property of him and his ex-wife, but his admission that it was his did not match that allegation. The trial court made not

effort to reconcile his statement with the factual allegation that he vandalized his exwife's property, and therefore is no factual basis for felony charge of vandalism.

Respondent argues this claim is not cognizable on appeal, because a guilty plea waives challenges to the sufficiency of the evidence or admissibility of evidence on appeal, or procedural irregularities in the proceedings, citing *People v. Turner* (1985) 171 Cal.App.3d 116, 125; and *People v. Voit* (2011) 200 Cal.App. 4th 1353; but acknowledges contrary authority in *People v. Marlin* (2004) 124 Cal.App. 4th 559. (RB, p. 19.)

The Court in *Voit* explained that a defendant is precluded from rising on appeal that the facts admitted or stipulated to were inaccurate, and relied upon this Court's decision in *People v. Westbrook* (1996) 43 Cal.App.4th 220, 223-224. In *Westbrook*, admitted to the drug quantity and stipulated to the grand jury testimony that was used to impose a sentencing enhancement, by later challenging the weight or existence of drugs. This Court found that the admission and stipulation at the time of the guilty plea foreclosed challenging the sentencing enhancement on appeal. In this case, by contrast, there was an explicit rejection that the Mr. Davis damaged property of another and no stipulation to other evidence to prove that necessary element. As the Court in *Voit* recognized, the trial court, not the Court of Appeal, was charged with determining if there was a necessary factual basis for the plea. (*Voit, supra*, 200 Cal.App.4th at p. 1365-66.) In this case, there was not.

As noted in Mr. Davis's opening brief, "a court must find a factual basis for a negotiated

plea of guilty or no contest before accepting it." (Penal Code § 1192.5; *People v. Holmes* (2004) 32 Cal.4th 432, 438-442.) If the court questions defendant about the factual basis, it may develop the factual basis for the plea on the record by defendant describing the conduct giving rise to the charge, or questioning defendant about the detailed factual basis described in the complaint or written plea agreement. If the court questions defense counsel about the factual basis, counsel may stipulate to a particular document that provides an adequate factual basis, such as a complaint, police report, preliminary hearing transcript, probation report, grand jury transcript or written plea form. (*Holmes*, 32 Cal.4th at p. 442.) Many courts ask the prosecutor to recite a brief factual statement, which should include all elements of the crime and refer to the police report, then ask defense counsel to agree to these facts.

In this case, the trial court did asked questions based upon what it believed was an incomplete factual basis as stated in the change of plea form.

It attempted to determine the date and number of times Mr. Davis damaged the property of another. He answered that he damaged property on only on date ans that it was his property. That answer required a followup question that was never asked, whether that property was also the community property of his exwife none as asked. There was no stipulation, as was done in *Westbrook*, to a Preliminary Hearing or Grand Jury Transcript, police or probation report when the guilty plea was taken. When the probation report, prepared after the

guilty plea, was filed, Mr. Davis disputed it. Any of the permissible means to establish as factual basis for the vandalism charge was missing, and Mr. Davis's guilty plea should be vacated for that additional reason.

D. Prejudice

As noted supra in this reply, the only discussion of prejudice by the Respondent is in the context of trial counsel's failure to advise Mr. Davis of collateral consequences, which the Respondent argues was non-prejudicial because Mr. Davis could have researched and found it out for himself. (RB, p, 15.) This is not the correct standard of prejudice, because under such a theory, trial counsel would never be found ineffective for failing to advise a client of a severe collateral consequence, because the client could have found for her/himself that consequence.

Respondent does not address the standard of prejudice, because he argues there was not error. There was, and Mr. Davis will repeat it in this reply. An involuntary guilty plea is a structural error that requires no showing of prejudice. (*People v. Collins, supra*, at pp. 311-312.) The failure of the record to show that Mr. Davis knowingly and intelligently waived his the privilege against self-incrimination under the Fifth Amendment, and his rights to confrontation and compulsory process under the Sixth Amendment, and to a jury trial under the Seventh Amendment, as required by *Boykin v. Alabama* and *In re Tahl*, are constitutional violations that are prejudicial unless shown to be harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24 [93 S.Ct.

1038, 35 L.Ed.2d 297].) It this case, the record is deficient to show a knowing and intelligent waive of the right to confrontation and compulsory process and the privilege against self incrimination, a violation that taints off Mr. Davis's convictions, a separate basis to vacate all convictions and remand to the trial court for further proceedings.

The failure of trial counsel to advise Mr. Davis of the collateral consequences of a felony conviction on his ability to have a real estate license is a violation of his right to effective assistance of counsel under the Sixth Amendment, under *Padilla v. Kentucky, supra,* 559 U.S. at p. 367 [130 S.Ct. 473, 176 L.Ed.2d 284], and there is a reasonable probability that counsel's failure to advise him of that consequence caused him to plead guilty, a prejudicial error even if Mr. Davis cannot show he wold have prevailed had he gone to trial. (*Lee v. United States,* ___U.S.___ 137 S.Ct. 1958, 1966-1967 [198 L.Ed.2d 476.])

The failure to establish a factual basis, as required by Penal Code § 1192.5, is a violation of a statute that is governed by California's "miscarriage of justice" standard. (California Constitution, Article VI, § 13; *People v. Watson* (1956) 46 Cal.2d 818.) Under this test, reversal is mandated when there is a reasonable probability that the error affected the jury's verdict. A "'probability' in this context does not mean more likely than not, but merely a reasonable chance, more than an abstract possibility." (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715.) Under that test, it is clear that the factual basis for the plea of guilty to vandalism of

more than $400 worth of damage failed to prove the necessary element of damage to the property of another, and that conviction mus be vacated and remanded for further proceedings.

CONCLUSION

For the reasons set forth in this reply and his opening brief, Gavin Blake Davis asks his Court to vacate his guilty pleas and remand the case for further proceedings.

DATED: March 25,2019

Respectfully submitted,
John Lanahan

JOHN LANAHAN
550 West C Street, Suite 1670
San Diego, California 92101-8557
Telephone: (619) 237-5498
Attorney for Defendant-Appellant

CERTIFICATION OF WORD COUNT [omitted]
PROOF OF SERVICE [omitted]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST,. SAN DIEGO, CA 92101

FOR COURT USE ONLY
FILED [stamp]
JUN 19 2018
By: A. Tenorio, Clerk

PLAINTIFF
THE PEOPLE

DEFENDANT
GAVIN B. DAVIS

SUPERIOR COURT CASE NUMBER
SCD266332

CERTIFICATE OF PROBABLE CAUSE (CRIMINAL)

A judgment of conviction upon a plea of guilty or nolo contendere, or an admission of violation of probation, was entered in the above-entitled case on 4-23-18 and the defendant was sentenced on 6-7-18. The defendant submitted a Notice of Appeal and Request for Certificate of Probable Cause on 6/8/18. The court finds defendant has shown reasonable constitutional, jurisdictional, or other grounds for appeal relating to the legality of the proceedings and certifies that there is probable cause for an appeal from the referenced judgment.

APPENDIX I

DATE: 6/19/18

Timothy R. Walsh

TIMOTHY R. WALSH, Judge of the Superior Court

Cal. Rules of Court Rule 8.304(b)
Cal. Penal Code § 1237.5

By: M. Danie-Ison, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA COURT OF APPEAL FOR THE FOURTH APPELLATE DISTRICT DIVISION 1

[STATE OF CALIFORNIA]
Plaintiff-Respondent,
vs.
GAVIN B. DAVIS
Defendant-Petitioner.

Case No.:

NOTICE OF APPEAL
STATEMENT OF APPEAL
PROBABLE CAUSE PRESENTED
PURSUANT TO Pen. Code, §1237.5

APPEAL FOR
Case no.: SCD266332, SCD273043

Date:
Time:
Courtroom:

APPENDIX J

PLEASE TAKE NOTICE, that, Defendant, Mr. Gavin B. Davis, hereby appeals from the order or judgment entered on June 7, 2018, in Case No.: SCD266332, and SCD273043, Superior Court of California - San Diego County.

This appeal follows from a guilty plea dually related to: (i) the sentence or other matters occurring after the plea (April 23, 2018) per Cal Rules of Court, rule 31 (d); and, (ii) relating to the validity of the plea, as the Defendant had requested to withdraw his plea for good cause prior to Sentencing on June 7, 2018; which was unlawfully denied.

This appeal is filed Pro Per, however, Defendant's trial counsel, the professional law firm of Ronis & Ronis, and attorney of record on June 7, 2018, Mr. Jane E. Ronis (SBN# 51450), has noted orally on record at least one reason (see pg. 2-3, 11 2 (iii) below for additional summary detail) in support of the Defendant's several reasons, each valid on their own, prima facie, for withdraw of his plea, which the court erred in denying; and, whereby, itself, upon this Court reviewing the oral record of June 7, 2018, qualifies as third party probable cause pursuant to Pen. Code, § 123 7 .5.

This Notice of Appeal, is succinctly drafted, though also constitutes the Defendant's Statement of Appeal, limited in scope, in such that, this Appeal is specific to the trial court's errors in not granting the Defendant withdraw of his plea, thereby, subjugating his due process; without prejudice, to the Defendant's positions on other errors in the lower court proceedings, and fully preserving, while tolling, such claims on appeal, if this Court, for any reason, does not

reverse the lower court's denial of the Defendant's withdraw of his plea. Given this limited scope appeal, and with the additional information provided below, and via attachment, or via citation, this embedded Statement of Appeal is Rule 184(b) complaint under the California Rules of Court.

Generally, the following points are to be raised in this appeal:

1. On June 7, 2018, the trial court (San Diego County, Dept. 1102) prior to commencement of the Sentencing Hearing in SCD266332 on such day, erred in not taking Judicial Notice, and Lodgment of the following collateral attack and cross-action in the United States District Court for the Southern District of California (USDC SD Cal), case no.: 17-654, *Davis v. SDDA et. al.*, respectfully requested for submission by one of the Defendant's trial attorneys, Mr. Jan E. Ronis of Ronis & Ronis. Such cross-action includes six (6) 42 U.S.C. § 1983 claims (17-654, Doc. 72, Amended Complaint, May 14, 2018, pending); against the Prosecution, for violations, generally related to his 4th and 8th Amendment rights, a priori; and, secondarily, due process violations under the 5th and 14th Amendments. Such request for Notice and Lodgment also included USDC SD Cal, 18- 866, *Davis v. San Diego Sheriff's Dept.*, opened on May 4, 2018, after the Defendant was unlawfully detained pre-trial, for approximately six (6) months, and whereby during this period, his Access to the Courts was unconstitutionally Denied in multiple capacities, including but not limited to such in a class capacity, moving under Fed. R. Civ. P. (FRCP) 23 for class counsel

(pending); as also sought in Defendant's (plaintiff therein) Partial Summary Judgment thereof under FRCP 56 (18-866, Doc. 6, filed on May 29, 2018).

2. On June 7, 2018, the trial court, prior to commencement of the Sentencing Hearing in SCD266332 on such day, erred in not accepting for filing with the trial court, a prepared Declaration of the Defendant's formally withdrawing his Plea Bargain of April 23, 2018 for good cause, while he was unlawfully incarcerated, pre-trial. Defendant's Declaration, and withdraw of the Plea Bargain for good cause is attached hereto, and includes but is not limited to:

(i) not freely, knowingly and intelligently waive his constitutional rights;

(ii) not being aware of all the consequences of the plea, as there is no way to know, with certainty and precision, as required via full disclosure, precisely what the terms of the Sentencing and Probation will be at the time of entering the Plea;

(iii) learning subsequent to the initial, coerced, entrance of the Plea on April 23, 2018, that the Defendant's professional licensing is in no uncertain jeopardy, which his attorney of record on June 7, 2018, Mr. Jan E. Ronis (Ronis & Ronis) at Sentencing, admits on record (sealed, without purvey of the court or the prosecution, requiring unsealing for the Appellate Court, solely, hereitr), he1 "'did not discuss with the Defendant prior to entering into the Plea; or, separately, prior to Sentencing;

(iv) Defendant was indirectly threatened, as implied on record on April 23, 2018 to enter

into the Plea Bargain; and, stated, more explicitly (during sealed portion of June 7 proceeding) by the Defendant on June 7, 2018; and,

(v) Defendant acknowledged on each of April 23, 2018, and, again, on June 7, 2018, that there was a "special condition" regarding his entering of the Plea on April 23, 2018, that being a return to his pre-trial Liberty (itself the subject of collateral attack, USDC SD Cal, 17-654). Defendant holds such as a material inducement. While this Court, on this specific point, withstanding the validity of the aforementioned separate points, could find that the Defendant had available remedy through bail review motions while he remained detained pre-trial for approximately six (6) months on Excessive and Punitive bail, Defendant notes, that, there were at least three (3) bail review hearings on calendar during this period of detainment, in which, his counsel, Ronis & Ronis, never filed the appropriate Motion; or, argued it. As such, this is also grounds for a claim of the ineffective assistance of counsel, a common legal ground for withdrawing a plea.

3. The Reporter's Transcript from June 7, 2018, during the closed portion of the proceeding (required for unsealing), notes certain of these positions put forth by the Defendant in requesting to withdraw his plea; which, the trial court judge, erred, in denying such request.

4. Defendant notes that if you plead guilty or no contest because you are threatened, coerced or lured (i.e. inducement) into doing so, the court should grant your Motion to Withdraw a Plea. This is because California law provides that guilty pleas must be entered into freely and

voluntarily. In *People v. Sandoval* (2006) 140 Cal.App.4th 124, it holds, on the long-established rule that "guilty pleas obtained through 'coercion, terror, inducements, subtle or blatant threats' are involuntary" ... and are therefore unlawful.

5. On June 7, 2018, the trial court, erred in not accepting the Defendant's withdraw of his guilty plea on multiple grounds. Pursuant to California Rule of Court, Rule 31, the following papers not included in the normal record of appeal are necessary to properly determine these points on appeal:

(i) The Declaration of the Defendant, as attached hereto, withdrawing his Plea, that was not admitted by the trial court on June 7, 2018;

(ii) The sealed Reporter's Transcript from the June 7, 2018 Sentencing Hearing, closed to the courtroom, and, to the prosecution, at the court's direction; requested to be unsealed to the Appellate Court; but, still sealed from the prosecution, for good cause; and,

(iii) If desired, for example, if the several valid reasons noted herein, or upon substantive review by this Court, are found to be insufficient, for any reasons, then the lodgment of the collateral attack (USDC SD Cal, 17-654; and 18-866) and cross-action, in the Court's discretion. Defendant, at present, acknowledges, that the full record, is not necessary and would overly burden this Court, if called, given the appeal, herein, is solely regarding the withdraw of the Defendant's plea, in order to be afforded proper due process, and move back into pre-trial in SCD266332 (e.g. *Pitchess* Motion, not heard); and, no longer waive time in SCD273043, moving timely to trial, though anticipating a dismissal at a Preliminary

Hearing. Appellate Court must Order the unsealing, for itself, and the Petitioner, solely, the Reporters' Transcript of June 7, 2018, in question before this Court; as brought forth, herein this Appeal.

Dated: June 8, 2018

Gavin B. Davis
Mr. Gavin B. Davis, Pro Per

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San Diego, CA 92101
858.876.4346
gbdproper@mail.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA COURT OF APPEAL FOR THE FOURTH APPELLATE DISTRICT DIVISION 1

[STATE OF CALIFORNIA]
Plaintiff-Respondent,
vs.
GAVIN B. DAVIS
Defendant-Petitioner.

Case No.:

ATTACHMENT TO NOTICE OF APPEAL; STATEMENT OF APPEAL; PROBABLE CAUSE PRESENTED PURSUANT TO Pen. Code, §1237.5

DEFENDANT'S FORMAL WITHDRAW OF PLEA APPEAL FOR

Case no.: SCD266332, SCD273043

Date:
Time:
Courtroom:

Gavin B. Davis, Pro Per
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San Diego, CA 92101
858.876.4346
gbdproper@mail.com

SUPERIOR COURT OF THE STATE OF CALIFORNIA SAN DIEGO COUNTY

[STATE OF CALIFORNIA]
Plaintiff,
vs.
GAVIN B. DAVIS
Defendant.

Case No.: SCD2666332, SCD273043

DECLARATION OF DEFENDANT UNDER CA PC§ 1018, WITHDRAWING PLEAS

Date: June 7, 2018
Time: 1 :30 p.m.
Courtroom: 1102, Hon. Timothy R. Walsh

INTRODUCTION

Defendant, Mr. Gavin B. Davis, has already unequivocally withdrawn his Plea Bargains, in SCD266332 and SCD273043 as entered before the court, on April 23, 2018, outside of State of California court, for Good Cause, as shown, herein. Defendant now moves in 'open court' for such withdraw of the pleas as required under Ca PC §1018, as follows:

STATEMENT OF FACTS AND SUPPORT OF DECLARATION AND WITHDRAW

1. First, Defendant, did not freely, knowingly and intelligently waive his constitutional rights. Indeed, of material issue, is federal collateral and cross-action in the United States District Court for the Southern District of California (USDC SD Cal), in case 17-654, *Davis v. SDDA et. al.*, where the Defendant (Plaintiff therein), has alleged six (6) claims (Doc. 72, Amended Complaint) of his Constitutional rights being violated by the prosecution (i.e. SODA and employees thereof) under, a priori, the 4th and 8th Amendments, separately; and, secondarily, the Due Process clauses of the 5th and 14th Amendments. Defendant (Plaintiff therein), has moved for Fed. R. Civ. P. 56 Partial Summary Judgment (Doc. 77, May 29, 2018) on three (3) of the six (6) claims, which remains pending in federal court.

2. Second, Defendant has lodged relevant USDC SD Cal, federal cross-action and collateral attack with the Superior Court of California, San Diego County, on June 7, 2018; which, on its own, provides sufficient support, and is beyond clear and convincing evidence, that these matters between the prosecution and the Defendant are far from being amicably resolved.

3. Third, Defendant was not aware of all the consequences of the plea, also,, on its own, grounds for the Court granting a request for withdraw. For example, as the Defendant has not been Sentenced (hearing scheduled June 7, 2018), yet, Defendant posits that at any time before Sentencing, a defendant can withdraw their Plea(s), as there is no way to know, with certainty

and precision, as required via full disclosure, precisely what the terms of the Plea will be. Further, thi shall include suggestions made by the San Diego County Probation Department in its report, which the Defendant, contests as having numerous falsehoods in it, as well as terms and conditions themselves that are unacceptable to the Defendant; and, that the Defendant's counsel, professional law firm, Ronis & Ronis (San Diego, CA), could not have known, themselves, at the time that the Plea was entered.

4. Fourth, Defendant was not advised of any mandatory jail or prison term. However, third parties, other than his defense have noted that the One Million Dollar ($1,000,000) bail threshold brings a mandatory sentencing with it; which, may, or may not have been completed while the Defendant was detained pre-trial, as, separately, the Probation Report, suggests. Irrespective, this is an unknown factor to each of the Defendant and his criminal defense counsel, until the actual Sentencing date.

5. Fifth, subsequent to release from custody after April 23, 2018, Defendant has been made aware that he will be ineligible for a California Real Estate professional license given a felony conviction. While the Defendant, has let his California Real Estate Salesperson license lapse, for certain reasons, including the notion that his professional work was completed in the State of Vermont in 2017; he, still desires to re-apply for this license in California, or, as relevant, in another state; where, a felony conviction prohibits such licensing.

6. Sixth, Defendant entered the Plea Bargain(s) on April 23, 2018, while being prompted by the Court if he was threatened to enter into them. On such day, before the Court, he indicated orally, "not directly," and had implied 'indirect' threats to his person and safety therefrom.

Defendant has reported these threats to federal authorities, and is not at liberty, to go into detail in this proceeding regarding the nature of such threats. Defendant also noted such specific matter in USDC SD Cal, 17-654, *Davis v. SDDA et. al.*, Doc. 69 (April 26, 2018), which has been lodged with the Court on June 7, 2018. Defendant clearly did not enter into the Plea Bargain(s) on April 23, 2018, freely and voluntarily.

7. Seventh, on April 23, 2018, Defendant was asked if there were any special conditions to him entering into the Plea Bargain(s) by the Court; and, he indicated, "Yes," he was promised an unconditional (operative word) return to his Liberty; and, separately, returned on the same day (April 23, 2018). Defendant had waited several months for a Bail Review Motion, which Hearing, was taken on and off calendar three (3) or more times during this period without being heard; and, whereby the Defendant was held on an Excessive, and Punitive bail of One Million Dollars ($1,000,000) after missing court on one of two (I of 2) hearings on October I 0, 2017, for good cause. Such matters are also referenced in USDC SD Cal, *Davis v. SDDA et. al.*, Doc. 69 (April 26, 2018). Once again, this is further evidence, that the Defendant did not enter into the Plea Bargain(s) of April 23, 2018, freely and voluntarily. Further, and, separately, Defendant,

as the Bail Review Motions were never filed, could have grounds, on this alone, of the ineffective assistance of counsel, a common legal ground for filing a Motion to Withdraw a Plea (failure to file and argue the appropriate motions)

8. Defendant notes that if you plead guilty or no contest because you are threatened, coerced or lured into doing so, the court should grant your Motion to Withdraw a Plea. This is because California law provides that guilty pleas must be entered into freely and voluntarily. In *People v. Sandoval* (2006) 140 Cal.App.4th 124, it holds, on the long-established rule that "guilty pleas obtained through 'coercion, terror, inducements', subtle or blatant threats' are involuntary" ... and are therefore unlawful. Once again, Defendant, as one of several valid reasons for withdraw of the Plea Bargains of April 23, 2018, notes that he was induced to enter into such Pleas in order to regain his pre-trial Liberty. Defendant made this very clear before the Court o April 23, 2018.

9. California Penal Code 1018 PC - Motion to Withdraw Guilty Plea - Defendant to plead in person; refusal of certain pleas; change of plea; corporate defendants; construction of section. ("Unless otherwise provided by law, every plea shall be entered or withdrawn by the defendant himself or herself in open court. No plea of guilty of a felony for which the maximum punishment is death, or life imprisonment without the possibility of parole, shall be received from a defendant who does not appear with counsel, nor shall that plea be received without the consent of the defendant's counsel. No plea of guilty of a felony for which the maximum punishment is not death or life imprisonment without the possibility

of parole shall be accepted from any defendant who does not appear with counsel unless the court shall first fully inform him or her of the right to counsel and unless the court shall find that the defendant understands the right to counsel and freely waives it, and then only if the defendant has expressly stated in open court, to the court, that he or she does not wish to be represented by counsel. On application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted. Upon indictment or information against a corporation a plea of guilty may be put in by counsel. This section shall be liberally construed to effect these objects and to promote justice.")

CONCLUSION

10. Each one of these seven (7) reasons for Withdraw of the Pleas, on their own accord, is grounds for withdraw of the Pleas; while each providing, clear and convincing evidence for such withdraw. In totality, taken together, such is more than sufficient for the withdraw of the Plea Bargains.

11. Per Ca PC § 1018, the Court is to "liberally construe" a Motion to Withdraw a Plea by a defendant, such as the Defendant, has brought forth, here today (June 7, 2018), in order to "promote justice," and whereby, denial of such forthright request and motion by the Defendant

in open court, would be a subjugation of his rights, prima facie; and, also, separately, premature given valid, open, federal collateral attack and cross-action.

12. The legal standard for "clear and convincing evidence," is, is it substantially more than not that a defendant would have entered a plea if all the facts had been known at the time of the plea; once again, to be construed" liberally" in favor of the defense. It is clear, prima facie, that Defendant would not have entered into the Pleas if he was at Liberty. Further, it is clear, prima facie, that Defendant would not have entered into the Pleas, if he had known all of the terms and conditions of such Pleas, themselves, which cannot be known, until such a party is formally Sentenced; after, taking into consideration unknown facts and factors consideration factors, at the time a Plea is entered.

REQUEST FOR RELIEF

13. Good cause, showing, in multiple capacities, the Defendant has withdrawn his Plea Bargains of April 23, 2018; and, requests that the Court formally acknowledge same in open court on June 7, 2018; via Order, as required, returning the matters to pre-trial in SCD266332.

14. Thereafter, in addition to withdraw of the Plea Bargains of April 23, 2018, Defendant no longer waives time with respect to the allegation of Failure to Appear (SCD273043) (note: Defendant is clearly engaged with the process of the law, and not evading it, in any uncertain capacity), and requests that the Court timely schedule a Preliminary Hearing there upon in SCD273043, moving to trial, timely thereafter, if

the defense should not be successful in dismissing such matter at the Preliminary Hearing.

CERTIFICATION AND CLOSING

By signing below, I certify to the best of my knowledge, information, and belief that this Motions and accompaniments: (a) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (b) is supported by existing law; (c) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; this filing otherwise complies good faith requirements.

DATED: June 7, 2018

Gavin B. Davis
Gavin B. Davis, Individually

Petitioner's Timely Facsimile to State of California (SDDA) Withdrawing Plea, April 25, 2018

[State of California v. Gavin B. Davis], SCD266332 and Associated Cases – Plea Rider A

GB Davis <gavinprivate96@gmail.com>
Wed, Apr 25, 2018 at 2:36 PM

To: "Trinh, Leonard" <leonard.trinh@sdcda.org>

Cc: Summer.Stephan@sdcda.org, "Manahan, George (USACAS)" <george.manahan@ usdoj.gov>, "christopher.combs" <christopher. combs@ ic.fbi.gov>, "ronald.lenert" <ronald.lenert @sdcounty.ca.gov>, jan <jan@ronisandronis.com>, gvh <gvh@ ronisandronis.com>, jason <Jason @ronisandronis.com>, hk <hk@tkflaw.com>, Patrick Hennessey <pjhjrlaw@gmail.com>, Kristina Davis <kristina.davis @ sduniontribune.com>

Mr. Leonard N. Trinh:

Please Note, the following, in part:

(1) On Monday, April 23, 2018, Mr. Gavin B. Davis (Defendant in SCD266332, and associated cases), appearing, horizontally (i..e Pro Per), with Mr. Jan E. Ronis of attorneys, Ronis & Ronis, entered a Plea Bargain(s) (Dept. 11, San Diego County, Central, Criminal)

(2) Immediately prior to the beginning of such proceeding (Dept. 11), Mr. Davis provided Mr.

Ronis a copy of the attached Rider A to the Plea Bargain; and discussed its contents, which Mr. Ronis read, asking certain questions. Mr. Davis requested that it be filed

(3) On Record on 4/23/18 (Dept. 11), Mr. Davis was specifically asked if:

(a) he was threatened to take such Plea, he indicated, not Directly, but alleges one or more claims of being Indirectly Threatened to take such Plea(s); and, separately,

(b) if any other Promises were made to enter into the Plea, to which Mr. Davis answered, "Yes"; with respect to (b):

(i) the Judge inquired further and Mr. Davis indicated that he was Promised as a condition of Plea, that his unrestricted personal Liberty would be returned; and, separately, returned on the same day (i.e. 4/23/18) as the Plea(s), Court Appearance (Dept. 11);

(ii) thereafter (i.e. after (b)(i)), the Judge clarified, and inquired if that was the DA (i.e. you, in your official capacity, despite Mr. Davis CA PC 1424, stance, against, each of you, and separately the SDDA, in favor of the CA AG) understanding; and, whereby, you Confirmed that this was the case, in an honest, and good faith capacity;

(iii) Mr. Davis went on record with, effectively, paragraph 4, pg 2 of the attached Plea Rider A

(4) In effect, without question/dispute, you (on record orally), Agreed to the OR release of Mr. Davis (despite a $1,000,000 bail from October 2017); Mr. Davis holds this as Evidentiary in cross-action; and in these cases, as further evidence of Vindictiveness (constructively), and further grounds for each of federal cross-action, and CA PC 1424, DQ of you;

(5) Mr. Davis has now been granted OR release at his last two court appearances by the SDDA, including on 4/23/18, as Agreed to by you (orally on record)

(6) The San Diego County Sheriff, upon release on the evening of 4/23/18, also Specifically, told Mr. Davis that his release was "on his Own Recognizance"

Please review CA PC 1319.5, with regard to OR release. Mr. Davis has a Right, to pre-trial release.

Mr. Davis withdraws his Plea, as stated to 3rd Parties, already, and wishes to move back into Pre-Trial with the Pitchess Motion, and a new CA PC 1424, seeking your disqualification

Further, please Note, as it relates to USDC SD Cal, 17-654, Davis v SDDA et al., an email was sent to you, and the SDDA's attorney, Mr. Ronald Lenert, earlier today, with this information:

"The Plaintiff, Mr. Gavin B. Davis, is filing an Amended Complaint ("TAC") as Granted (Doc. 66), however, as the Plaintiff was being Denied

Access to the Courts (Doc. 59, 63), while being illegally Detained, pre-trial, against his 4th and 8th Amendment rights, a priori, and also violating other rights (e.g. Due Process clauses of the 5th and 14th Amendments), on Thursday, April 26, 2018, the Plaintiff is Moving for a reasonable Extension of the Start date of 30-day period so Granted by the Court (Doc. 66) to file such TAC, from February 26, 2018; to April 26, and, therefore having such TAC "Outside Date" be May 25, 2018."

Regards,
Gavin B. Davis

2 attachments
Plea Rider 1 of 2 42318.pdf
15K

Plea Rider 2 of 2 42318.pdf
30K

Petitioner's Hand-written Plea Rider of April 23, 2018

[the following was hand-written with a golf pencil while detained pre-trial, sufficiently duplicated by hand-writing, and provided to defense counsel to submit with the April 23, 2018 Plea, which was not done; and is highly evidentiary in multiple regards]

1. Mr. Gavin B. Davis has entered certain form documents regarding a Plea Bargain, with his attorney Mr. Jan E. Ronis, of Ronis & Ronis (San Diego), on Friday, April 20, 2018 based on conversations and written correspondence with Deputy District Attorney (DDA), Mr. Leonard Nyugen Trinh, of the San Diego County District Attorney (SDDA). This document serves as an official rider ("Rider A") to such Plea(s).

2. Rider A is entered contemporaneously with the Plea(s) – the documents are inseparable (i.e. they run together)

3. The Plea(s) are conditioned, unequivocally, on Rider A.

4. Rider A, stipulates that, Mr. Gavin B. Davis will be released on the same day as the Plea(s) are entered (intended as Monday, April 23, 2018), and his liberty returned, or the Plea(s), in their entirety will be null and void therefore necessitating new documentation, prima facie.

5. In the alternative, should Rider A not be accepted for any reason, Mr. Gavin B. Davis, and counsel, so move to re-schedule the prior 'Bail Review Hearing' by right in forty-eight

(48) hours, if feasible and no longer than five (5) days, by statutory authority.

Gavin B. Davis 4/22/18
Defendant
Gavin B. Davis

Defense Attorney
Mr. Jan E. Ronis, esq.

Prosecution