

APPENDIX A

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October 1, 2017

CONFIDENTIAL LEGAL MAIL

CSP - Centinela
Mr. Michael A. Jace BA3055
P.O. Box 931
Imperial, CA 92251

Re: *People v. Michael Jace*
Court of Appeal No.: B276074

Dear Mr. Jace:

I have reviewed both of your recent letters several times. I am not going to file a supplemental brief. The things you complain of are not supported by the appellate record.

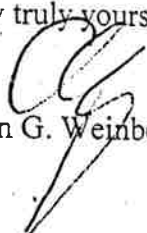
When claims require evidence outside the record you have to file a petition for writ of habeas corpus because that is the way to get new evidence or declarations before a reviewing court.

Your trial attorneys are not communicating with me. If they were, they would not admit the things you accuse them of. This leads to any outside of the record claims coming down to your words against theirs. For that reason you would have a difficult time convincing any court of your claims. You are going to have to pursue these claims on your own as there is no right to appointed counsel in habeas claims. You can prepare and file a writ now or you can wait until after the direct appeal is completed. There are pros and cons to both approaches.

I am sorry I am not able to give you a better outlook in the claims involving your trial attorneys. I hope you can appreciate my honesty.

Please write if you have more questions.

Very truly yours,


Allen G. Weinberg

AGW/tbm

APPENDIX B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

FILED

DIVISION THREE

Feb 21, 2018

In re

B288116

JOSEPH A. LANE, Clerk

VGray

Deputy Clerk

MICHAEL JACE

(Super. Ct. No. BA424932)

on Habeas Corpus.

ORDER

THE COURT:

We have read and considered the petition for writ of habeas corpus filed on February 13, 2018. We have also reviewed our file in case number B276074, petitioner's direct appeal.


In his pro. per. petition, petitioner purports to raise arguments which his counsel allegedly refused to raise as part of the pending appeal. Petitioner does not rely on any matters that are not part of the record on appeal. Thus, the petition represents an improper attempt to evade the prohibition against criminal appellants raising arguments on appeal in pro. per. (See *People v. Clark* (1992) 3 Cal.4th 41, 173.) Necessarily, such prohibition applies only during the pendency of the appeal.

The petition is denied.

The clerk of this court is directed to mail copies of the petition and this order to petitioner's counsel in the appeal.



EDMON, P. J.



LAVIN, J.



EGERTON, J.

APPENDIX C

II.

**SINCE TRIAL COUNSEL'S FAILURE TO
OBJECT TO THE PROSECUTOR'S
MISCONDUCT IN CLOSING ARGUMENT
FORFEITED THE ISSUE, APPELLANT
RECEIVED INEFFECTIVE ASSISTANCE
OF COUNSEL UNDER THE CALIFORNIA
AND UNITED STATES CONSTITUTIONS**

Trial counsel failed to object to the prosecutor's misstatement of the law with respect to provocation and heat of passion and failed to seek an admonition. (4RT 394-397.) Appellant submits that his trial counsel's failure herein constituted prejudicial ineffective assistance.

Under both the Sixth Amendment to the United States Constitution and article I, section 15, of the California Constitution, a criminal defendant has the right to the effective assistance of counsel. (*People v. Ledesma* (1987) 43 Cal.3d 171, 215.) This right "entitles [the defendant] to 'the reasonably competent assistance of an attorney acting as [the defendant's] diligent conscientious advocate.' [Citation.]" (*Ibid.*)

The right to adequate counsel is denied if counsel's acts or omissions fall outside the range of professionally competent assistance, and, there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. (*Strickland v. Washington* (1984) 466 U.S. 668, 694 [104 S.Ct. 2052, 80 L.Ed.2d 674 (*Strickland*)]; *People v. Duncan* (1991)

- d. Ground four: DEFENSE COUNSEL DID NOT INFORM THE PETITIONER OF THEIR IRRESPONSIBLE AND RECKLESS STRATEGY WHERE THEY CONCEDED MURDER. THIS WAS DONE AGAINST THE PETITIONER'S EXPRESSED WILL AND BEST INTEREST. IT WAS ALSO DONE WITHOUT HIS KNOWLEDGE OR CONSENT. DUE TO TRIAL COUNSEL'S IAOC THE PETITIONER'S CONSTITUTIONALLY GUARANTEED SIXTH AND FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED.

- (1) Supporting FACTS: The petitioner was never informed that Mr. Hicks was going to stand before the court and declare that he agreed with the prosecution's theory of how the petitioner's wife was murdered. On pg. 51/line 5,6,: "This is not about how it was done. We acknowledge it." On pg. 51/line 15-16. - Reporter's Transcripts Mr. Hicks continues his concession: "Most of the stuff that the District Attorney told you, were going to agree with."

APPENDIX D

SUPPORTING CASES, RULES OR AUTHORITIES

McCoy v. Louisiana, 2018 U.S. Lexis 2802: "The Sixth Amendment guarantees a defendant the right to choose the objective of his defense and to insist that his counsel refrain from admitting guilt..."

TABLE OF AUTHORITIESGround One

Smith v. Dugger, 911 F.2d 494 (11th Cir. 1990)	4
Smith v. Wainwright, 777 F.2d at 617	4
United States v. Cronic, 466 U.S. 648	4
Brown v. Illinois, 422 U.S. 590, 604	4
Arizona v. Fulminate, 499 U.S. 279, 303 (1991)	4

Ground Two

U.S. v. Cronic, 466 U.S. 648	7
Beasley v. United States, 491 F.2d 687 (6th Cir 2008)	11
People v. Pope, supra, 23 Cal. 3d 425	11
People v. Frierson, 25 Cal. 3d 163	11
Marcum v. Luebbers, 509 F.3d 502-508 (8th Cir. 2007)	10
Gaines v. Hopper, 575 F.2d 1147 (5th Cir. 1978)	7, 9

Ground Three

Poe v. United States, 1964 U.S. Dist. Lexis 7361	14
Beasley v. United States, 491 F.2d 687 (6th Cir. 1974)	15
People v. Frierson, 25 Cal. 3d 163	15

Ground Four

McCoy v. Louisiana, 2018 U.S. Lexis 2802	19
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Ground Five

Groseclose v. Bell, 130 F.3d 1161	24
U.S. v. Cronic, 466 U.S. 648	25
Beasley v. United States, 491 F.2d 687 (6th Cir. 1974)	25

Ground Six

Nealy v. Cabana, 764 F.2d 1173 (5th Cir. 1985)	30
Groseclose v. Bell, 130 F.3d 1161 (6th Cir)	30
Wiggins v. Smith, 539 U.S. 510 (2003)	30


Ground Seven

Wright v. Estelle, 572 F.2d 1071 at 1076	32
Gallego v. United States, 174 F.3d 1196, 1198-99 (11th Cir. 1999)	32

VERIFICATION

I am the petitioner in this action. All facts alleged in the above petition, not otherwise supported by citations to the record, exhibits or other documents, are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on 3/16/23 at Cerritos, California.


MICHAEL JACE