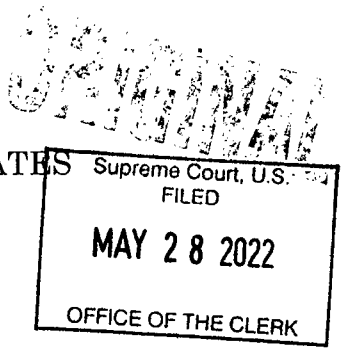
Case No. 21-1581



IN THE SUPREME COURT OF THE UNITED STATES

TONG PARK,

Petitioner,

v.

THE PEOPLE OF THE
STATE OF CALIFORNIA,

Respondent

On Petition for Writ of Certiorari to the

California State Supreme Court

PETITION FOR WRIT OF CERTIORARI

TONG PARK
In Propria Persona,
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San Mateo, CA 94403
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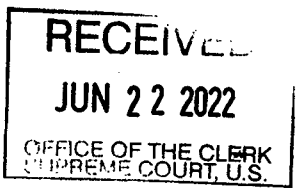

QUESTIONS PRESENTED

The following questions are presented:

1) Although unpublished, because the Court of Appeal's opinion departed from a long line of well-established and published opinions of both this Court and lower federal courts, this Court should intervene and exercise its jurisdiction over the lower state courts in order bring them back in line with established U.S. constitutional laws

2) The State Court of Appeal's opinion provides an adequate vehicle to present important issues of law for this Court to resolve.

3) After being denied access to the courts (extrinsic fraud), was the Petitioner denied his right to a fair trial in violation of his Eighth Amendment right to the United States Constitution, thereby nullifying the notion of prima facie guilt, and thereby nullifying the binding requirement of providing evidence of extrinsic fraud, and hence, evidence of innocence, in a petition for writ of error coram nobis?

4) Because the conviction of the Petitioner was entirely based upon inferences, and not on direct and positive evidence, is the Petitioner prima facie guilty of perjury, and therefore, required to produce evidence of extrinsic fraud to surmount the judgment of conviction?

5.) Because the Petitioner was denied access to the Maguire Jail Law Library for several months, after already

having secured In Propria Persona status while in State custody, as evidenced from the criminal record, did not this said denial constitute extrinsic fraud due to the fact that the Petitioner was denied access to the courts, in clear violation of *Faretta v. California*, 422 U.S. 806, 812-836.

6) Because perjury is intrinsic fraud, is the Petitioner prima facie guilty of perjury after he lost as a Defendant, a non-litigant, in the civil restraining order hearing of July 20, 1993 and gained nothing from his statements made in civil court, as evidenced by both his Notice of Appeal appealing the injunction order of July 20, 1993 (aliunde - external to the criminal record) and by a letter from the Inspector for the District Attorney luring the Petitioner to an interrogation room (Exhibit A of the criminal record)?

7) Having been illegally committed due to a complaint that lacked probable cause, but which illegally initiated the criminal process without jurisdiction, in violation of both *Giordenello v. United States*, 357 U.S. 480, 486 and *Aguilar v. Texas*, 378 U.S. 108, 115-116, as well as *Jaben v. United States*, 381 U.S. 214, 224-225, did the lower State Court of Appeal have the jurisdiction to affirm the San Mateo County Superior Court's denial of the Petitioner's application for Writ of Error Coram Nobis, which was used as a vehicle to attack the void on its face judgment?

8) Because the criminal complaint is void on its face for lack of in personam jurisdiction owing to the fact that it lacked both a declaration of material facts (no probable cause; failure to state a public offense; & failure to give notice) and the subscription of a natural person, as clearly

reflected on the face of the criminal record, in violation of *Giordenello*; *Aguilar*; & *Russell v. U.S.*, and because the judgment is void on its face for lack of subject matter jurisdiction, due to the notice of appeal, as clearly reflected on the face of the civil record (aliunde) from which the criminal action was derived, in violation of *Sharon v. Hill*, 26 F. 337, 346 (9th Cir., Cal. 1885), could the trial court and the Court of Appeal still impose the doctrine of laches and res judicata for the Petitioner's failure to both appeal and file a motion for a new trial, as well as impose the additional condition of providing evidence of extrinsic fraud to defeat his bid for post-conviction relief, in violation of *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84; & *Harris v. Hardeman*, 14 How. 337, 14 L.Ed. 444?

PARTIES TO THE PROCEEDING

The Petitioner, Tong Park, was the Defendant in the San Mateo County State Superior Court civil restraining order hearing in 1993; the Defendant in the State criminal proceeding for perjury in the California State Municipal and Superior Courts; the Petitioner in the Writ of Error Coram Nobis proceeding in the California State Superior court; the Appellant in the California State Court of Appeal regarding the writ of error coram nobis; and the Petitioner in the California State Supreme Court regarding the writ of error coram nobis; and is the Petitioner in this U.S. Supreme Court regarding the denial of review of the said California State Court of Appeal decision. The Respondent is the People of the State of California represented by Rob Bonta, the California State Attorney General. The

Respondents were the People of the State of California represented by Rob Bonta, the California State Attorney General, in both the lower California State Supreme Court and California State Court of Appeal. The Respondents were the Appellees in the proceedings before the lower California State Supreme Court and the California State Court of Appeal. The San Mateo County District Attorney, Steve Wagstaffe, was the Respondent in the writ proceedings before the California State Superior Court, in and for the County of San Mateo.

RELATED CASES:

Sarah Elizabeth Swift v. Tong Park, 384037, California State Superior Court, In and For the County for San Mateo, Civil injunction Order entered on July 20, 1993 [*People v. Tong Myung Park* action for perjury derived from civil injunction hearing].

Tong Park v. Sarah Elizabeth Swift, A062713, California State Court of Appeal, First Appellate District, Division Three, Remittitur entered on May 5, 1995.

People of the State of California v. Tong Myung Park, SC034313A, California State Superior Court, In and For the County of San Mateo, Judgment entered on March 29, 1996.

Tong Park v. Attorney General, Ray Hilburn, and Cal Terhune, Case No. C-98-20184-RMW (PR), United States District Court for the Northern District of California, Order of Dismissal entered on August 1, 2000.

In re Tong Myung Park, SC034313A, California State Superior Court in and For the County of San Mateo, Judgment entered on April 09, 2021.

The People of the State of California v. Tong Park, A162603, California State Court of Appeal, First Appellate District, Division Three, Judgment entered on December 17, 2021.

The People of the State of California v. Tong Park, S272902, California State Supreme Court, Order denying Petition for Review entered on March 9, 2022.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully seeks a writ of certiorari to review the judgment of the California State Court of Appeal.

OPINIONS BELOW

The opinion of the California State Superior Court (App. 1-4) has not been published by Westlaw publications.

The opinion of the California State Court of Appeal (App. 5-18) at issue here has not been published by Westlaw publications.

JURISDICTION

The California State Supreme Court Order denying the Petitioner's State Petition for Review was filed on March 9, 2022 (App. 19). This Court's jurisdiction rests on Title 28 U.S.C., section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution,
Amendment IV.....13, 14, 15, 22, 24

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED - Continued

STATEMENT OF THE CASE

On July 20, 1993, a civil hearing took place at the San Mateo County Superior Court, where Judge McGinn Smith granted an injunction order to the civil Plaintiff, Sarah Elizabeth Swift, against the civil Defendant, Tong Park. Tong Park, the criminal Petitioner of this writ petition, subsequently filed an appeal from the said court ruling on August 4, 1993. On or around August 15, 1993, the said presiding judge sent a letter to then Bureau Inspector Randall Curtis ordering him to start an official investigation of the Petitioner, Tong Park, for the felony crime of perjury.

Inspector Curtis did investigate the Petitioner for perjury even though he was not present at the said civil hearing and possessed no personal knowledge of the case. Via a letter dated January 21, 1994, in the false guise of investigating Sarah Elizabeth Swift for perjury and using Tong Park as a witness, San Mateo County Bureau Inspectors

Randall Curtis and Mike Dirickson tricked and lured the Petitioner to an interrogation room on the 3rd floor of the District Attorney's Office where both said detectives interrogated the Petitioner for roughly four hours. The interrogation was inquisitorial in nature, while the atmosphere, being cut-off from the outside world, was both oppressive and intimidating. Note here that the detectives admitted that they read the Defendant's Petitioner's Appellant's Brief of 1993 and were therefore, fully aware of the appeal (note: Curtis unsuccessfully tried to persuade Defendant to drop the appeal). Yet, the interrogation continued, and the said San Mateo County Bureau detectives failed to provide any Miranda warning to the Petitioner throughout the custodial-like ordeal. Moreover, the said detectives ignored the Petitioner's obvious need for an attorney. Nonetheless, on February 15, 1994, Bureau Inspector Randall Curtis, in bad faith, applied for and obtained a search warrant.

On February 18, 1994, a criminal complaint for 7 counts of felony perjury was filed in the Municipal Court of San Mateo County against the Petitioner.

On February 18, 1994, a warrant for the arrest of the Petitioner was issued by the Municipal Court Magistrate, which was filed on February 23, 1994 and docketed in the criminal case summary record on February 24, 1994. Search warrant was filed on

April 4, 1994. Petitioner was arraigned in the San Mateo County Municipal Court of now retired Judge Joseph N. Gruber on 03/22/94 where he pled 'not guilty' to all counts. An Information was filed on October 3, 1994 in the Superior Court of San Mateo County. On 10/05/94, the Preliminary Examination transcript was handed to Edward Pomeroy who physically held it with him and only showed 5 pages of the said transcript to the Petitioner. The Petitioner was only shown and had only seen 5 pages out of the total 102 pages of the entire Preliminary Examination transcript of 09/20/94 during the entirety of the Petitioner's state custody. In other words, the Petitioner was deprived of 95% of the said Preliminary Examination transcript from the time his state custody began in 1994 to January 23, 2022.

The information initiated the criminal proceedings in the Superior Court on October 3, 1994. Petitioner filed a Motion pursuant to *Faretta v. California*, 422 U.S. 806, 812-836, which was granted on 03/20/95 and reaffirmed on 08/10/95. However, even in *Propria Persona*, Petitioner was still denied law library privileges for no reason whatsoever. Indeed, the Petitioner was denied in jail law library privileges from 03/20/95 to 08/10/95 on the orders of Lieutenant Laurence Boss, and the late Judge John G. Schwarz in violation of his due process right of access to the courts.

On 08/10/95, after repeated attempts by the Petitioner to gain access to the law library via

numerous complaints, Judge John Schwarz finally relented and ordered the Sheriff's Department to allow the Petitioner to the Maguire Jail law library. On May 5, 1995, the First Appellate District of the California signed the civil Remittitur on April 18, 1995 and issued the said document on May 1, 1995, which was filed in the San Mateo County Superior Court on May 5, 1995. On August 10, 1995, the late Superior Court Judge John G. Schwarz reinstated the Petitioner's library privileges.

On 10/13/95, the Petitioner remained his own counsel (in propria persona). On 10/16/95, the Petitioner demurred to both the complaint and information, but Judge Mark Forcum denied the demurrer hearing. On 10/16/95, the Petitioner's Motion to Dismiss for Prosecutorial Misconduct was heard in the Superior Court of Judge Mark Forcum. The Petitioner direct-examined Randall Curtis who admitted that he sent a letter of solicitation to the Petitioner on January 21, 1994 luring the Petitioner to an interrogation without the benefit of Miranda Rights around the latter half of January 1994. The said letter from Inspector Randall Curtis was entered into evidence as Exhibit A. Judge Mark Forcum denied the Petitioner's said motion to dismiss.

On October 16, 1995, State Exhibits 1-5 was admitted into evidence by Superior Court Judge Mark Forcum to the surprise and shock of the Petitioner.

On October 17, 1995, in a court directed verdict, the Petitioner was tried and convicted by the late San Mateo County Superior Court Judge Clarence B. Knight on six counts of felony perjury (counts 2–7). On 02/01/96, Petitioner filed an Ex Parte Petition for Writ of Habeas Corpus in the State Court.

A judgment of conviction was entered on March 29, 1996 by the late court Judge John G. Schwarz after Judge Knight disqualified himself due to his prior involvement in a 08/16/89 temporary restraining order civil hearing involving the Petitioner. Due to prejudicial bias, Judge Knight disqualified himself to avoid constitutional invalidity of his decision under *Tumey v. Ohio*, 273 U.S. 510, 521. Nonetheless, prior to sentencing, Judge Knight still failed to recuse himself from presiding over the Petitioner's criminal trial, thereby rendering his court directed verdict of guilty constitutionally invalid.

The Petitioner was sentenced by the late Judge John Schwarz to the State Penitentiary for four years. On 03/28/96, the Abstract of Judgment was filed. On 04/16/96, Petitioner appealed the judgment of conviction. On 04/26/96, the Petitioner's State habeas petition was denied. In 1996, attorney John May, appointed by the California Court of Appeal for the Petitioner/Defendant, filed an appellants brief of a few pages. On February 2, 1998, Petitioner Tong

Park filed a Petition for Writ of Habeas Corpus in the Federal Northern District Court of California [*Tong Park v. Attorney General*, Ray Hilburn, and Cal Terhune]. On March 16, 1998, Petitioner, because he was not able to pursue both an appeal in the State Court and a writ action in the Federal Court at the same time, he therefore abandoned the appeal on April 4, 1997 in favor of the Peremptory Writ of Habeas Corpus proceeding in the Federal Northern District Court of California. However, because Petitioner, Tong Park, was subsequently released from Parole, and no longer in custody for purposes of the Writ of Habeas Corpus Proceedings, the Federal Court dismissed the Habeas Corpus action without prejudice for lack of subject matter jurisdiction on August 1, 2000. And the Court has since refused to reopen the Habeas action on March 31, 2004 and February 23, 2005.

On March 12, 2020, a Motion to Vacate the Information and Judgment of Conviction was filed in the Court of Appeal where it was denied.

On December 28, 2020, the Petitioner filed a Petition For Writ of Error *Coram Nobis* in the San Mateo County Superior Court of Judge Susan Greenberg. Judge Greenberg denied the said petition on April 9, 2021 (App. 1-4). On May 7, 2021, the Petitioner appealed the order of denial. On December 17, 2021, the Court of Appeal affirmed the decision of the trial Court (App. 5-18). The California State Supreme Court denied review on March 9, 2022 (App. 19).

RESONS FOR GRANTING THE PETITION

A.) THE PETITIONER INVOKES THE JURISDICTIONAL POWERS OF THIS COURT TO CORRECT THE DECISION OF THE LOWER CALIFORNIA STATE COURT OF APPEAL BECAUSE IT CONFLICTS WITH RELEVANT CONTROLLING DECISIONS OF THIS COURT IN SUCH AN EGREGIOUS MANNER:

Pursuant to Rule 10(c) of the Supreme Court Rules, the Petitioner do hereby invoke the jurisdictional powers of this Court in order to correct the wrongful decision of the lower California State Court of Appeal, because such a decision blatantly disregarded the relevant controlling decisions of this court in such a fundamental manner. Such a State Court decision constitutes an egregious violation of this Court's decisional precedents, thereby rendering them utterly useless and meaningless. The California State Court of Appeal's decision, and the State Supreme Court's failure to correct it, should be alarming to this Court, for such violations goes against the heart of United States Constitutional law.

The Petitioner cited numerous published caselaw decisions within his Petition for Writ of Error *Coram Nobis* and within the Petitioner's Opening Brief in Supplement to the Wende Brief. Yet, the Court of Appeal didn't consider such cited authorities as controlling (App. 15).

Such a holding by the Court of Appeal is tantamount to outright refusal to adhere to cited published appellate decisions by both State and Federal Courts that have long held that where a judgment is void on its face: 1) extrinsic facts are not required to be shown; 2) *coram nobis* is available even if the jurisdictional defect was known to all concerned at the time of trial; 3) *coram nobis* is still available after failing to either appeal or file a motion for new trial; 4) there are no time limits for the filing of post-conviction remedies; and 5) the granting of *coram nobis* petitions is not discretionary, but mandatory. (See: Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84; Mooney v. Holohan, 294 U.S. 103, 112-113; and V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n. 8 (10 Cir. 1979).

According to the Court of Appeal's opinion of December 17, 2021, the Court of Appeal has taken the position that a writ of error *coram nobis* petition cannot be used to attack a judgment void on its face after a Petitioner fails to file a motion for new trial or pursue an appeal, especially after 25 years had elapsed since the October 17, 1995 conviction. Indeed, on pages 10-12 of the said opinion, the lower Court of Appeal opined the following:

> *Park also contends that he is exempt from the previously-unknown-fact requirement for coram nobis relief because his judgment of conviction was void on its face. He cites*

> *no controlling authority for this point.* (App. 15).

According to the Court of Appeal in *People v. O'Neal*, a writ of error *coram nobis* will lie where the judgment is void on its face. People v. O'Neal, *supra*, 204 Cal.App.2d 707, at 708.

In *People v. Cantrell*, *id.* at 44, the Court of Appeal provided the exceptions to the requirements for either an appeal or a motion for a new trial when seeking a remedy to vacate a void on its face judgment by holding the following:

> *"Ordinarily no appeal lies from an order denying a motion to vacate a judgment of conviction on a ground which could have been reviewed on appeal from the judgment. [Citations omitted.] In such a situation appeal from the judgment is an adequate remedy; allowance of an appeal from the order denying the motion to vacate would virtually give defendant two appeals from the same ruling and, since there is no time limited within which the motion may be made, would in effect indefinitely extend the time for appeal from the judgment. [Citation.] The considerations are the same whether the matters sought to be presented by motion to vacate actually were presented to the trial court prior to judgment of conviction or whether such matters should have been but were not so presented."*

The court in *Cantrell* further held:

> *"The remedy here sought [motion to vacate] is available, however, because the basis of defendant's attack on the judgment is that it is void. Fundamental jurisdictional defects, like constitutional defects, do not become irremediable when a judgment of conviction becomes final without appeal (or even after affirmance on appeal ...) ... And when such a motion is proper the ensuing order of denial is appealable even though the facts which constitute the claimed jurisdictional defect were known to all concerned, including the trial court, when sentence was pronounced. [Citation omitted.]"*

Voluntary dismissal of an appeal and laches can never validate a judgment that is void on the face of the record. People v. Davis, 143 Cal. 673, at 677. In *People v. Davis*, *id.* at 677, the California Supreme Court held that

> *"Neither failure on the part of plaintiff to appeal nor lapse of time could make it valid or impair the power of the court to formally vacate it on its own motion and without notice. Therefore, it is immaterial, first, whether plaintiff took any appeal; second, whether plaintiff's motion was made within six months from the making of the order; third, whether notice of the motion was ever given; and fourth, whether the grounds of*

the motion were sufficiently stated."

In Thorson v. Western Development Corp., supra, 251 Cal.App.2d 209, at 211, the California State Court of Appeal held that an Appellant is exempt from the due diligence requirement in seeking judicial relief from a judgment that is void on the face of the record. The Court in Thorson held that

> *"...if the judgment is void on its face there are no time limits on a motion to vacate it or set it aside."* (*Id.* at 211)

Only when the judgment of conviction is not void and there are no jurisdictional and constitutional defects, can a judgment not be set aside except via motion for a new trial or appeal. In the Petitioner's case, neither remedy is currently available. No longer being in state custody and many years since the judgment of conviction was entered, the Petitioner's only available remedy was the petition for writ of error *coram nobis* in the trial court. And all authorities cited by the Court of Appeal are inapposite in that all of them dealt with judgments that were claimed to be void, but were found to be regular on their faces as reflected by the record in those cases. Not so in the case at bar.

According to the Court of Appeal in *People v. O'Neal*, a writ of error *coram nobis* will lie where the judgment is void on its face. People v. O'Neal, *supra*, 204 Cal.App.2d 707, at 708. The Court in *O'Neal* held the following:

> *"Appellants' motion to set aside the judgment, while including within its scope the area of a petition for writ of error coram nobis, is more inclusive, as in addition to serving the purposes of the writ, it will lie where the judgment is void on its face."*

According to the California State Court of Appeal in People v. Cantrell, *supra*, 197 Cal.App. 2d 40, at 43,

> *"Where a judgment is not void on its face and has been regularly entered the court has no authority to modify or set it aside except in the mode provided by law, such as a motion for a new trial or appeal."*

In People v. Cantrell, *id.* at 44, the Court of Appeal provided that the exceptions to the requirements for either an appeal or a motion for a new trial was an attack on a judgment void on its face.

In *Craft v. Craft*, defendant appealed from orders relating to the plaintiff's request for modification of the interlocutory and final judgment of divorce so as to provide for increased alimony payments of $25.00 per week. Defendant's motion to strike portions of the interlocutory decree and to modify or vacate the decree was denied. Although it was error for the trial court to award such alimony due to the fact that the complaint failed to demand any support money whatsoever, the defendant not only

failed to appeal such error, but also failed to file any motion for relief as well. However, the California Supreme Court held that when a defendant fails to either file a timely appeal or a motion for relief, the defendant may still attack the judgment at any time if it is "void on the face of the record." Craft v. Craft, 49 Cal.2d 189, at 192.

On the issue of the extrinsic facts requirement, although it is recognized that facts extrinsic to the criminal record are normally required in a petition for writ of error *coram nobis*, there are a few exceptions to the rule. One of these exceptions regards attacks on void judgments for lack of jurisdiction. Indeed,

> *'Exempted from the usual requirement that proof of errors of fact must be extrinsic to the record, a jurisdictional defect, such as the barring of an action by the statute of limitations, may be asserted even if the error appears on the face of the record. Similarly, lack of jurisdiction may be recognized in coram nobis even if the defect was known at the time of trial.'*

Morgan Prickett, *The Writ of Error Coram Nobis in California*, Santa Clara Law Review, vol. 30, No. 1, 1990, pp. 31-32; and People v. Thomas, 52 Cal.2d 521, at 529.

A judgment void on its face may be vacated upon motion, no matter what length of time has

interposed since its rendition; neither is it necessary for the movant to show any meritorious defense, nor can the court impose any conditions for vacating it. Peralta v. Heights Medical Center, Inc., *supra*, 485 U.S. at 84.

On December 17, 2021, the Court of Appeal affirmed the San Mateo County Superior Court's denial of the Petitioner's application for the writ of error *coram nobis* on the ground that the Petitioner was prima facie guilty, and therefore, had the burden of proof to provide extrinsic evidence to surmount the strong presumption in favor of the validity of the final judgment (App. 11, 13, 15-16). However, the final judgment of guilt is vitiated in a court that lacks personal jurisdiction over the defendant such as in the case at bar. The U.S. Court of Appeal in Wages v. I.R.S., 915 F.2d 1234-1235, n. 5 (9th Circuit, Cal. 1990) held

> *"A court that lacks personal jurisdiction over a defendant obviously would be similarly foreclosed from conducting a trial and entering a final judgment."*

This Supreme Court in Ex Parte Reed, 100 U.S. 13, 23 held that without jurisdiction, final judgment is a nullity.

State Appellate Court's said opinion conflicts not only with this Court's precedents such as *Peralta*, but lower federal ones as well. The Petitioner cited numerous published caselaw decisions on pages

104-106 of the Petitioner's Opening Brief in Supplement to the *Wende* Brief. Yet, the Court of Appeal ignored such cited authorities, which is tantamount to outright refusal to adhere to decisions by this Court and those below it that have long held that the presumption of a judgment's correctness can only be accorded to judgments rendered in courts with jurisdiction over both the case and the person.

B.) AFTER HAVING BEEN ILLEGALLY COMMITTED WITHOUT PROBABLE CAUSE AND SUBJECTED TO TRIAL WTHOUT JURISDICTION DID THE BURDEN OF PROOF OF INNOCENCE REMAIN ON THE PETITIONER EVEN AFTER THE JUDGMENT OF CONVICTION BECAME FINAL:

In 1994, the Petitioner was illegally arrested by Hillsborough Police based upon a San Mateo County municipal court issued complaint that failed to show probable cause and failed to state a public offense, in violation of the Petitioner's Fourth and Fourteenth amendment rights protected under the U.S. Constitution. The said deficiencies of the complaint deprived the lower state courts from securing in personam jurisdiction over the Petitioner, thereby illegally committing him to state custody. This Court should intervene to prevent such egregious violations of both the U.S. Constitution and well-established precedent decisions of this Court from continuing.

In People v. Sesslin, 8 Cal.2d 418, at 426 (1968), the California State Supreme Court held that when a complaint is based on

> *"information and belief" rather than personal knowledge of the affiant, or phrased in terms of the statutory language of the alleged offense it fails the Giordenello-Aguilar constitutional test to find probable cause to arrest. The crucial factor lies not in the form of the allegations, but in the sufficiency of the facts alleged "to enable the appropriate magistrate, ... to determine whether the 'probable cause' required to support a warrant exists."*

(Giordenello v. United States, 357 U.S. at 486 (1958); Aguilar v. Texas, 378 U.S. 108, at 115 (1964).) The California State Supreme Court further held that the United States Supreme Court decision in *Giordenello* must be read as formulating the requirements of the Fourth Amendment for valid arrest, and that the standards set forth in *Giordenello*, apply to the states through the Fourteenth Amendment.

According to People v. Sesslin, *supra*, 68 Cal.2d at 425, if such a complaint, supporting an arrest warrant, does not allege the two types of facts delineated by *Aguilar* and *Jaben*, the warrant fails and an arrest made pursuant to it is illegal, since it lacks probable cause. (Barnes v. Texas, 380 U.S. 253.) As in *Sesslin, Giordenello, Aguilar, Jaben,*

and *Barnes*, the complaint against the Petitioner in the trial court did not state (1) any facts which would support the complainant's belief that defendant had committed any felonies as alleged, or (2) any facts relating to the identity or credibility of the source of the complainant's information. The criminal complaint against the Petitioner alone could not support the independent judgment of a disinterested magistrate to issue the warrant of arrest of the Petitioner. A complaint that is based on conclusions without underlying facts constitutes a document that alone could not support the independent judgment of a disinterested magistrate. Whiteley v. Warden, Wyo. State Penitentiary, 401 U. S. 560, at 564-565, 568–569 (1971). And an otherwise insufficient affidavit cannot be rehabilitated by testimony concerning information possessed by the affiant when he sought the warrant but not disclosed to the issuing magistrate. [Citation.]. Whiteley v. Warden, Wyo. State Penitentiary, *ibidem*, 401 U. S. at 570, fn. 8. A contrary rule would, of course, render the warrant requirements of the Fourth Amendment meaningless. *id.* Moreover, the unsupported assertion or belief of an officer does not satisfy the requirement of probable cause under the Fourth Amendment to the U.S. Constitution. Spinelli v. U.S., 393 U.S. 410, 423 (1969); Byars v. United States, 273 U.S. 28, 29 (1927); Jones v. United States, 362 U.S. 257, 269 (1960); and Grau v. United States, 287 U.S. 124, 127 (1932).

Because the criminal complaint failed to both state a public offense and show probable cause, the

Petitioner was illegally committed. The Respondent had no legal authority to hold the Petitioner over in the State Superior Court to stand trial for the felony crime of perjury. As a consequence of the illegal commitment, which led to an illegal trial and conviction, the burden of proof was never legally placed upon the Petitioner to prove his innocence via the showing of extrinsic fraud. An illegal commitment of the defendant forecloses the State from trying such defendant. People v. Elliott, 54 Cal.2d 498, 506 (1960); Wages v. I.R.S., *supra,* 915 F.2d at 1234-1235, n. 5 (9th Circuit, Cal. 1990).

The California State Supreme Court in People v. Elliott, *supra,* 54 Cal.2d 498, 506 (1960), held the following:

> *"Article VI, section 4 1/2, of the Constitution, cannot operate so as to save this conviction. When a defendant has been denied a fair trial prejudice must be presumed. Nor can a fair trial in the superior court cure the errors of the committing magistrate and of the superior court judge in permitting the trial to take place. Before an accused can be required to defend himself he must be committed in accordance with law."*

Based upon the foregoing, the Petitioner's 4th, 6th, 8th & 14th Amendment rights protected under the U.S. Constitution were violated. The April 9,

2021 Order of Denial by Judge Susan Greenberg was not only erroneous and void, but also entitled the Petitioner to a reversal.

On the face of the 12/17/21 California State Court of Appeal's opinion (App. 5-18), it can safely be said that the Court of Appeal held that the trial Court directed verdict of guilty of the Petitioner for the crime of perjury was secured via a fair trial, and therefore, the judgment was final and correct.

For a trial to be fair, a Defendant is entitled to have the State trier of fact prove every fact of the crime charged beyond a reasonable doubt in order to satisfy the due process requirements of fairness guaranteed by the Fourth and Fourteenth Amendments to the U.S. Constitution. In re Winship, 397 U.S. 358, 364 (1970); Herrera v. Collins, 506 U.S. 390, 398 (1993). As a result, "[t]he prosecution bears the burden of proving all elements of the offense charged and must persuade the factfinder 'beyond a reasonable doubt' of the facts necessary to establish each of those elements." Sullivan v. Louisiana, 508 U.S. 275, 277-278 (1993) (citations omitted); and Estelle v. McGuire, *502* U. S. 62, 69 (1991). Evidence is only sufficient to support a conviction if a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt. United States v. Hawkins, 934 F.3d 1251 (11th Cir. 2019). In violation of section 702(a) of the California Evidence Code, the Respondent State convicted the Petitioner for the crime of perjury

based upon mere information and belief, while possessing no personal knowledge over the subject matter of the civil hearing from which the criminal action of perjury was derived, and as a consequence, could never legally prove every fact of the crime charged beyond a reasonable doubt at trial. Also see: section 602 of the Federal Rules of Evidence.

In Evans v. Unkow, 38 Cal.App.4th 1493, at 1498 (1995), the California Court of Appeal held that declarations on a special motion to strike a SLAPP suit (strategic lawsuit against public participation) (Code Civ. Proc., § 425.16) may not include averments on information and belief. Because the plaintiff, A. Peter Evans, lacked personal knowledge, the Court affirmed a civil judgment dismissing his defamation action against 10 individual defendants for failure to establish a probability he would prevail. Indeed, the Appellate Court in *Evans* held the following:

> *"the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter." (Evid. Code, § 702, subd. (a).) An averment on information and belief is inadmissible at trial, and thus cannot show a probability of prevailing on the claim.*

And although the Petitioner was illegally committed via a criminal complaint that lacked probable cause as clearly reflected on the face of the

record, it can also be seen that the Petitioner was actually innocent in that the criminal case against the Petitioner was entirely inferential and hence, immaterial. In People v. Planer, 23 Cal.App.2d 252, 254, the California State Court of Appeal, in quoting page 259, section 6 of the 21 Ruling Case Law, held the following:

> *"The materiality of the testimony must be established by evidence and cannot be left to presumption or inference, and proof that the testimony was admitted on the trial is not sufficient to warrant a jury in inferring that such testimony was material to the issue."*

The California State Supreme Court in People v. McDermott, 8 Cal. 288, 290, held

> *"The rule is well established, that the false oath must be material to the issue, and, therefore, prejudicial to someone, otherwise, however willful, it cannot be perjury."*

Perjury must be proved by direct and positive evidence of falsity of statement under oath, and circumstantial evidence of such falsity, no matter how persuasive, is insufficient. Radomsky v. United States, 180 F.2d 781 at 782-783 (9th Cir. 1950). The United States Supreme Court held

> *Whoever, under oath that he will testify truly, wilfully and contrary to the oath testifies falsely as to a material matter, not*

> *believing it to be true, is guilty of perjury (Citation omitted.) Perjury is not proved as are most crimes. The crime of perjury, from the time of Blackstone, has been declared not capable of proof on the testimony of but one witness, 'because there is then but one oath against another.*

United States v. Wood, 39 U.S. (14 Pet.) 430, 437, 10 L.Ed. 527 (1840), citing Hawkins' Pleas of the Crown, Vol. 2, ch. 46, p. 591.

The order by the trial court and its affirmance in the Court of Appeal was a denial of substantial rights. A denial of substantial rights of the accused constitutes a miscarriage of justice. When it appears that there has been a miscarriage of justice, the reviewing court must disturb the exercise of the trial court's discretion. Denham v. Superior Court (1970) 2 Cal.3d 557, 566.

The Court of Appeal opined that the "granting of a writ of error *coram nobis* is completely discretionary." (App. 13). However, because the Court Record reflects that the judgment is irrefutably and indisputably void on its face, the Court of Appeal's said decision is a departure from the established federal court decision held in V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n. 8 (10 Cir. 1979), where it was held that

> *"If voidness is found, relief is not a discretionary matter; it is mandatory."*

And because the Petitioner's verified and uncontradicted application for writ of error *coram nobis* included an undisputed affidavit with attached certified court record documents, the trial court was required to accept as true the factually based allegations. Yet, the Court of Appeal's opinion that they were "not required to accept as true the allegations of the motion or petition" (Ap 13) was contrary to the appellate court decisions in People v. Evans, 185 Cal.App.2d 331, 333-334 and People v. Muhlenbroich, 137 Cal.App2d 745, 747.

In *Evans* and *Muhlenbroich*, the Court of Appeal held that ONLY

> *"in the absence of affidavits or other evidence, the trial court was not required to accept as true the allegations of defendant's petition, even though the petition is verified and uncontradicted."*

When the Petitioner had presented far more than bare allegations, and stated facts with sufficient particularity, the writ is available. Yet, the Court of Appeal's decision of 12/17/21 is not in line with appellate court authority, including People v. Shipman, 62 Cal.2d 226, 231; and Taylor v. Alabama, 335 U.S. 252, 262.

In People v. Shipman, *supra,* 62 Cal.2d 226, 231, the State Supreme Court held that

> *When, however, facts have been alleged with sufficient particularity (Citation.) to show that there are substantial legal or factual issues on which availability of the writ turns, the court must set the matter for hearing.*

In Taylor v. Alabama (1948), 335 U.S. 252, 262-263, the U.S. Supreme Court held that the

> *Court should look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof.*

Probability of the truth of the Petitioner's allegations is heightened by the following: 1) Letter from Randal Curtis luring Petitioner to the D.A.'s interrogation room and denying Miranda Rights in the guise of using him as a witness for an investigation of perjury allegations against someone else; 2) Petitioner's arrest, based upon a factually and legally baseless complaint, was executed without both probable cause and in personam jurisdiction, thereby inferring prosecutorial malice (Albertson v. Raboff, 185 Cal.App.2d 372, 388-389); 3) complaint knowingly filed during the pendency of the civil appeal process over the same civil record showing contempt of the jurisdictional authority of the reviewing court (section 1209(a)(5) of the California Code of Civil Procedure); 4) denial of Access to the Courts inferred from the Case Docket Record, whereby the

record indicates that the late Judge John Schwartz was forced to order the Sheriff Officers to allow the Petitioner access to the Maguire Jail Law Library, after the Petitioner repeatedly complained to the said Judge that he was denied access to the said library for nearly half a year (03/20/95 until 08/10/95), even after being granted self-counsel status via a granted *Faretta* Motion on 03/20/95.

Because the State Court decision(s) have departed from all known federal decisions, especially in the particular case of the Petitioner, and such State Courts have followed a pre-1968 practice of arresting and committing individuals without jurisdictional facts, and hence, without probable cause, this Court should intervene to impose its supervisory powers over the said State Courts in order to enforce their compliance with the precedent decisions of this Court and prevent further egregious abuses from occurring with impunity. Failing to do so would result in further erosion of the U.S. Constitution, and eventually allow tyranny to become both acceptable and commonplace. Petitioner requests this intervention not only for himself, but on behalf of all similarly situated individuals in this nation.

C.) BECAUSE THE TRIAL COURT LACKED JURISDICTION OVER BOTH THE CRIMINAL CAUSE AND THE PETITIONER THE COURT OF APPEAL ALSO LACKED THE JURISDICTION TO AFFIRM THE ORDER OF THE TRIAL COURT:

Although the Court of Appeal had the jurisdiction to determine if the San Mateo County Superior Court had jurisdiction over both the cause and the Petitioner, it had no jurisdiction to affirm the order of denial of the petition for writ of error *coram nobis*. The Court of Appeal had no more jurisdiction over the case to affirm the judgment than did the trial court did in rendering it. And whether a judgment is or is not void on its face is not predicated on meeting the conditional requirements for the writ of error *coram nobis*. In People v. Paiva, 31 Cal.2d 503, at 510, the California State Supreme Court opined the following:

> *It has been repeatedly held that an order made in a proceeding in the nature of a writ coram nobis is an order in the original case, after final judgment therein, which "affects the substantial rights" of the party (either the plaintiff or the defendant, as the case may be) and gives him a right of appeal as provided for by sections 1237 and 1238 of the Penal Code.*

Notwithstanding the requirements for *coram nobis* relief, it is still an undisputed fact that the judgment is void on its face due to the pendency of a civil appeal from 1993 to 1995; the lack of prejudice to a litigating party due to the granting of a 1993 civil injunction order against the Petitioner, constituting grounds for factual/actual innocence (Kuehn v. Kuehn, 85 Cal.App.4th 824, 833; People v. McDermott, 8 Cal. 288, 290; In re Branch, 70 Cal.2d 200, at 214); Chisholm v. House, 160 F.2d 632, 643 (perjury is intrinsic fraud whereby judgment was procured by false representation to the detriment of the losing litigant); Citimortgage, Inc. v. Guarino, 978 N.Y.S.2d at 650 ("Perjury is a fraud in obtaining the judgment, but it does not prevent an adversary trial."); Vance v. Burbank, 101 U.S. 514, 519-520; and Brady v. Beams, 132 F.2d 985, 986-987 (10 Cir. 1942) (fraud is practiced by a successful litigant in gaining a judgment); and United States v. Throckmorton, 98 U.S., (8 Otto) 61, 25 L.Ed. 93 (1878) [(intrinsic fraud is fraudulent evidence upon which a judgment is based)]; and the fatally defective criminal complaint containing no personal knowledge of the affiant (incurable under section 702(a) of the California Evidence Code; & section 602 of the Federal Rules of Evidence), no subscription of a natural person (violation of sections 806, 959(3) of the California Penal Code; Article I, section 14 of the California Constitution; Rocklite Products v. Municipal Court, 217 Cal.App.2d 638, 640 (see: Headnote), 646) and no declaration of jurisdictional facts (People v. Howard, 111 Cal. 655,

658-662; People v. Sesslin, 68 Cal.2d 418, 421, 424-426, 431, fn. 4; People v. Case, 105 Cal.App.3d 826, 832-833; Giordenello v. United States, 357 U.S. 480 (1958), Aguilar v. Texas, 378 U.S. 108 (1964); Jaben v. United States, 381 U.S. 214, 225, 231(1965); Barnes v. Texas, supra, 380 U.S. 253 (1965); Nathanson v. United States, 290 U.S. 41, 44; King v. Gokey, D.C., 32 F.2d 793, 794; Worthington v. U.S., 166 F.2d 557 (6th Cir., 1948) citing U.S. ex rel. King v. Gokey, D.C., *supra*, 32 F.2d 793, at 794 (N.D.N.Y. 1929); and the Fourth & Fourteenth Amendments to the United States Constitution).

Petitioner's writ claims regarding the void on its face judgment were never opposed by the San Mateo County District Attorney or the California State Attorney General in all state forums. Failure to oppose constitutes a concession to the granting of the motion to vacate (a.k.a. petition for the writ of error *coram nobis*). Rule 8.54 [c], California Rules of Court. Violation of Rule 8.54 [c] of the California Rules of Court by both the San Mateo County Superior Court, the California State Court of Appeal, and the California State Supreme Court constitutes harmful error, for the Petitioner was denied his substantial rights.

The Court of Appeal opined that it would not address and decide on the matter of the said Petitioner's civil Notice of Appeal affecting the jurisdiction of the trial court that would have prevented the rendition of judgment, because the Petitioner failed to satisfy the unknown facts and

diligence requirement for coram nobis (App. 12, 15). Because the Court of Appeal's decision departs from the previous appellate decisions of People v. Thomas, *supra*, 52 Cal.2d at 528-529 and People v. Davis, *supra*, 143 Cal. At 675-677, exempting the Petitioner from the unknown facts and diligence requirements respectively, such a decision effectively results in the concession of the Petitioner's claims. Indeed, in People v. Bouzas (1991) 53 Cal.3d 467, 480, the State Supreme Court held that any failure to address the Petitioner's contention can be seen as a concession.

And although the civil Notice of Appeal is extrinsic to the criminal record, a judgment that is void based upon an extrinsic record is equivalent to a judgment that is void on its face. County of San Diego v. Gorham, 186 Cal.App.4th 1215. Consequentially, the criminal judgment is void on its face, thereby making the denial of the petition for writ of error *coram nobis* void as well. Likewise, the Court of Appeal's decision to affirm the said void order is void. When the underlying judgment is void, the order based on it is also void. Austin v. Smith, 312 F.2d 337, 343 (D.C. Cir. 1962). The trial court's subsequent order denying a party's motion to vacate the judgment, in that it gives effect to a void judgment, is itself void. Rochin v. Pat Johnson Manufacturing Co., 67 Cal.App.4th 1228, at 1240; County of Ventura v. Tillett, 133 Cal.App.3d 105, at p. 110; and Bennett v. Wilson, 122 Cal. 509, 513-514 (A "final" but void order can have no preclusive effect.). The Supreme Court in

Bennett v. Wilson, *supra*, 122 Cal. 509, at 513-514, held that

> *" 'A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one.' [Citation.]"*

A judgment that is void for lack of jurisdiction is a nullity, and can be *"neither a basis nor evidence of any right whatever."* Estate of Johnson, 198 Cal. 469, 472. A judgment can be erroneous because it is void. Ex parte Lange, *supra*, 85 U.S. 163, 175; 18 Wallace 163, 175 [21 L.Ed. 872].

The matter and civil action from which the presumed perjury had arose from a case that was still under review in the Appellate Court from **August 4, 1993** (the filing date of the Notice of Appeal) to **May 5, 1995** (the date the remittitur issued by the Court of Appeal was received and filed by the San Mateo County Superior Court.

Consequentially, there was no fundamental jurisdiction to allow filing of the complaint in either the Municipal Court on February 18, 1994 or in the Superior Court on May 10, 1994. A failure of the defendant to object to the constitutional deficiencies of the said criminal complaint (i.e. Fourth Amendment right to show probable cause to arrest; Sixth Amendment right to notice of the charges pursuant to U.S. v. Simmons, 96 U.S. 360, 362, 24

L.Ed. 819) cannot be forfeited in a court that lacked jurisdiction. Yakus v. United States, 321 U.S. 414, 444 (1944); O'Neil v. Vermont, 144 U.S. 323, 331; Barbour v. Georgia, 249 U.S. 454, 460; and Whitney v. California, 274 U.S. 357, 360, 362, 380. This Court in *Yakus* held that

> *"No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal, as well as civil, cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it."*

The San Mateo County Superior Court's reception and filing of the issued Remittitur on May 5, 1995 ONLY prospectively, but not retroactively restored subject matter jurisdiction in the San Mateo County Superior Court from May 5, 1995 onwards. But because the Complaint against the Petitioner was filed on February 18, 1994, roughly seven months after the August 4, 1993 filing of the Notice of Appeal, the said criminal complaint was illegally filed without jurisdiction and therefore, void. For this reason, the judgment of conviction against the Petitioner is void ab initio.

Consequentially, because the basis for the preliminary examination is void, so is the preliminary examination itself, and the subsequent initiation of the criminal proceedings via the filing of the information is also void as well. Indeed, in order to give the court requisite jurisdiction over

the subject matter, so as to enable it to issue orders or process, it is necessary that the action be legally commenced. Ex parte Cohen, 6 Cal. 318, 319. And the taking of an appeal deprives the trial court of jurisdiction over a particular matter or thing and vests jurisdiction with the appellate court until issuance of the remittitur by the reviewing court. Andrisani v. Sangus Colony Limited, *supra*, 8 Cal.App.4th 517, 523; 10 Cal.Rptr.2d 444. Moreover, it is a well-established rule of law that a judgment (the judgment roll or record) from a State civil action cannot be used as evidence for the purpose of proving facts therein found or recited, unless the judgment in question is final, and no longer pending in any court. Baker v. Eilers Music Co., 175 Cal. 652, 655; Tatum v. Levi, *supra,* 117 Cal.App. 83, 92; Feeney v. Hinckley, 134 Cal. 468; & In re Blythe, 99 Cal. 472; & Sharon v. Hill, 26 F. 337, 346 (9th Cir., Cal. 1885). Besides, in injunction proceedings, an appeal effectively maintains the status of the parties as it existed *"before the entry of the judgment appealed from . . ."* Tulare Irr. Dist. v. Superior Court, 197 Cal. 670, 671.

For these foregoing reasons, the trial court was deprived of both subject matter jurisdiction over the criminal case and in personam jurisdiction over the Petitioner/Defendant once he filed the Notice of Appeal on August 4, 1993 in the lower Court of Appeal. The Court of Appeal's holding that the said Petitioner's argument was disallowed by the Petitioner's lack of due diligence in presenting the defense earlier in trial court departs from the

decision held in People v. Davis, *supra*, 143 Cal. 673, at 677, where the State Supreme Court held that the doctrine of laches does not apply to attacks on void on its face judgments. And the Petitioner's failure to either appeal or file a motion for a new trial cannot preclude him, under the doctrine of res judicata, from attacking a judgment void on its face. Indeed, the doctrine of res judicata does not apply to void orders & judgments, as a matter of well-established supreme law. Lang v. Lang, 182 Cal. 765, 769; & Moffat v. Moffat, 27 Cal.3d 645, 654.

Although it is recognized that facts extrinsic to the criminal record are normally required in a petition for writ of error *coram nobis*, one is exempt from such a rule when attacking void judgments for lack of jurisdiction. Morgan Prickett, *The Writ of Error Coram Nobis in California*, Santa Clara Law Review, *supra*, vol. 30, No. 1, 1990, pp. 31-32; and People v. Thomas, *supra*, 52 Cal.2d 521, at 529.

Given the aforesaid exemption, the Petitioner has nevertheless presented extrinsic facts that would nullify the criminal judgment. The extrinsic fact regards a civil notice of appeal that was extrinsic to the said criminal record involving the Petitioner. The notice of appeal appealing the civil action from which the criminal action for perjury was derived was clearly presented to the trial court within the petition for writ of error *coram nobis*.

Regarding the required finding of extrinsic fraud, as opposed to just extrinsic facts, when vacating judgments, the Petitioner is also exempt from such requirement when seeking a petition for writ of error *coram nobis*, since Petitioner sought to attack a judgment that is void on the face of the record. Indeed, extrinsic fraud is ONLY required to be found when attacking a judgment that is not void on its face. People v. O'Neal, *supra*, 204 Cal.App.2d 707, at 708-709. In Wells Fargo & Co. v. City etc. of S.F., 25 Cal.2d 37, at 40, the California State Supreme Court held that

> *"In the absence of extrinsic fraud or mistake [Citations omitted.] a judgment so attacked cannot be set aside unless it is void on its face."*

A judgment is void if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Margoles v. Johns, 660 F.2d 291 (7th Cir. 1981) *cert. denied,* 455 U.S. 909, 102 S. Ct. 1256, 71 L. Ed. 2D 447 (1982); and Black's Law Dictionary, 6th ed., p. 1574 (Definition of 'Void Judgment'). Mere error does not render the judgment void unless the error is of constitutional dimension. Simer v. Rios, 661 F.2d 655 (7th Cir.1981), *cert. denied, sub nom* Simer v. United States, 456 U.S. 917, 102 S. Ct. 1773, 72 L. Ed. 2d 177 (1982).

Whether a judgment is void upon its face can only be determined by an inspection of the judgment-roll or record. Canadian etc. Co. v. Clarita etc. Co., 140

Cal. 672, 674; 74 Pac. 301; People ex rel. Schwartz v. Temple, 103 Cal. 447, 451; Jacks v. Baldez, 97 Cal. 91.) The question is to be determined on inspection of the record only. Butler v. Soule, 124 Cal. 69, 72. The Court of Appeal's opinion illegally suggested that voidness was predicated on meeting the conditions for the writ of error *coram nobis.* This Court must resolve this matter.

The California State Court of Appeal in 2010 determined that a judgment that is void based upon an extrinsic record is equivalent to a judgment that is void on its face. County of San Diego v. Gorham, 186 Cal.App.4th 1215. As said in People v. Greene, 74 Cal. 400, 16 P. 197,

> *"a judgment which is void upon its face and requires only an inspection of the judgment roll to demonstrate its want of vitality, is a dead limb upon the judicial tree which should be lopped off, if the power to do so exists. It can bear no fruit to the plaintiff, but is a constant menace to the defendant."*

The Clause of section 5274, Rev. Laws 1910, provides that "a void judgment may be vacated at any time on motion of a party or any person affected thereby." A judgment is void on its face when it so appears by an inspection of the judgment roll, but will not be held void on its face unless the record thereof affirmatively shows the court was without jurisdiction to render it. People ex rel. Schwartz v. Temple, *supra*, 103 Cal. 447,

451; People v. Davis, *supra*, 143 Cal. 673, 675-677. A judgment void on its face may be vacated upon motion, no matter what length of time has interposed since its rendition; neither is it necessary for the movant to show any meritorious defense, nor can the court impose any conditions for vacating it. Peralta v. Heights Medical Center, Inc., *supra*, 485 U.S. at 84; Furman v. Furman, 60 Am. St. Rep. 642, 643; and Harris v. Hardeman, 14 How. 337, 14 L.Ed. 444. If the underlying judgment is void, the order based on it is void. Austin v. Smith, 312 F.2d 337, 343 (D.C. Cir. 1962). If voidness is found, relief is not a discretionary matter; it is mandatory. V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n. 8 (10 Cir. 1979); also see: 11 C. Wright A. Miller, *Federal Practice and Procedure,* § 2862 note 7.

On April 9, 2021, the San Mateo County Superior Court of Susan Greenberg erred in denying the Petitioner's petition for writ of error *coram nobis* because the Petitioner couldn't meet all of the conditions for vacating the void judgment of conviction, in violation of Peralta v. Heights Medical Center, Inc., *supra*, 485 U.S. at 84 (conditions cannot be imposed upon one seeking relief from a void judgment). State Trial Court's denial Order was an abuse of discretion.

D.) BECAUSE THE PRO PER PETITIONER WAS DENIED ACCESS TO THE JAIL LAW LIBRARY FOR SEVERAL STRAIGHT MONTHS AS EVIDENCED FROM THE CRIMINAL RECORD THIS SAID DENIAL CONSTITUTED EXTRINSIC FRAUD:

The Petitioner was denied access to the San Mateo County Maguire Jail Law Library for nearly half a year (03/20/95 until 08/10/95), after already having secured In Propria Persona status while in State custody via a granted *Faretta* Motion, as evidenced from the criminal record. This said denial constituted extrinsic fraud due to the fact that the Petitioner was denied access to the courts, in clear violation of Faretta v. California, 422 U.S. 806, 812-836. Because the Petitioner suffered loss of substantial rights in regards to this matter in that he was intentionally barred by the Respondent State from presenting a adequately prepared defense for purposes of his trial, in violation of Maanger v. Hoye, 122 F.Supp. 932, 935. The U.S. District Court held

> *Extrinsic fraud is fraud which affects the jurisdiction of the court, which prevents a party from having a trial or from presenting all of his case to the court, or which operates not on the judgment but on the manner in which it is procured, so that there is not a fair submission of the controversy.* Maanger v. Hoye, *id.* 122 F.Supp. 932, at 935.

(See also: United States v. Throckmorton, *supra*, 98 U.S., (8 Oto) 61, 25 L.Ed. 93 (1878), and the expansion of Throckmorton, the decision of Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997 [88 L.Ed. 1250] (1944). In *Hazel*, this Court held that a judgment obtained by

> *"intrinsic fraud that results from corrupt conduct by officers of the court...can serve as a basis to collaterally attack the state court judgment."*

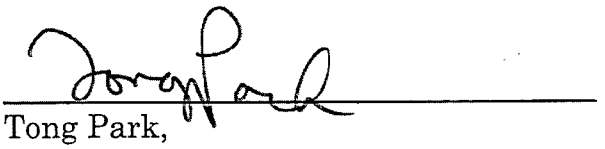
Thus, based upon the foregoing, the Petitioner had established good cause for the granting of the said Petition for Writ of Error *Coram Nobis*. The denial order of Judge Susan Greenberg is both void and erroneous, and an abuse of discretion.

CONCLUSION:

The Court of Appeal's opinion suggests that the conditions for the writ of error *coram nobis* greatly outweigh the fact that the judgment is void on its face, and that if such conditions are not met, then the judgment cannot be vacated. Such imposed conditions to vacate a void on its face judgment is unconstitutional and leaves no reasonable chance to vacate it. This Court should resolve the said controversy, and the more important controversy involving the lower State Court's unconstitutional arrest and commitment of the Petitioner, a factually innocent man, without both probable

cause and jurisdiction, for both State Trial Court and the Court of Appeal's decision departs from all known federal law on this matter. The Petitioner in the above-entitled matter prays that this highest Court will grant review and reverse the lower State Court's erroneous and void affirmance of the San Mateo County Superior Court's denial of his Petition for Writ of Error *Coram Nobis*. Doing so would not only affect the constitutional rights of the Petitioner, but also affect all other similarly situated individuals in the entire nation.

Executed in San Mateo, California, on June 15, 2022, and respectfully submitted by



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Electronically FILED
By Superior Court of California, County of San Mateo
On April 9, 2021
By /s/ Bell, Rachel
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

In re:	)	
	)	Case No. SC 034313A
	)	
TONG MYUNG PARK	)	**ORDER OF DENIAL**
	)	
On Writ of Error Coram Nobis.	)	
	)	

Petitioner Tong Myung Park filed his Petition for Writ of Error Coram Nobis on December 28, 2020. The Court has reviewed the Petition and all supporting documents. The Petition is denied.

A petitioner may obtain relief pursuant to a writ of error coram nobis only where three requirements are met: 1) a fact existed, which would have prevented the rendition of the judgment at the trial court, and that fact was not presented through no fault of the petitioner; 2) the newly discovered evidence does not go to the merits of issues tried; and 3) the facts upon which the petitioner relies were not known to him and could not in the exercise of due

diligence have been discovered by him at any time substantially earlier than the time of the petition for the writ. (*People v. Mbaabu* (2013) 213 Cal.App.4th 1139, 1146. Petitioner fails to satisfy the requirements for relief. Petitioner uses the instant Petition on facts which were known to him or should have been known to him. Petitioner essentially contends that the trial court should not have proceeded with his criminal trial before the appeal in his civil action concluded. Clearly, Petitioner either would have or should have been aware of the status of his appeal. Thus, there are no facts which were not known to Petitioner or could not in the exercise of due diligence have been discovered by Petitioner.

Petitioner's contention that he may challenge his conviction in a petition for writ of error coram nobis has no merit. Petitioner's reliance on *People v. O'Neal* (1962) 204 Cal.App.2d 707, is misplaced because there the court explained that a petition for writ of error coram nobi cannot be used to serve the purpose of an appeal or other statutory remedy unless there has been extrinsic fraud that deprived the petitioner of a trial on the merits. (*Id.* at p. 709.) Petitioner has shown no extrinsic fraud, and any issue with respect to an alleged lack of fundamental jurisdiction could have been raised on appeal.

Petitioner's reliance on *People v. Cantrell* (1961) 197 Cal.App.2d 40, is also misplaced. There, the court explained, "the writ cannot be used to serve the purpose of an appeal when this remedy was lost through failure to invoke it in time even though such failure occurred without fault or neglect on the part of the one seeking the remedy."

(*Id.* at p. 45.) Here, Petitioner has alleged that he dismissed his appeal and therefore cannot use the instant Petition to raise issues that could have been raised on appeal.

Furthermore, Petitioner fails to provide any legal support for his contention that a criminal trial where perjury has been alleged cannot proceed while an appeal is pending from the proceeding where the alleged perjury was committed. The issue of whether Petitioner had committed perjury would not be an issue on appeal and therefore could not deprive the trial court in the criminal action from exercising jurisdiction over Petitioner.

Petitioner's remaining contentions fail because Petitioner has provided no facts unknown to him or no facts that could not have been discovered by him had he exercised due diligence. Contrary to Petitioner's assertions, he is not exempt from this requirement.

Finally, the Court declines to exercise its equitable powers to set aside the judgment of conviction. Petitioner has provided no meritorious basis for setting aside his judgment of conviction.

The instant Petitioner for Writ of Error Coram Nobis is denied.

THE GREAT SEAL OF THE STATE OF CALIFORNIA

Judge Susan Greenberg So Ordered.
Redwood City, CA 2021-04-09 08:12:17

Dated: _____

_____
Susan Greenberg
Presiding Judge, Criminal

Filed 12/17/21 P. v. Park CA1/3
NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. TONG PARK, Defendant and Appellant.	)	A162603 (San Mateo County Super. Ct. No. SC034313A)

Tong Park appeals from a judgment after the trial court's denial of his petititon for a writ of error coram nobis. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), which raises no issues and requests that we conduct an independent review of the record to determine whether there are any arguable issues on appeal. Park was informed of his right to file a supplemental brief and filed a 119-page supplemental brief raising 25 issues on appeal. (1) We have reviewed Park's

1 We grant Park's application for leave to file his oversized supplemental brief. The 39,853 word supplemental brief shall be filed as of the date of this opinion.

supplemental brief and conclude his arguments lack merit. In our discretion, we have also reviewed the record and find no error. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The record in this appeal, which consists solely of a 222-page clerk's transcript, is sparse, especially given that Park's brief discusses multiple proceedings that stretch back to 1993. The following background section is based on the limited record provided and what we reasonably infer from it.

In or around 1993, Sarah Swift filed *Swift v. Park*, San Mateo Superior Court Case No. 384037, in which she petitioned the court for an injunction against Park prohibiting him from harassing her. The matter was heard in July 1993 with both parties represented by counsel. Park testified at the proceeding; according to Park, the trial judge "was skeptical of [his] veracity." The trial court granted the injunction. The order was entered in Swift's favor on July 23, 1993. Among its provisions, the order directed Park to not harass Swift and to not attempt to obtain information concerning Swift's employment records, credit records, or private activities.

In August 1993, Park appealed the decision to this court in Case No. A062713. Park stated the basis of his appeal was in part to seek "reversal of order appealed from to determine prejudice and unlawfully obtained order based on perjury." According to Park, the trial court judge who

presided over Swift's petition initiated an investigation of Park for perjury.

On January 21, 1994, while his civil appeal (Case No. A062713) was pending, Randall Curtis, an Inspector of the San Mateo County District Attorney, wrote a letter to Park with the subject matter "Your allegation of perjury against Sarah Swift." Curtis stated that he read the transcript of the hearing on the injunction as well as Park's petition to the appellate court. Curtis requested an interview with Park. Later, Curtis applied for a warrant to search Park and his home. On February 15, 1994, a San Mateo Municipal court judge approved the warrant. The search appears to have been executed the following day. On October 3, 1994, in *People v. Park*, San Mateo County Superior Court Case No. SC034313A, Park was charged by information with seven counts of perjury related to his testimony in the July 2013 civil proceeding.

A few months later, Park's appeal in the civil proceeding concluded. This court affirmed the order and judgment on January 12, 1995, and the Supreme Court denied the petition of review. The remittitur was issued on April 18, 1995.

Meanwhile, the criminal case against Park proceeded to a bench trial in which Park represented himself in propria persona. On October 17, 1995, the trial court found Park not guilty of count 1 perjury charge, and guilty on the counts 2 through 7 perjury charges, according to the court's minutes. Park's sentencing hearing occurred on March 29, 1996. At the hearing, Park withdrew his *Faretta* motion

for sentencing purposes and defense counsel was appointed. The court sentenced Park to state prison for the upper term of four years on count 2 and stayed sentences on the remaining counts. In April 1996, Park appealed the judgment to this court in Case No. A074059. Several months later, however, he abandoned his appeal, which this court dismissed in January 1997.

In March 2, 1998, in *Park v. Attorney General*, U.S. District Court, Northern District of California, Case No. C-98-20184-RMW, Park, while on parole, filed in propria persona a petition for writ of habeas corpus in federal district court. In a written order, the district court rejected and dismissed five of the seven grounds Park asserted for habeas relief. It found two of his contention—that his Miranda rights were violated and his attorneys ineffective—cognizable claims. As to these claims, the court directed the Attorney General to file an answer showing cause why a writ of habeas corpus should not be issued. Based on the federal docket for Park's habeas petition, the California Attorney General filed an answer in response to the order to show cause. Months of litigation over the Attorney General's answer followed. In August 2000, the district court dismissed without prejudice Park's habeas petition for lack of subject matter jurisdiction. In August 2002, almost two years following dismissal, Park moved to reopen the original habeas corpus action. In March 2004, the court denied the motions, which according to the federal court docket were also "administratively terminated." In September 2004, Park again asked the court to reassess its position and amend its 2000 order dismissing his habeas petition. In February 2005, the

court denied the motion.

In March 2020—approximately 15 years after the last order in the federal habeas proceeding—Park filed *Park v. Superior Court for the County of San Mateo*, Case No. A159808, in this court, in which he petitioned to vacate the October 1994 information and 1996 judgment of conviction in his criminal case. We summarily denied the petition. (2)

In December 2020, Park filed a petition for writ of error coram nobis in San Mateo County Superior Court. In his petition, Park asserted among several arguments that the trial court presiding over his criminal proceeding lacked subject matter jurisdiction and that the judgment against him was void. He asked the court for a "new final order and judgment to dismiss the case and declare such aforesaid order and judgment void on their faces (SC034313A), as well as purge the entered criminal record from all existing local, county, state, and national record centers and databases." The trial court denied the petition. This appeal followed.

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2 On our own motion, we take judicial notice of the contents of these documents as records of our court. (Evid. Code, section 452, subd. (d).)

DISCUSSION

Wende holds that, on appeal from a conviction, a court of appeal must "conduct a review of the entire record whenever appointed counsel submits a brief which raises no specific issues or describes the appeal as frivolous." (*Wende*, supra, 25 Cal.3d at p. 441.) Our Supreme Court has clarified that this rule applies "[i]n an indigent criminal defendant's first appeal as a matter of right." (*Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 535.) It does not apply to an appeal, like this one, from an order in a postconviction proceeding. (*People v. Flores* (2020) 54 Cal.App.5th 266, 271; *People v. Serrano* (2012) 211 Cal.App.4th 496, 501-502.) Nonetheless, courts of appeal may exercise discretion to review the record independently in such appeals, in the manner required by Wende in a direct appeal from a conviction. (*People v. Cole* (2020) 52 Cal.App.5th 1023, 1030, review granted Oct. 14, 2020, S264278 [surveying decisions addressing "what procedures appointed counsel and the Court of Appeal should follow when counsel finds no arguable merit to an appeal from the denial of postconviction relief"].) Where the defendant files a supplemental brief, "the Court of Appeal is required to evaluate any arguments presented in that brief and to issue a written opinion that disposes of the trial court's order on the merits (that is, by affirming, reversing or other like disposition)." (*Id.* at p. 1040.)

In his supplemental brief, Park asserts the trial court erred in denying his petition for writ of coram nobis and

raises another 24 issues for our consideration on appeal. (3) We have considered Park's arguments and conclude the trial court did not err in denying him coram nobis relief.

A petition for writ of error coram nobis "is an attack upon a judgment which has become final and in favor of which there are strong presumptions of regularity." (*People v. Adamson* (1949) 34 Cal.2d 320, 329-330.) The petition is a limited remedy and the moving party bears a heavy burden to show that he should obtain relief. (*People v. Kim* (2009) 45 Cal.4th 1078, 1091 (*Kim*).)

"The grounds on which a litigant may obtain relief [through] *coram nobis* are narrower than on habeas corpus [citation]; the writ's purpose 'is to secure relief, where no other remedy exists, from a judgment rendered while there existed some fact which would have prevented its rendition if the trial court had known it and which, through no negligence or fault of the defendant, was not then known to the court.' " (*Kim*, *supra*, 45 Cal.4th at p. 1091; *People v. Ibanez* (1999) 76 Cal.App.4th 537, 544 (*Ibanez*) ["A writ of coram nobis is generally used to bring factual errors or omissions to the court's attention."].)

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3 We will not enumerate all the issues Park raises, as we need not decide all of them to resolve this appeal. As a general matter, Park challenges the trial court's subject matter jurisdiction and its personal jurisdiction over him in the criminal case that resulted in his 1996 conviction. He also asserts several constitutional violations in that proceeding.

"The writ of error coram nobis is granted only when three requirements are met . . .: (1) The Petitioner must show that some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of the judgment. (2) The petitioner must also show that the newly discovered evidence does not go to the merits of issues tried; issues of fact, once adjudicated, even though incorrectly, cannot be reopened except on motion for new trial. This second requirement applies even though the evidence in question is not discovered until after the time for moving for a new trial has elapsed or the motion has been denied. (3) The petitioner must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his petition for the writ." (*People v. Mbaabu* (2013) 213 Cal.App.4th 1139, 1146-1147 (*Mbaabu*).)

"[F]acts that have justified issuance of the writ in the past have included a litigant's insanity or minority, that the litigant had never been properly served, and that a defendant's plea was procured through extrinsic fraud or mob violence." (*Kim, supra*, 45 Cal.4th at p. 1102.)

"Because the writ of error *coram nobis* applies where a fact unknown to the parties and the court existed at the time of judgment that, if known, would have prevented rendition of the judgment, the remedy does not lie to enable the court to correct errors of law." (*Mbaabu, supra*, 213 Cal.App.4th at p. 1147.) In addition, the writ of error *coram*

nobis "is unavailable when a litigant has some other remedy at law," such as by appeal or a motion for a new trial, " 'and failed to avail himself of such remedies.' " (*Kim*, *supra*, 45 Cal.4th at pp. 1093-1094.)

Relief through a writ of error *coram nobis* is extraordinary relief. (*In re Reno* (2012) 55 Cal.4th 428, 453.) " 'A petition for writ of error *coram nobis* places the burden of proof to overcome the strong presumption in favor of the validity of the judgment on the petitioner. This burden requires the production of strong and convincing evidence.' " (*Ibanez, supra*, 76 Cal.App.4th at pp. 548-549.) The granting of a writ of error coram nobis is completely discretionary. (*People v. Evans* (1960) 185 Cal.App.2d 331, 333.) A writ of error *coram nobis* is reviewed under the abuse of discretion standard. (*Ibanez, supra*, 76 Cal.App.4th at p. 537.)

With the above standards in mind, we turn to the claims raised in Park's supplemental brief. The alleged previously unknown fact Park identifies as the basis for his petition is that his civil appeal was still pending during the criminal proceeding against him. He contends this fact, if known, would have prevented the court from entering the judgment of conviction because "a judgment (record/judgment roll) from a State civil action cannot be used as evidence for the purpose of proving facts therein found or recited, unless the judgment in question is final, and no longer pending in any court." Since his civil action was not yet final at the of his criminal proceeding, he asserts the trial court lacked both subject matter jurisdiction and personal jurisdiction over him.

Even if we assume without deciding that Park's proffered fact was one which would have prevented rendition of the judgment for the reasons Park states, he cannot satisfy the diligence requirement for *coram nobis* relief. As noted above, Park must show this fact was not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his petition for the writ. (*Mbaabu*, supra, 213 Cal.App.4th at p. 1147; *People v. Casteneda* (1995) 37 Cal.App.4th 1612, 1619 ["[A] defendant who seeks to set aside the judgment on a petition for a writ of error *coram nobis* must allege the time and circumstances under which the new facts were discovered in order to demonstrate that he has proceeded with due diligence."].) He cannot make this showing. Park, appearing in propria, filed his notice of appeal of the injunction order in August 1993. The information in the criminal proceeding against him was filed in October 1994. This court affirmed the injunction in the civil proceeding in January 1995. At the time the information issued in the criminal case, Park would have or should have been aware that his appeal was still pending in the civil case, especially given he was representing himself pro se in the appeal. Further, such information about the status of his civil appeal was readily available to Park throughout his criminal proceeding up to the time of judgment. Thus, Park cannot show that his proffered fact was only discoverable by him no earlier than December 2020, when he filed his writ petition with the superior court. He cannot show that he could not have ascertained this fact in the ensuing 25-plus years since the information in his criminal case was filed against him. Accordingly, Park cannot meet the standards for *coram*

nobis relief.

Park also contends he is exempt from the previously-unknown-fact requirement for *coram nobis* relief because his judgment of conviction was void on its face. He cites no controlling authority for this point.

Further, in *People v. O'Neal* (1962) 204 Cal.App.2d 707, the court rejected a similar argument that a defendant could vacate his conviction because the underlying judgment against him was void. (*Id.* at pp. 709-710.) The court explained: "Any errors or uncertainties which could have been reached on a motion for new trial or on appeal after judgment cannot subsequently be grounds for a motion to set aside the judgment. [Citation.] Furthermore, treating appellant's motion as a petition for a writ of error coram nobis [citations], it is axiomatic that this writ cannot be used to serve the purpose of an appeal or other statutory remedy [citations], unless there has been extrinsic fraud that deprived the petition of a trial on the merits." (*Id.* at p. 709.) The defendants in *O'Neal* made no showing of extrinsic fraud or that they were deprived of any rights, and the court affirmed the trial court's order denying the motion to set aside the judgment of conviction. (*Ibid.*)

Likewise, Park has not made any adequate showing of fraud. " 'At the outset it should be borne in mind that in *coram nobis* proceedings there is a strong presumption that the judgment of conviction is correct . . . . "(T)he petitioner is deemed to be prima facie guilty." Defendant, therefore, has the burden of overcoming the presumption in favor of the validity of the judgment by establishing through a

preponderance of strong and convincing evidence [citations] that he was deprived of substantial legal rights by extrinsic causes [citations]. In this connection, the lower court is not required to accept at face value the allegations of the motion or petition even though it be verified and uncontradicted.' " (*People v. Fowler* (1959) 175 Cal.App.2d 808, 811, disapproved on another ground in *People v. Shipman* (1965) 62 Cal.2d 226, 231.)

We have reviewed Park's assertions of fraud, and he has made no satisfactory showing of any extrinsic fraud that deprived him of a fair trial. In light of the scant record, his assertions of fraud amount to only general accusations. His showing is insufficient to constitute the "strong and convincing" evidentiary support required of him to overcome the strong presumption in favor of the validity of the judgment. The trial court correctly stated Park failed to show extrinsic fraud.

In *Kim, supra,* 45 Cal.4th 1078, our Supreme Court stated: "[T]he writ of error *coram nobis* is unavailable [when a litigant has some other remedy at law. 'A writ of [error] *coram nobis* is not available where the defendant had a remedy by (a) appeal or (b) motion for a new trial and failed to avail himself of such remedies.' [Citations.] 'The writ of error *coram nobis is* not a catch-all by which those convicted may litigate and relitigate the propriety of their convictions *ad infinitum*. In the vast majority of cases a trial followed by a motion for new trial and an appeal affords adequate protection to those accused of crime. The writ of error *coram nobis* serves a limited and useful purpose. It will be used to correct errors of fact which could not be corrected in any other manner. But it is well-settled law in this and in other states that where other and

adequate remedies exist the writ is not available." (*Id.* at p. 1094; see also *People v. Fritz* (1956) 140 Cal.App.2d 618, 621 ["It is well settled that where the remedy of the motion for a new trial or appeal exists the writ is not available. And the writ cannot be used to serve the purpose of an appeal when this remedy was lost through failure to invoke it in time even though such failure occurred without fault or neglect on the part of the one seeking the remedy."].)

The many issues Park raises with respect to jurisdictional and constitutional violations could have been raised in a motion for new trial or on direct appeal. The record provided does not indicate Park ever moved for a new trial after his conviction. As to a direct appeal, Park dismissed his appeal of his criminal convictions and cannot now—25 years after his conviction—use a petition for *coram nobis* after he abandoned his appeal to relitigate the propriety of his convictions. (See *People v. Kerr* (1952) 113 Cal.App.2d 90, 94 [rejecting defendant's effort 5 ½ years after judgment to "substitute the writ of error *coram nobis* or a motion to vacate the judgment" for the available remedy of direct appeal provided by statute].)

Accordingly, in light of Park's failure to exercise his right of appeal, we need not address Park's remaining arguments, none of which assert new facts unknown to the trial court at the time it rendered judgment that support issuance of a writ of error *coram nobis*. We also to decline to exercise any equitable powers to set aside Park's judgment of conviction, as he has provided no grounds for our doing so.

Finally, in our discretion in the interests of justice, we have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to Park.

DISPOSTIION

The order is affirmed.

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Petrou, J.

WE CONCUR:

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Tucher, P.J.

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Rodriguez, J.

People v. Park/ A162603

Court of Appeal, First Appellate District, Division Three – No. A162603

S272902

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

TONG PARK, Defendant and Appellant.

The Petition for review is denied.

/s/ CANTIL-SAKAUYE
Chief Justice