

APR 14 2021

Jorge Navarrete Clerk

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S267080

Deputy

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re RICKY LEON SCOTT on Habeas Corpus.

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The petition for writ of habeas corpus is denied.

**CANTIL-SAKAUYE**

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*Chief Justice*

THE STATE OF CALIFORNIA  
SUPREME COURT

# THE PEOPLE OF CALIFORNIA

vs.  
RICKETTS LEON SCOTT

PETITION FOR REVIEW

## INTRODUCTION

TO THE HONORABLE CHIEF JUSTICE;  
AND ASSOCIATED JUSTICE'S FOR THE  
STATE OF CALIFORNIA SUPREME COURT

RECEIVED  
DEC 31 2020  
CLERK SUPREME COURT

Re Sc

Inmate Rickey Leon Scott  
CDC No. AR 5932  
CSAT-F/State Prison at Corcoran  
P.O. Box 5246/C-6-#104  
Corcoran, CA 93212

1 RICKY LEON SCOTT AR 5937

2 CSATF/STATE PRISON AT CORCORAN

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

4 CORCORAN, CA 93212

5

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7 STATE OF CALIFORNIA

8 SUPREME COURT

9

10 RICKY LEON SCOTT

PETITION FOR REVIEW

11 vs

12 PEOPLE OF THE STATE  
13 OF CALIFORNIA.

SUMMARY DENIAL OF  
PENAL CODE SECTION  
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 ad  
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  
appellant to have Appellant's murder conviction vacated  
and to be resentenced on any remaining counts when  
the conditions apply.

26 Se. 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.

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

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

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

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

17 (3) Appellant, "Scott," filed on his own behalf a  
18 petition for resentencing pursuant to section 1170.95.  
19 In the petition, appellant filed a declaration in which  
20 [HE] checked a number of preprinted boxes that collectively  
21 indicated [HE] was eligible for resentencing pursuant to  
22 section 1170.95 sub. (d)(2), among other assertions,  
23 "Appellant "Scott" declared that he did not act with  
24 reckless indifference to human life during the course  
25 of the crime or felony.

26 Part II

27 COURT'S FAILURE TO FOLLOW THE  
28 PROCEDURAL REQUIREMENTS OF THE STATUTE

California Coastal Com. (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.

1 (4) Section 1170.95 subd. (c) twice use the  
2 phrase "prima facie showing." Courts of Appeal have  
3 inferred from the structure of the provision that sect-  
4 ion 1170.95 (c) contemplates two separate ASSESSMENTS  
5 by the trial court of a prima facie showing: ONE focused  
6 on "Eligibility" for relief and the SECONd on  
7 "Entitlement," to relief. As the Second District Court  
8 of Appeal stated in Verdugo, "[S]ubdivision (c) . . .  
9 prescribes two . . . court reviews before an order to  
10 show cause MAY ISSUE, ONE MADE before any briefing  
11 to determine whether the Appellant has made a prima  
12 facie showing he or she falls within section 1170.95 -  
13 that is, that the Appellant(s) may be eligible for  
14 relief - and a second after the briefing by both [ ]  
15 sides to determine whether the Appellant(s) has  
16 made a prima facie showing he or she is entitled to  
17 relief." (Verdugo, supra, 44 Cal. App. 5th at p. 328.)

18 (5) As an initial matter, Isn't it observe that  
19 it is not the meaning of "prima facie showing" itself  
20 that is ambiguous. A prima facie showing is ONE that is  
21 sufficient to support the position of the party(s) in question.  
22 (Aquilar v. Atlantic Richfield Co. (2001) 25 Cal. 4th 826,  
23 851 (107 Cal.Rptr. 2d 841, 24 P.3d 493); SEE ALSO Black's Law  
24 Dictionary (11<sup>th</sup> ed. 2019) [defining a "prima facie case."  
25 "[A] party's production of enough evidence to allow the  
26 fact[finder] to infer the at issue and rule in the party  
27 s favor.)

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

1 facie showing under section L 1170.95 (c), habeas corpus  
2 procedures provide a suitable analogy. It is a maxim  
3 of statutory construction that " "SIMILAR statutes  
4 should be construed in light of ONE ANOTHER." (People  
5 v. Tran (2015) 61 Cal. 4th 1160-1167-1168 (191 Cal. Rptr. 3d  
6 257, 354 P. 3d 148.) Petition for habeas corpus often  
7 seek post-conviction relief. (In re Clark (1993) 5  
8 Cal. 4th 750, 763, 764 (21 Cal. Rptr. 2d 509, 855 P. 2d 729),  
9 which is Penal Code section 1170.95's exclusive  
10 focus.<sup>2</sup>

11 Conclusion

12 (7) TO grant this Appellant's request

13 Date: 12/27/2020

14 Respectfully Submitted

15 1st Rickey Leon Scott  
16 RICKY LEON SCOTT

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f.2. Entitled to relief. (People v. Endsley (2018) 28 Cal.App. 5th  
93 i.01. I demand appropriate where trial court failed to follow  
statutory procedures.

1 RICKLEY 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

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8 SUPREME Court of California

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11 In re RICKLEY LEON Scott on A161502  
12 Habeas Corpus "Application for Relief from  
13 Default"

14

15 To THE Honorable CHIEF Justice and Associated  
16 Justice's of Supreme Court of California:  
17 [REDACTED]

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

22 Appellant as the total prison at present are in  
23 "Lock Down" the only Movement are Medical. Also  
24 the Clerk of Supreme Court's Notice just arrived today.

25 Without being allowed Law Library programming  
26 Appellant was going by a 30 day mandate <sup>RECEIVED</sup> To Review,  
27 SEE Exhibit - A

JAN 11 2021

1 Appellant must point out, HOWEVER, "A prisoner  
2 may claim on habeas corpus that [he] was sentenced to a  
3 term in excess of that permitted by the Constitution, EVEN  
4 if his claim was previously rejected on direct appeal."  
5 *In re Huffman* (1986) 42 C3d 552, 555, 229 CR 789.

6 It is why application for "Review" is so -  
7 important. The newly Pen Code § 1170.95. issue, as well  
8 Section 188 or 189 made effective January 1, 2019, important  
9 by Senate Bill No 1437.

10  
11 Appellant "Scott", pray the Court will allow his  
12 application for relief from default.

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14 Respectfully submitted  
15 "I declare under penalty of perjury that the  
16 above is true and correct."

17 Dated Jan 07 2021

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is  
Rickey Leon Scott  
RICKY 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

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

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

Dear Mr. Scott:

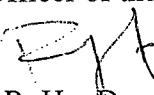
Returned unfiled is your petition for review received December 31, 2020. In a letter dated December 31, 2020 you were advised that your petition for review was untimely and you were required to submit an Application for Relief from Default explaining the reasons for your failure to file a timely petition 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.”<sup>158</sup>

**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.<sup>159</sup>

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 . . .”<sup>160</sup> 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.”<sup>161</sup>

But Pavao partially recanted his statements to the police in

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<sup>158</sup> RT 2629.

<sup>159</sup> RT 1551-1553, Exhibit 14.

<sup>160</sup> RT 1550.

<sup>161</sup> RT 1551.

money.<sup>167</sup> 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.<sup>168</sup>

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.”<sup>169</sup> (Pavao also testified that Smith 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.”)<sup>170</sup>

**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.<sup>171</sup> Pavao himself testified that he drank “sometimes

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<sup>167</sup> RT 1551.

<sup>168</sup> RT 1554.

<sup>169</sup> RT 1472, 1480.

<sup>170</sup> RT 1480, 1546.

<sup>171</sup> 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.<sup>177</sup>

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."<sup>178</sup> He explained that the attacker was "smaller" and had a hat and a black jacket.<sup>179</sup> Pavao told the police that he thought the attacker was "like 5'3."<sup>180</sup> 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.

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<sup>177</sup> RT 1537.

<sup>178</sup> RT 1534, 1556.

<sup>179</sup> RT 1556.

<sup>180</sup> 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.<sup>182</sup>

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<sup>182</sup> 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.<sup>183</sup>

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Q. And so this afternoon are you

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<sup>183</sup> RT 1471-1472

nobody came to really stop him.<sup>184</sup>

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

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<sup>184</sup> 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.<sup>185</sup>

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.<sup>186</sup> But the video to which the

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<sup>185</sup> RT 1546-47.

<sup>186</sup> The videocamera recorded images at the rate of two frames

# APPENDIX

E

## 1 DECLARATION

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

9 Prosecution's theories to jury was Appellant  
10 Rickey Leon Scott was charged with murder under theories  
11 of felony murder, based on victim Abdul Smith, taken  
12 had taken Money from "Scott", which were witness's  
13 Whitney Parao statements on Stand to jury. Also Scott  
14 brought knife(s) to a fist fight consequence of an  
15 assault and battery. Prosecution's Theories.

### 16 A. WHY APPELLANT FACTUAL BASIS

17 FOR THIS PETITION are as follows:

19 (1) Appellant asserts (1) he was charged  
20 with murder under a theory of felony murder (2) he  
21 was convicted of first degree murder and (3) he could  
22 not be convicted of first degree murder under the post-  
23 January 1, 2019 definition of murder because "he" did  
24 not act in the underlying felony with reckless -  
25 indifference to human life as described in Subd. (d)  
26 of section 190.2 (SEE L 1170.95(a). — There isn't any facts  
27 in the trial court's record that will refute "Scott's" assertion  
28 that he had been convicted of first degree murder on  
29 <sup>See Exhibit B.</sup> MALICE is implied from the provocative act. ( People  
v. Concha (2009) 47 Cal.4th 653, 662-663 (1st Rptr. 3d 141, 218 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 "reckless indifference to human life," and those who  
18 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  
(Cochia) Implied malice has both objective and subjective  
components. The objective test requires "an act, the natural  
consequences of which are - dangerous to life." (P)  
People v. Knoller (2007) 41 Cal. 4th 139, 143)

1 SAN FRANCISCO'S HOMELESS SHELTER., AND HIS ACTIONS  
2 WERE BASED ON ONLY TO PROTECT HIMSELF FROM HARM  
3 BASED ON THE ACTIONS ALREADY SHOWN, SET IN MOTION  
4 BY VICTIM ABDUL SMITH'S AGGRESSION TOWARD HIM.

5 "QUESTION" WHERE IS THE MALICE INPUT BY  
6 APPELLANT "SCOTT'S TO ONLY PROTECT HIMSELF?

7 (6) IT'S WITH CONSIDERABLE PROVOCATION WHICH  
8 APPEARS, THAT APPELLANT TAKES HIS STAND TO ONLY  
9 PROTECT HIMSELF FROM HARM, AS AN SENIOR MALE AGE  
10 64 YEARS OF AGE, BEING ATTACKED BY ANOTHER MALE WHO  
11 IS MUCH YOUNGER, PLUS THE FEAR FACTOR'S RUNNING WILD,  
12 BROUGHT FULL A-WAKE.

### Conclusion

14 (7) THE COURT SHOULD ASSUME ALL FACTS STATED  
15 IN THE SECTION 1170.95 PETITION ARE TRUE (VERDUGO,  
16 SUPRA, 44 CAL APP. 5TH AT P. 328) (SEE PEOPLE V. SLEDGE,  
17 (2017) 7 CAL APP. 5TH 1089, 1095-1096.)

18 (8) APPELLANTS COULD OBTAIN RELIEF ON APPEAL  
19 UNDER THE RULE ALLOWING RETROACTIVE APPLICATION OF —  
20 AMENDATORY STATUTES LESSENING PUNISHMENT. PEOPLE  
21 V. MEDRANO (CAL APP. 5TH DIST. DEC. 3, 2019), 256 CAL.Rptr. 3d  
22 200, 42 CAL APP. 5TH 1001, 2019 CAL APP. LEXIS 1208, MODIFIED,  
23 CAL APP. 5TH DIST. DEC. 23, 2019) 2019 CAL APP. LEXIS 1298.

24 "QUESTION" (1) MAY SUPERIOR COURT CONSIDER  
25 THE RECORD OF CONVICTION IN DETERMINING WHETHER IT'S  
26 MADE A PRIMA FACIE SHOWING OF ELIGIBILITY FOR RELIEF  
27 UNDER PENAL CODE SECTION 1170.95? (2) WHEN DOES  
28 THE RIGHT TO APPOINT COUNSEL ARISE UNDER PENAL CODE  
FOR 2 I'M ELIGIBLE FOR RELIEF UNDER THIS SECTION BASED ON ALL  
REQUIREMENTS OF SUBD. (A) 1170.95 (A) SUCH AS MURDER  
(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 facie -  
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 TRAN (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. <sup>3</sup>

12 DATE 12/27/2020,

13 RESPECTFULLY SUBMITTED  
14 *Rickey Leon Scott*  
15 *Rickey Leon Scott*

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CONTINUE f/B. Entitled to relief ( People v. Endsley (2018) 28 Cal App.  
5th 93, 104 ( remand appropriate where trial court failed to  
follow statutory procedures)