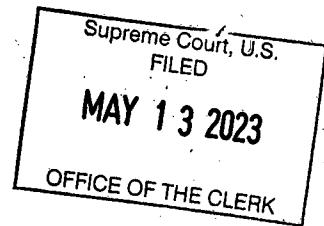


23-5097

ORIGINAL

IN THE
SUPREME COURT OF THE
UNITED STATES



October Term 2022

NO: _____

ALLEN R. AUTEN,

Petitioner

- Against -

KATHLEEN ALLISON, Secretary, California
Department of Corrections & Rehabilitation;
JENNIFER SHAFFER, Exec. Officer of
the State's Parole Agency; ROB BONTA,
State Attorney General; KAMALA HARRIS,
Previous State Attorney General; GAVIN
C. NEWSOM, Governor of California

Respondents, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

ALLEN R. AUTEN
CIM Alpha - Four
P.O. Box - 3100
Chino, CA 91708

QUESTIONS PRESENTED

2 1. Has the California Supreme Court (CSCC) prejudicially abused its dis-
3 cretion by repudiating United States Supreme Court (USSC) controlling
4 authority and the will of State Voters by changing and disregarding
5 Senate Bill 42 (1976) and its "Seven Category Sentencing Structure" and
6 Assembly Bill 476 (1977) Legislative Declaration declaring that punish-
7 ment for crime is determined by the Legislature and imposed to a final-
8 ity by a court of law as Determinate Terms, and then unlawfully trans-
9 formed the "punishment for the crime itself", into uncertain terms;
10 against the will of the voters, its own precedent and this Court's
11 authority in violation of Article IV § 9 of the State Constitution and
12 the 14th Amendment to the United States Constitution?

13 2. Based on the facts presented in this case, has the CSC and the Atto-
14 rney General abused their discretion by repudiating and ignoring the
15 mandatory provisions of the State Constitution and USSC controlling
16 precedent when they knew a State Legislator unlawfully used the initia-
17 tive process to defeat Legislative Policy that he could not do by
Referendum in exchange for Quid Pro Quo contrabutions from the Prison
Guards' Union and special interest groups whose goal was to recreate
uncertain and disproportionate punishment to Petitioner and thousands of
the mostly Black and Hispanic prisoners wrongfully sentenced?

13 3. Has the CSC prejudicially abused its discretion by ignoring its govern-
14 ing authority and USSC controlling precedent by allowing a Executive
15 Branch Ministerial Agency (without legislative and/or judicial Art. III
16 powers) to arbitrarily and capriciously exercise these exclusive powers
17 to extend Petitioner's term beyond his credit earning date and to
misuse the judicial power to determine who is and who is not a threat
to public safety; without a trial providing uncertain punishment on
whether or not Petitioner is a public safety risk and extending his
term for a crime yet to be committed?

PARTIES

19 (1). Petitioner, Allen R. Auten, is a prisoner at the California Insti-
20 tution for Men, Chino, California, requesting a decision ordering Respon-
21 dents to comply with USSC authority that will affect thousands of State
22 prisoners who are mostly Black and Hispanic who are imprisoned under a
23 repealed law's sentencing structure without jurisdiction. The Respon-
24 dents are 1. Kathleen Allison, Secretary of the California Department of
25 Corrections & Rehabilitation (CDCR); 2. Jennifer Shaffer, Executive
26 Officer of the Parole Agency (BPH); 3. Rob Bonta, State Attorney General
27 (AG); 4. Kamala Harris, (previously notified as the A.G.) and 5. Gavin C.
28 Newsom, Governor of the State of California, et al.

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1 DECISIONS BELOW

2 (2). The decision of the California Supreme Court (CSC) was filed on
3 February 15, 2023 and is unreported and attached to the Petition as
4 Appendix 13.

5 JURISDICTION

6 (3). The Judgement of the CSC was entered on February 15, 2023.
7 Jurisdiction is conferred pursuant to 28 U.S.C. § 1257(a).

8 CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

9 (4). This case involves Amendment VIII to the United States
10 Constitution which provides:

11 Excessive bail shall not be required, nor excessive fines imposed,
12 nor cruel and unusual punishment inflected.

13 (5). This case also involves Amendment XIV to the United States
14 Constitution, which provides:

15 All persons born or naturalized in the United States, and subject to
16 the jurisdiction thereof, are citizens of the United States and of
17 the State wherein they reside. No state shall make or enforce any
18 law which shall abridge the privileges or immunities of Citizens of
19 the United States; nor shall any state deprive any person of life,
20 liberty, or property, without due process of law nor deny to any
21 person within its jurisdiction the equal protection of the laws.

22 I. STATEMENT OF THE CASE

23 (6). Allen R. Auten (Hereafter Petitioner) has served 27 years on his
24 category four 15 to Life Determinate term sentence. Said Category Four
25 term was reduced by his mandatory Good Time Credits, which should have
26 fixed his term at 10 years 6 months. Respondents illegally administered
27 Petitioner's sentence under the repealed Indeterminate Sentencing Law
28 (ISL) in violation of the Determinate Sentencing Law (DSL) and it's
"Purpose, Policy, Ways and Means". This unlawful and unconstitutional
violation of Petitioner's 8th Amendment and 14th Amendment rights resulted

1 in a excessive and disproportionate 27 year ongoing term which continues
2 to be grossly unfair and unequal to the crime as compared to the greater
3 Category Five Crime of Penal Code § 187 in the first degree. Based on the
4 facial sentencing facts lodged herein, once construed in accordance with
5 the Constitutional rule of law, and in Petitioner's favor, would entitle
6 Petitioner and thousands of other illegally and unconstitutionally
7 sentenced California prisoners relief from an Excess of Jurisdiction and
8 Unconstitutional sentence. Relief will also unburden the California
9 taxpayers who are funding billions of dollars to support an illegal
10 sentencing structure which was repealed and never lawfully reenacted.

11 (7). Petitioner submitted multiple United States Supreme Court (USSC)
12 authorities along with multiple U.S. Constitutional violations documenting
13 indisputable factual evidence warranting relief and yet the California
14 Supreme Court (CSC) failed to provide a decision on the merits in
15 violation of their own precedent See: Cal. Const. Art. VI § 14 even though
16 the facial case evidence and supporting authorities are straight forward
17 to the court. The Three (3) indisputable facts which prove that uncertain
18 and unconstitutional punishment for crime cannot exist under California
19 law are:

- 20 A. On July 1, 1977 the State of California repealed it's ISL which has
21 never been lawfully reenacted; and,
- 22 B. The July 1, 1977 repeal included the "Purpose Policy, Ways, and
23 Means", for which uncertain sentencing existed from 1917 through
1977, before repeal; and,
- 24 C. The July 1, 1977 repeal also included eliminating the Parole
25 Agency's term fixing and term extending Article III Powers, without
26 which uncertain and disproportionate sentencing cannot exist.

1 II. BASIS FOR FEDERAL JURISDICTION AND CHRONICLED BACKGROUND
2 DOCUMENTING CALIFORNIA'S DISPROPORTIONATE AND
3 UNCONSTITUTIONAL SENTENCING

4 (8). In March of 1975, after a through investigation of recidivism
5 issues, California Attorney General, Governor Brown and both houses of the
6 California Legislature believed that the Indeterminate Sentencing Law, was
7 a failed experiment with an 83% recidivism rate and had failed to
8 sufficiently reduce and deter crime in California (See: Appendix 1).

9 (9). Ten months before a final decision was made to repeal the
10 Indeterminate Sentencing Law (ISL) legislator John V. Briggs, who, in a
11 conspiracy with, a small faction of other Legislators that were connected
12 to the prison guards union and the long term expansion of the prison
13 industrial complex, contacted Governor Brown and attempted to intimidate
14 him using dishonest means by advancing the Red Herring of "the most
15 violent crime wave California has ever experienced" and in what appears to
16 be criminal misconduct, urged the Governor's Veto of the elimination of
17 the ISL (See: Appendix 2.; Cf. Cal. Const. Art. IV § 15.)

18 (10). Effective July 1, 1977, with the support of both parties, both
19 houses, the Attorney General, and the Governor, the California Legislature
20 repealed and replaced the Indeterminate Sentencing Law (ISL) with the
21 Determinate Sentencing Law (DSL) (See: Appendix 3.) In repealing the 59-
22 year-old ISL, the Legislature found and newly declared that the purpose
23 for imprisonment for crime was "punishment" and repealed the "PURPOSE,
24 POLICY, WAYS, and MEANS" necessary for uncertain punishment for crime to
exist under the ISL (See: SB-42 and AB-476, at Appendix 3).

25 (11). In enacting the DSL, the Legislature stated its purpose and
26 reasons for repealing the uncertain "MINIMUM to MAXIMUM" sentencing that
27 made up the foundation of the ISL including, neither the prisoners or

1 their family knew at sentencing when or if they were going to be released.
2 Another reason for repealing the ISL's uncertain sentencing structure is
3 because there was no uniformity or proportionality in the actual time each
4 person served for the offense (See: AB-476 Stats 1977 Ch. 165 § 15; Cf.
5 Specht v. Patterson, 386 U.S. 605, 608-09 [87 S.Ct. 1209] (1967); accord
6 Ring v. Arizona, 536 U.S. 584, 602 [122 S.Ct. 2428] (2002).

7 (12). According to all the facts and law that existed as of July 1,
8 1977, the date of the ISL's repeal, the purpose of imprisonment became
9 "punishment for the crime itself" and uncertain ISL sentencing had ceased
10 to exist (See: Penal Code § 1170(a)(1) (See: Appendix 6 and SB-42 Pgs. 1
11 thru 4 at Appendix 3).

12 (13). Effective July 1, 1977, after the repeal of the ISL and under
13 the newly enacted DSL, the punishment for first degree murder under Penal
14 Code § 190 was: Death, Straight Life, or Life without the Possibility of
15 Parole (See: Pen.Code § 190, Stats 1976 Ch. 1139 § 133). The punishment
16 for second degree murder was 5, 6, or 7 years. On November 7, 1978, after
17 Legislator Briggs violated multiple State Constitutional statutes and
18 abused his office related to advancing Prop. 7, voters ratified Prop. 7
19 labeled the Murder Penalty Initiative statute (See: Appendix 5, Prop. 7's
20 Title prepared by the Attorney General). In Prop.7's Title, its author
21 asked the voters to: 1. Change and expand provisions for the death penalty
22 as described on pgs. 32 thru 35 and 41 thru 46; 2. Change the sentence for
23 first degree murder from "Life" to "25 years to Life"; 3. Increase the
24 punishment for second degree murder; and 4. Stated that parole of
25 convicted murders was prohibited, except subject to earned good-time
26 credits (See: Prop.7's Title on Pg. 32 of the 1978 Ballot at Appendix 5.)

27

28

III. STATEMENT OF FACIAL FACTS

2 (14). On March 26, 1975 the California Department of Justice Attorney
3 General Evelle Younger states the ISL was a failed experiment
4 expressed his support for Senate Bill 42 (SB-42) which repeals
5 the Indeterminate Sentencing Law (ISL) in California and
6 provides a "Seven Category Sentencing Structure" of Determinate
7 and fixed prison terms aka. the Determinate Sentencing Law (DSL)
8 (See: Appendix 1.)

9 (15). On September 1, 1976 California Legislator John V. Briggs issued
10 a strongly worded "most violent crime wave California has ever
11 experienced" letter to then Governor Jerry Brown in an attempt
12 to unlawfully influence Governor Brown to veto SB-42 so as to
13 keep the ISL in place. The September 1, 1976 letter is direct
14 evidence that Briggs' goal was to prevent the repeal of the ISL
15 and it's uncertain terms of punishment of inmates for crimes for
16 personal and financial gain (See: Appendixs B & G; Cf. Cal.
17 Const. Art IV § 15, see also Specht, supra & Ring, supra.)

18 (16). As previously stated, on July 1, 1977 the California Legislature
19 repealed and replaced the ISL with the DSL. In repealing the
20 59-year-old ISL, the Legislature found and declared that the
21 purpose of imprisonment for crime was "Punishment" and repealed
22 the "PURPOSE, POLICY, WAYS and MEANS" necessary for uncertain
23 ISL punishment for crime to exist (See Appendix 3, which
24 includes AB-476, the Urgency Statute and post SB-42 clean-up
25 legislation).

26 (16). On July 1. 1977 the California Legislature passed AB-476, Stats,
27 1976 Ch. 1139 § 273, operative July 1, 1977. 14 months later

1 the DSL was ratified by the Proposition Seven voters on November
2 7, 1978, it clarified and confirmed that all prisoners were
3 subject to the DSL, even those with ISL terms whose crime was
4 committed before the repeal of the ISL prior to July 1, 1977 who
5 were already sentenced and incarcerated. In order to meet
6 constitutional standards these ISL sentences were, pursuant to
7 Penal Code § 1170.2, to be provided DSL terms (See: Appendix C at
8 AB-476 at Pg.17:21-36).

9 (18). On October 7, 1978, the Briggs Initiative aka Prop.7 confirmed
10 that the voters intended that the increased 15 and 25 year
11 sentences were to be reduced for good behavior subject to Penal
12 Code § 2931 Good Time Credits (See: Appendix 5 at Prop.7's title
13 & Art. IV § 9; Cf. Wolff v. McDonnell, 94 S.Ct. 2963, 2974
14 (1974).) Wolff confirmed that these credits were mandatory
15 Allegory contract credits and not discretionary. Pursuant to the
16 Legislative Declarations in Penal Code § 1170(a)(1) and Prop.
17 7's title both the 15 and 25 year terms allowed for release
18 subject to Good Time Credits (See: Appendix 5). No where in
19 Prop.7's Title or it's text was ANY type of ministerial agency
20 vested with the power to hold so called suitability hearings for
21 crimes that called for punishments for less than SB-42 Category
22 Five or less than straight Life. (See: SB-42 and it's Seven
23 category sentencing structure at Appendix 3.)

24 VI. FACTUALLY SUPPORTED SENTENCING DEFINITIONS
25 (codified by SB-42 & AB-476)

26 (19). FOR LIFE & STRAIGHT LIFE are Category 5 Determinate sentencing
27 terms that were punished less than, Life Without the Possibility
28 of Parole (LWOP) and less than the Death Penalty. SB-42

1 confirms that the FOR LIFE sentence is a determinate Category
2 Five crime (See: Appendix 3; Cf. In re Stanworth, 22 Cal.3d 176,
3 181-186 [187 CR 783] (1982).

4 (20). LIFE WITHOUT THE POSSIBILITY OF PAROLE (LWOP) is a Category 6
5 crime and has always been a determinate sentence (See: Appendix
6 3.)

7 (21). DEATH PENALTY is and has always been a determinate sentence and
8 is the most sever Category 7 punishment. (See: Appendix 3).

9 (22). As of July 1, 1977, all crimes were determinate sentences as
10 submitted, codified and approved by the Legislature (See:
11 Appendix 3) and Prop. 7 voters, by way of Penal Code § 190 and
12 could not change Legislative policy from determinate sentences
13 with parole "Subject to Good Time Credits" (See: Appendix 5,)
14 and attempt to transform the sentencing law by subterfuge into
15 ISL sentences. NOWHERE in Prop.7 was the subject of the Parole
16 Agency and reenactment of the ISL ever proposed or discussed in
17 the tiniest way (See County of San Diego v. Commission on State
18 Mandates, 6 Cal.5th 196, 208 (2018); Cf. Cal. Const. Art.II §
19 8(d); Cf. Cal. Const. Art.IV § 9; accord Freedland v. Greco, 45
20 Cal.2d 462, 468 [289 P.2d 463] (1955).

21 REASONS FOR GRANTING THE WRIT (Argument)

22 THE CALIFORNIA SUPREME COURT (CSC) PREJUDICIALLY ABUSED
23 IT'S DISCRETION AND ACTED WITH A LACK OF JURISDICTION
WHEN IT REFUSED TO ISSUE A DECISION ON THE MERITS.

24 (23). The CSC violated Article I Section 9(2) of the United States
25 Constitution when it issued a defacto suspension of Habeas Corpus by
26 failing to issue an opinion regarding the repealed ISL. When the CSC
27 realized the state-wide impact of having to deem Petitioner's facts true
28

1 (affecting thousands of other disproportionate sentences) regarding the
2 repeal of the ISL and that the ISL was never lawfully reenacted, it chose
3 to only order an informal reply (See: Cal. Rule of Ct; Rule 4.551(b).)
4 This is a fraudulent and deceptive procedural device used to intentionally
5 avoid the merits of Petitioner's documented facts showing that not only is
6 petitioner's sentence disproportionate, but the sentencing court lacked
7 jurisdiction to sentence Petitioner under a repealed sentencing statute.
8 The AG's argument supports the state's highest court's failure to follow
9 it's own precedent by falsely claiming that "Auten's challenge to the
10 Constitutionality of Prop.7 should have been raised on direct Appeal and
11 is defaulted in Habeas". This statement placed in a segment title (See:
12 Appendix 11 Pg.25; Cf. Appendix 12, Pg.11-14) is and continues to be a
13 fraud upon the court as the AG as an officer of the Court knows (as every
14 1st year law school student knows) that an unconstitutional sentence or a
15 sentence in Excess of Jurisdiction can be challenged at any time.
16 Regardless of the conspiracy evidence of the CSC Justices in not allowing
17 Petitioner's facts to be deemed as true, as required when issuing an OSC,
18 the conduct documented on this record shows a blatant 8th Amendment
19 excessive term as well as cruel and unusual sentence and a 14th Amendment
20 violation of a lessor punishment then provided for the greater crime.
21 (See: People v. Stanworth, 33 Cal.3d 176, 177-183 [183 CR 783] (1982).)
22 which demonstrates an outrageous disproportionate sentence suffered by
23 Petitioner. Especially, when one considers that Petitioner is a first
24 time offender of any crime (convicted of 2nd Degree P.C. § 187). Thus,
25 the gross disproportionality is additionally shown and supported with an
26 8th and 14th Amendment violation as the facts that caused the excessive
27 incarceration have never been found true by a jury, See: Alleyne v. U.S.,
28 133 S.Ct. 2151, 2155-63, 2164-65 [186 L.Ed.2d 315] (2013).

B. THE CALIFORNIA SUPREME COURT, THE ATTORNEY GENERAL AND THIS COURT ARE INFORMED THAT VICE PRESIDENT KAMALA HARRIS WAS AWARE THAT FAILING TO CORRECT A BLATANT SENTENCING ERROR WOULD ALLOW THOUSANDS OF BLACK AND HISPANIC PRISONERS TO REMAIN WRONGLY INCARCERATED UNDER A REPEALED LAW

(24). Because the CSC and the Attorney General (Kamala Harris back in 2013) had direct knowledge of the thousands of Black and Hispanic prisoners who would have to be released based on their contractually earned Good Time Credits (See Appendix 5, Legislative Declaration on Good Time Credits) both engaged in a conspiracy to cover up and conceal this very serious unconstitutional jurisdictional sentencing error.

Additionally, AG. Harris also had taken substantial campaign contributions from the California Correctional Peace Officers Association (See: Appendix 4) which could mean criminal conspiracy charges (Quid Pro Quo campaign contributions in exchange for silence and continued costly incarceration harming mostly Black and Hispanic inmates).

(25). Both AG Harris and the CSC justices were well aware that under California's Constitution (Article IV § 9) "Briggs" could not adopt the repealed ISL's sentencing structure, so there is no question that reenactment of the repealed law and the ways and means for its accomplishment were prohibited and is a separate subject that was never submitted to voters according to law, and that made Prop. 7 Void. (See: Cal. Const. Art. II § 8(d); Cf. Art. IV § 9). There is also no question that as a State Legislator, Senator Briggs intentionally deceived the voters by failing to present the subject of reenactment of the ISL's Minimum to Maximum Sentencing Structure, along with the statutes necessary to carry uncertain sentencing into effect, for voter approval (See: Cal. Const. Art. II § 8(d); Cf. Scott A. v. Superior Court, 27 Cal.App.3d 292, 295 [133 CR 683] (1972); accord Wallace v. Zinman, 200 Cal.585, 590 [254 P. 946] (1927); Cf. 16 Am.Jur.2d Constitutional Law § 256, et seq.).

1 (26). The only way of saving Prop. 7's adopted sentencing structure,
2 which cannot exist under the DSL's purpose and policy, would be if the
3 parole dates and DSL sentencing for Prop. 7 offenders are honored and are
4 fixed through the gateway of Penal Code § 2931; adopted by the voters as
5 their only means for fixing parole release dates as of Nov. 7 1978 (See:
6 Prop. 7's Title & pgs. 44 & 45 where the court imposes a flat DSL "term of
7 25 years" to a finality on a Category 6 sentence; Cf. Penal Code §§ 2931 &
8 3000; Cf. Cal. Const. Art. II § 8(d) & Art. IV § 9 & 16). Under any other
9 set of circumstances, Prop. 7 and its uncertain sentencing structure is
10 "void on its face" and the punishment for these offenses must be returned
11 to what they were prior to Nov. 7, 1978 (See: In re Blaney, 30 Cal.2d 643,
12 655 [184 P.2d 892] (1947) [Re: Severability Clause].

(27). Moreover, as demonstrated throughout the legislative process from 1976 to 1977, when Senator Briggs failed in his financial conspiracy to convince Governor Edmund G. Brown Jr., to Veto the repeal of the ISL and the enactment of the DSL into law, he then unlawfully used his constituency and the divine nobility of the governmental status of his Senate office to qualify Prop. 7 as the People's Initiative (See: Prop. 7 1977 Ballot at Appendix E.) Because Senator Briggs did not have the necessary votes for a referendum to defeat the repeal of the ISL through both houses of the legislature he then, under the guise of codifying the death penalty, illegally and deceptively attempted to include Minimum to Maximum sentencing from the repealed ISL, without submitting the specific subject of its reenactment for voter approval. This means Senator Briggs did indirectly what the State Constitution prevented him from doing directly, which is why this State has unconstitutional and uncertain punishment for crime existing under the DSL today (See: Cal. Const. Art.

1 II § 8(d); Art. IV §§ 9 & 16; Scott A. v. Superior Ct., Supra at Pg.292;
2 Cf. Cal. Gov. Code § 9609); accord Fairbank v. United States, 181 U.S.
3 253, 294 [21 S.Ct. 698] (1901). The record reflects Senator Briggs was
4 sanctioned for circumventing the Legislative process and never again held
5 public office. The CSC and AG Harris have been successful at concealing
6 and intentionally avoiding these facts for many years. Many Legislators
7 have also been successful at concealing the Quid Pro Quo campaign
8 contributions which came with the promise and understanding from the
9 lawmakers to support more mass incarceration legislation (See: Appendix
10 7).

11 C. THE PAROLE AGENCY ACTED WITHOUT JURISDICTION AND IN BLATANT
12 DISREGARD TO THIS STATE COURTS OWN PRECEDENT AS WELL AS THE
13 NINTH CIRCUIT, THIS COURTS PRECEDENT AND CONTINUES TO ABUSE
14 IT'S LACK OF ARTICLE III POWER TO ILLEGALLY EXTEND PRISON
TERMS AS AN ONGOING FORM OF PUNISHMENT FOR A CRIME THAT HAS
NOT YET BEEN COMMITTED UNDER THE GUISE OF SUITABILITY, WHICH
15 IS IN AND OF ITSELF A WORD THAT CANNOT BE DEFINED
TO ANY DEGREE OF CERTAINTY

16 (28). As shown through this Petition and according to State law, every
17 person whose crime was committed after repeal of the ISL, along with its
18 purpose and policy, and who were not sentenced to serve a "Straight Life"
19 punishment/sentence, which had no minimum term, are having their sentence
20 unconstitutionally administered with a complete lack of any sentencing
21 Jurisdiction and their earned parole release dates unlawfully taken from
22 them without due process and in violation of equal protection of the law.
23 This is so because they are denied parole by a non-constitutional
24 ministerial Parole Agency who in a conspiracy with John Briggs teamed up
25 with legislators Burton and former Lierutenant Governor Ed Reinecke and
26 Attorney General Lockyer, to enlarged the Parole Agency's authority to

1 hold so-called suitability hearings on less than SB-42 category five
2 crimes without authority of law. For example, it was the Parole Agency
3 who had its term fixing and extending powers repealed for abuse, and who
4 continue to usurp legislative and judicial powers to decide and impose
5 different punishment for different prisoners committing the same crime.
6 This same Parole Agency continues to enlarge its powers in violation of
7 Cal. Const. Art. III § 3 every time it extends one's prison term by
8 deciding who is and who is not a danger to public safety which is a
9 exclusive judicial function that cannot be preformed by a ministerial
10 agency against a class of offender they have no jurisdiction over and
11 absent a trial on the matter of the person's alleged danger to public
12 safety, in violation of the State's Constitution and the United States
13 Supreme Court precedent (See: Cal. Const. Art. III § 3; accord U.S. Const.
14 5th, 6th, & 14th Amend.'s; Cf. Ring v. Arizona, 536 U.S. 584, 602 [122
15 S.Ct. 2428] (2002); Cf. People v. Olivas, 17 Cal.3d 236, 243-44, 246-47
16 [131 CR 55] (1976); accord Apprendi v. New Jersey, 530 U.S. 466, 469-476
17 (2000, [Depravation of liberty without Due Process]).

18 VI. CONCLUSION

19 (29). Lastly, what makes the Executive Branch Parole Agency's actions
20 so outrageous is how prisoners are having the punishment for their crimes
21 arbitrarily decided by the same branch of government charged with their
22 prosecution. This is not only fundamentally unfair, but such a
23 administrative process cannot be tolerated to exist under the American
24 Justice System (maybe in Iran, Russia or China, but not here). However,
25 as shown throughout this Petition, and to add insult to injury, these same
26 State Officials and their employee relatives have taken it upon
27 themselves, without authority of law to decide punishment for crime for

1 personal and financial gain in such a way that every offender committing
2 the same crime is serving a different punishment being administratively
3 decided in violation of Cal. Const. Art. III § 3. In Petitioners case the
4 amount of time he has already served is grossly disproportionate and
5 unlawful. Please take notice that based on all the above facts that
6 Petitioner's adopts herein, he respectfully requests that this Court
7 consider and compare the case of Dennis Stanworth. Mr. Stanworth was
8 sentenced to death following his plea of guilty to two first degree murder
9 and two attempted murders. He also pled guilty to four charges of
10 aggravated kidnaping, forcible rape, oral copulation, and robbery.
11 Because of People v. Anderson, 6 Cal.3d 628 [100 CR 152] (1972),
12 Stanworth's sentence was modified to "Life" with the possibility of
13 Parole. In 1979, the Parole Agency fixed Stanworth's term at twenty-
14 three years, four months and nine days. That is 3.9 years for each of
15 Stanworth's Six Life Sentences and other crimes. Also noteworthy, the
16 court held that Stanworth was not sentenced to an indeterminate sentence
17 but to a determinate life sentence, See: In re Stanworth, 33 Cal.3d 176,
18 177-183 [187 CR 783] (1982).

19 (30). It is outrageous government conduct when a non-constitutional
20 ministerial agency can make law to deny parole for speculative
21 unsuitability reasons which clearly is punishment for a crime that has
22 not yet been committed. And as this Petitioner shows is happening today
23 at the voters and taxpayer expense, for personal and financial gain, and
24 to further the mass incarceration industry. Petitioner posits that
25 Administrative action after Nov. 7, 1978 has been taken by the
26 incarcereators for profit who continue to completely ignore the "Rule of
27 Law" and for the purpose of continuing an unconstitutional and illegal

1 administrative sentencing process for personal gain using and exploiting
2 the minority population (mostly Blacks and Hispanics) as pawns and
3 chattel, please closely review Appendix 4.

VII. PRAYER FOR RELEIF

5 (31). Because the CSC has failed to follow the Rule of Law mandated by
6 the U.S. Constitution, this Court and their own CSC precedent including
7 the California Constitution on the facts presented by Petitioner, as well
8 as the likelihood that many more mostly Black and Hispanic prisoners will
9 needlessly continue to be wrongly incarcerated, this Court should Grant
10 Certiorari and decide the case on the merits as supported by the
11 documentary evidence and facial facts presented.

12 (32). What chance does a reasonable person have to protect their
13 federally guaranteed rights after those Constitutional Rights were denied
14 them because, like the case at bar, the State's highest court refuses to
15 follow its own decisions, obey the mandatory provisions set forth by the
16 Legislative policy, and the State's Constitution, or acknowledge this
17 Court's precedent and Rule of Law.

VI. VERIFICATION

19 (33). As the Petitioner in the above entitled action, I declare under
20 penalty of perjury under the laws of the United States of America, that
21 the foregoing is true and correct. Executed on May (month) 2 (day),
22 2023.

Respectfully Submitted

Allen Ray Auten
Allen R. Auten
Petitioner in Pro Se