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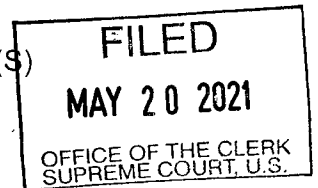
IN THE
SUPREME COURT OF THE UNITED STATES

Iv re Rickey Leon Scott — PETITIONER
(Your Name)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



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

PETITION FOR WRIT OF CERTIORARI

RICKEY LEON SCOTT
(Your Name)

P.O. BOX 5246
(Address)

CORCORAN, CALIFORNIA, 93212
(City, State, Zip Code)

(Phone Number)

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:

STATE OF CALIFORNIA COURT OF APPEALS FIRST APPELLANT DISTRICT
DIV. FIVE
SAN FRANCISCO COUNTY'S DISTRICT ATTORNEY.

RELATED CASES

CHAPMAN v. CALIFORNIA (1967) 386 U.S. 18, 24, 17 LEd2d 705,
87 S. Ct 824.

IN RE MARTINEZ. SUPRA; 3 Cal. 5th at pp. 1224, 1226 [jury was instructed on correct and incorrect theories of liability]

IN RE RICKY LEE COBBIS CITE AS 2019 DJDAR 9031:

People v. Chin. SUPRA. 59 Cal. 4th at p. 168;

People v. RIVERA. SUPRA. (2015) 284 Cal. App. 4th 1350, 1358-1359 [184 Cal. Rptr. 3d 801]

People v. Stutzelberg (2018) 29 Cal. App. 5th 314, 319 [240 Cal. Rptr. 3d 1567];

IN RE K.C. (2011) 52 Cal. 4th 231, 236: [Only a person aggrieved by a decision may appeal]

Marsh v. Mountain Zephyr Inc. (1996) 43 Cal. App. 4th 289, 295 ["holding to appeal is ... jurisdictional"]

People v. Aledamat (2019) 8 Cal. 5th 1 [251 Cal. Rptr. 3d 371, 447 P.3d 273]

QUESTION(S) PRESENTED

1. Does Senate Bill No. 1437 likely conflict with Article III of the Constitution?
2. By requiring Courts to overrule their own... precedent simply because an agency later adopts a different interpretation of a statute. A violation of "Due Process"? or "Miscarriage of Justice"?
3. Is judicial power to be exercised for the purpose of giving effect to the will of the Legislature?, or in other words to the will of the law?
4. Did the California State Supreme Court and the State of California's Court of Appeal First Appellant District Div., distilled its three analytical techniques to aid its very... deferential review of (1) an examination of the nature of the offense and the offender, with particular attention to the degree of danger?
5. IS MY HABEAS CORPUS DENIAL; saying this rule raises grave Article III concerns? no less than if it allows Judges to... substitute their policy preferences for the original meaning of a statute?

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Marsh v. Mountain Zephyr Inc. (1996) 43 Cal.App.4th 289, 295	5, 8
Osborn v. Bank of United States: 9 Wheat 738, 866 (1824) (Marshall C.J. for the Court)	1
Dickson, 15 Pet. at 161 <u>Justice Story</u> writing for the Court.	1
In re Clark (1993) 5 Cal.4th 750, 763-764	4
In re COBBs. Cite AS 2019 DJNAR 1031	1, 2
In re H.W. (2019) 6 Cal.5th 1068, 1073	
In re K.C. (2011) 52 Cal.4th 231, 236	5, 8
Chung Sing; supra; 178 Cal. 2d	3
Evola supra; 158 Cal.App. 2d at p. 661	3, 5, 6
Vibert supra; 64 Cal. 2d 65	3, 5, 6

STATUTES AND RULES

Senate Bill No. 1437	1, 2, 7, 8
Code of Civil Procedure Section 902	5
Pen. Code § 1170.95	2, 3, 4, 7, 8
Pen. Code § 187 subd. (a)	4
" " § 188 (a) (3) - (a) (4)	6
" " § 189 subd. (c)	6
" " § 21a	6
" " § 190.2 (a) (17) (A) (i)	6
Rules of Court rule 1237 subd. (b)	3
8.1105 (e) (1)	1
8.1115 (e)	1
8.100 (a) (1) (a) (2)	3

Added: People v. Johnson (1980) 26 Cal. 3d 557, 578: 8

OTHER

B.E. Witkin drafted Rules of App. 4	
Malice aforethought	
Reckless Indifference to human life	
Provocation	4
Article III	1
Walker supra 35 Cal.4th 15	3
People v. Tran (2015) 61 Cal.4th 1160, 1167-1168, 191 Cal. Rptr. 3d 251, 354 P.3d 148	4

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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 C to the petition and is

- ☐ reported at IN RE SCOTT 2021 CAL. LEXIS 2664; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the COURT OF APPEAL FIRST APPELLANT DIST court appears at Appendix A to the petition and is

- ☐ reported at SCOTT, 2015 CAL. APP. LEXIS 5188; 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 APR 14, 2021
A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE III OF CONSTITUTION

SENATE BILL NO. 1437 (2017-2018 REG SESS)

PENAL CODE SECTION 1170.95's.

CAL. CONST. ART 11 § 10 Subd. (2)

STATEMENT OF THE CASE

State of California's Supreme Court deny's In re Ricky Leon Scott's Habeas Corpus: This "Denial" - By requiring Court to overrule their own precedent, - is In re Ricky Lee Cobbs; to where I'm to believe In re Cobbs's likely conflicts with Article III of the Constitution. The Constitution imposes a duty on "Justices [s]" to exercise the judicial power. That ... power is to be exercised "for the purpose of giving effect to the will of the Legislature or in other words, to the will of the law." Osborn v. Bank of United States. 9 Wheat 738 866 (1824) (Marshall, C.J., for the Court)

Did the California Supreme Court by-pass its very distilled analytical techniques when it failed to comply with its own decision in In re Ricky Lee Cobbs, regarding In re Ricky Leon Scott's matter of [BANK] two theory's used in trial court... which law based on Senate Bill No. 1437; and also failed to ... comply with statutory mandate to give "great weight" to ... In re Cobbs's concurrences, [It erroneously saw legal uncertainty where none exists. There's nothing stating (why) the denial. (REVIEW California Rule of Court. rules 8.1105 (a) (1) (B), 8.1115 (a).)]

The Article III duty to decide case even when the Executive ... disagrees with the conclusion has long been recognized by this - Court, "[If] it is not in conformity to the true intent and provisions of the law. it cannot be permitted to ... conclude the judgment of a court of justice." Dickson, 15 Pet. at 116; Justice Story, writing for the Court admonished that,

"it is not to be forgotten that ours is a government of laws, and not of men; and that the Judicial Department has imposed upon it, by the Constitution, the solemn duty to interpret the laws, in the last resort; and however disagreeable that duty may be, in cases... where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender, or to waive it." Id., at 162

Senate Bill No. 1437 is in serious tension with... this understanding of Article III

Introduction: To both Courts: The First Appellant District Div Five: Court of Appeal, and the California Supreme Court: Case No. A161502 also S2167080, were to "thunder," my reasoning where Senate Bill No. 1437; (2017-2018 Reg Sess); changes the law underlying two theories of guilt, i.e., felony murder based on attempted robbery and murder as the natural and probable consequence of assault and battery. (Irene Cobbs: controlling citation), it provides a procedure for those who seek retroactive... application of Pen. Code § 1190.95, which is sole means by which a person may obtain relief for a conviction that became final before the effective date of Senate Bill No. 1437.

A. APPEALS; APPEALABILITY.

The right of appeal is statutory and judgment or order, is not appealable unless expressly made so by statute.

A postjudgment order affecting substantial rights of a party, Pen Code § 1237 Subd. (b) does not turn on whether that party's claim is meritorious, but on the nature of the claim and the court's ruling thereto: (rules of court rule 8.100 (a) (1); (a) (2)).

State of California's Court of Appeal First Appellant District Div. Five, "IDENIAL," of my petition(s) reasoning was that [my] habeas corpus is unavailable to CIRCUMVENT the remedy of appeal.

B. LIBERAL CONSTRUCTION

Appellant "Scott's", argues, "liberal construction" ... compelled the court to conclude as stated in Vibert supra; 64 Cal.2d 65. Even if the notice's defect was the result of "Appellant's ignorance." (id at pp. 68-69 italics omitted. quoting Evola supra; 158 Cal.App.2d at p. 661)

However, the same could be said of the various type of technical defects that's addressed in Chung Sing supra; 178 Cal.2d 61; Vibert supra; 64 Cal.2d 65, and Walker supra; 35 Cal.4th 15; In all those cases, (its) concluded that defect in notice did not ... warrant an automatic dismissal.

Also at least with respect to the prima facie showing under Pen Code § 1170.95 (c); habeas corpus ... procedures provide a suitable analogy. It is a maxim of statutory ...

Construction that " " Similar statutes should be ...
constructed in light of one another." People v. Tran, (2015)
61 Cal.4th 1160-1167-1168; 191 Cal. Rptr. 3d 251, 354 P. 3d 1497.)
Petition for habeas corpus often ... seek post-conviction
relief." (In re Clark (1993) 5 Cal.4th 750, 763-764.) Which
is Penal Code's 1170.95's "Exclusive focus."

C. TESTIMONY BY WITNESS "WHITEY PAVAO,"

Appellant "Scott," further gave his specificity to
show "provocation" which is part of the recorder(s) that
victim "Abdul Smith" attacked "Scott" possibly thinking
appellant - Scott, was the guy that witness Whitey Pavao
testified about at trial saying that Scott wasn't who
he'd ... remembered seeing, that the guy he'd remember's
was around 5 feet 1 inches tall, and Smith was in a
fighting stand. [I] was allowed to stand in front of
the jury - I'm (5.11 1/2). "Pavao," testified I wasn't the
one.

He'd also stated it was over money taken by
Smith from the other person. A "rip off," to where the
prosecution's theory to jury [I] was tempting to re-robb
victim Smith and had brought "knives," to a fits...
fight, creates assault and battery. (SEE APPENDIX-D)

So instructed, jury on two type of theory's,
One of which is legally correct and one legally incorrect,
reversal is required

D. CONSTITUTIONAL LAW. CASE OR CONTROVERSY STANDING = ELEMENT

Standing to invoke the judicial process requires an actual justiciable controversy as to complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer... an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator(s). To have standing party's must beneficially have interest in the controversy that is he or she must have some special... interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. The party(s) must be able to demonstrate that he or she has some such... beneficial interest that is concrete and actual and not conjectural or hypothetical.

Although the party's brief included multiple type references set in "Standings" which is a jurisdictional requirement set forth in Code of Civil Procedure section 902 (SEE 902 ("[A]ny party aggrieved may appeal."); In re K. C. (2011) 43 Cal.4th 231, 236 ["only a person aggrieved by a decision may appeal"]; Marsh v. Mountain Zephyr, Inc. (1996) 43 Cal.App.4th 289, 295 ("[S]tanding to appeal is... jurisdictional.")).

It is clear that the public policy interests underlying the... "liberal construction requirement" justified an examination of the record(s) to determine whether,

1 despite the notice's defect, the appellant's intent was
2 nonetheless clear to the parties, as stated in Vibert even
3 if the notice's defect was the result of "Appellant's
4 Ignorance." (id at p. 70) of the technical requirements of
5 Appellate procedure, "He should not be precluded
6 from securing a review of what all concerned knew he
7 was seeking to have reviewed." (id at p.p. 68-69, ... italics
8 omitted, quoting V. Evola, Supra; 158 Cal. App. 2d at p. 666).

10 E. CASE SUMMARY

11 On Feb. 06, 2012 Appellant "Ike Rickey
12 Leon Scott", was arrested for the murder of "Abdul
13 Smith". The crime happens in the T.V. AREA at a homeless
14 shelter at 5th and Bryant Street in San Francisco. (CASE
15 Number 219205) Sup. Ct.

16 While sitting sleep in T.V. AREA "Scott" was
17 attacked. (ran into)... (hit in face); by "Abdul Smith", unknowing
18 at the time it was my "White hair Beard" that brought
19 Abdul Smith's 'vituperate' thinking I was same person
20 earlier he'd been fighting, this also was based on testimony
21 at trial by witness "Whiten Pavao", that I wasn't the guy
22 he'd seen fighting with Abdul Smith nor the actual killer
23 (SEE APPENDIX-D.)

24 On Abdul Smith's second pass toward (N)E;
25 now I'm awake still in my chair. I look-up and here's Abdul
26 coming DACE again, without his jacket on and now with and ...
27 rolled-up NEWS paper looking as if some type of weapons...
28 within it, as he turns my way I stand-up pull's my knife

only to SCARE him AWAY from (ME), unknowing at time
the time (HE) WAS totally high out of his mind (D.29),
so intent on getting ME, "HE" rushes swinging news
paper... I duck, he ran into my right hand... hold-
ing knife. Testimony by medical opt was that "Abdul's"
... death could very well BEEN CAUSED by him rushing
into the knife. My reaction's to pull away from him
kept the full length of the knife from entering...
any deeper, the testimony was the knife barely...
enter the AREA of heart; yet enough to cut a valve.

Witness "Whitey PAVAS" testimony gave the
People's theory that "Scott" kills Smith to AVENGE
a "rip-off". I was tempting to rob Smith; also I'd
brought knife's to a fist fight creates Assault and Battery.
I'd pointed out that, In re Ricky Lee Cobbs
was (my) controlling citation in my habeas corpus.

OVERVIEW

HOLDINGS: (1) The State of California's statute
Penal Code section 1170.95's. petition procedure...
underscores legislative intent to requires those who
seek retroactive relief to proceed by way of that...
statutorily specified procedure. The statute requires
A petitioner to submit a declaration stating he or she
is eligible for relief based on criteria in 1170.95
subd. (a); 1170.95 subd. (b) (1) (A).

(2) The Legislature intended person's
seeking the ameliorative benefits of Senate Bill No. 1437;
which is not silent on the question of "Retroactivity."

REASONS FOR GRANTING THE PETITION

The pattern jury instruction on implied malice murder states that "A) Natural and probable consequence is one that a reasonable person . . . would know is likely to happen if nothing unusual intervenes." [No] such comparable facts or circumstances are presented in this case. — Appellant's conduct, while reprehensible falls outside the outer . . . bounds of conduct sufficiently dangerous to support a finding that he committed an act with a high degree of probability that it would result in death. Reviewing "the whole record in the light most favorable to the judgment below," Appellant "Scott" conclude that the evidence which is insubstantial (that is, it does not disclose "evidence which is reasonable, credible, and of solid value" such that a reasonable trier of fact could find the Appellant "Scott", guilty beyond a reasonable doubt." (People v Johnson (1980) 26 Cal.3d. 557, 570)

B.E. Witkin who "Drafted" the original Rules on Appeal (see ante. at p. 7) appears to have anticipated that in appropriate cases, the rule of liberal construction would be utilized to remedy defects in the notice's description of the appealing parties. Scott's petition (briefs) include multiple references to "Standings" which is a jurisdictional requirement set forth in Code of Civil Procedure Section 902 (see § 902 "Any party aggrieved may appeal").

California Supreme Court on January 2, 2019 transferred In re Cobbs's matter back to Court's of Appeal with directions to vacate the denial and . . . issue an order to "show cause", returnable as to why petitioner is not entitled to relief. "Appellant "Scott" seeks the same:

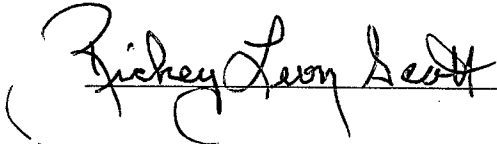
Appellant "Scott", meets these standing requirements. He filed timely petition alleging a justiciable controversy affecting concrete . . . interests. He claims he's eligible for resentencing pursuant to Pen. Code § 1170.95 and Senate Bill No. 137. — Provides a remedy by way of a statutory postjudgment motion.

A denial of which foreclosing a reduced sentence would certainly "affect [] the substantial rights of the party." (11237 subd. (b) italics . . . added)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 19, 2021

APPENDIX

A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

In re RICKEY LEON SCOTT on Habeas
Corpus.
A161502
San Francisco No. 219205

BY THE COURT:*

It appears petitioner seeks habeas corpus relief pursuant to S.B. 1437 and Penal Code section 1170.95. Exhibit A to the petition indicates that on October 9, 2020, the superior court denied petitioner's "*Petition for Resentencing* pursuant to SB1437 & PC1170.95," and the superior court advised petitioner he had 60 days from that date to file an appeal. Habeas corpus is unavailable to circumvent the remedy of appeal. (*In re Dixon* (1953) 41 Cal.2d 756, 759.) Consequently, the petition for writ of habeas corpus is denied.

Date 12/04/2020

Simons, J., Acting P.J.

ACTING P.J.

* Before Simons, Acting P.J., Burns, J. and Reardon, J. (Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution)

**CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FIVE**

350 McAllister Street
San Francisco, California 94102

December 23, 2020

Rickey Leon Scott
AR5937
P.O. Box 5246 C-6-*104
Corcoran, CA 93212

In re Rickey Leon Scott on Habeas Corpus
Court of Appeal Case Number A161502

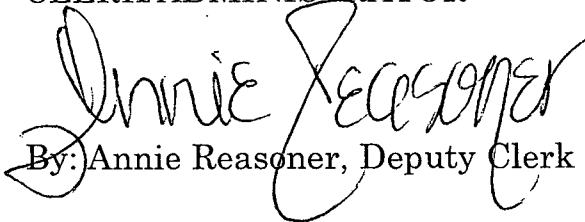
Dear Mr. Scott:

I am writing in response to your "rehearing notice" dated December 9, 2020.

Your case was final on December 4, 2020, when the order on the petition was filed. This court has no authority to take action on a case when it is final.

I am sorry this court cannot assist you.

Sincerely,
CHARLES D. JOHNSON,
CLERK/ADMINISTRATOR


By: Annie Reasoner, Deputy Clerk

/ar

APPENDIX

B



HALL OF JUSTICE

Superior Court of California County of San Francisco

Honorable Brendan Conroy, Judge Presiding

DEPARTMENT 25

Rickey Leon Scott
CDCR# AR5937
P.O. Box 8800
Corcoran, CA 93212-8309

October 19, 2020

RE: PETITION FOR RESENTENCING PURSUANT TO PENAL CODE 1170.95

Dear Mr. Scott,

We have received your *Petition for Resentencing* pursuant to SB1437 & PC1170.95 on October 5, 2020.

On October 9, 2020, the court found that you are ineligible under PC 1170.95 and your petition for resentencing was denied. Please be advised that you have 60 days from 10-09-20 to file an appeal.

until DEC 09, 2020

Very truly yours,

Deputy Clerk,

Petitioner Name Rickey LEON Scott CDCR # (if applicable): AR 5937 Institution Name (if applicable) CSATF/STATE PRISON AT CORCORAN Street Address P.O. Box 5246/C-6-10A City: CORCORAN State: CA. 93212 Zip: Attorney Name (if applicable) State Bar No:	<i>For Court Use Only</i>
Superior Court of California, County of SAN FRANCISCO Street Address: 850 Bryant Street Room 101 Mailing Address: City, State, Zip: SAN FRANCISCO. CA. 94103 Branch Name:	Superior Court Case Name 219205 People of the State of California v. Rickey LEON Scott Superior Court Case Number Year of Conviction:
PETITION FOR RESENTENCING (Penal Code § 1170.95)	<i>For Court Use Only</i> Date: Time: Department:

I, Rickey Leon Scott, declare as follows:

☒ 1. A complaint, information, or indictment was filed against me that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine.

☒ 2a. At trial, I was convicted of 1st or 2nd degree murder pursuant to the felony murder rule or the natural and probable consequences doctrine;

OR

☐ 2b. I pled guilty or no contest to 1st or 2nd degree murder in lieu of going to trial because I believed I could have been convicted of 1st or 2nd degree murder at trial pursuant to the felony murder rule or the natural and probable consequences doctrine.

☒ 3. I could not now be convicted of 1st or 2nd degree murder because of changes made to Penal Code § § 188 and 189, effective January 1, 2019.

Note: Box 1, Box 2a or 2b, and Box 3 must all apply in order to be resentenced under Penal Code § 1170.95.

☒ 4. I request that this court appoint counsel for me during this re-sentencing process.

☒ 5. (If applicable) I was convicted of 1st degree felony murder and I could not now be convicted because of changes to Penal Code § 189, effective January 1, 2019, for the following reasons (all must apply):

☐ I was not the actual killer.

☐ I did not, with the intent to kill, aid, abet, counsel, command, induce, solicit, request, or assist the actual killer in the commission of murder in the first degree.

☒ I was not a major participant in the felony or I did not act with reckless indifference to human life during the course of the crime or felony.

☒ The victim of the murder was not a peace officer in the performance of his or her duties, or I was not aware that the victim was a peace officer in the performance of his or her duties and the circumstances were such that I should not reasonably have been aware that the victim was a peace officer in the performance of his or her duties.

☐ 6. (If applicable) I was convicted of 2nd degree murder under the natural and probable consequences doctrine or under the 2nd degree felony murder doctrine and I could not now be convicted of murder because of changes to Penal Code § 188, effective January 1, 2019.

☒ 7. (If applicable) There has been a prior determination by a court or jury that I was not a major participant and/or did not act with reckless indifference to human life under Penal Code § 190.2(d). Therefore, I am entitled to be re-sentenced pursuant to § 1170.95(d)(2).

☒ 8. I have mailed a copy of this Petition to the following:

☒ Office of the District Attorney

County of SAN FRANCISCO

850 Bryant Street
[Street Address]

SAN FRANCISCO, CA 94103
[City, State, Zip]

☒ Office of the Public Defender

County of SAN FRANCISCO

555 SEVENTH STREET
[Street Address]

SAN FRANCISCO, CA 94103-4709
[City, State, Zip]

OR

☐
[Trial Attorney Name]

[Firm Name]

[Street Address]

[City, State, Zip]

I declare under penalty of perjury that the above is true except as to that stated on information or belief or that which is a legal conclusion and as to those, I believe them to be true.

Signature: _____

Name [Printed]: Rickey LEON SCOTT

Date: _____

Filed 9/29/2020

APPENDIX

C.