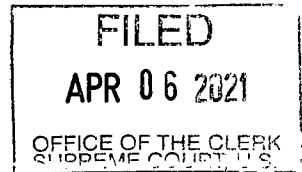


20-7902
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



John Laponte — PETITIONER
(Your Name)

VS.

Craig Koenig — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court for the State of California No. S266867- 03/17/2021

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Laponte, CDCR #E-50787

(Your Name)

CTF/P.O. Box 689, C-DW-118-L

(Address)

Soledad, California. 93960-0689

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Is petitioner entitled to enforce the terms of his plea agreement;
2. Is indefinite incarceration constitutional;
3. What constitutes excessive punishment.

LIST OF PARTIES

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

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

BOYKIN v. ALABAMA, (1969) 395 U.S. 238

SANTOBELLO v. NEW YORK, 404 U.S. 257 (1971)

STATUTES AND RULES

Penal Code Section 3040 et seq.

Penal Code Section 1170.2

Code of Regulations 15 CCR §2280 et seq.

Penal Code Section 209(b)

OTHER

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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☐ is unpublished.

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

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☐ is unpublished.

☒ For cases from **state courts**:

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

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☒ is unpublished.

The opinion of the California Court of Appeal, Second Appellate court appears at Appendix B to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

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

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 3/17/2021.
A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution:

U.S. Constitution 5th Amendment

U.S. Constitution 8th Amendment

U.S. Constitution 13th and 14 Amendment

Statutory Provisions: California Penal Codes;

PC §209(b)

PC §236

PC §245(a)(2)

PC §211

PC §3040

PC §3041(c)

PC §1168

PC §1170

California Code of Regulations:

15 CCR §2280 et seq.

STATEMENT OF THE CASE

On December 20, 1989, petitioner was charged in an information with one count of kidnap for ransom (Pen. code §209(a). One count of False Imprisonment by violence (Pen. Code §236, count 2. One count of assault with a firearm (Pen. Code §245(a)(2) Count 3. Robbery (Pen. Code §211) Count 4. It was also alleged as to all counts that petitioner personally used a firearm. (Pen. Code §12022.5)

Petitioner entered guilty pleas to count 1. amended to a violation of Penal Code section 209(b) and to the remaining three counts, in exchange for a promised sentence of life with the possibility of parole on count 1. and the middle term on each of the three remaining counts concurrent to the life term.

At the March 21, 1990, sentencing hearing the court imposed a sentence of life with the possibility of parole as follows: on count 1. the firearm was stricken, and the court imposed a sentence of life with the possibility of parole. On count 2. the middle term of two years plus two years for the firearm enhancement. On count 3. the middle term of three years was imposed, plus 2 years for the firearm enhancement. And on count 4. the middle term of two years was imposed plus two years for the firearm enhancement. Count 2. was stayed pursuant to Penal Code section 654; counts 3 and 4 were designated concurrent sentences..

On May 10, 2017 (27 years into the sentence) the trial sentencing court (granted) a "motion for modification of the original sentence imposed on March 21, 1990?) and ordered that the sentences imposed on counts 3 and 4 should be stayed pursuant to Penal Code section 654.

This resulted in the issuance of an abstract of judgment which correctly documented the three stayed sentences but erroneously documented a sentence of life with the possibility of parole in count 1.

Petitioner wrote to the clerk of the court and pointed out the error and was issued yet another abstract of judgment on August 31, 2017 with the same error in count 1.

On November 17, 2017, after a petition for writ of mandate was heard and granted in the Second Appellate District Court of Appeal in case number (B285920) that court ordered the Superior Court to "correct the abstract of judgment to reflect the terms of petitioner's plea agreement, as modified on May 10, 2017, which should reflect that petitioner is serving a sentence of life with the possibility of parole." A correct abstract of judgment, reflecting stayed sentences on counts 2 through 4 and a sentence of life with the possibility of parole on count 1. was filed November 16, 2017. Petitioner now has 4 abstract's of judgment in one case, this mainly due to the fact that the trial court never brought petitioner to court for the proceedings? and petitioner alleged in a timely appeal that the modification of his original sentence violated his plea agreement. Petitioner filed a timely notice of appeal on January 2, 2018 pursuant to California Penal Code section 1237.

/

STATEMENT OF FACTS

On 12/07/2020, petitioner filed a writ of habeas corpus in the state court of California Los Angeles Count In re John Laponte v. Graig Koenig, Case No. KA001795, On 12/15/2020, petition (denied) without citation. At **Appendix "C"** the grounds stated in the petition were as follows:

Ground 1. CDCR Falsely imprisoning petitioner;

Ground 2. Board of Parole Hearing lost jurisdiction over the petitioner;

Ground 3. Petitioner alleged a 9th suitability hearing held by the Board of Parole Hearings On April 10, 2020, was in fact unconstitutional since the Board had lost jurisdiction over the petitioner when they set his life sentence term on September 13, 2016 at 12 years;

Ground 4. Petitioner alleged his continued unlawful confinement violated the U.S. Constitution's 13th Amendment;

Ground 5. Petitioner alleged he was entitled to enforce the terms of his original plea agreement.

On January 4, 2021, the same petition was filed in the California court of Appeals for the Second Appellate District Court in In re JOHN LAPONTE, On Habeas corpus No. (B309741) said petition was (denied) On January 13, 2021, with a citation for petitioner to return to the very court which (denied) the petition on 12/15/2020 Superior Court at **Appendix "C"** with all other respects to the petition it was (summarily denied) on January 13, 2021 at **Appendix "B"**

On March 17, 2021, the highest state court Supreme court of California Case No. S266867 (summarily denied) petitioner's without citation. At **Appendix "A"**

Petitioner did not seek a re-hearing. Petitioner claims this court retains jurisdiction over the subject matter.

/

SUPPORTING FACTS AND DOCUMENTS APPENDICED

On March 21, 1990, petitioner did sign the plea agreement waiver at **Appendix "D"** the sentence imposed co-incides with the sentencing transcript at **Appendix "E"** which states in part at p. 3. lines 8 - 10. The only agency who could set petitioner's sentence in a number of years was the Board of Prison Terms pursuant to PC §3040. At **Appendix "G"** original sentencing abstract of judgment "which co-incides with the original sentence imposed).

On December 16, 2013, the Executive Officer the the Board of Parole Hearings JENNIFER SHAFFER, entered into a stipulation and agreement with prisoner/inmate Roy Butler, In re Butler, Cal.App.1st.(A139411) December 16, 2013. In this stipulation and agreement the Board of Parole Hearing would now set the "Base and Adjusted Base Term for all life term prisoner's and those prisoners who have already been to their initial parole hearings would have their terms set at their next scheduled suitability hearings, the implementation of this stipulation and agreement began on April 1, 2014.

PETITIONER'S 8th SUITABILITY HEARING

On November 2008, California voters changed the parole deferral that could be handed out by the Board pursuant to Penal code section 3041.5.

This law known as Proposition 9. Marcy's Law, was applied to petitioner at his 8th suitability hearing on november 23, 2009. where the Board of Parole Hearings could now defer parole for period's of and up to: 15 years, 10 years, 7 years, 5 years and a minimum of 3 years. Penal Code section 3041.5

Prior to this change in the law, under the original law when petitioner entered and signed his plea agreement the maximum parole deferral that could be issued for "non-homicde case" was 2 years. Penal Code section 3041.5.

At petitioner's 8th parole suitability hearing which took place on November 23, 2009, because petitioner refused an offer by Los Angeles County Deputy District Attorney LAWRENCE MORRISON, who offered petitioner a minimum of 3 years if petitioner would stipulate to the Board that he was not ready to be paroled? petitioner refused said offer and Deputy District Attorney LAWRENCE MORRISON, attempted to influence the Commissioner to defer parole for petitioner for a period of 15 years? Petitioner debated with the commissioner that the application of Proposition 9 was Ex Post Facto Law in direct violation of Article 1. Section 9.

(3) Ex Post Facto Law: No bill of attainder or ex post fact shall be passed.

Petitioner also explained to the Board Commissioner that the application of Ex Post Facto Law violated petitioner's original plea agreement and the law that governed said agreement made on March 21, 1990?

This information seemed to infuriate the commissioner and (she) deferred parole to petitioner for a period of 10 years.

Petitioner alleges that the change in the law Penal Code section 3041.5 now stated that pursuant to Penal Code section 3041.5(d)(1) or (d)(2) inmate's could petition to advance a previous parole deferral?

Petitioner made several attempts to utilize this procedure pursuant to the changes and stipulated agreement made by the Executive Officer JENNIFER SHAFFER, the the Bulter, stipulation agreement In re Butler, Cal.App.1st.(A139411) December 16, 2013, implemented April 1, 2014.

Every attempt made by petitioner to "advance his hearing and have his life term set was (denied) by the Board of Parole Hearings pursuant to Penal Code section 3041.5(d)(1) or (d)(2)?

PETITIONER'S STATE WRIT OF HABEAS CORPUS

In re JOHN RAFAEL LAPONTE, Cal.App.2d.(B267768) July 29, 2016

At Appendix "G" Unpublished Decision

On July 29, 2016, the California Court of Appeal, Second Appellate District Court in In re JOHN RAFAEL LAPONTE, Cal.App.2d.(B267768) July 29, 2016, (GRANTED) petitioner habeas corpus relief and ordered the Board to set petitioner's base and adjusted base term. At Appendix ""G" Unpublished Decision.

Petitioner alleges that another issue arose after the Court of Appeals in the above mentioned case appointed counsel MICHAEL SATRIS, who discovered during the state habeas corpus proceedings that "the trial court imposed an 'unauthorized sentence' on March 21, 1990"

See Appendix "G" p. 3. Foot Note 3. where it states:

³ In his traverse, petitioner raises a new claim that each of counts 2, 3 and 4 should have been stayed pursuant to PC §654. Because this issue was not raised in the petition, we do not consider it.

However, what the Court of Appeal, Second Appellate District did was order that the Board of Parole Hearings had (90) days to set petitioner's base and adjusted base term at a number of years, At Appendix "G" p. 7 - 10.

On September 13, 2016, the Parole board (did) set petitioner's base and adusted base term at a determinate term in count 1. of 12 years, then chose not to aggravate or mitigate that term of 12 years. At Appendix "H" BPH form 1135.

The Parole Board chose California Regulations Matrix 15 CCR §2282(c) and chose the middle term at 12 years. Appendix "H" p. 2. 15 CCR §2282(c) Matrix.

Petitioner alleges that the stipulation and agreement made be the Executive Officer JENNIFER SHAFFER, in In re Butler, Cal.App.1st.(A139411) December 16, 2013 implemented April 1, 2014, violated state parole regulations governing parole and fact findings of life term prisoners pursuant to 15 CCR §2282(a) which states in part:

(a) General. The panel shall set the base term for each life prisoner who is found suitable?

The stipulation and agreement in In re Butler, Cal.App.1st.(A139411) December 16, 2013, implemented on April 1, 2014, made absolutely no reference to a life term prisoners (status) pursuant to 15 CCR §2282(a) once each priosner's base term were set. Therefore, petitioner alleges that once the Executive Officer of the Parole Board made this decision it was not even considered what the regulation pursuant to the setting of the base term would affect each prisoner's life term converting that term from and indeterminate term into a determinate term?

Petitioner alleges that he brought this fact in a writ of habeas corpus to the state of California's highest Supreme Court and on March 17, 2021, the state's highest court denied review of the issues. At Appendix "A" state court's highest ruling.

Petitioner, also brought the fact that once the Parole Board set his base and adjusted base term on count 1. of petitioner life term with the possibility of parole and (denied) petitioner continued parole procedures pursuant to statutory provisions in accord with state law Penal Code section 3041.(c) the Parole Board had actually lost jurisdiction over the petitioner as of September 13, 2016?

PETITIONER ALLEGES THAT HE WAS ENTITLED TO A CONTINUED STATUTORY PROCESS

PURSUANT TO PENAL CODE §3041(c)

Which states in part:

For the purpose of reviewing the suitability for parole of those prisoners eligible for parole under prior law at a date earlier than that calculated under section 1170.2, the board shall appoint panels of at least two persons to meet "annually" with each such prisoner until such time as the person is released pursuant to such proceedings or reaches the expiration of his term as calculated under Section 1170.2.

At Appendix "G" Cal.App.2d.(B267768) July 29, 2016, at p. 10. (Disposition) the parole board was given (90) days to set petitioner's life term at a number of years. However, they were given an option to give petitioner 1. A new hearing, or 2. Provide petitioner with a written statement? The Parole Board chose option 2 and mailed petitioner a written statement of there actions taken on September 13, 2016. Appendix "H" p. 1.

Thus, in choosing option 2 of the court's order in Appendix "G" p. 10. The Parole Board violated petitioner's statutory continued parole process since petitioner was no longer under Proposition 9 Marcy's Law where parole could be deferred for a higher period than what the current procedure pursuant called for which was pursuant to PC §3041(c) "annual" hearings until such time as petitioner would be released or his term as calculated pursuant to PC §1170.2, expired?

Thus, it was also incorporated in petitioner's writ of state habeas corpus that petitioner was entitled to enforce the terms of his original plea agreement and sentence once that sentence had been calculated in accord with the sentencing transcript? Appendix "E" p. 3 lines 8 - 10.

PETITIONER'S VIOLATIONS OF THE PLEA AGREEMENT DID NOT END HERE

At Appendix "I" Motion for Modification of Sentence filed by court appointed counsel MICHAEL SATRIS. Court appointed counselor had also discovered that on March 21, 1990, petitioner had waived his federal constitutional rights and received an "unauthorized sentence" imposed by the trial court.

On May 10, 2017, the trial court (judge) STEVEN D. BLADES (IN CHAMBERS) did modify petitioner's original sentence and elevated petitioner's term in count 1. from life with parole to life without parole? also the fact that the judge (STEVEN D. BLADES) stayed the sentences in count's 3 - 4, these sentences were tied into and ran concurrent to count 1. Thus, petitioner was entitled 1. to be present during these procedures and 2. petitioner had the right to direct appeal pursuant to PC §1237. All which were (denied) to petitioner.

What petitioner did received from the order and modification was 3 new abstract of judgment's none which co-incide with petitioner's original sentencing transcript located at Appendix "E"

At Appendix "J" ORDER GRANTING MOTION FOR MODIFICATION OF SENTENCE (IN CHAMBERS). On May 10, 2017, 27 years after the sentencing court issued to petitioner an "unauthorized sentence" in direct violation of Boykin/Thal.

At Appendix "K" 1st. Amendment abstract of Judgment depicts in count 1. petitioner was now serving a term of life without parole? at p. 1. also at p. 2. CR-290 the term in count's 2 - 4 were all now stayed?

At Appendix "I" On August 31, 2017, the trial court again in there attempt to set petitioner's 2d amended abstract of judgment again elevated petitioner's term in count 1. to life without parole and at p. 2. of Appendix "I" CR-290 count's 2 - 4 were all stayed pursuant to PC §654?

It was not until petitioner filed a petition for writ of mandate in the Court of Appeal, Second Appellate District Court No. B285920) that the Superior Court was ordered to correct the sentence in count 1. from life without parole to life with the possibility of parole at Appendix "M" 3rd amended abstract of judgment.

Petitioner now is in possession of 4 abstract of judgment's in his case People v. Laponte, Case No. KA001795-01.

At Appendix "N" CDCR Generated Form known as "Legal Status Summary Sheets" These documents are evidence of the sentence prisoner's arrive with on the date of reception by the California Department of Corrections. At Appendix "N" p. 1. Petitioner's original CDCR Legal Status Summary Sheet depicts he was received by CDCR on March 30, 1990 with the sentence imposed by the trial court of:

At sentence components:

Count 1. Life with parole;

Count 2. (stayed)

Count 3. 3 years the middle term plus 2 years enhancement;

Count 4. 3 years the middle term plus 2 years enhancement.

However, after the trial court's attempt to correct it's own error's petitioner was issued a new and "false document" of what sentence he was received with by the California Department of Correction on March 30, 1990. At Appendix "N" p. 2.

New CDCR Generated Form: Legal Status Summary Sheet now depicts petitioner's sentence received on March 30, 1990 as follows:

Count 1. Life with parole;

Count 2. Stayed;

Count 3. Stayed;

Count 4. Stayed.

Petitioner alleges that he appeared before the Parole Board yet again on April 10, 2020, where he was (denied) parole for a period of 3 years in direct violation of his federal constitutional rights to due process. U.S. Constitution's 5th and 14th Amendments. At **Appendix "O"** On April 15, 2020, CDCR made yet another attempt to correct it's own records by re-calculating petitioner's life term after the Parole Board had (denied) parole to petitioner on April 10, 2020.

At **Appendix "O"** p. 3. depicts petitioner's maximum adjusted release date as of 09/14/1996 and the minimum date prior to becoming eligible for parole as 11/02/1993? All these records have been altered to look like petitioner is serving the sentence imposed by the trial court on March 21, 1990, but they are all false records.

The facts remain that petitioner was sentence to a life term in count 1. which pursuant to PC §3041. Petitioner would have to serve the maximum minimum term prior to becoming eligible for parole was 7 years. Therefore, Appendix "O" p. 3. depicts petitioner's minimum sentence to be served is 11/02/1993? which would have put petitioner serving the minimum of his life term at 3 years? instead of the mandatory 7 years pursuant to PC §3041.

/

REASONS FOR GRANTING THE PETITION

1. Petitioner's continued confinement is unconstitutional;
2. Petitioner's plea agreement and sentence were violated on 4 different occasions;
3. The state court's in California have suspended the writ of habeas corpus;
4. Petitioner's continued confinement violates the 8th, 13th and 14th Amendment;
5. Petitioner is entitled to enforce the original terms of his plea agreement;
6. Petitioner has a liberty interest in the outcome of this petition.

MEMORANDUM OF POINTS BOTH STATUTORY AND FEDERAL CONSTITUTIONAL RIGHTS

On March 21, 1990, in the California Superior Court in People v. John Laponte, No. KA001795-01, petitioner did knowing and voluntarily sign the plea waiver agreement in Appendix "A" pursuant to **Boykin v. Alabama**, (1969) 395 U.S. 238, **petitioner's plea was protected by the four corners of the contract?**

Plea agreement are enforceable by both state and statutory law in accord with **Santobello v. New York**, 404 U.S. at p. 257. U.S. Constitution's 5th and 14th Amendments.

Petitioner alleges that once his life term was set by the Board in a number of years pursuant to 15 CCR §2282(a) he was deemed suitable. In re Butler, Cal.App.1st.(A139411) December 16, 2013.

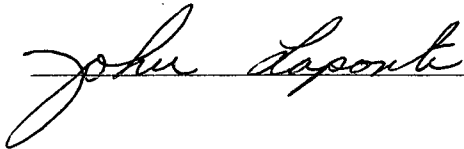
In accord with the changes in California Penal code 3041.5 by Proposition 9. Once the Board set petitioner's base and adjusted base term he no longer could be denied parole for the minimum of 3 years according to statutory law PC §3041(c) the Board was to appoint two persons with each such prisoner's who has there terms calculated pursuant to statutory law PC §1170.2 and these prisoner's were entitled to "annual suitability hearings" no longer subject to PC §3041.5 Proposition 9 parole deferrals for up and to 15 years, 10 years, 7 years, 5 years or the minimum term of 3 years.

Base on these facts petitioner believes the United States Supreme court should issue a writ of certiorari in his favor and deem his term and continued confinement unlawful.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: April 7, 2021