

Original  
22-5045  
No. \_\_\_\_\_

FILED  
JUN 24 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

SHAHEED SCOTT, Sr. — PETITIONER  
(Your Name)

VS.

ROBERT FOX, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT, No. 21-15443

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

PETITION FOR WRIT OF CERTIORARI

SHAHEED SCOTT, Sr., AKA Rodney L. Scott  
(Your Name)

318 S. Alandale Avenue  
(Address)

Tucson, AZ 85710  
(City, State, Zip Code)

(520)-273-9466  
(Phone Number)

RECEIVED  
JUL - 6 2022  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## QUESTION(S) PRESENTED

Did the Ninth Circuit Court properly deny habeas petition where petitioner made substantial showing requirement at least described a burden that the petitioner meet the threshold condition for the requirement of a certificate of appealability (COA). Where petitioner showing indicated an issue not defective, that the issue is debatable among jurists. Did the petitioner meet the core of habeas corpus while incarcerated sought grievance that challenged procedures that relate to petitioner's early release from prison sentence where the decisions of Calif. Depart. of Corrections would not effect his court-imposed prison term, but did deny his release on parole by being held 35 days past 120 days pursuant Penal Code 3041(b)(2) any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days. Did the procedural defect deny due process pursuant core habeas corpus subjecting petitioner to invalidity of confinement or its duration. Did the District Courts denial and to address why (COA) should issue and issues presented was proper for the petitioner showed any confinement or to particulars effecting his duration are the province of habeas corpus. Did the petitioners prior 1983 civil action for damages meet requirements for unlawfulness of confinement by procedures deprive petitioner of relief that required first have proof by court's issuance of habeas corpus, where state supreme court denys as untimely for calif. court of appeals denys case number over and over and to claim not to have orders for case number for superior court meet due process for diligence for habeas corpus.

## LIST OF PARTIES

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

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JERRERY BEARD, X-Secretary California Department of Corrections and Corrections;

ROBERT W. FOX, X-Warden, California Medical Facility;

G.THUMSER, CHief Deputy Warden (A)cting California Medical Facility;

ANGEL PAYAN, Case Records Manager, California Medical Facility;

D.ARTIS, Examiner, Captain for Chief Inmate Appeals;

R.L.Briggs, Chief of Appeals.

## TABLE OF CONTENTS

OPINIONS BELOW.....	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3., 4.
STATEMENT OF THE CASE .....	5., 6., 7., 8., 9
REASONS FOR GRANTING THE WRIT .....	10., 11., 12.
CONCLUSION.....	13.

## INDEX TO APPENDICES

APPENDIX A (A)

APPENDIX B (B.1), (B.2), (B.3), (B.4), (B.9), (B.18)

APPENDIX C (C.1), (C.2), (C.3)

APPENDIX D (D.1), (D.2), (D.3), (D.4)

APPENDIX E (E.2)

APPENDIX F (F.8), (F.10)

APPENDIX G (G)

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
In re Ballard, 115 Cal.App.3d 647 (1981).....	5
Barefoot v. Estell, 463 U.S. 880 (1983).....	11
Board of pardons v. Allen, 482 369 (1987).....	5
Edwards v. Balisok, 520 U.S. 641 117 S.Ct.1584 (1997).....	11
Heck v. Humphrey, 512 U.S. 477, 114 U.S. 74, 125 S.Ct.1242 (2005).....	10
Garlotte, 515 U.S. 46.....	10
Gonzalez v. Thaler, 565 U.S. 134 (2012).....	11,12
Greenholtz v. Inmates of Nebraska Penal Correctional Complex, 442 U.S. 12, 99 S.Ct.2100 (1979).....	5
Johnson v. Shaffter, 2014 U.S.E.D. Cal. LEXIS 16796, Dec. 2, 2014.....	5
Jones v. Cunningham, 371 U.S. 236 (1963).....	10
Maleng v. Cook, 490 U.S. 488 (1989).....	10
Miller v. Oregon, 642 F.3d 711 (9th Cir.2011).....	5
Miller-El v. Cockrell, 537 U.S. 322 (2003).....	11
Muhammad v. Close, 530 U.S. 749, 124 S.Ct.1256 (2004).....	10
Nettles v. Grounds, 830 F.3d 922 (9th Cir.2016).....	12
People v. Lara, 20 Cal.App.3d 1297, 254 Cal.Rptr.59 (1988).....	5

CONTINUED PAGE 2

## TABLE OF AUTHORITIES CITED

PAGE 2

Continued

## CASES

Priser v. Rodriguez, 411 U.S. 475, 93 S.Ct.1827 (1973).....	10,11
Slack v. McDaniel, 529 U.S. 472 (2000).....	11
Swartout, 131 S.Ct. 862 .....	5,11
Wilkerson v. Dotson, 544 U.S. 82, 125 S.Ct.1242 (2005).....	10

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix (A) to the petition and is

reported at Exhibit (A) ORDER; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix (B.3) to the petition and is

reported at Exhibit's (B.1),(B.2),(B.3),(B.4) F & R; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

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

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

The opinion of the CALIF. APPEALS, 2nd APP., Exhibit F.10 court appears at Appendix F.10 to the petition and is

reported at REMARKS; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 24, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was SEP 24, 2019. A copy of that decision appears at Appendix G.

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

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

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. All persons born or naturalized in the United States, and subject to this jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of the law, deny any person within it jurisdiction the equal protection of the law.

The Amendment is enforced by 28 United States Code: 2254:

State custody; remedies in Federal courts (a) The Supreme Court, a Justice thereof, a circuit court judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

For SUPREME COURT has Jurisdiction On Writ of Certiorari, Rule 10

Considerations Governing Review on Certiorari. Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that

conflicts with a decision by a state court of last resort; or has so far departed from the accepted and unusual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

The case involves Amendment VII to the United States Constitution, which provides:

Section 1. Excessive Bail not required, nor excessive fines imposed, nor cruel and unusual punishment inflected.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The case involves Amendment I to the United States Constitution, which provides:

Section 1. Congress shall make no law respecting an establishment or religion, or prohibiting the free exercise thereof: or abridging the freedom of speech, or of the press: or the right of the people peaceably to assemble, and to petition the government for a redress of grievance.

## STATEMENT OF THE CASE

On August 18, 2014, petitioner filed grievance, Exhibit's 1, 2, for "Release as Soon as Possible, & Given Compensation at \$500, a day," for Minimum Earliest Release Date, was 7/2/1984, for base offense 16 years as committed CDC 10/14/1977. And found **Suitable for Parole** July 17, 2014, by Commissioner, Cynthia Fritz, Deputy Commissioner, James Andres, at Exhibit 1, 2, pursuant Penal Code §3000(b)(4): The parole authority shall consider request of any inmate regarding the length of his or her parole and the conditions thereof.

Petitioner request "No' delayed time credits added to parole, as People v. Lara (1988) 20 Cal.App.3d 1297 [254 Cal.Rptr.59]; In re Ballard (1981) 115 Cal.App.3d 647. Request my parole "entilements" as Greenholtz v. Inmates of nebraska Penal Correctional Complex, 442 U.S. 12, 99 S.Ct.2100 (1979) and 'No' Ex Post Facto Classues ADDED. Where at 70-71, 107 S.Ct.2415, 96 Led.2d 303, Montana parole scheme created a federally protected liberty interest in parole where the statute mandated that "the board shall release the inmate when findings prerequisite to release are made," (emphasis added); Miller v. Organ, Br. of Parole and Post Prison Supervision, 642 F.3d 711 (9th Cir.2011) ("A state parole-release determination made by Nebraska Board of Parole; Swartout, 131 S.Ct. at 862 (noting that [t]he liberty interest at issue here is the interest in receiving parole when the California standards for parole have been met") OPINION Allision Clair; Sam Johnson v. Jennifer Shafter, 2014 U.S.E.D., Cal. LEXIS 16796, Dec. 2, 2014, Liberty Interest at Stake. In any event, the asseration is well supported by the statute governing parole in California, and by the Supreme Court and Ninth Circuit authority, see Cal. Penal Code 3041(b). Petitioner Scott requested at Exhibti 2, Title 15 #3084.7(A)(1), A policy, procedure or regulation implemented.

On September 18, 2014, petitioner received Second Level Response by Reviewer, Angle Payan, Correctional Case Records manager, 'denied' citing 12th subsequent Board of Parole Hearing was granted July 17, 2014, and Signed by Chief Deputy Warden (A)cting Gray Thumser (4) Warden (A)cting Robert W.Fox, Exhibit's 3, 4, which BPH Investigations Comments, Exhibit 5, and Board of Parole Consideration Decision, Exhibit's 6, 7, showing "Minimum Eligible Parole Date" February 2, 1984, which Respondents Granted July 17, 2014, and the 120 Days were up November 17, 2014. Yet! petitioner was 'Held,' to December 22, 2014, thirty five (35) additional days. This 'Time,' accured cause the petitioner to suffer, and was the violations procedural defect, done under color of official right and created a liberty interest for the Fourteenth Amendment, based on impartial review that cause a month and 5 days additional effection duration sentence.

On September 29, 2014, petitioner responded, Exhibit 1, Section F., 'Dissatisfied' which states Granted pursuant In re Butler. The petitioner states having been held over 'MARTIX,' violated unlawfulness of his conviction or confinement, for OVER-Extended 'TIME SERVED.'

On December 23, 2014, petitioner received Director's Response by Appeals Examiner, D.Artis, Captain, signed by Chief (A), Office of Appeals, R.L.Briggs, stated; "the issue has been Cancelled and Rejected, to deny the chance to exhaust administarative remedies as required by Court's & Prison Litigation Reform Act 28 U.S.C. 1915(e). And to defeat prisoners mertious claims, and deny useful record for subsequent judicial review and barred from asserting claim of exhaustion as, Paroled by Third Level Review, and any further attemps would be denied, Exhibit 8, denying due process of Fourteenth Amendment, and First Amendment denial of court access chilled for Eight Amendment excessive sentence.

In October 2015, petitioner filed State Tort Claim, and was Screened 'barred,' until May 3, 2016, by Clerk D.Mecessy, over 5 Times for various reasons that petitioner 'Complied To,' and Clerk sent back, Exhibit's 10, 11, 12, 13, 14, 15.

On October 8, 2016, petitioner filed U.S.E.D., Court, Sacramento, civil complaint 1983, No. 2:16-cv-1927-KJN-P.

On March 15, 2017, U.S.E.D., Court dismissed without prejudice and entered judgment, with leave to Amend, and 1 year to exhaust state remedies, Exhibit (B.18).

On June 21, 2017, petitioner filed Habeas Corpus in L.A. Superior Court, Exhibit (C.1), and the court responds Dismissed, Exhibit's (C.2), (C.3) No relief remains in Habeas proceeding.

On July 9, 2017, petitioner filed Petition Calif. Court of Appeals, Second Appellate District, Exhibit's (D.1), (D.2) Proof of Service, and Court replies with 2007 prior filing, Exhibit (D.3). The petitioner 'Not' being Attorney and new to law assumed that the denial was for current filings.

On February 28, 2018, petitioner sent Petition For Review, California Supreme Court, and the Court responds March 9, 2018, Exhibit (E.2) to file Default, and Habeas Corpus Form, and "You have not provided your Court of Appeals case number."

On April 9, 2018, petitioner filed Motion for Extension of Time to Exhaust state habeas court remedies, U.S.E.D., Court.

On April 12, 2018, U.S.E.D., Court denied motion for extension of time, and sent U.S. District Court, Habeas Corpus for Fresno, Exhibit (B.9).

Petitioner filed numerous "Request to Calif. Court of Appeals for Case Number," and as Exhibit (D.4) received Response June 18, 2018, with

same filings 2007, Exhibit (D.3).

Petitioner having sought U.S.E.D., Court relief, again sought over and over Calif. Court of Appeals case number.

On February 4, 2019, Court of Appeals responds with, Exhibit F.8, January 29, 2019, Request, and court responds with, Exhibit F.10, "The documents you are requesting are superior court documents." The Second Appellate District does not have orders for BH011217.

On June 14, 2019, petitioner filed Petition For Review to California Supreme Court, and September 18, 2019, supreme court denied as [courts will not entertain habeas corpus claims that are untimely].), Exhibit (G).

On August 25, 2020, petitioner filed Habeas Courpus, U.S.E.D., Court, Fresno Division.

On January 20, 2021, U.S.E.D., Court, No. 2:20-cv-01820-TLN-AC, ORDER Findings and Recommendations by Magistrate Judge Allison Claire, denies, and petitioner may file Objections and address whether a certificate of appealability should issue, Exhibit's (B.1), (B.2), (B.3), (B.4).

On February 5, 2021, petitioner filed Objections to Magistrate Judges, Findings and Recommendations, Exhibit's OMJ1, OMJ2, OMJ3, OMJ4, OMJ5.

On February 12, 2021, District Judge Troy L. Munley dismissed case, based on findings and recommendations of Magistrate Judge Claire.

On March 5, 2021, petitioner filed Motion Statement Of Reasons For Certificate/Appeaalability, Exhibit's MC0A1, MC0A2, MC0A3, MC0A4, MC0A5, MC0A6.

On March 13, 2022, petitioner Motion Request for Status of Case.

On March 10, 2022, District Court responds to Status of Case, Exhibit RS, RS1, ('General Docket') And Courts General Docket March 12, 2021 1

Open 9th Circuit docket: needs certificate of appealability.  
Yet! Exhibit RS1, Court paper shows "Inadequate address in database:"  
And Exhibit MRS1 has petitioner's address at Exhibit's MRS2, bottom at  
2 Filed Appellant Scott.

On April 1,, 2022, petitioner filed PETITIONER'S APPLICATION FOR  
CERTIFICATE OF APPEALABILITY PURSUANT Fed. Rules Appellant Procedure  
22(b)(2), Exhibit's H, H1, H2, H3, H4, B.

On May 24, 2022, petitioner was denied by ORDER by Ninth Circuit  
Court of Appeals, Exhibit A, request for a certificate of appealability  
is Denied because appellant's 28 U.S.C. §2254 petition fails to state  
any cognizable habeas claims debatable among jurists of reason. See 28  
U.S.C. §2253(c)(2)-(3); Citations and (holding that claims fall outside  
"the core of habeas corpus" if success will not necessarily lead to  
immediate or earlier release from confinement.

## REASONS FOR GRANTING THE PETITION

In Petitioner's Exhibit's Objections To Magistrate Judges Findings and Recommendations, Exhibit's OMJ1, OMJ2, OMJ3, OMJ4. The petitioner cites OMJ1, at I) Habeas Corpus is for challenges to confinement itself, or its length, Muhammad v. Close, 530 U.S. 749, 124 S.Ct.1256 (2004) (per curiam ) "Challanges to the validity of any confinement or to particulars effecting its duration are the province of habeas corpus. When a state prisoner challenges "the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or speedier release from that imprisonment, his sole remedy is a writ of habeas corpus. Priser v. Rodriguez, 411 U.S. 475, 500, 93 S.Ct.1827 (1973). Exhibit OMJ1, and at Exhibit OMJ2, Petitioner Scott, Sr., meets 28 U.S.C. §2254 state prisoners who are currently in custody pursuant to a state court judgment must proceed under. Prisoners who are 'Not' convicted (e.g., pretrial detainees, persons waiting extradition, ect Free persons) should use U.S.C. §2241 through 2255. Petitioner Scott meets above. Jones v. Cunningham, 371 U.S. 236, 242 (1963) custody requirement satisfied by release on parole; Maleng v. Cook, 490 U.S. 488, 493 (1989).

Under habeas corpus petitioner may challenge serving consecutive sentences that has Yet began, or one that has expired. Garlotte, 515 U.S. at 46-47. (Peyton extended to petitioners serving consecutive sentences who challenge conviction underlying sentence already served.

At Exhibit OMJ3, 4) Petitioner contines as in Wilkinson v. Dotson, 544 U.S. 74,82,125 S.Ct.1242 (2005) and Heck v. Humphrey, 512 U.S. 477, 114 S.Ct.2364 (1994). the petitioners 35 day Held past Parole Release Date, pursuant Penal Code 3041(b)(2), can not be called into Question until this Court [I]ssurance of writ of habeas corpus, for invalid sentence,

Accurred. This would meet "core of habeas corpus," Preiser, 411 U.S. at 488-89, that the "favorable termination" rule in Edwards v. Balisok, 520 U.S. 641 117 S.Ct.1584 (1997) also applies to disciplinary proceedings that effect the length of confinement by taking away good time.

At Petitioner's Exhibit OMJ4, at 5) Petitioner contines he should be given "the Certificate of Appealability," pursuant to Court Order entered on January 20, 2021. The certificate should be granted pursuant to Miller -El v. Cockrell, 537 U.S. 322 (2003) where issues at hand are debatable; Slack v. McDaniel, 529 U.S. 472, 481-82 (2000); Barefoot v. Estell, 463 U.S. 880, 893 (1983). Petitioner contends the issue is "debatable among reasonable jurists" thereby granting certificate of appealability, pursuant Miller-El; Slack; Barefoot, supra.

The above was spoken for at Exhibit's MCOA1 MOTION FOR CERTIFICATE OF APPEALABILITY, and at Exhibit MCOA3 bottom line at II. LEGAL STANDARD FOR ISSURANCE OF COA, at Exhibit's MCOA4 through MCOA5. Also at Exhibit's H, H1, H2, H3, gives LEGAL STANDARDS FOR ISSUANCE OF COA, at H2, H3. And Petitioner Scott [I]ssues are in above supra, and for constitutional claim of denial of due process of Fourteenth Amendment. Also as Petitioner described in Habeas Corpus page 2 lines 25-28, Swartout, 131 S.Ct. at 862 (noting that [t]he liberty interest at issue here is the interest in receiving parole when California standards for parole have been met') OPINION (Allison Claire, Sam Johnson v. Jennifer Shafter, 2014 U.S.E.D., Cal. LEXIS 16796, Dec. 2, 2014. Liberty Interest at Stake. Petitioner Scott should be given same due process by Magistrate Judge Allison Claire, in above case in 2014, as in 2014 when petitioner Scott was denied the same.

Petitioner Scott contends he meets, Gonzalez v. Thaler, 565 U.S. 134, 140-41 (2012) at HN13 Appeals, Certificate of Appealability, 28 U.S.C.S.

§2253(c)(3) is nonjurisdictional. Like §2253(c)(2), it too reflects a threshold condition for the issuance of a certificate of appealability (COA)--the COA's indication of which issue satisfy the showing required by §2253(c)(2). It too does not speak in jurisdictional terms or refer in any way to the jurisdiction of the appeals courts.

The unambiguous jurisdiction terms of §2253(a), (b), (c)(1), show that Congress would have spoken in clear terms if it intended §2253(c)(3) to have similar jurisdictional force. Instead, the contrast underscore that the failure to obtain a COA is jurisdictional, while a COA's failure to indicate an issue is not. A defective COA is not equivalent to the lack of any COA.

Petitioner's Scott COA indicates a [I]ssue and is not a lack of any COA, and should be allowed to proceed.

In Gonzalez at HN14 Whereas 28 U.S.C.S. §2253(c)(2)'s substantial showing requirement at least describes a burden that "the appellant" seeking a certificate of appealability (COA) bears, §2253(c)(3)'s indication requirement binds only the judge issuing the COA.

Petitioner Scott's Judge denied the COA without any Hearing for Evidentary Facts concerning Issue jurist of reason would find debatable.

In Nettles v. Grounds, 830 F.3d 922, 934-35 (9th Cir.2016) at . Wilkson v. Dotson, 544 U.S. 74, 81-82, 125 S.Ct. 1242, 161 L.Ed.2d(2534) (2005) concluded that habeas corpus was the exclusive vehicle for state prisoner claims where "success in that action would necessarily demonstrate the invalidity of confinement or its duration." Id. at 82, 125 S.Ct.1242.

Petitioner Scott's Reason for Granting the Petition consist of the above guidelines, that were denied by the court of appeals and district court.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Shahed Scott Jr.

Date: June 24, 2022