

SUPREME COURT
FILED

APR 14 2021

Jorge Navarrete Clerk

Deputy

S267080

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re RICKEY LEON SCOTT on Habeas Corpus.

The petition for writ of habeas corpus is denied.

CANTIL-SAKAUYE

Chief Justice

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6 THE STATE OF CALIFORNIA
7 SUPREME COURT
8

9 THE PEOPLE OF CALIFORNIA
10

11 - VS -

12 RICKEY LEON SCOTT
13

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15 PETITION FOR REVIEW
16

17
18 INTRODUCTION
19

20 TO THE HONORABLE CHIEF JUSTICE;
21 AND ASSOCIATED JUSTICES FOR THE
22 STATE OF CALIFORNIA SUPREME COURT
23
24

25
26 RECEIVED
27 DEC 31 2020
28 CLERK SUPREME COURT

Pro Se
Inmate Rickey Leon Scott
CDC No. AR 5937
CSAT-F/State Prison at Corcoran
P.O. Box 5246/C-6-4104
Corcoran, CA 93212

1 RICKY LEON SCOTT AR5937

2 CSATF/STATE PRISON AT CORCORAN

3 P.O. BOX 5246 / C-6-*104

4 CORCORAN CA. 93212

5
6
7 STATE OF CALIFORNIA
8 SUPREME COURT
9

10 RICKY LEON SCOTT

PETITION FOR REVIEW

11 vs

SUMMARY DENIAL OF

12 PEOPLE OF THE STATE

PENAL CODE SECTION

13 OF CALIFORNIA.

1170.95 PETITION

14 INTRODUCTION

15 A. WHY REVIEW SHOULD BE GRANTED

16 (1) The summary denial of [this] petition to vacate
17 felony murder was improperly denied, because at the
18 stage of the process governed by § 1170.95, subd. (c), the
19 trial court should not have engaged in fact-finding, as to
20 whether the Appellant's actions were "reckless indifference,"
21 without first issuing order to show cause, appoint an
22 counsel and allow the parties to present evidence at
23 a hearing pursuant to section 1170.95 subd. (d)

24 (2) A person "Scott," convicted of felony murder
25 may file a petition with the court that sentenced the
26 appellant to have appellant's murder conviction vacated
27 and to be resentenced on any remaining counts when
28 the conditions apply:

§ 1. A remittitur may only be recalled for "good cause" (Cal. Rules
of Court, rule 8.272 (c) (2).) Other than to correct clerical errors. "good
cause" generally exists only when a judgment was secured by
fraud ... mistake or inadvertence. (Pacific Legal Foundation v

(a) The Appellant was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the Appellant could convicted of first degree or second degree murder.

(b) The Appellant could not be convicted of first or second degree murder because of changes to Section 188 or 189 made effective January 1, 2019.

(c) If Appellant is entitled to relief pursuant to this section, murder was charged generically, and the target offense was not charged, the Appellant's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes. Any applicable statute of limitations shall not be a bar to the court's redesignation of the offense for this purpose.

(d) This section does not diminish or abrogate any rights to remedies otherwise available to Appellant.

(3) Appellant "Scott" filed on his own behalf a petition for resentencing pursuant to Section 1170.95. In the petition, Appellant filed a declaration in which [HE] checked a number of preprinted boxes that collectively indicated [HE] was eligible for resentencing pursuant to Section 1170.95 subd. (d)(2), among other assertions, - "Appellant "Scott" declared that he did not act with reckless indifference to human life during the course of the crime or felony.

Part II

COURT'S FAILURE TO FOLLOW THE

PROCEDURAL REQUIREMENTS OF THE STATUTE

California Coastal Comm. (1982) 33 Cal.3d 158, 165) " "This remedy [recalling the remittitur] though described in procedural terms, is actually an exercise of an extraordinary substantive power."

(4) Section 1170.95 subd. (c) twice use the phrase "prima facie showing." Courts of Appeal have inferred from the structure of the provision that section 1170.95 (c) contemplates two separate assessments by the trial court of a prima facie showing: one focused on "Eligibility" for relief and the second on "Entitlement," to relief. As the Second District Court of Appeal stated in Verdugo, "[S]ubdivision (c) ... prescribes two ... court reviews before an order to show cause may issue, one made before any briefing to determine whether the appellant has made a prima facie showing he or she falls within section 1170.95 - that is, that the appellant(s) may be eligible for relief - and a second after the briefing by both [I] sides to determine whether the appellant(s) has made a prima facie showing he or she is entitled to relief." (Verdugo, *supra* 44 Cal.App. 5th at p. 328.

(5) As an initial matter, isn't it observe that it is not the meaning of "prima facie showing" itself that is ambiguous. "A prima facie showing is one that is sufficient to support the position of the party(s) in question." (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal. 4th 826, 851 (107 Cal.Rptr. 2d 841, 24 P.3d 493); see also Black's Law Dictionary (11th ed 2019) [defining a "prima facie case." "[A] party's production of enough evidence to allow the fact-finder to infer the at issue and rule is the party's favor].")

(6) Also at least with respect to the prima ... , its significant function is to permit the court to set aside an erroneous judgment on appeal obtained by improper means." (In re Richardson (2011) 196 Cal. App. 4th 647, 663.)

facis showing under section 1170.95 (c), habeas corpus procedures provide a suitable analogy. It is a maxim of statutory construction that " "Similar statutes should be construed in light of one another." (People v. Tran (2015) 61 Cal.4th 1160-1167-1168 (191 Cal.Rptr.3d 257, 354 P.3d 148).) Petition for habeas corpus often seek post-conviction relief. (In re Clark (1993) 5 Cal.4th 750, 763, 764 (21 Cal.Rptr.2d 509, 855 P.2d 729), which is Penal Code section 1170.95's exclusive focus.²

Conclusion

(7) To granted this Appellant's request

Date: 12/27/2020

Respectfully Submitted
1st Rickey Leon Scott
RICKY LEON SCOTT

112. Entitled to relief. (People v. Endsley (2018) 28 Cal.App. 5th 93 109.) Remand appropriate where trial court failed to follow statutory procedures.

1 Rickey Leon Scott AR5937
2 Substance Abuse Treatment Facility
3 and State Prison, Corcoran
4 P.O. Box 5246 / C-6-*104
5 Corcoran, CA 93212
6
7

8 Supreme Court of California
9

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11 In re Rickey Leon Scott as
12 Habeas Corpus

AL61502
"Application for Relief from
Default"

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14
15 To THE HONORABLE CHIEF JUSTICE and Associated
16 Justice's of Supreme Court of California:
17 ~~_____~~
18

19 Appellant In re Rickey Leon Scott pursuant to
20 "Good Cause," ask that the Honorable Chief Justice; and
21 Associate Justice's allow (my) continue Litigation of the
22 above case No 161502.

23 Appellant as the total prison at present are in
24 "Lock Down" the only movement are medical. Also:
25 the Clerk of Supreme Court's Notice just arrived today.

26 Without being Allowed Law Library programming
27 Appellant was going by a 30 day mandate to REVIEW
28

SEE exhibit - A

JAN 11 2021

It is why application for "Review" is so -
important. The Newly Pen Code 1170.95. issue, AS well
Section 188 or 189 made effective January 1, 2019, important
by Senate Bill No 1437.

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

151 Rickey Leon Scott
Rickey Leon Scott



Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

EARL WARREN BUILDING
350 McALLISTER STREET
SAN FRANCISCO, CA 94102
(415) 865-7000

January 13, 2021

Rikey Leon Scott
CDC #AR-5937
Substance Abuse Treatment Facility and State Prison, Corcoran
P.O. Box 5246
Corcoran, CA 93212

Re: **A161502 — In re RICKEY LEON SCOTT on Habeas Corpus**

Dear Mr. Scott:


Returned unfiled is your petition for review received December 31, 2020. In a letter dated December 31, 2020 you were advised that your petition for review was untimely and you were required to submit an Application for Relief from Default explaining the reasons for your failure to file a timely petition for review. You were also advised that after January 4, 2021 this court loses jurisdiction. On January 11, 2021 the court received your application for relief from default. Unfortunately, after January 4, 2021 the court lost jurisdiction to consider or grant relief of any nature in this case.

In the event there is a desire to file a petition for writ of habeas corpus, a copy of the form is enclosed. Please complete the form as fully as possible and sign it on page six (we must have an original signature). You may attach any documents to the completed form.

The rules require that you file an original and ten copies. The institution has facilities for making the required number of copies. If the institution refuses to make copies, we will accept the original without copies.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court


By: R. Ho, Deputy Clerk

cc: rec

APPENDIX

D

first degree murder case.”¹⁵⁸

1. **In a sworn statement that he signed before trial, Pavao recanted his “you’ll never rip anyone off again” testimony.**

After the stabbing, Pavao was taken to a room with other people who had been in the “entertainment” area of the drop-in center at the time of the stabbing. Pavao stayed there for about 45 minutes, during which he spoke with other people.¹⁵⁹

Pavao was interviewed by the police a few hours after the incident. He told them: “The guy who did the stabbing said I guess you’re not going to rip anyone off any more or something, but I remember him saying something to that effect about money and stealing the money, about money”¹⁶⁰ At the end of the interview, the police asked Pavao, “Do you have any questions or have anything you’d like to add?” Pavao responded: “Yeah, uh, you know, somehow I, you know, if I, if I had to think about why it happened, I think it happened because, because the victim had ripped off the suspect.”¹⁶¹

But Pavao partially recanted his statements to the police in

¹⁵⁸ RT 2629.

¹⁵⁹ RT 1551-1553, Exhibit 14.

¹⁶⁰ RT 1550.

¹⁶¹ RT 1551.

money.¹⁶⁷ When confronted with his September 27, 2012 sworn statement, Pavao responded that although he “couldn’t have been sure that they were arguing about money at the time of the interview [with the police],” he now had recovered his earlier recollection that Scott talked about money and ripping off somebody before the altercation happened.¹⁶⁸

Yet Pavao also testified that just before the stabbing, he heard Scott tell Smith something along the lines of “I told you to stay away from here.”¹⁶⁹ (Pavao also testified that ~~Smith~~^{Scott} might have said “I told you to stay away from me,” or “I told you to leave me alone,” or “I told you to keep your distance.”)¹⁷⁰

2. Pavao’s trial testimony was incoherent, inconsistent, and contradicted by the videotape of the incident.

Pavao is a chronic alcoholic who hallucinates. Jamie Torres, who had seen Pavao at the shelter frequently over the past six years, testified that Pavao seemed intoxicated about 90% of the time.¹⁷¹ Pavao himself testified that he drank “sometimes

¹⁶⁷ RT 1551.

¹⁶⁸ RT 1554.

¹⁶⁹ RT 1472, 1480.

¹⁷⁰ RT 1480, 1546.

¹⁷¹ RT 1627-1628.

Q. And you're not suggesting that Mr. Scott grew eight inches since February 6th?

A. No, I'm not saying he grew eight inches. I'm saying—I'm saying his personality that night was not the personality that you see before you today.

Q. Okay. And when you say his personality, how do you know his personality? You've never talked to him.

A. The only thing I know about personality is that when it comes—when it comes to dealing with people, if you talk—if you talk to people when they don't want to associate with you, it degrades you, and this and that, then fine, you just shun people off, and you leave people alone, but that day he was in a—he was in a strange set of mind. Over what, I don't know, but I know that that

happen, but I didn't see Mr. Scott.¹⁷⁷

At the "cold show" on the night of the incident, Pavao could not identify Scott. Asked whether Scott was the person who had attacked and stabbed Smith, Pavao said: "That's not him."¹⁷⁸ He explained that the attacker was "smaller" and had a hat and a black jacket.¹⁷⁹ Pavao told the police that he thought the attacker was "like 5'3."¹⁸⁰ Scott is five feet 11 inches tall.

When asked at trial whether he had been able to identify Scott at the "cold show," Pavao provided inconsistent testimony, first stating that he had told the police that he could not be "certain that that's the man," but then acknowledging that he actually had told the police that Scott was *not* the attacker:

Q. Okay. Do you recall being shown Mr.
Scott?

A. No, because like I said, his features
are different than they are now.

¹⁷⁷ RT 1537.

¹⁷⁸ RT 1534, 1556.

¹⁷⁹ RT 1556.

¹⁸⁰ Exhibit 16; February 11, 2014 Supplemental Clerk's Transcript, Transcript of Pavao Statement at 6.

stabbing took place:

Q. Okay, so what I'm hearing you say is that he passed by once?

A. Once.

Q. And then he passed by a second time?

A. The second time—and then the second time he passed, then he didn't re-pass.

Q. Okay. I didn't hear. What was the last thing you said? The second time . . .

A. The second time he passed, he really passed.

Q. What do you mean he really passed?

A. Because he—it was already chaotic, and then it had already happened, and you know.¹⁸²

¹⁸² RT 1469.

where I didn't understand, you know. He had already—it had already happened, and, you know, so I never understood.

Q. Okay. So let's talk about the "it" that you're referring to happening. When you say it had already happened, what are you talking about?

A. See, I'm sitting in there watching TV. The guy comes through the door, walked around the chairs. The guy had said something to Abdulla [Smith], okay, "I told you to stay away from here," and this and that. Wait. Wait. Then he got—then he got into a scuffle, but I thought the scuffle was there, but, you know, I wasn't paying attention, but it had already happened anyways.¹⁸³

Q. And so this afternoon are you

¹⁸³ RT 1471-1472

nobody came to really stop him.¹⁸⁴

According to Pavao, Scott and Smith chased each other back and forth between the TV and the snack machine before ending near the TV.

Q. Okay. But again, when we talked to you, you said that the other man, Rickey Scott said, "I told you to leave me alone."

A. That's correct.

Q. "I told you to stay away from me."

A. "That's correct.

Q. "That's it. I told you to keep your distance."

A. That's it.

Q. Okay, and you said that this altercation occurred near the TV; is that right?

A. Yes, it did.

Q. Okay. Not way over here where you

¹⁸⁴ RT 1521.

walked back, and then fell out by the coffee machine.

Q. Okay. Now, the altercation where you heard somebody say "I told you to stay away from me, I told you to keep your distance, I told you to leave me alone," where did that occur? Did it occur down here between the coffee and the snack machine or by the TV?

A. No, it started up there by the chairs.

Q. By the TV?

A. By the TV, right.¹⁸⁵

Pavao's testimony contradicts the event as depicted on videotape. If Smith and Scott had exchanged words and had chased each other back and forth as Pavao testified, that presumably would have taken more than five seconds and would have been captured on video.¹⁸⁶ But the video to which the

¹⁸⁵ RT 1546-47.

¹⁸⁶ The videocamera recorded images at the rate of two frames

APPENDIX

E

DECLARATION

While waiting for services in a homeless-shelter, Appellant Rickey Leon Scott stabbed Abdul Smith. He was convicted of first degree murder following a trial at the defense instructed jury on the lesser offenses of second degree murder and manslaughter based on theories of accident, self-defense, imperfect self-defense and provocation.

Prosecution's theories to jury was Appellant Rickey Leon Scott was charged with murder under theories of felony murder, based on victim Abdul Smith taken had taken money from "Scott", which were witness's Whitey Pavao statements on stand to jury. Also Scott brought knife(s) to a fist fight consequence of an assault and battery. Prosecution's Theories.

A. WHY APPELLANT FACTUAL BASIS FOR THIS PETITION ARE AS FOLLOWS:

(1) Appellant asserts (1) he was charged with murder under a theory of felony murder (2) he was convicted of first degree murder and (3) he could not be convicted of first degree murder under the post-January 1, 2019 definition of murder because "he" did not act in the underlying felony, with reckless-indifference to human life as described in Subd. (d) of section 190.2 (SEE L 1170.95(a). — There isn't any facts in the trial court's record that will refute "Scott's assertion that he had been convicted of first degree murder on ~~fel~~ see exhibit B, Malice is implied from the provocative act. (PEOPLE v. LOPEHA (2009) 47 Cal.4th 653, 662-663 (101 Rptr.3d 141, 210 P.3d 660)

1 A theory of Felony Murder

2 (2) What role did the defendant have in
3 supplying or using lethal weapons? What awareness
4 did the defendant have of particular dangers -
5 posed by the nature of the crime, weapons used,
6 or past experience, or conduct, and did his or her
7 own actions or inaction play a particular role in the
8 death?

9 (3) No one of these considerations are -
10 necessary, nor is any one of them necessarily -
11 sufficient - All may be weighed in determining the
12 ultimate question, whether the defendant's partici-
13 pation in criminal activities known to carry a grave
14 risk of death. Subject matter of the elements of
15 Murder. (Gooden, supra 42 Cal App 5th at p. 281, Pearson
16 supra 48 Cal 4th at p. 573) Thus, it draws a distinction
17 between those who act with intent to kill or with "
18 reckless indifference to human life", and those who
19 do not

20 B. Argues

21 (4) Except as stated in subdivision (e) of
22 section 189, in order to be convicted of murder, a
23 principal in a crime shall act with malice aforethought
24 Malice shall not be imputed to a person based
25 solely on his or her participation in a crime.

26 (5) Given Appellant "Scott's", defense, of
27 being attacked twice by victim "Abdul Smith", -
28 While Scott was seated sleep in T.V. room area at
(Concha) Implied malice has both objective and subjective
components. The objective test requires "an act, the nature
and consequences of which are - dangerous to life." (P)
People v. Knoller (2007) 41 Cal 4th 139, 143)

SAN FRANCISCO'S HOMELESS SHELTER, AND HIS ACTIONS WERE BASED ON ONLY TO PROTECT HIMSELF FROM HARM BASED ON THE ACTIONS ALREADY SHOWN, SIT IN MOTION BY VICTIM ABDUL SMITH'S AGGRESSIVENESS TOWARD HIM. "QUESTION" WHERE IS THE MALICE INPUT BY APPELLANT "SCOTT'S" TO ONLY PROTECT HIMSELF?

(6) IT'S WITH CONSIDERABLE PROVOCATION WHICH APPEARS, THAT APPELLANT TAKES HIS STAND TO ONLY PROTECT HIMSELF FROM HARM, AS AN SENIOR MALE AGE 64 YEARS OF AGE, BEING ATTACKED BY ANOTHER MALE WHO'S MUCH YOUNGER, PLUS THE FEAR FACTOR'S RUNNING WILD, BROUGHT FULL A-WOKE.

CONCLUSION

(7) THE COURT SHOULD ASSUME ALL FACTS STATED IN THE SECTION 1170.95 PETITION ARE TRUE (VERDUGO, SUPRA, 44 CAL. APP. 5TH AT P. 328) (SEE PEOPLE V. SLEDGE, (2017) 7 CAL. APP. 5TH 1089, 1095-1096.)

(8) APPELLANTS COULD OBTAIN RELIEF ON APPEAL UNDER THE RULE ALLOWING RETROACTIVE APPLICATION OF — AMENDATORY STATUTES LESSENING PUNISHMENT. PEOPLE V. MEDRANO (CAL. APP. 5TH DIST. DEC. 3, 2019), 256 CAL. RPT. 3d 200, 42 CAL. APP. 5TH 1001, 2019 CAL. APP. LEXIS 1208, MODIFIED, CAL. APP. 5TH DIST. DEC. 23, 2019) 2019 CAL. APP. LEXIS 1298.

"QUESTION" (1) MAY SUPERIOR COURT CONSIDER THE RECORD OF CONVICTION IN DETERMINING WHETHER IVE MADE A PRIMA FACIE SHOWING OF ELIGIBILITY FOR RELIEF UNDER PENAL CODE SECTION 1170.95? (2) WHEN DOES THE RIGHT TO APPOINT COUNSEL ARISE UNDER PENAL CODE DIV. 2 I'M ELIGIBLE FOR RELIEF UNDER THIS SECTION BASED ON ALL REQUIREMENTS OF SUBD. (A) 1170.95 (A) SUCH AS MANSLAUGHTER E.G., FLORES SUPRA, 44 CAL. APP. 5TH AT PP. 990, 993.) (CAL. RULE OF COURT RULE 4.551(b))

1 Section 1170.95 subd (c)?

2 (9) At least with respect to the prima facis -
3 showing under section 1170.95 (c), habeas corpus procedure
4 provide a suitable analogy. It is a maxim of -
5 statutory construction that " " similar statutes should
6 be construed in light of one another. " " (People v.
7 Iran (2015) 61 Cal.4th 1160, 1167-1168, [191 Cal.Rptr. 3d
8 251 354 P.3d 148]). Petitioner's, in for Habeas Corpus
9 often seek postconviction relief (In re Clark (1993) 5
10 Cal.4th 750; which is section 1170.95 exclusive
11 focus.)³

12 Date 12/27/2020,

13 Respectfully Submitted
14 131 Rickey Leon Scott
15 RICKY LEON SCOTT
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Continued B. Entitled to relief (People v. Eadsley (2018) 28 Cal App.
5th 93, 104 (remand appropriate where trial court failed to
follow statutory procedures)