No. 20-8155

IN THE

SUPREME COURT OF THE UNITED STATES

Frederick Wayne Smith — PETITIONER
(Your Name)

ORIGINAL

vs.

HON. JUDGE CRAIG RICHMAN. Et. Al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE SUSPENSION OF STATE POSTCONVICTION PROCEEDING BY CALIFORNIA COURT'S SYSTEM NEVER "LEGAL" REACHING THE MERITS OF THE CLAIMS OF INNOCENCE, DENING THE FIRST HABEAS CORRUS BY VIOLATING CRC §4.551.(c)(2) which would have alleged AUTONOMY ... [California Supreme Court] SEE page 2 of coversheet:

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

PETITION FOR WRIT OF CERTIORARI

Frederick Wayne Smith C#69967
(Your Name)

Kern Valley State Prison P.O.BOX 5103
(Address)

Delano, California 93216
(City, State, Zip Code)

(Phone Number)

CONTINUE FROM COVERSHEET

No._____

CALIFORNIA SUPREME COURT; 2nd APPEAL COURT AND SUPERIOR COURT ALL SUSPENED THE HABEAS CORPUS WRIT ALLEGING SECOND SUCCESSIVE HOWEVER, NEVER GRANTING COUNSEL...WHO WOULD HAVE ADDRESS AUTONOMY. IT IS CLEAR THAT FOR A PETITION TO BE "SECOND OR SUCCESSIVE" WITHIN THE MEANING OF THE STATUTE, IT MUST AT A MODICUM BE FILED SUBSEQUENT TO THE CONCLUSION OF " A PROCEEDING THAT 'COUNTS AS THE FIRST. A PETITION THAT HAS REACHED FINAL DECISION COUNTS FOR THIS PURPOSE. THE CONSTITUTION, TREATIES, AND STATUTES OF THE UNITED STATES"CONSTITUTED PARAMOUNT LAW.SUCCINCTLY, STATE POSTCONVICTION PROCEEDINGS IN WHICH THE PRISONER IS RAISING CLAIMS THAT ARE THEN AVAILABLE FOR THE FIRST TIME IN ANY STATE COURT ARE THE FUNCTIONAL EQUIVALENT OF A FIRST APPEAL AS OF RIGHT IN SUCH CIRCUMSTANCES, THE RIGHT TO COUNSEL AND ESSENTIAL FINANCIAL ASSISTANCE RECOGNIZED IN DOUGLAS SHOULD APPLY. AND THE ORDER TO SHOW CAUSE, INFRA., CANNOT COUNT AS THE FIRST...BECAUSE OF THE MISCARRIAGE OF JUSTICE(DENING COUNSEL, VIOLATING 6th Amendment)and STATUS QUO PETITION FOR VIOLATION OF PROTECTED AUTONOMY RIGHT SHOULD STAND FOR FIRST POSTCONVICTION HABEAS CORPUS PETITION TO REACH THE MERITS OF A SUBSEQUENT PEITION 'IF THE ENDS OF JUSTICE DEMAND AND THE MISCARRIGAE OF JUSTICE EXCEPTION WOULD ALLOW SUCCESSIVE CLAIMS TO BE HEARD." FIND A VIOLATION OF THE 14 AMENDMENT OR PERHAPS THE SUSPENSION CLAUSE 53 U.S. CONST., ART.1,SECTION 9,cl.2...ART.1,§ 11. HABEAS CORPUS MAY NOT BE SUSPENDED UNLESS REQUIRED BY PUBLIC SAFETY.

QUESTION(S) PRESENTED

Should the May 2, 1995 Order to Show Cause/Prima Facie case; The NOV 05 2018 Superior Court writ of habeas corpus/Prima facie showing of violation of autonomy, and the current prima facie alleging factual innocence and violation of autonomy, make an exception and allow the Court to hearing De Novo& fair hearing and supersede allege successive or abuse of writ of habeas corpus???

Attacking the fact that procedure "California Rule of Court § 4.551.(A)(c)(2) was circumvented and Defendant was not allowed Counsel, that would have addressed factual innocence and exhibited Autonomy violation would that be successive or abuse??

The Prima Facie evidence that is still sufficient to establish the OSC was not rebutted or contradicted by the Ex-Trial Counsel alleging He knew the Detectives Furr, Adair and Smith and the fact they were known for framing People...That He knew them when he use to be a L.A.P.D. Sergeant, and he would show the jury and court I was innocent and someone else committed the crimes and he would also put me on the witness stand. Counsel rest the case without doing it and going contrary to my wishs, is that violation of autonomy and should the court hear the case???

Was not confronted with the witness against me, was not afforded the power of compulsory process, and not represented effectively by competent counsel, due to conflict of interest and violation of autonomy is that a Sixth amendment violation?

Prima Facie evidence that is sufficient to establish the O.S.C. was not rebutted or contradicted, defendant alleging that Detectives FURR, Adair and Smith framed Defendant and incriminated by them counsel DEBLANC opine, he knew the Officers from working with them when he was a L.A.P.D. Sergeant and knew them too incriminate innocent blacks with false evidence and he would produce evidence to the court to show it, and did not do it...did contrary to defendants wishs is this miscarriage of justice and violation of autonomy? Exculpatory evidence was never produce and the OSC exhibits prima facie case that shows autonomy, is that a second or supplemental petition for writ of habeas corpus? and if so should it deter disputing violation of autonomy?

Is petition "successive or and abuse of the writ of habeas corpus petition for attacking that procedure California rule of court §4.-551.(A)(C)(2) was not followed to appoint counsel to dispute the factual innocence and violation of autonomy?

Counsel opine he would establish factual innocence, that there was no reasonable cause to arrest defendant, and that counsel knew the detectives to frame others and show evidence that someone other then defendant did the crime, however, didnot and done contrary is that autonomy violation and the first time addressed? Is "quintessential miscarriage of justice" making someone do Life without parole, who is entirely innocent," and not giving them the chance to show old and new evidence, that can show erroneous conviction of an innocent person????

LIST OF PARTIES

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

[x] 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: The Second Appellate District, California; Los Angeles Superior Court, Department #120 Judge Craig Richman/supra

RELATED CASES

Since 1995 dealing with A374486 numerous petitions filed unable to list them...do not have my documents and see declaration pursuant to why where etc. I will attach copy of status quo.

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Add on sorry about err on numbers.....

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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.

[X] For cases from **state courts**: See declaration

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

[ ] reported at California - SUPREME COURT; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the ____ - SEC APP.DIV. FOUR, CALIFORNIA court appears at Appendix A & B to the petition and is DENIED

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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).

[X] For cases from **state courts:** See Declaration

The date on which the highest state court decided my case was NOV 13.19.
A copy of that decision appears at Appendix N/A C.
See Appellate Courts Case Information 11/13/2019

[ ] 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 Supra.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including APPENDIX F (date) on Jan 29, 2021 (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

McCoy v. Louisiana 138 S. Ct. 1500, 1510-12(2018).see id.1511("Violation of a defendant's Sixth Amendment-secured autonomy ranks as error of the kind our decisions have called 'structural', when present, such an error is not subject to harmless-error review."); TheSixth Amendment:In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; jto have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

XIV All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;nor shall any state deprive anytperson of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

28 U.S.C. § 2244(b)(3)(C)("The court of appeals may authorize the filing of a second or successive application satisfies the requirements of this sub."). and 2244(b)(2)'s bar does not apply. Had no fair opportunity to raise autonomy-violation in any application.

A decision produced by fraud on the court is not in essence a decision at all and never becomes final."Statutes of repose...Autonomy could not have been discovery previously through the exercise of due diligence due to dening counsel after ascertaining the 1995 order to show cause

Sanders v. United States, 373 U.S. at 15-16. Accord 28 U.S.C. 2244(b) (superseded)(successive petition rule applies only "after an evidentiay hearing on the merits of a material factual issue, or after a hearing on the merits of an issue of law); Green v. Reynolds, 57 F.3d 956, 957-58 & n.3(10th cir.1995)(although petitioner previously raised claim in two petitions, current claim is not "successive"because previous petitions were dismissed on procedural grounds and thus claim was never "decided on the merits"); Hill v. Lockhart, 894 F.2d 1009, 1010 (8th cir)(en banc), cert.denied, 497 U.S. 1011(1990)("The District court did not abuse its discretion in hearing Hill's second habeas petition, because there had been no final determination on the merits of Hill's first petition.")

The facts and holding of Sanders v. United States itself supply another possible basis for concluding that determination of a prior petition was not on the merits. In Sanders, the applicant first challenged the constitutionality of his guilty plea in a postconviction motion conclusionally alleging coercion and intimidation. Following summary dismissal of that motion on the ground that,"'although replete with conclusions [it] sets forth no facts upon which such conclusions can be found,'"the petitioner filed a second motion. The later motion included detailed factual allegations that the prisoner pleaded guilty while under the influence of drugs administered by jailhouse medical personnel. Applying its guidelines for adjudicating successive petitions, the Sanders Court concluded that the earlier "denial...was not on the merits" because it "was merely a ruling that petitioner's pleading was deficient." The court reached this conclusion, notwithstanding that the district court had "reviewed the entire file" and was "of the view that petitioner's

complaints are without merit in fact,"because many of the new facts allege ed by the petitioner lay outside the record reviewed in the first proceeding. The court held that a prior summary dismissal qualified as "on the merits" only if the pleadings and records reviewed by the dismissing court" 'conclusively show'...that is no merit in his present claim."

Explicitly codifying Sanders 'holding in the 1966 amendments to 28 U.S.C. §2244(b), Congress limited successive petition dismissals to situations in which relief was denied in the earlier proceeding "after an evidentiary hearing on the merits of a material factual issue, or after aahearing on the merits of an issue of law." Consistent with this language and with Sanders 'holding, the courts have concluded that "with prejudice"dismissals of prior petitions are not on the merits when:

(1) The claim as pleaded in either the prior or current petition alleges dispositive facts that are not "conclusively" disproved by the record and that were not tested at an evidentiary hearing in the prior proceeding.
(2) The prior determination in other respects was summary and not based upon the legal merits of the petitioner's claims
(3) The hearing in the prior proceeding was not "full and fair."
(4) Although the prior proceeding was on the merits, it was not reviewed on appeal for a reason other than a deliberate and fully informed decision by the petitioner not to appeal a decision that could have been appealed and should have been appealed if the petitioner disagreed with it.
Felker v. Turpin, 518 U.S. at 657;Sawyer v. Whitley, 505 U.S. 333, 339 (1992); McCleskey v. Zant, 499 U.S. 467, 495(1991)may have claim considered on the merits if show actual innocence."

Ex Parte Bollman 8 U.S. 75, 94, 2L. Ed. 554(1807) "[T]he power to award the writ by any of the courts of the United States, must be given by written law, Ex Parte Bollman.

The Court must appoint Counsel on the issuance of an Order to Show Cause(OSC)In Re Clark(1993)5 Cal.4th 750 and People v. Shipman (1965) 62 Cal.2d 226, 231-232.) The Court of Appeal has held that under Penal Code § 987.2(a)(attorney who has contracted with city to provide services as city attorney, under specified conditions, may also contract to provide defense for criminally accused indigent). Counties bear the expense of appointed counsel in a habeas corpus proceeding challenging the underlying conviction. (Charlton v. Superior Court(1979) 93 Cal.App. 3d 858, 862)Penal Code § 987.2 authorizes appointment of the Public Defender, or Private Counsel if there is no public defender available, for indigents incriminal proceedings.

California Rules of Court Rule 4.551. Habeas corpus proceedings succinctly: (c) Order to show cause
(1) The court must issue an order to show cause if the petitioner has made a prima facie showing that he is entitled to relief. In doing so, the court takes petitioner's factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his factual allegations were proved. If so, the court must issue an order to show cause(OSC).
(2)On issuing an order to show cause, the court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel. NOTE: Petitioner did file a motion for counsel and was denyed, and Petitioner;s Ex-Trial Attorney DEBLANC nerver answered to any of the OSC,which now exhibit autonomy violations).

See also Dobbs v. Zant, 506 U.S. 357, 359(1993)(per curiam)(discussed buttressing Booker v. Dugger, 825 F.2d 281(11th Cir. 1987),Cert. denied, 485 U.S. 1015(1988)(petitioner was obliged during prior habeas corpus proceedings to investigate all reasonable grounds for relief; petitioner's failure in second habeas corpus proceeding to discover and raise perjured testimony of prior counsel renders third habeas corpus petition in capital case improperly successive); Sanders, 737 U.S. at 16-17. See, e.g. Kaufman v. United States, 394 U.S. at 227(permitting relitigation of factual questions not previously considered at "full and fair fact hearing"as defined by Townsend v. Sain, 372 U.S. 293(1963); Smith v. Yeager, 393U.S. at 126; Raulerson v. Wainwright, 753 F.2d at 874(because "[p]etitioner had a full and fair opportunity to establish"ineffective assistance at prior proceeding, he "has not met his burden of establishing that the ends of justice require relitigation").

See, e.g, Sher v. Stoughton, 516 F. Supp. at 540(absence of counsel is among factors warranting relitigation).

May v. Collins, 955 F.2d299,308-09(5th Cir),cert.denied, 504 U.S.901 (1992)(in successive petition context, court applies "miscarriage of justice"exception to hear new and previouslyraised claims relating to adequacy of state court factfinding procedure because evidence rejected by the state court, "if credited,"would make out "colorable showing"that petitioner "was not the murdered...and was not even present...at the time of th[e]murder").

Equal protection -claims available in state postconviction proceedings.

In Douglas v. California, The Supreme Court held that the Equal Protection Clause requires the states to provide appointed counsel for indigents pursuing first appeals as of right. The Court concluded that "where the merits of the one and only appeal an indigent has of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor" in that situation.

> [there is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself. The indigent, where the record is unclear or the errors are hidden, has only the right to a meaningless ritual. While the rich man has a meaningful appeal.

Succinctly, state postconviction proceedings in which the prisoner is raising claims that are then available for the first time in any state court are the functional equivalent of a first appeal as of right in such circumstances, the right to counsel and essential financcial assistance reconized in Douglas should apply.

The Supreme Court also has held that prisoners have a constitutional right to meaningful access to state postconviction courts. See Bounds v. Smith, 430 U.S. 817, 825(1977) (due process rights to "reasonably adequate opportunity to present claimed violations of fundamental rights to the courts"). Accord Lewis v. Casey, 518 U.S. 343(1996) See also Christopher v. Harbury, 536 U.S. 403 (2002). The "right of access to the courts ... is founded in the Due Process Clause and assure that no person will be denied the opportunity to present to the judiciary allegations concerning violations

of fundamental constitutional rights. "Wolff v. McDonnell, 418.U.S. 539(1974) "It is clear that ready access to the Courts is one of, perhaps the, fundamental constitutional rights." Cruz v. Hauck, 475 F.2d 475(5th Cir.1973) (Prison regulations may unreasonably invade prisoner's relationship to courts) (emphasis in original). Accord McCarthy v. Madigan, 503 U.S. 140 (1992) ("because a prisoner oridinarily is divested of the privilege to vote, the right to file court action might be said to be his remaining most "fundamental political right, because preservative of all rights. 'Yick Wo v. Hopkins, 118 U.S. 356 (1886)."). See Bounds v. Smith 430 U.S. 817 (1977). See also Tenessee v. Lane, 541 U.S. 509 (2004)("oridinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a meaningful right of access to the courts").

Pursuant to this due process right, the court has held that the State may not deny indigents access to state postconviction remedies by charging them filing fees they cannot pay. Smith v. Bennett, 365 U.S. 708(1961). See Tenessee v. Lane, 541 U.S. at 532 & at 21 ("will-established due process principle that, within the limits of practicability, a state must afford to all individuals a meaningful opportunity to be heard' in its courts" gives rise to "duty to waive filing fees in certain ... criminal cases, "including "filing fee for habeas petitions" (citing Shith v. Bennett, supra)) M.L.B. v. S.L.J. 519 U.S. 102, 111 & n. 4 (1996) (describing Smith v. Bennett as part of "line of decisions" resting on " fundamental'principle that' avenues of appellate review, ... once established, ..., must be kept free of unreasoned distinctions that can only impede open and equal access to the courts' "(quoting Rinaldi v. Yeager, 384 U.S. 305, (1966)); Lewis v. Casey, 518 U.S. at 350 (Courts has protected "right of access to the courts ... by

requiring state courts to waive filing fees ... or transcript fees...for indigent inmates"). See also Gardner v. California, 393 U.S. 367(1969)("rule of the Griffin v. Illinois)case,"requiring that states provide trial record to indigent prisoners, also applies "in the context of California's habeas corpus procedure' because" denial of a transcript to an indigent...in practical effect denie[s] effective appellate review to indigents"). That states must either extend legal aid services to prisoners or, alternatively, provide them with law libraries and access to jailhouse lawyers. Bounds v. Smith, 430 U.S.817 (1977);Johnson v. Avery,393 U.S. 483(1969); See Shaw v. Murphy,532 U.S. 223(2001)("Under out right-of-access precedents, inmates have a right to retain legal advice from other inmates...when it is a necessary'means for ensuring a "reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." "(quoting Lewis v. Casey, 518 U.S. at 350-51,quoting Bounds v. Smith, 430 U.S. at 825));Lewis v. Casey, 518 U.S. at 351(explaining that "Bounds did not create an abstract, free-standing right to a law library or legal assistance"for prisoners, but rather required that states adopt these or other appropriate measures as "means for ensuring 'a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts' ", thus, "[i] nsofar as the right vindicated by Bounds is concerned, "meaningful access to the courts it the touchstone' " (quoting Bounds v. Smith, 430 U.S. at 823)); Murray v. Giarratano, 492 U.S. 1, 14-15(!)(*)(Kennedy, J. concurring in the judgment); Bounds v. Smith, 430 U.S. at 824(state has "affimmative obligation" to enable prisoners to secure access to the courts); Gomez v. Vernon, 255 F.3d 1118, 1122(9th Cir),cert.Denied, 534 U.S. 1066(2001)(inmates of prison that "employs prison inmates as law clerks in its prison libraries to help other inmates file legal papers,such as habeas corpus petitions...enjoy access to the law libraries, and the assistance of the assistance of the inmate law clerks, as a guarantee of their due process right of access to the courts"(citing Bounds v. Smith)); Carper v.Deland,54E.3d 613,616-17(10th Cir. 1995)(if "state...elect[s]to provide legal assistance to inmates in lieu of maintaining an adequate prison law library,"state must" supply[]'adequate assistance from persons trained in the law,'...such as inmate law clerks,paralegals,law students,volunteer attorneys, or staff attorneys ... to aid inmates in the preparation of state or

federal petitions for writs of habeas corpus or initial deading in civil rights actions challenging conditions of current confinement");Martin v. Davies,917 F.2d 336, 340(7th Cir.1990),cert.denied,501 U.S. 1208(1991)(denial of meaningful access to courts presumed if access to jail library is restricted on" substanial and continuous basis:,no denial of access because prisoner was offered counsel but refused in any event, had significant access to library.Compare Milton[v. Morris, 767F.2d 1443(9th Cir. 1985)with United States v. Smith, 907 F.2d 42,45(C.A.6 1990)('[B]y knowingly and intelligently waiving his rights to counsel, the appellant also relinquished his access to a law library');That the states must either extend legal aid services to prisoners or, alternatively,provide them with law libraries and access to jailhouse lawyers; Bounds v. Smith,430 U.S. at 823. See also Gardner v. California, 393 U.S.at 369-71; Ex parte Hull; 312 U.S. 546,549(1941); Dorn v. Lafler, 601 F.3d 439("The right of access to the courts is fundamental. ... This right prohibits regulations that prevent state prisoners from filing habeas corpus petitions unless they were found 'properly drawn' by the ' legal investigation' for the parole board, Ex Parte Hull, 312 U.S. 546,(1941); requires that indigent prisoners be allowed to file appeals and habeas corpus petitions without paying docket fees, burns v. Ohio, 360 U.S. 252,(1959); requires that States provide trial records to inmates who are unable purchase them, Griffin v. Illinois, 351;demands counsel be apponted to indigent inmates in pursuit of appeals as of right, Douglas v. California,372 U.S. 353(1963);and mandates that prisons assist inmates in preparing and filing legal papers by providing access to adequate lau libraries or assistance from persons trained in the law, Bounds, 430 US.at 828. "..States have 'affirmative obligations to assure all prisoners meaningful access to the courts.' "). A number of courts have recognized that assistance by attorneys is an indispensable element of meaningful access to the courts, at least in circumstances in which access to law books and other resources short of counsel is insufficient due to the mental or physical status of the prisoners, trhe conditions of their confinement, or the nature of their legal claims. Under this aspect of due process analysis, therefore, counsel and necessary finacial

assistance arguably are constitutionally required in tantamount to the denial of meaningful access to postconviction remedies-i.e.,that,under the circumstances"[t]he right to be heard[will]be...of little avail if it d[oes]not comprehend the right to be heard by counsel."See Mcfanand v. Scott,512 U.S. at 856 ("right to[habeas corpus]counsel necessarily includes a right for that counsel meaningfully to research and present a defendant's habeas claims,"else there is "substantial risk that [petitioner's]habeas claims never would be heard on the merits") Case v. Nebraska,381 U.S. 336,347(1965)(Brennan,J., concurring). See Lewis v. Casey, 518 U.S. at 354-55(to establish Bounds violation,prisoner must "demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim, He might show, for example, that acomplaint he prepared was dismissed for failure to satisfy some technical requirement which, because of deficiencies in the prison's legal assistance facilites, he could not have known. Or that he had suffered arguably harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable even to file a complaint"). See also Bound v. Smith 430 U.S. 817(1977). Penal Code § 1473(a)(Person unlawfully imprisoned or restrained my seek writ of habeas corpus to inquire into cause of imprisonment or restraint),and 1485(when no legal cause shown for imprisonment or restrain, party must be discharged);In re Chessman(1955) 44 Cal.2d 1. At the trial court level, once an order to show cause has issued the court is required, by rule of court, to appoint counsel to represent the defendant if the defendant makes such a request and shows indigency. Cal. Rules of Court Rule § 4.551.(c)(2); see also People v. Rodrigez(2019) 251 Cal.Rptr. 3d 538(because the trial court denied defendant's motion based on untimeliness and denied the motion without the presence of defendant or his counsel, denial of defendant's Penal Code § 1473.7motion was reversed). People v. Fryhaat(2019)248Cal.Rptr.3d39(because neither defendant nor an attorney on his behalf was present,the trial court did not satisfy the requirements of former P.C.§1473.7-by holding a hearing at which the moving party was present or his presence was waived for good cause).

THE SUSPENSION CLAUSE OF THE CONSTITUTION PROVIDES:

The supreme Court has described the suspension clause as "protect[ing] the rights of the detained by a means consistent with the essential design of the Constitution ... [and] ensur[ing] that, except during periods of formal suspension, the judiciary will have a time-tested device, the writ, to maintain the 'delicate balance of governance' that is itself the surety safeguard of liberty." The Clause has prompted the Court to recognize "that 'there is no higher duty than to maintain [writ]unimpaired.' "Johnson v. Avery, 393(1969) (quoting Bowen v. Johnston, 306 U.S. 19 (1939)). See, e.g, In re page, 179 F.3d 1024(7th Cir. 1999),cert. denied, 528 U.S. 1162(2000)('There remains the possibility that a claim in no sense abusive, because it could not have been raised earlier, yet not within the dispensation that section 2244(b)(2) grants for the filing of some second or successive petitions, would have sufficient merit that the barring of it would raise an issue under the clause of the Constitution that forbids suspending federal habeas corpus other than in times of rebellion or invasion."); Nguyen v. Gibson, 162 (10th Cir. 1998)(application of AEDPA's successive petition provisions to prisoner's incompetence-to-be executed claim "does not preclude federal consideration of ... claim and, therefore, does not suspend the writ[because] ... [p]-etitioner may still obtain federal review by the United States Supreme Court, either through review of a state court's determination of his competency, or through an original habeas proceeding filed with the Court...[and] petitioner may have available other judicial remedies"); id at 604(Briscoe, J. Dissenting)(disagreeing with majority's Suspension Clause analysis and concluding that application of AEDPA's successive petition provisions to incompetence-to-be executed claim "effectively results in an unconstitutional suspension of the writ of habeas corpus"); Miller v. Marr, 141 F.3d 976(10th Cir.),cert denied,

525 U.S. 891(1998)(recognizing that "[whether the one year [opt-in] limitation period violates the Suspension Clause depends upon whether the limitation period renders the habeas remedy 'inadequate or ineffective' to test the legality of detention'"and that"[t]here may be circumstances where the limitation period at least raises serious constitutionsal questions and possibly renders the habeas remdy inadequate and ineffective, "but concluding that statute of limtations did not have that effect in instant case); Martinez-Villarel v. Stewart, 118 f. 3d at 631-32 & n.3-5(finding "patent" constitutional problem with" applying AEDPA to "preclu[de]"any federal postconviction opportunity, including on original writ to Supreme Court, to raise constitutional claim of incompetence to be executed (because claim was "premature" at time of first petition when on original writ to Supreme Court, to raise constitutional claim of incompetence to be executed (because claim was "premature" at time of first petition when on original writ to Supreme Court, to raise constitutional claim of incompetence to be executed (because claim was "premature" at time of first petition when execution was not imminent and because, read literally, AEDPA would bar numerically "second" petition raising same claim); Suspension clause problems are avoided only when "res Judicata" principles apply because petitioner did raise or could have raised claim in prior petition; "reject[ing]...suggestion that direct review by the Supreme Court [on Certiorari] of the state court's competency proceedings suffices to sustain [AEDPA] against constitutional attack "because" [c]ertiorari review does not amount to an adequate alternative form of collateral relif" (citing Swain v. Pressley, 430 U.S. 372 (1977); also rejecting literal interpretation of AEDPA's ban on "second" petitions and treating petition at issue as not "second or successive' " in order to avoid" "serious constitutional problems' "); id. at 635 (T.G. Nelson, J., concurring)("in my view, the 1996 Act unconstitutionally suspends the writ of habeas corpus as to competence to be executed claims...in an unambiguous fashion, by prohibiting

the consideration of claims in second or successive petitions that ... there was no earlier [federal postconviction] opportunity to [raise]. If the writ has not been suspended as to those claims, it is difficult to see how it can ever be suspended as to any class of claims. "); In re Medina, 109 F.3d 1556, (11th Cir. 1997)(finding no Suspension Clause violation in situation similar to that in Martinez-Villareal but premising conclusion on assumption that claim was congnizable on original writ in Supreme Court); Camarano v. Irvin, 98 F.3d 44 (2nd Cir. 1996)(giving nonliteral interpretation to" "second or successive petition' " as used in AEDPA to permit petitioner whose intial peition had been dismissed without prejudice for failure to exhaust state remedies to secure adjudication of later petition containing same, but now exhausted, claims, otherwise, "application of ... [AEDPR's successive peition restrictions] to deny a resubmitted petition in cases such as this would effectively preclude any federal [postconviction] review"); Poland v. Stewart, 41F. Supp.2d 1037 (D. Ariz. 1999)(permitting filing of incompetence-to-be executed claim without compliance with AEDPA's successive petition provisons in order to avoid Suspension Clause problem that would be created by "essentially foreclos]ing[a federal district court from ever considering such a ... claim"). See also Blair-Bey v. Quick, 151 F.3d 1036, 1046-47 (D.C. Cir.), supplemented upon rehearing, 159 F.3d 591(D.C. Cir. 1998)(relying on Felker v. Turpin to conclude that "Congress has not extinguished Blair-Bey's section 2241 remedy [through enactment of local D.C. statute]"because" "[repeals by implication are not favored' " and because "principle that the withdrawal of habeas corpus jurisdiction is subject to especial scrutiny...dates back over a hundred years"); In re Dorsainvill, 119 F.3d 245, 248(3d Cir. 1997)

(if "party who claims that she or he is factually or legally innocent as a result of a previously unabailable statutory interpretation "has no " avenue of judicial review available, "federal court" would be faced with a thorny constitutional issue"' court need not reach constitutional issue because sectio 2255 movant whose successive 225 motion was barred by AEDPA can "resort to the writ of habeas corpus codified under 28 U.S.C. § 2241"); Rosa v. Senkowshi, 1997 U.S. Dist. LEXIS 11177 at *19(S.D.N.Y Aug. 1, 1917), modified, 1997 U.S. Dist. LEXIS 18310 (S.D.N.Y Nov. 19, 1997), aff'd on other grounds, 148 F.3d 134 (2d Cir. 1998)("The application of the [nonopt-in]time limit Rosa's first habeas petition effectively deprives him of the ability to obtain any collatera review in a federal court of the merits of his claim that his confinement violates his constitutional rights. Such a deprivation constitutes an unconstitutional 'suspension' of the writ of habeas corpus in this case because prior to its passage, the petitioner would not have been time barred, yet upon its passage he was immediately time barred; the statute provides for no safe harbor or special exception. The law would require the petitioner, prior to the passage of § 2263 to have anticipated this effect. Section 2263 in the instant case is inadequate to test the legality of the petitioner's conviction and completely prevents any consideration of the equities of the case, therefore § 2263 violates the suspension clause and is unconstitutional as applied") infra § 28 4a nn 7, 19 and accompanying text; infra §41 2 b n. 19(citing federal prisoner cases originally filed under 28 U.S.C. § 2255 in which AEDPA presents potential Suspension Clause issues that courts have sought to avoid by invoking residual habeas corpus remedy under id§ 2241•. See also Burris v. Parke, 95 F.3d 465(7th Cir. 1996•(en banc)(applying pre-AEDPA law and thereby avoiding injustice of applying AEDPA's stringent standards for successive petitions in manner that would have entirely deprived habeas corpus petitioner-

who filed separate petitions to challenge conviction and penalty retrial but who could have consolidated claims in single petition of he had been given notice of AEDPA-of any forum in which to litigate constitutional attacks on resentencing); Rodirigues v. Artuz, 990 F. Supp. 275, 277-84(S.D.N.Y.)aff'd 161 F.3d 763 (2nd Cir. 1998)(per curiam)(declining to follow holding in Rose v. Senkowshi "that the AEDPA's one year statute of limitations is in all cases an unconstitutional suspension of the writ, "but recognizing that Suspension Clause issues may arise if, as result of AEDPA, "a petitioner could never have raised his or her claim "or federal review is unabailable for "a petitioner [who] can show he is actually innocent of the crime for which he is convicted"). Cf. Delaney v. Matesanz, 264 F.3d 7, 13(1st Cir. 2001)(rejecting Suspension clause challenge to AEDPA's statute of limitations because relevant "provisions nether gut the writ of habeas corpus nor render it impuissant to test the legality of a prisoner's detention, "and provisions "leave[]habeas petitioners with a reasonable opportunity to have their claims heard on the merits"). Turner v. Johnson, 177 3d 390 (5th Cir.),cert denied, 528 U.S. 1007(1999) (rejecting Suspension Clause challenge to AEDPA's statute of limitations because petitioner "cannot show that the limitation period had rendered his habeas remedy inadequate or ineffective"). Compare In re Vial, 115 F.3d 1192(4th Cir. 1997)(en banc)(concluding that suspension clause challenge to successive petitions limitations that would preclude petitioner from raising claim that could not have been raised earlier "is foreclosed by the recent decision of the Supreme Court in Felker "Triestman v. United States, 124 F.3d 361 (2d Cir. 1997)(expressing doubts about, but declining to resolve, propriety of 4th Circuit's interpretationof Felker in Inre Vial and noting that issue presented in Vial and also Triestman "involves a situation that the Felker Court did not face: Congress has arguably cut off all postconviction relief for a claim of actual innocence that was based on the existing record and that could not have been effectively brought previously.").

Under the Cal. Law, the appointment of Counsel for an indigent prisoner pursuing a civil action is an aspect of the right of access to the courts [Smith v. Ogbuehi(2019)38@al.App. 5th 453,251 Cal.Rptr.3d 185].Penal§2601(d) which allows state prisoners the right to initiate civil actions, has been interpreted to include#within its scope the right to be afforded meaningful access to the courts to prosecute those civil actions. A prisoner may not be deprived, by inmate status, of a meaningful access to the civil courts if indigent and a party to a bona fide civil action thretening personal or property interests[Smith v. Ogbuehi(2019)38 Cal.App. 5th 453. However, neither the California Constitution nor Penal Code § 2601(d) requires the appointment of counsel for indigent prisoner litigants as a matter of right Instead, the choice of measures to safeguard a prisoner's right, as a plaintiff or defendant, to meaningful access to the courts to prosecute a civil action is committed to the trial court's discretion[Smith v. Ogbuehi(2019)38 Cal.App. 5th 453].

A trial court that denies an indigent prisoner litigant's motion for appointed counsel on the ground that it has no such authority, commits legal error by failing to recognize its discretionary authority [Smith v. Ogbuehi(2019)38 Cal. App.5th 453]. In a medical-malpractice case brought by an indigent,self-representing prison inmate against medical professionals who treated him while incarcerated, the appellate court reversed summary judgment for the defendant because the trial court committed legal error by denying the prisoner's motion for appointed counsel on the ground that it had no authority to grant the relief. The appellate court remanded the case and directed the trial court to determine initially whether the prison inmate is indigent,and then whether the suit involves a bona fide threat to personal or private interests. If those two conditions are met,the court must consider what remedies are available to protect right to meaningful access to the court,which remedies include the appointment of counsel and the appointment of an expert underEvid.C §730[Smith v.Ogbuehi(2019)38Cal.App.5th 453].

Rock v. Arkansas, 483 U.S. 44, 49-52, 97 L.Ed.2d 37 (1987)
(right to testify is personal to defendant and may not be waived by your Counsel)

Estate of Washburn (1905) 48 Cal. 64 Opine pursuant to What Law is:
[1] § 34 of the original judiciary Act of 1789, commonly known as the Rules of Decision Act, provided:

Laws of States as rules of decision. The laws of the several states, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.

Section 34 was first added to the Draft Bill of the Judiciary Act by a Senate amendment; this amendment as originally drafted read:

And be it further enacted, that the Statute law of the several States in force for the time being and their unwritten or common law now in use, whether by adoption from the common law of England, the ancient statutes of the same of or otherwise, except where the Constitution, Treaties of Statutes of the United States shall otherwise require or provid shall be regarded as rules of decision in the trials at common law in the courts of the United States in cases where they apply.

However, before the amendment was submitted the words "Statute Law" were stricken and the word "laws" was inserted and the words "in force for the time being and their unwritten or common law now in use, whither by adoption from the common law of England, the ancient statutes of the same or otherwise" also were stricken, see Warren, New Light on the History of Judiciary Act

of 1789, 37 harv. L. Rev. 49, 86 (1923) Warren argued that the word "laws" was intended to include both statutory and case-made law because of these legislative language changes. He also stated that § 34 was prompted to quiet fears of many people that a different law would be applied in federal courts than was applied in state courts. Whatever the original draftsman have meant, the use of the amibiguous words "the laws of the several states" gave rise to much controversy.

Swift v. Tyson is the leading case interpreting the meaning of these words. 41 U.S. (16 Pet.) 1, 10 L.Ed 865(1842). For commentary on the Swift decision, see generally Bridwell & Whitten, the constitution and the common law 101-105 (1977); II W.W. Crosskey, Politics and the Constitution 865-60, 912-19(1953); G.T. Dunn, Justice Joseph Story and the Rise of The Supreme Court 403-414(1970) Fletchen, The General Common law and section 64 of the judiciary Act of 1789; The Supreme Court 403-414(1970); Fletcher, The General Common law and section 34 of the Judiciary Act of 1789: The Example of Marine Insurance, 97 Harv.L Rev. 1513(1984); Freyer, Harmony and Dissonance: The Swift and Erie Cases in American Federalism (1981); horwitz, The Transtormation in American law 1780-1860 (1977); La Piana, Swift v. Tyson and the Brooding Omnipresence in the sky: An Investigation of the idea of law in antebellum America, 20 Suffolk U.L. Rev. 771 (1986); R.K. Newmeyer, Supreme Court Justice Joseph Story: Statesman of the old Republic 332-43 (1985); Schulam, The Demise of Swift v. Tyson, 47 Yale L.J. 1336 (1938); Warren, New Light on the Federal judiciary Act of 1789, 37 Harv.L. Rev. 49 (1923); and M. Wendell. Relations Between the Federal and State Courts 119-23, 125-28(1949). This was an action in the circuit court of New York by a non-resident holder of a negotiable bill of

exchange.The acceptor of the bill defended on the ground that he had been indced to accept the bill by fraud and that this defense was a bar against the plaintiff, because under New York decisions, which he contended were binding on the federal court, the plaintiff was not a holder for value because he had taken the billin satisfaction of a pre-existing debt. The Supreme Court in an opinion by Justice Story, declined to follow the New york decisions:

In the ordinary use of language it will hardly be contended that the decisions of Courts constitute laws. They are, at most, only evidence of what the laws are, and are not themselves laws. They are often reexamined, reversed, and qualified by the Courts themselves, whenever they are found to be either defective, or ill-founded, or other-wise incorrect. The laws of a state are more usually understood to mean the rules and enactments promulgated by the legislative authority thereof, or long established local customs having the force of laws. In all the various cases, sshich have hitherto come before us for decision, this court have [sic] uniformly supposed, that thetrue interpretation of the 34th section limited its application to state laws strictly local. that is to say, to the positive statutes of the State, and to the construction thereof adopted by the local tribunals, and to rights and titlers to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intraterritorial in their nature and character. It never had been supposed by us, that the section did apply, or was designed to apply, to questions of a more general nature, not at all dependent upon local statutes or local usages of a fixed and permanent operation, as, for example, to the construction of ordinary contracts or other written instruments, and especially to questions of general commercial law, where the state tribunals are called upon to perform the like functions as ourselves, that is, to ascertain upon general reasoning and legal analogies, what is the true exposition of the contract or instrument, or what is the just rule furnished by the principles of commercial law to govern the case. ... The law respecting negotibale instruments may be truly deciared...to be in great measure, not the law of a single conuntry only, but of the commercial worked

In brief, then, some state judicial decisions were to be followed. In addition to those decision s construing the state constitution and statutes, decisions enunciating the common law pertaining to rights and titles to real estates were controlling. But in the broad fields of commercial law and general jurisprudence the state common law was not binding upon the federal courts.

"The Constitution, Treaties, and statutes of the united States" constituted paramount law. As to non-federal matters ,federal matters, federal courts were to conform to the "laws" of the state in trials at common law. The phrase "trials at common law" excluded criminal cases. United States v. Reid,53 U.S. (12 How.)361, 363, 13 L. Ed. 1023, 1024 (1851). Although the Act, by its terms, applied only to actions at law, federal courts sitting in equity were bound by state statutes and decisions construing them where they created or declared a substantive right. See Dawson v. Kentucky Distilleries & Warehouse Co., 255 U.S. 288, 41 S.Ct. 272, 65 L.Ed.638(1921); Missouri, Kansas & Texas Trust Co. v. Krumseig,172 U.S. 351 U.S. 351, 19 S.Ct. 179, 43 L.Ed. 474(1988);Brine v. Hartford Fire & Inc. Co.,96 U.S.(6. Otto)627. 24 L.Ed.858(1878); O'Connor v. Townsend, 87 F.2d. 882(8th Cir. 1937);and Mutual Life Ins. co. v. Cunningham, 87 F.2d 842(8th Cir. 1937). But, in general. section 34 of the judiciary Act of 1789 did not apply to actions in equity and it was not until the 1948 revision to the Rules of Decision Act that the statute was broadened to cover all"civil actions." See P. Bator, D. Melzer, P. Mishkin, & D. Shapiro. Hart and Wechsler's the Federal Courts and the Federal System at 750(Foundation Press 3d Ed.1988); see also 28 U.S.C. § 1652. The language change recognized the merger of actions at law and equity effectuated by promulgation of the Federal Rules of Civil Procedure in 1938.

[2] Laws of States as Including State Constitutions, Statutes, and Decisions

Swift v. Tyson defined "laws" to include state constitutions, statutes, and decisions of state courts construing them. Thus if a state court found that its statute was substantially identical to that of another state, the federal courts were bound by that decision. See Morehead v. N.Y. ex rel Trpaldo.,298

U.S. 587, 56 S.Ct. 918, 80 L.Ed. 1347 (1936)explained by West Coast Hotel Co v. Parrish, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703(1937). And if there were no state decisions but a state statute was the same as another state's the federal court followed that state's interpretation. Dinkins v. Connish, 41 2d 766 (E.D. Ark. 1930). however, the Supreme Court, which in Swift v. Tyson was impressed with the need for uniformity in commercial law, accepted varying state interpretations of the Negotiable instruments law. See Marine Nat'l Exch. Bank v. Kalt-Zimmers Mfg. Co. 293 U.S. 357, 55 Ct. 226, 79 L.Ed. 427(1934); Burns Montg. Co. v. Fried, 292 U.S.A. 487, 54 S.Ct. 813, 78 L.Ed. 1380(1934). See generally Beutel. Common Law Judicial Technique, 9 Tulane L.Rev. 64(1934); Fordham, The Federal Courts and the Construction of Uniform State laws. 7 N.C.L. Rev. 423(1929), and note. Swift v. Tyson and the Construction of State Statutes, 41 W. Va. L.Q. 131 (1935). The federal courts applied state statutes as construed by state courts and followed state decisions in a wide array of contexts. Federal courts followed state decisions in the following situations. But if there were no state decision on point, then the federal courts could reach an independent construction of a state constitution or statute. See Thompson v. Consolidated Gas Utils. Corpl 300 U.S. 55, 74, 57 S.Ct. 364, 81 L.Ed. 510,520 (1937); Concordia Ins. Co. v. School Dist., 282 U.S. 545, 51 S.Ct.275,75 L.Ed. 528(1931)(state decisions interpreting statute so confused that federal court free to interpret as it saw fit); Portneuf-Marsh Valley Canal Co. v. Brown, 274 U.S. 630, 47 S.Ct. 692, 71 L.Ed. 1245(1927)See also Henderson Co. v. Thompson, 300 U.S. 258, 57 S.Ct. 447, 81 L.ED.632(1937) (Supreme Court deferred to lower federal court's understanding). Nonetheless, federal courts were reluctant to adjude a state statute to be in conflict with the state constitution before it had been passed upon by the state courts, especially when the highest court had rendered decisions on the assumption of its validity. See Ponter v. Investors' Syndicate, 287 U.S. 346, 53 S.Ct.

132, 77 L.Ed. 354(1932); Louisville & Nashville R.R. Co. v. Garrett, 231 U.S. 298, 305, 34 S.Ct. 48, 51, 58 L.Ed. 229, 239(1913); Michigan C.R.R. power 201 U.S. 245, 291, 26 S.Ct. 459, 461, 50 L.Ed.744, 760(1906); Joseph. R.Foard Co. v. Maryland, 219 F. 827, 838(4th Cir. 1914). If there were no state decisions when a federal court construed a state statute, a federal appellate court was not obided to reverse because of an intervening state decision construing the statute differently, See Concordia ins. C Co. v. School Dist, 282 U.S. 545,51 S.Ct.,275, 75 L.ED. 528(1931); Burgess v. Seligmen, 107 U.S. 20, 2 S.Ct. 415 70 L.Ed. 795(1926);Tradesmen's Nat'l Bank & Trust Co.Johnson,54F.2d 367(D.Md. 1931).

[3] Laws of States as including "Rights and Titles to Things Having Permanent Locity"

Swift v. Tyson held that the federal courts were bound to follow state decisions on local usages and on "rights and titles to things having a permanent locality. Such as the rights and titles to real estate and other matters immovable and intraterritonial in their natural character. "Thus, federal courts followed state common law in at least four broad areas. The first related to state decisions on matters concerning property, real estate, taxes, and liens. See Blair v. Commissioner, 300 U.S. 5,57 S.Ct. 330, 81 L.Ed. 465(1937)(nature of a trust); United States v. Kombst, 286 U.S.424,52 S.Ct. 616, 76 L.Ed.1201 (1932)(estate tax); Guarantly Trust Co. v. Blodgett,287 U.S. 509,53 S.Ct.244 77 L.Ed. 463(1933)(property subject to tax);Waggoner Estate v. Wichita County, 273 U.S. 113,47 S.Ct.271,71 L.Ed.566(1927)(real estate);Dawson v. Kentucky Distillenies & Warehouse Co. 255 U.S. 288, 41 S.Ct. 272, 65 L.Ed. 638(1921) (Nature of property of license tax); Bardon v. Land & River Improv Co.

157 U.S. 327,15 S. Ct. 650,39 L.Ed 719(1895)(Tax Liens);Lewis v. Monson, 151 U.S. 545 14 S.Ct. 424, 38 L.Ed 265 (1894)(validity of taxes);Case v. Kelly. 133 U.S. 21, 10 S.Ct. 216,33 L Ed. 513(1890)(Real esate);Brainard v. Commissioner of IRS, 91 F.2d 880(7th Cir. 1937),cert,dismissed, 303 U.S. 665, 58 S. Ct. 748,82 L. Ed. 1122 (1938)(Nature of trust);Blackhurst v. Johnson,72 F.2d 644(8th Cir. 1934)(same);Washburn v. Gillespie, 261 F.41 (8th Cir. 1919),cert. denied, 252 U.S. 587,40 S. Ct. 396,64 L. Ed. 729(1920)(oil,gas and mining leases);Sun Life Assur. Co. of Casanova, 260 F. 449(1st Cir. 1919)(Liens on personal property);American Surety Co v. Bellinghan Nat'L Bank, 254 F. 54(9th Cir. 1918)(banker's Lien);Southern Ry Co. v. Board of Comm'rs 246 F. 383(4th Cir. 1917 (rights of way);Bear River Paper & Bag Co. v. City of Petoskey, 241 F. 53(6th Cir.1917)(tax Liens on personal property); Nelson v. Republic Iron & Steel Co. 240 F. 285 (8th Cir. 1917)(Oil ,gas and mining leases);In re Israelson, 230 F.1000(S.D.N.Y. 1916)(mortgages); Columbia Digger Co. v. Sparks, 227 F. 780(9th Cir.1915) (priority of Liens);Thompson v. Sloss-Sheffield Steel & Iron Co. 209 F.840(5th Cir. 1914)(real Estate);Loberstine v. Union Elev R.R. Co. 80 F.9(7th Cir. 1897)(rights of abutters);Santee River Cypress Lumber Co. v. James, 50 F. 360(C.C.S.C. 1892(Possession of land).The second area involved decisions dealing with water rights see Borax Consol.Ltd v. Cityof Los Angeles, 296 U.S.10,22, 56 S.Ct. 23, 29, 80 L.Ed.9 17(1935)(riparian rights); Fox River Paper Co. v. Railroad Comm'n of Wisconsin, 274 U.S. 651, 47 S. Ct. 669, 71 Ed.1279(1927)(same);St. Louis v. Rutz, 138 U.S.226, 11 S. Ct. 337, 34 L. Ed. 941(1891)(title to land formed by accretion); The Golden Rod 197 F. 830(D. Me. 1912),aff'd208 F. 24 (1st Cir. 1913)(right of what to extend into navigable waters); Chicago. B. & Q. R.R. Co. v. Appanoose County, 182 F.291 (8th Cir. 1910)(water rights).The third category encompassed decisions relating to municipal corporations. See Detroit v. Osborne, 135 U.S. 492,10 S.Ct. 1012 34 L.Ed. 260(1890)(liability of municipal corporation for tort); Meriwether v. Muhlenburg County court, 120 U.S. 354. 7 S;Ct. 563, 30 L.Ed. 563(1887)(power of municipal corporations to contract); Norton v. Shelby County, 118 U.S. 425 6 S.Ct. 1121, 30 L.Ed. 178(1886)(same); Board of Comm'rs v. Pollard-Compbell Co. 251 F. 249(8th Cir. 1918(powers and duties of municipal corporation).And the fourth area in which federal courts followed state decisional law was on matters of status, such as marital rights.See Taylor v. Voss, 271(1926) (rights of married woman in husband's property); Union Trust Co. v. Grosman, 245 U.S. 412(1918)(Power of married woman to make contracts); Meister v. Moore, 96 U.S. 76, 24 L. Ed. 826(1878)(Formalities necessary for marriage);Gillespie v. Pocahontas coal & Coke Co.,163F. 992, 997(4th Cir. 1908)cert.Denied, 214 U.S.519 29 S.Ct.700,53 L.Ed. 1065(1909)(Validity of contracts by husband and wife).

If there was no state decision that formulated a property rule when the action was begun, the federal court could make an independent judgment and was not bound by a subsequent state decision. Kuhn v. Fairmont Coal Co. 215 U.S. 349,30 S. Ct. 140, 54 L. Ed. 228(1910)(Holmes, White and McKenna dissenting); Brainard v. Commissioner of internal Revenue, 91 F.2d 880(7th Cir. 1937)(Independent Judgment as to nature of trust formulated as there were no binding state decisions).

[4] Laws of States as Not including common olaw Rules on Commercial Law and General Jurisprudence

Under the doctrine of Swift v. Tyson the federal courts were not bound to follow state decisional law in matters of commercial law and general jurisprudence. Thus if there was no valid state statute the federal courts independently decided matters pertaining to negotiable instruments.See Wade v. Chicago S. & St Louis Ry Co., 149 U.S. 327, 13 S.Ct. 892, 37 L.Ed. 755(1893)(holder in due course may recover face value of note. although he paid less);Cromwell v. County of Dac.96 U.S. 51,24L. Ed 681(1878)(same);Swit v. Tyson 41 U.S.(16 Pet.) 1,10 L.Ed 865(1842)(one who takes negotiable paper for pre-existing debt is a holder for value).the interpretation of contracts founded on cerficates of corporate stock,see Wabash Ry. Co. v. Barclay, 280 U.S. 197 50 S.Ct. 106,74 L.Ed. 368(1930).and the general law of insurance.See Bosseman v. Connectiocute Gen. Life Ins. Co. 301 U.S. 196, 57 S. Ct. 686, 81 L.Ed1036(1937);Aetna Life Ins. Co.Moore, 231 U.S. 543,34 S.Ct. 186, 58 L. Ed. 356(1913);Grigsby v. Russell, 222 U.S. 149, 32 S. Ct. 58, 56 L.Ed. 133(1911);Mackelvie v. Mutual Ben Life. Ins Co. 287 F.660 (2d Cir); cert. denied, 262 U.S. 747, 43 S.Ct. 522, 67 L. Ed. 1212(1923)See generally Brown, State insurance Cases in Federal Court, 25 Geo.L.J.642(1937).

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Moreover, in the absence of a valid state statute federal courts independently decided a range of commercial matters and particular questions of contract law.See, e.g., Salem Trust Co. v. Manufacturers Fin. Co. 264 U.S. 182, 44 S. Ct. 266, 68 L.Ed. 628(1924) (law governing contract assignments;federal court not bound to follow state rule);Roehn v. Horst, 178 U.S. 1,20 S.Ct 780; 44 L. Ed. 953(1900) (contract repudiation and] anddamages);Central Transp. Co. v. Pullman's Palace Car.Co.139 U.S. 24, 40 11 S.Ct. 478, 481, 35 L.Ed. 61 (1891) (Ultra vires contracts);Pearce v. Madison & Indianapolis Ry Co. 62 U.S.(21 how.)441, 16 L. Ed 184(18-58) (same);Fitzpatrick v. Flannagan, 106 U.S. 648, 1 S. Ct. 369, 27 L.Ed. 211 (1892) (Partnership debts).

Thus, in these areas the ffederal courts evolved their own common law. This was true also in the broad field of "general jurisprudence." particularly concerning various issues relating to negligence.

Questions of non-statutory public policy also came within the term"general jurisprudence"and state decisions generally were not binding. Thus, in Black & White Taxicab & Transfer Co. V. Brown & Vellow Taxicab & Transfer Co. a taxicab company successfully enjoined a rival taxic ab company from soliciting business in violationof plaintiff's contract with a railroad, although applicable state court decisions had held similar contracts invalid as discriminatory and in restraint of trade.

The reign of Swift v. Tyson also supplied other tensions and inconsistencies in applicable law. For example, with regard to general damages federal courts could independently formulate a common law rule. But for invasions of rights in real property. the issue of damages was regarded as local and to be settled by state decision. Further, a federal court judgment accrued interest in accordance with state rules, by virtue of federal statute:

The determination of the conflict of laws rule was a matter of general jurisprudence and the federal courts were free to decide the issue.

But even when the federal courts did not have to conform to state decisions federal courts frequently abided by the principle of comity to reach a result in accordance with such decisions and leaned toward state views if the question was "balanced with doubt."

Thus, the principle of comity often softened the divergence of state and federal decisions.

[5] What state decisions were the "Law" of State

Federal courts were obliged to follow the applicable state decisions on questions involving state constitutions, state statutes, rules of property and local matters. It became important, therefore, to determine what decisions were considered as expressing the law of the state. If a state court's statement was dictum, usually it was not binding on the federal courts. State decisions not precisely in point did not have to be followed. For sometime it appeared that decisions of state courts other than the highest court were not precisely in point did not have to be followed. For sometime it appeared that decisions of state courts other than the highest court were not binding, even though the highest court could not or would not review. however, this was changed by the willingness of the Supreme Court to regard a clear decision by an intermediate state court as controlling. In a suit by trustees to obtain a construction of a will with respect to the power of the beneficiary to assign part of the beneficiary's interest, an Illnois appellate court decided that the interest was assignable. The Supreme Court stated:

> The questions of the validity of the assignments is a question of local law. ...The decisions of the state court upon these questions is final. ...It matters not that the decision was by an intermediate appellate court. ... To derogate from the authority of that conclusion and of the decree it commanded, so far as the question is one of state law, would be wholly unwarranted in the exercise of federal jurisdiction. Blair v. Commissioner, 300 (1937).

"A Prisoner is not stripped of constitutional rights (protection) at the prison gates, but, rather they retains all the rights of an ordinary citizen except those expressly, or by necessary implication taken from them by the law. See, Bell v. Wolfish, 441 U.S. 520, 60 L. Ed. 2d 447, 99 S.Ct. 1800(1979 7 Brown v. Nix. 33 F.ed 951(8th Cir. 1994)

(1) Protection from CRUEL AND UNUSUAL PUNISHMENT;
(2) Protection from Racial or Religious Discrimination;
(3) Self-Representation, if timely, or Religious Discrimination;
(4) A private Interview with the Defendant's Attorney;
(5) Limited Privacy of Mail;
(6) Visitation by Persons assisting with the Defentant's Case(s);
(7) Bail, except in some cases;
(8) Civil Rights granted to sentenced Prisoners;
(9) Constitutional Rights, such as Freedom of Speech and Religion, Protection from invidious Discrimination, and Due Process protection from Deprivation of Life, Liberty, or Property, enjoyed by convicted Prisoners;
(10) Detention conditions not amounting to preconviction CRUEL AND UNUSUAL PUNISHMENT AND (11) for Defendant who is representing himsel,

the privileges A prisoner's Rights must be Respected, absent a showing of an overriding governmental interest. The Defendant's request for enforcement of a prisoner's rights is granted in the absolute discretion of the court, the discretion is limited by due process requirements only after a reasonable expectation in the privillege has vested. The court decides in its demonstrated good cause for remedial laws and inter alia, "prison walls are a powerful restained on litigant wishing to appear in a civil proceeding. "Given this, all courts have an obligation to ensure those walls do not stand in the way of affording litigants with bona fide claims the opportunity to be heard. See Apollo v. Gyaami 85 Cal.Rptr.3d 127 (2008).
Espinoza-Matthews v. California(9th Cir 2005)432 F3d 1021(When prison's refusal to allow petitioner access to legal papers for 11 months despite diligent attempts to obtain them was extraordinary circumstance).

STATEMENT OF THE CASE

In count I of an information filed by District Attorney of Los Angeles county, Petitioner was charged with murder, further alleged that duringthe commission of that offense, Petitioner, used a firearm and that the murder occurred while petitioner was engaged in the commission of a robbery.

Petitioner pleaded not guilty and denied the special allegations.(C.T.p.47.) The victim in both counts was Salvatore T. Gambina. On May 5, 1983, a jury returned a verdict of guilty on both counts and found true the allegation that the murder alleged in count I, was committed during the perpetration of a robbery. The jury also found the allegation concerning the use of the firearm true as to both counts. (C.T. 126-128.)

On June 20, 1983, petitioner was sentenced to life imprisonment without the possibility of parole on count one and to the mid term of three years on count two. The sentences were ordered to run concurrently. The Court imposed an additional two years for each count under § 12022.5(C.T.147-7.)

On July 21, 1983, petitioner filed a notice of appeal. (C.T.148-9.) The Court of appeal affirmed conviction on AUG 2, 1984. 2CRIM No. 44951. The record will show petitioner was arrested by Detectives FURR & Adair NOV circa 1981(a month before the crimes above mentioned was committed)and also OCT circa 1981(these are murder detectives)and told parole agent Mr. Graham...who said just laylow till MONDAY 21th 1981, and we both go to the police station and see why they are looking for you now. I was arrested for above the same day. Furr & Adair were pressuring Petitioner to find Mike Terry-hi brother-in-law, and turn him in to(he allegedly had committed a murder and the detectives while looking for him came apone petitioner at Mike Terry's sister home and begain taking Petitioner back and forth to the station. Petitioner had just got out the hospital)))succinctly Counsel DEBLANC failed to put my requested evidence on trial to show my innocence.

REASONS FOR GRANTING THE PETITION

Did not do the crimes; Was told by AL. De Blanc Jr Ex-Trial Attorney, that we would put on defense that would show I was framed by the L.A.P.D. Detectives Smith, Adair and Furr...That DEBLANC JR. use to be a L.A.P.D. Sergeant and worked with supra detectives and knew them, and that they were known for setting up framing Blacks and gang members. Would show I had just got out of L.A. General Hospial(had a kidney;Spleen;gallbladder removed,half of my stomach & haff pancreas and vagus nerve removed)it was no way I was able to commit the crimes. Att. DeBlanc was suppose to produce my hospital records/&doctors; was suppose to show thattheir main witness HORNE was lieing for the detectives and was the best friend of my Ex-Wife's(Ex boy-friend andin the same gang)was upset with me because I end up with his friends girlfriend...who end up being my wife. And after 20 years of me being in prison. My ex-wife have a baby by her ex. The gunshots I ascertained came from their gangmembers(I being a Ex-member contrary to their gang).

DeBlanc said he would put on the above defense and never did anything I only got convicted of (1-one) witness/Horne. The other gang members statement was read into the jury From Preliminaryhearing that is illegal. because the hearing, I was facing the death pentaly...So I was denyed a Grand Jury and unable to have consided "all the evidence, old and new. Denyed evidentiary hearing, which would have exhibited the officers all were together in perpetrating the fraud on the court and Without hearing dispute of being violated of autonomy causes an continous miscarriage of justice.

See McCoy v. Louisiana 138 S.Ct. 1500(2018)the court granted McCoy a new trial and explained that when a defendant's constitutional right to autonomy has been violated by defense counsel despite defendant's affrmative instructions to the contrary the result is an automatice reversal of the conviction, i.e., a showing of prejudice not required. Case at bar see declaration and caselaw

REASONS FOR GRANTING THE PETITION #2

Frederick Wayne Smith(I)am indigent and not only did my Ex-trial attorney Mr.DEBLANC, Jr do contrary too my wishs and the facts of my case...The Order to show cause(OSC)1995 judge denyed counsel to buttress the petition which would have knew about autonomy rights and able to exhibit evidence of being framed and 2018 while reading a legal news paper (Criminal Legal News) July 2018, I saw"SCOTUS: SIXTH AMENDMENT RIGHT TO AUTONONY-(I DID NOT KNOW WHAT THE WORD MEANT)ATTORNEY CANNOT OVER-RULE CLIENT'S DECISION TO ASSERT INNONENCE AT TRIAL."

Since 1995(because it took me that long to do my case and know an iota of law))I been fighting in the courts IAC because I knew my Ex-trial attorney did a bad job on proving my Innocence.

While working on my case since 1995 I could not find a case of Innocence like myself I read: Murray v. Carrier, 477 U.S. 478(1986); Sawyer v. Whitley, 505 U.S. 333, 112 S.Ct.2514(1992);House v. Bell 547 U.S. 518(2006); McQuiggin v. Parkings, 135 Led 1019(2013) and when I found Schlup v. Delo, 513 U.S. 298(1995) I had to keep looking to find something that shows innocence like me...so I kept looking till I found People v. Adair 29 Cal.4th 895(2003)which took me to People v. Bleich 178 Cal.App. 4th 292(2009)with People v. Slattery 167 Cal.App. 4th 1091(2008)due to me being a victim pursuant to Art.1 §28 for 39 years in prison for a crime I didnot committ and was framed by L.A.P.D. was represented by a former LAPD who gave his word he would show I was framed and someone else did it. My case would effect everyone innocent because it would show a person innocent and was denyed his rights to put on his case,

and the following cases buttress because of a miscarriage of justice.

See Reed v. Texas, 140 S.Ct. 686, 689(2020)(MEM)(statement of Sotomayor.,respecting the denial of certiorari)("when confronted with actualinnocence claims asserted as a procedural gateway to reach underlying grounds for habeas relief habeas courts consider all available evidence of innocence. House v. Bell, 547 U.S.518 538(2006)(federal habeas courts evaluating gateway actual innocence claims 'must consider" 'all the evidence, ' "old and new incriminating and exculpatory'(quoting Schlup v. Delo, 513 U.S. 298, 328(1995))"); Reeves v. Fayette S.Ct. 897 F.3d 154, 161-64 (3d Cir. 2018), cert.Denied, 134 S.Ct. 2713(2019).

See., Weaver v. Massachusetts, 137 S.Ct. at 1911("[T]he Court's precederts [have]determin[ed] that certain errors are deemed structural and require reversal because they cause fundamental unfairness, either to the defendant in specific case or by peruasive underimining of the systemic requirements of a fair and open judicial process. ... Those precedents include ... turney 527 U.S. at 8 (biased trial judge"is 'structural [error]; and thus [is] subject to automatic reversal"); Edwards v. Balisol, 520 U.S. 641, 647(1997)("A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence against him.")

McQuiggin v. Perkins, 569 U.S. 383(2013), the court held that AEDPA'S statute of limitations is subject to an "Actual innocence exception even though no such exception appears in the AEDPA provisions establishing and defining the statute of limitations.

Reasons for granting the petition continues #4

See Magwood v. Patterson, 561 U.S. 320(2010)time limit can be extended); can be obtained upon a prima facie showing that the claim that is desired to be presented was not litigatgddom a prior petition because:(1)the claim relies on a previously unavailabe rule of constitutional law that has been made retroactive by the Supreme Court to cases on collatera review;or (2) "the factual predicate for the claim could not have been discovered through the exercise of due diligence"; and"the facts underlying offense."See 2254(b)(2)(A) and (b)(2)(i)&(ii).

Schlup v. Delo, 513 U.S. 299, 130 L.Ed.2d 808, 115 S.Ct.851 contrary to care at bar. Factual innocence and never presented old & or new evidence...See People v. Adair 29 Cal. 4th 895 "'"[F]actually innocent"as used in [§851.8, Subdivision(b)does not mean a lack of proof of guilt beyond a reasonable doubt or even by "a preponderance of evidence."[citation.] Defendants must show that the state should never have subjected them to the compulsion of the criminal law-because no objective factors justified official action... ,[Citation.]In sum, the record must exonerate, not merely raise a substantial question as to quilt. See also United States ex rel. Maldonado v Denno, 348 F.2d 12,15 (CA21965)("[E]ven in cases where the accused is harming himself by insisting on conducting his own defense, respect for individual autonomy requires that he be allowed to go to jail under his own banner if he so desires ..."). That view ignores the established principle that the interest of the State in a criminal prosecution "is not that it shall win a case, but that justice shall ber done."Berger v united States, 295 US 78(1935).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Smith — Smith 4-26-21

Date: 12-03-2020