

SUPREME COURT

FILED

FEB 15 2023

Jorge Navarrete Clerk

S274173

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ALLEN RAY AUTEN on Habeas Corpus.

The request for judicial notice is denied.

The petition for writ of habeas corpus is denied.

Evans, J., was recused and did not participate.

GUERRERO

Chief Justice

APPENDIX 14:

Jun. 2, 2022 Request of Judicial Notice documents
the Court refused to acknowledge this Court's
and the CSC's own controlling authorities.

12

SUPREME COURT
FILED

JUN 2 2022

Jorge Navarrete Clerk

Deputy

IN THE SUPREME COURT IN AND
FOR THE STATE OF CALIFORNIA

Case No. S274173

App. No. CO95350

Sup. # STK-CR-FMISC-2021-8070

MOTION FOR:

Judicial Notice

MEMORANDUM OF:

POINTS AND AUTHORITIES

1 Allen R. Auten, J-42767
Alpha - 5 (CIM) MH-188-L
2 Post Office Box No. 3100
Chino, California 91708
3 Phone No. (909) 597-1821

8 ALLEN R. AUTEN,
9
10 Petitioner,
11
12 vs.

11 KATHLEEN ALLISON, CDCR Sec.; JENNIFER
SHAFFER, Executive Officer of the BPH;
12 ROB BONTA, (A) Cal. Attorney General;
JAMES HILL (A) CIM Warden; & GAVIN C.
13 NEWSOM, et al, Governor for the State
of California,

14 Respondents, et al.
15

17 TO THE HONORABLE JUSTICES OF THE SUPREME COURT
18 IN AND FOR THE STATE OF CALIFORNIA.

19 I. INTRODUCTION AND PROCEDUAL HISTORY

20 (1). Please take notice that effective Jan. 7, 2022, Petitioner had
21 exhausted his State remedies in the Court of Appeal after exhausting his
22 remedies in the Superior Court (Note: in both cases, Petitioner's filings
23 contained the six (6) page HC-001 Form stating two (2) grounds for relief
24 and eight (8) exhibits supporting Petitioner's allegations). In his cases,
25 Petitioner alleged that: A. the over 27 years Petitioner has suffered for
26 the offense is disproportionate to the crime itself; B. his sentence has
27 been unconstitutionally administered by a "State-wide Ministerial Agency"

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of California,

14 Respondents, et al.
15

MOTION FOR:

DECLARATORY AND INJUNCTIVE RELIEF

AND/FOR

REQUEST FOR JUDICIAL NOTICE

MEMORANDUM OF:

POINTS AND AUTHORITIES

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18 IN AND FOR THE STATE OF CALIFORNIA.

19 I. INTRODUCTION AND PROCEDUAL HISTORY

20 (1). Please take notice that effective Jan. 7, 2022, Petitioner had
21 exhausted his State remedies in the Court of Appeal after exhausting his
22 remedies in the Superior Court (**Note:** in both cases, Petitioner's filings
23 contained the six (6) page HC-001 Form stating two (2) grounds for relief
24 and eight (8) exhibits supporting Petitioner's allegations). In his cases,
25 Petitioner alleged that: A. the over 27 years Petitioner has suffered for
26 the offense is disproportionate to the crime itself; B. his sentence has
27 been unconstitutionally administered by a "State-wide Ministerial Agency"

1 that C. is acting in excess of its jurisdiction and without term fixing
2 powers because effective July 1, 1977, ALL punishment for crime was fixed by
3 the Legislature and imposed to a finality by a court of law (See: Habeas @
4 EXHIBIT 5 Part 1 - Pen. Code § 1170(a)(1)). By the Legislative Declaration
5 itself, that the purpose for imprisonment for crime, on or after July 1,
6 1977, is "punishment for the crime itself" shows the Parole Agency has
7 exceeded its jurisdiction to make law (absent a constitutional amendment) by
8 including Petitioner's lesser offense with the greater class of crimes
9 through its rule making authority to give itself jurisdiction in violation
10 of Article III § 3 of the State Constitution and the Fourteenth Amendment to
11 the United States Constitution. For example, when the Parole Agency acted
12 to include the lesser offense of a Pen. Code § 187 in the 2nd degree with
13 SB-42's more serious and greater Category Five list of crimes where the
14 punishment is a determinate term of "**Straight Life**", when Petitioner was
15 convicted of a lesser offense, which the Legislature expressly excluded from
16 the jurisdiction of the Parole Agency, has denied those within the lesser
17 SB-42 Category Four, substantive due process and equal protection of the DSL
18 (See: Cal. Const. Art. II § 8(d); Art. III § 3; and Petitioner's EXHIBIT 7
19 SB-42 at pg. 3 which states:

20 "(4) 5, 6, 7 years - this classification covers the most serious
21 crimes that are to be punished with something **less** than life im-
22 prisonment or death. SB 42 places the following five crimes into
23 this category: second degree murder; attempted murder; explosives
24 with bodily injury; gang rape, and conspiracy to commit a crime on
certain elected officials." (Note: Prop. 7 did not ask the voters
to "change" a SB-42 Category Four crime into a Category Five or
from a determinate sentence into an indeterminate sentence under a
repealed ISL; cf. Writ @ EXHIBIT 7 Part 1)

25 (2). Please take notice that Petitioner in his effort to exhaust his
26 state remedies, he filed his initial Habeas Writ in the Superior Court where
27 he was sentenced but that Court failed to issue the writ on all the issues



1 and did not allow him to fairly litigate each of the causes he raised in
2 accordance with State and United States' Supreme Court precedent (See:
3 **Lucido v. Superior Court**, 51 Cal.3d 336, 341-42 [272 CR 767] (1990) &
4 **Sanders v. United States**, 372 U.S. 1, 8, 15-16 [83 S.Ct. 1068] (1963)). For
5 example, the lower court completely ignored prior precedent and the Parole
6 Agency's own Rules and Regulation (See: Petitioner's Writ @ EXHIBIT 4; cf.
7 Petitioner's Motion @ Section II, infra, and cases cited therein stating
8 that "... once the term is fixed it cannot be increased"). Therefore,
9 Petitioner is requesting a "Show of Cause" issue on all the issues he raised
10 in the two grounds listed in the writ and on the subject of whether or not
11 the 1978 Prop. 7 Initiative is unconstitutional on its face because:

- 12 1. Senator Briggs, Prop. 7's Author and Drafter did not have the use of
13 the People's Initiative process when he did not have the votes to
14 place the issues raised in Prop. 7 by Referendum (See: ATTACHMENT
15 5). and
- 16 2. The Legislature declared in AB-476 on pg. 17, lns. 21-36 that the
17 purpose of imprisonment for crime is "**punishment** for the crime
18 itself" (ibid). However, under Prop. 7's term to life sentencing
19 structure, that "punishment for the crime itself", is fatally
20 uncertain as to what the actual punishment will be (inflicted
21 equally) in accordance with SB-42 (1976), AB-476 (1977), and the
22 "Enrolled Bill Report", stating that every offender and their family
23 members have the right to know at sentencing the exact time the
24 offender will be coming home; whereas Prop. 7 uncertain sentencing
25 scheme denies these rights in violation of due process and equal
26 protection of the law (See: ATTACHMENTS 1 & 4). and
- 27 3. As a Senator Briggs could not use the initiative process to adopt the



1 term to life sentencing structure from the repealed ISL without
2 submitting the subject for voter approval pursuant to Gov. Code §
3 9609 & Cal. Const. Art. IV § 9, thus making Prop. 7 "Void on its
4 Face" because it does not conform to the Legislative Declaration in
5 Pen. Code § 1170(a)(1) and denies those adversely effected the same
6 rights for which **All** Pen. Code provisions must conform under the law
7 as it existed on Nov. 7, 1978. For all the reasons expressed above,
8 Petitioner is requesting Declaratory and Injunctive Relief for the
9 entire class on these matters due to the Legislative Declaration in
10 Pen. Code § 1170(a)(1) and its preclusive effect it has on Prop. 7's
11 uncertain sentences (See: ATTACHMENT 3,4, & 5 cf. Ptrs. Writ @
12 EXHIBIT 5 Part 1 - Pen. Code § 1170(a)(1), Stats 1977 Ch. 165 § 15
13 infra).

14 **Chapter 4.5 Trial Court Sentencing: § 1170(a)(1) Findings and Declarations:**

15 (a)(1) "The Legislature finds and declares that the purpose of imprison-
16 ment for crime is punishment. This purpose is best served by terms
17 proportionate to the seriousness of the offense with provisions for
18 uniformity in the sentences of offenders committing the same offense
19 under similar circumstances. The Legislature further finds and declares
20 that the elimination of disparity and the provision of uniformity of sen-
21 tences can best be achieved by determinate sentences fixed by statute in
22 proportion to the seriousness of the offense as determined by the
23 Legislature to be imposed by the court with specified discretion."

24 **II. IN ADDITION TO JUDICIAL NOTICE THE QUESTION BEFORE THIS COURT IS:**

25 **"WHAT IS A "LIFE" SENTENCE UNDER STATE LAW AFTER JULY 1, 1977".**

26 (3). Before repeal of the Indeterminate Sentencing Law (ISL) and from
27 1917 up to July 1, 1977, those sentenced to a determinate "**Straight Life**" a
SB-42 Class 5 penalty had to serve a minimum of 7 years before found to be
"**REHABILITATED**" and released on parole (Note: the average term served was 8
to 13 years before parole). Those under the "ISL", had their terms fixed
after being found to be "Rehabilitated" before release on parole (See:



1 9/02/75 Admin. Dir. 75/30; cf. **In re Stanworth**, 33 C.3d 176, **181-86** [187 CR
2 783] (1982); **In re Jeanice D.**, 28 C.2d 210, **217, 223-28** [168 CR 455] (1980);
3 **In re Stanley**, 54 C.A.3d 1030, **1036-38, 1041-43** [126 CR 783] (1976); **People**
4 **v. Walker**, 18 Cal.3d 232, **243-44** [133 CR 520] (1976); **In re Rodriguez**, 14
5 C.3d 639, **652, 653-54**, n.18 & 20 [122 CR 552] (1975); **People v. Wingo**, 14
6 Cal.3d 169, **183-84** & n.15 [534 P.2d 1001] (1975); **In re McManus**, 123 C.A.
7 395, **396** n.1 [266 P.2d 929] (1955)).

8 (4). Previous decisions of the State's highest Court tells us that
9 before repeal of the Indeterminate Sentencing Law (ISL), persons **not** sent-
10 enced to serve "**Straight Life**" penalties were sentenced to a "**MINIMUM TO**
11 **MAXIMUM**" term until fixed by the Parole Agency (See: Pen. Code Sections **671,**
12 **3020-3025**, (repealed) and § **5077**, amended to remove the last vestage of the
13 Parole Agency term fixing powers). Without term fixing power, uncertain
14 punishment cannot exist (See: Cal. Const. Art. III § 3; Pen. Code §§ 12 &
15 13). Effective July 1, 1977, the purpose for imprisonment for **all** crimes
16 changed from "mitigation of the term" based on rehabilitation, to "**Punish-**
17 **ment for the Crime Itself**" (See: Pen. Code § 1170 (a)(1), Stats 1977 Ch. 165
18 § 15). On July 1, 1977, uncertain penalties ceased to exist (**ibid**). Then,
19 on Nov. 7, 1978, the voters ratified the 1978 Prop. 7 Initiative and
20 "**CHANGED**" the sentence for a Pen. Code § 187 in the 1st degree from "**Life**"
21 to "**25-years-to-life**". "**Increases the penalty for second degree murder**" and
22 stated: "**Prohibits parole ... subject to good-time credits**" and nothing more
23 (See: Prop. 7's Pen. Code § 190.4 **stating that** when the person is found
24 guilty of first degree murder and special circumstances are not proved, the
25 "**court**" shall impose a "**term of 25 years**").

26 (5). Please take notice that based on the foregoing facts, the question
27 then becomes how does the lesser "**Term-to-life**" or, SB-42 Category one thru



1 four crimes morph by ministerial law making, into the same category as the
2 more serious determinate SB-42 "**Straight Life**" "**For Life**" category five list
3 of crimes and turn the Pen. Code § 1170(a)(1) declaration in the Determinate
4 Sentencing Law on its head. As shown by statute, this question can best be
5 answered by Prop. 7 because the subject of reenacting any part of the ISL is
6 not presented in the Initiative which violates Articles II § 8(d) and IV § 9
7 of the State Constitution. There is no question Senator Briggs knew this
8 but did it anyway and completely disregarded the Legislative Declaration in
9 Pen. Code § 1170(a)(1) (See: Cal. Const. Art. II § 8(d); Art. III § 3 & Gov.
10 Code § 9609). The second part of the question is whether Senator Briggs
11 could use the power of initiative to defeat the purpose and policy stated by
12 the Legislature in Pen. Code § 1170(a)(1)'s declaration when he did not have
13 the votes for a Referendum and could not do indirectly what he was prevented
14 from doing directly by using the People's Initiative. For his illegal acts,
15 Senator Briggs was sanctioned (fired) and told he would never be allowed to
16 hold another public office in this state (See: **Fairbank v. United States**,
17 181 U.S. 283, 294 [21 S.Ct. 648] (1901); cf. Gov. Code § 9609 and **Gibbs v.**
18 **City of Napa**, 130 Cal. Rptr. 382, 384-385 [59 Cal.App. 3d 148] (1976); **In**
19 **the matter of Goddard**, 24 Cal.App. 2d 132, 138-141 [74 P.2d 818] (1937) and
20 **Association for Retarded Citizens v. Department of Developmental Services**,
21 38 C.3d 384, 390-394 [211 CR 758] (1985) and **Bixby v. Pierno**, 4 Cal.3d 130,
22 137-145, 150-151 [123 P.2d 457] (1971)).

23 (6). Petitioner posits that the questions raised by Prop. 7's uncertain
24 sentencing scheme, can only be answered in two ways. First, because the "**25**
25 **and 15 year terms**" described in Prop. 7's title can only be enforced accord-
26 ing to the Legislative Declaration in Pen. Code § 1170(a)(1) as it existed
27 on Nov. 7, 1978, and exactly the way the voters were told it would be and



1 the same as all other SB-42's list of crimes committed on or after July 1,
2 1977; where a person earns their release on parole "**subject to good-time**
3 **credits**" (See: **s/n #1**) or Secondly, Petitioner posits, Prop. 7 is "**void on**
4 **its face**" as a violation of State and United States Supreme Court precedent
5 (See: **United States v. Gonzales**, 520 U.S. 1, 6 (1997) held: "We have stated
6 time and time again that the courts **must** presume that a legislature says in
7 a statute what it means and means in a statute what it says there."; cf.
8 Pen. Code § 1170(a)(1), Stats 1977 Ch. 165 § 15; cf. Prop. 7's Title @
9 ADDENDUM 3). Moreover, it would conflict with the Legislative policy and
10 the specific language used in Prop. 7's Title and Pen. Code § 190.4 if the
11 penalties of 25 and/or 15 years were construed to be "Life" sentences when
12 the Legislature declared that **ALL** persons whose crime was committed on or
13 after July 1, 1977 had a right to know at sentencing the exact punishment
14 for the crime itself, including the offender's family members (See: SB-42

15 **S/n #1:** As shown by the repealing statutes in Stats 1976 Ch. 1139 and Stats 1977 Ch. 165, the
16 statutory authority allowing the Parole Agency to fix terms was repealed (See: Pen. Code Sec-
17 tions 671, 2920-2940, 3020-3025, repealed and § 5077, amended to remove the last vestage of the
18 Parole Agency's Term Fixing Authority). The controlling issue in this case is the Legislative
19 Intent in its Pen. Code § 1170(a)(1), setting forth the PURPOSE for imprisonment for all crimes
20 committed on or after July 1, 1977 (See: Legislative Pen. Code § 1170(a)(1) Declaration & Pen.
21 Code § 2930, et seq.). For example, "The almost unbroken custom for centuries has been to
22 preface laws with a Statement in some form declaring the enacting authority. The purpose of an
23 enacting clause of a statute is to identify it as an act of legislation by expressing on its
24 face the authority behind the law" (73 Am.Jur2d Statutes; Sjoberg v. Security Savings & Loan
25 Ass'n, 73 Minn. 203, **212-213** (1898)). In this case the enacting clause states the purpose of
26 imprisonment in Pen. Code § 1170(a)(1), and in 82 C.J.S. Statutes, § 65 p. 104, it states:
27 "[A]lthough there is no constitutional provision requiring an enacting clause such a clause
has been held to be requisite to the validity of a legislative enactment" (See: Harry
Bettenson, Documents of the Christian Church, 2nd ed. Oxford Univ. Press, 1963 p. 65; cf,
Morgan v. Murray, 328 P.2d 644, **654** (Mont. 1958) stating: "The enacting clause of a bill goes
to the substance of that bill, it is not merely procedural.")). Effective July 1, 1977, the
Legislature stated its intent by repealing the ISL and in its Pen. Code § 1170(a)(1) declara-
tion made clear its Purpose & Policy standards for control over all Pen. Code violations for
crimes listed in its "Seven Category Sentencing Structure" and there is nothing in the Nov. 7,
1978 Prop. 7 Initiative asking the voters to reenact any part of the ISL, change or repeal any
part of the DSL, nor reconstitute the Parole Agency with Term Fixing Powers, without which the ISL
cannot exist (See: ADDENDUMS attached hereto). This means, unless it can be proven otherwise
petitioners must be given the same punishment as those in their SB-42 classification; such as
provided by CDCR shown in SB-42's Ways & Means Seven Category Sentencing Structure.



1 ENROLLED BILL REPORT at Benefits ¶ 12). Furthermore, Prop. 7 did not ask the
2 voters to change the punishment for crime from determinate sentencing to
3 indeterminate sentencing under the repealed ISL and at that moment in time,
4 the punishment for a Pen. Code § 187 in the second degree was a SB-42
5 Category Four Crime of "Less than Life" in which the Parole Agency had no
6 jurisdiction over on Nov. 7, 1978 when Prop. 7 was ratified by the voters
7 (See: Cal. Const. Art. III § 3; cf. Witkin & Epstein, Crim. Law Vol. 1 § 12
8 (1989) and Gov. Code § 9609). Moreover, any construction that defeats the
9 Legislative Declaration in Pen. Code § 1170(a)(1) without submitting the
10 subject to the voters would seemingly be void simply because the penalty
11 provisions must conform to the Legislative Declaration and not the other way
12 around (See: Cal. Const. Art. III § 3; Art. IV §§ 9 & 16; & U.S. Const. 14th
13 Amend. & ante @ s/n #1).

14 (7). Please take notice that the law of this case clearly shows that
15 John V. Briggs, Prop. 7's Author and Drafter as a State Senator, did not
16 have the votes for a Referendum and therefore did not have the power of
17 initiative nor could he recreate uncertain punishments for crime by adopting
18 the sentencing structure from the repealed ISL under the Purpose & Policies
19 of the DSL (See: cf. Fairbank v. United States, supra, 181 U.S. @ 294 &
20 Gibbs v. City of Napa, supra, 130 Cal. Rptr. @ pp. 384-385; cf. Cal. Const.
21 Art. III § 3; IV §§ 8(b), 9, & 16 and U.S. Const. 14th Amend.). Senator
22 Briggs knew this but submitted Prop. 7 knowing it was a direct attack upon
23 the Legislative Declaration in Pen. Code § 1170(a)(1) as well as a violation
24 of Article III § 3 to give the Executive Branch judicial and legislative
25 powers without a Constitutional Amendment (See: e.g., Pen. Code Sections 12
26 & 13; cf. Stats 1977 Ch. 165 § 15). This, in and of itself proves that the
27 Parole Agency has been exceeding its jurisdiction and statutory powers since



1 Nov. 7, 1977 every time this "MINISTERIAL AGENCY" fixes the term within
2 Prop. 7's sentencing structure without term fixing powers (See: ADDENDUM 1 -
3 LIST OF DECISIONS CALLING FOR JUDICIAL NOTICE and ADDENDUM 2 - FYI WHY
4 UNCERTAIN PUNISHMENT FOR CRIME CANNOT EXIST UNDER STATE LAW; and ADDENDUM 3
5 - 1978 Prop. 7 Initiative).

6 CONCLUSIONS

7 (8). Please take notice that Petitioner posits that this writ should be
8 granted unless the Respondents can meet their burden and show on the merits:

- 9 1. The Indeterminate Sentencing Law, as it existed from 1917 to 1977
10 was **not** repealed, or that it was lawfully reenacted by Prop. 7
11 voters; and
- 12 2. That the Determinate Sentencing Law and the Legislative Declara-
13 tion in Pen. Code § 1170(a)(1) did not supersede and control all
14 Penal Code provisions that provide "**punishment**" for ALL crime for
15 which imprisonment is prescribed on or after July 1, 1977; and
- 16 3. That during the Legislative process used to repeal the ISL, the
17 Legislature gave the Parole Agency jurisdiction to fix terms for
18 crimes listed in SB-42's Categories one through four or in any
19 other lawful legislative process; and
- 20 4. By what authority of law Prop. 7 voters were asked to give the
21 Parole Agency jurisdiction over less than SB-42 Category Five list
22 of crimes; and
- 23 5. That after repeal of the ISL and its "PURPOSE, POLICY, WAYS and
24 MEANS, necessary for the ISL's existence, by what authority of law
25 the ISL was reenacted with voter approval and the Parole Agency
26 was given back its term fixing authority without which the ISL
27 cannot exist.



1 (9). Please take notice that Petitioner posits that unless it can be
2 shown otherwise, Petitioner respectfully requests this Court find and
3 declare that the Legislative Declaration in Pen. Code § 1170(a)(1), stating
4 that the "**punishment**" is for the crime itself must be the same for every
5 offender committing the same offense (See: Cal. Const. Art. 1 § 7(a)(b) &
6 the U.S. Const. 14th Amend.). Additionally, the "**punishment**" for the crime
7 itself, and must be fixed to a certainty in all its terms and provisions
8 when it leaves the hands of the Legislature so that every offender
9 committing the same crime serves the same punishment as determined by the
10 Legislature and imposed by a court of law so that no person is kept beyond
11 his minimum term or held beyond his Pen. Code § 2931 contractually earned
12 good-time and participation release date in violation of United States
13 Supreme Court precedent (See: Cal. Const. Art. III § 3 & U.S. Const. 14th
14 Amend.; cf. **Alleyne v. United States**, 113 S.Ct. 2151, 2155-63 & 2164-65 [186
15 L.Ed.2d 315] (2013) [cited on pg. 3 in Petitioner's Writ]; cf. **Sandin v.**
16 **Conner**, 575 U.S. 472, 477-80, 482 [115 S.Ct. 2293] (1995) [Held: mandatory
17 parole based on state credit earning statute]). Otherwise we have different
18 punishments for different persons committing the same crime being
19 arbitrarily decided by a ministerial agency under the same branch charged
20 with the person's prosecution. Petitioner posits that this is not only
21 fundamentally unfair, it violates the State Separation of Powers Clause and
22 denies those adversely affected substantive due process and equal protection
23 of the DSL (See: EXHIBIT 7 Part 2 - AB-476 @ p. 17, lns. 21 thru 36. Stats
24 1977 Ch. 165 § 15; cf. Cal. Const. Art. III § 3).

25 **REQUEST FOR RELIEF**

26 (10). Please take notice that Petitioner adopts herein all his pre-
27 vious claims brought in his Habeas Writ, as well as in this Motion for



1 Declaratory and Injunctive Relief and respectfully requests this Court to
2 issue a "Show of Cause" for Respondent(s) to answer this complaint pursuant
3 to Pen. Code § 1473(a)&(b) on:

4 1. The two grounds raised in his original Habeas Writ pending in this
5 Court and the matters presented ante from pg. 1 ¶ (1) thru pg. 10
6 Ins. 1 thru 27 inclusive; and

7 2. That this Court "ORDER" Respondent(s) show by what authority of
8 law the Parole Agency was vested with jurisdiction by the Legisla-
9 ture and/or Prop. 7 voters, over less than SB-42 Category Five
10 Crimes as those crimes existed on Nov. 7, 1978, and/or over Peti-
11 tioner and those in his SB-42 Category Four Class (See: ante @ pg.
12 2, Ins. 20 thru 24; and

13 3. That this Court "Find & Declare" that those within Petitioner's
14 SB-42 Category Four who have specifically performed according to
15 the terms and provisions of Pen. Code §§ 1170(a)(1) and 2931 who
16 are entitled to have been released "... [s]ubject to good-time
17 credits", be "ORDERED" by this Court to be released on parole
18 forthwith and if those contractually earned Pen. Code § 2931
19 credits exceed the term of parole that those person's be ordered
20 discharged; and

21 4. That this Court "Find & Declare" that Petitioner and those within
22 his class, who have performed according to the "Aleatory Con-
23 tract" provisions in Pen. Code § 2931 and have served "punish-
24 ment" in excess of the "MINIMUM" term -- in violation of United
25 States Supreme Court precedent -- of either 10-years 6-months for
26 a 2nd degree Pen. Code § 187 and/or 16-years 6-months for a 1st
27 degree Pen. Code § 187 and whose credits exceed parole of 1-year
for 2nd degree and 3-years for 1st degree, be "ORDERED" discharged
forthwith; and

5. That for all the reasons expressed in this Motion and those filed
in his Writ of Habeas Corpus, that this Court "Find & Declare" the
Nov. 7, 1978 Prop. 7 Initiative to be "Void on its Face" and that
unless shown by authority of law, under the "Rule of Law" that the
State's Ministerial Parole Agency can make law to increase its own
jurisdiction and give itself term fixing powers, that its author-
ity and jurisdiction is confined (exclusively) to SB-42 Category
Five Crimes and no other; and

6. That based on all the issues presented herein and in Petitioner's
Writ, that this Court issue the "Writ" and grant any other relief
this Court finds he is entitled to as a matter of law; including
the "Findings" that a "Structural Error" occurred at sentencing as
well as in the post administration of a repealed laws sentencing
scheme proving Petitioner's fundamental rights, under the State
and United States Constitutions, have been violated.

27 /////



Respectfully submitted,

Allen Ray Auten

Allen Ray Auten, et al.

V E R I F I C A T I O N

As the Petitioner in the above entitled action, I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Executed on April (Month) 28 (Day), 2022.

Allen Ray Auten

Allen Ray Auten, et al.

4.28.22
Date

WORD-COUNT CERTIFICATE

I hereby certify, under penalty of perjury, that the attached Motion contains no more than 3,360 words, including footnotes, pursuant to the California Rules of Court, as determined by Petitioner based on 75 spaces per line, 7 word character and 27 lined legal paper.

Dated: 4.28.22

Respectfully submitted,

Allen Ray Auten

Allen Ray Auten
Petitioner, in pro se.

