Case No.: 24-5436 ORIGINAL

SUPREME COURT OF THE UNITED STATES

David Fink,

Petitioner.

VS.

State of California,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

CHALLENGING THE SUPREME COURT OF CALIFORNIA

David Fink, BR6598

POB-4000, A2-121

Vacaville Ca. 95696-4000

In Propria-Persona

IMPORTANT QUESTIONS OF LAW

In California, the right of appeal has been reduced to a farce or a sham by appointed attorney's tactical choice to undermine the appeal with superficial issues (or watered down substantial issues) that has converted the substantial right of appeal into a "charade" complete with State actors acting out their phony roles amounting to a fraud on the court.

The appellant is then procedurally barred from bringing his substantial claims into federal court because s/he did not include them in the appeal in which s/he had no voice.

This is made possible because: (A. an appellant has no right of self-representation (Martinez v. Cal. COA, 528 US 152 (2000)); (B. the COA gets to "pick and choose" the appellate attorney; and (C. many conservative COA's appoint attorneys who will not "rock the boat."

(1. Should an appellant have a voice in his or her own appeal? If not, can s/he be procedurally barred for failing to raise it as here?

(2. Where, as here, the COA is aware that a large part of the lower court record is missing from the appeal; can "counsel hardly be said to have made a strategic choice when s/he ha[d] not yet obtained the facts which such a decision could be made." (United States v. Gray, 878 F.3d. 702, 712 (3rd Cir. 1989))?

(3. Should an appellate attorney include the entire lower court record in the appeal so s/he can make an informed tactical decision? And if s/he refuses to do so, should appellant be permitted to do so?

(4. "Ineffective Assistance of Appellate Counsel" ("IAAC") is conclusively established where s/he failed to raise: (a. "potentially meritorious" claims; or (b. one's "stronger than those presented on appeal." (Nguyen v. Curry, 736 F.3d. 1287, 1291 (9th Cir. 2013) and Hurles v. Ryan, 752 F.3d. 768, 783 (9th Cir. 2014)). Does the Fourteenth Amendment require the State to consider these facts when presented by an appellant during an appeal?

(5. If an attorney refuses to raise substantial constitutional claims on appeal, does a COA err by: (1. refusing to take judicial notice of its own records of the claims brought in pretrial mandamus petitions; or (2. consider the claims brought during the appeal by the appellant?

(6. If an attorney refuses to bring highly substantial claims on appeal, as here, does the substantial right of appeal require the reviewing COA to hear the voice of the appellant, so the substantial right of appeal is is not reduced to a farce or a sham?

TABLE OF CONTENTS

IMPORTANT QUESTIONS OF LAW ii

I. PETITION FOR WRIT OF CERTIORARI 1

II. JURISDICTION & OPINIONS BELOW 1

III. STATEMENT OF THE CASE 2

(a. Claims Not Permitted or Included in Appeal: 2

(b. Criminal Eavesdropping Evidentiary Hearings: 4

(c. Lack of Corpus Delicti to Crimes that Never Existed: 7

(d. Missing $60,000 As Judge Hall Left Bench: 8

(e.The Substantial Right of Appeal: 9

(f. Prequil to Appeal Shows Pattern of Behavior: 10

VI. REASONS FOR GRANTING THE WRIT 11

V. PRAYER FOR RELIEF 13

VERIFICATION 14

CERTIFICATE OF WORD COUNT 14

TABLE OF AUTHORITIES

Araidne, 80 US 475 (1872) 12

Carrillo v. County of Los Angeles, 798 F.3d. 1210 (9th Cir. 2015) . 12

Chambers v. Mississippi, 410 US 298 (1973) 10-11

County of Sacramento v. Lewis, 523 US 838 (1998) 12

Costco v. Superior Court, 47 Cal.4th 725 (2009) 5

Devereaux v. Abbey, 263 F.3d. 1070 (9th Cir. 2003)(en banc) 3

Edwards v. Balisok, 520 US 641 (1997) 13

Evitts v. Lucey, 469 US 387 (1985) 11-12

Faretta v. California, 422 US 806 (1975) 11

Fink v. Shemtov, 210 Cal.App.4th 993 (2012) 7

Franks v. Delaware, 438 US 154 (1978) 3, 9, 11

Goldberg v. Kelly, 397 US 554 (1970) 12

Hurles v. Ryan, 752 F.3d. 768 (9th Cir. 2014) . . . . . ii, 12

Kennedy v. LAPD, 901 F.2d. 702 (9th Cir. 1989) 6, 13

In re Clark, 3 Cal.4th 41 (1992) 1

Lasko v. Valley Pres. Hospital, 180 Cal.App.3d. 519 (1986) . . . 6, 13

Luis v. United States, 136 S.Ct. 1983 (2016) 4, 11

Martinez v. California COA, 528 US 152 (2000) . . . . . ii, 12

Mathews v. Eldridge, 424 US 319 (1976) 6, 11

McNally v. United States, 544 US 349 (2005) 8, 11

Nguyen v. Curry, 736 F.3d. 1287 (9th Cir. 2013) . . . . . ii, 12

People v. Chatman, 38 Cal.4th 344 (2006) 5

People v. Ledesma, 39 Cal.4th 641 (2006) 8

People v. Pennington, 3 Cal.5th 768 (2018) 2

People v. Perkins, 109 Cal.App.4th 1262 (2003) 13

Pasquantino v. United States, 544 US 349 (2005) 8, 11

Rochin v. California, 342 US 165 (1952) 12

Romero v. Securis, 331 FRD 391 (S.D. Cal. 2018) 6

Smith v. Superior Court, 52 Cal.App.5th 57 (2020) 10

Trendsettah v. Shisher, 31 F.4th 1124 (9th Cir. 2022) 12

United States v. Carter, 429 F.Supp.3d. 788 (D. Kan. 2019) 4

United States v. Gonzales-Lopez, 548 US 140 2006) 4, 11

United States v. Gray, 878 F.2d. 702 (3rd Cir. 1989) ii

United States v. Morrison, 449 US 361 (1981) 7, 11

United States v. Muho, 978 F.3d. 1212 (11th Cir. 2020) 3

Weatherford v. Busey, 429 US 545 (1977) 7, 11

Williams v. Pennsylvania, 136 S.Ct. 1899 (2016) 11

I.
PETITION FOR WRIT OF CERTIORARI

1. "Petitioner" ("Pet.") petitions the Court to review a judgment of the California Supreme Court on a writ of certiorari.

II.
JURISDICTION & OPINIONS BELOW

2. This Court has jurisdiction over this issue because:

(A. On March 10, 2015, Pet. was arrested for low-level felonies, and turned down a time-served offer on Jan. 6, 2020, solely due to his substantial right of appeal to hold the State accountable for the abundance of criminal eavesdropping committed in the case. Pet. is 62 years old, has no history of violence, and suffers from systemic lupus; an incurable potentially fatal auto-immune disease.

(B. On Dec. 16, 2021, Pet. was sentenced to 40 years 4 months, because of a 40 year old non-violent strike, despite 20 years of clean time between the last conviction and the current offense. Although Pet. clearly fell outside of the spirit of the Three Strikes Law, his IAAC never even included it as an appeal claim.

(C. The trial judge (Judge Hall), had only been on the bench 10 years before leaving (for unknown reasons), and had 45 reversals in that 10 year period, likely making him the most reversed judge in Los Angeles.

(D. The COA appointed Mary Strnad for the appeal (B317362), who would not even accept Pet.'s phone calls, brought superficial claims, and two less substantial claims, but so watered them down to ensure denial.

(E. On Nov. 22, 2022,(before the opening brief was filed), Pet. submitted a motion to remove her (called a "Marsden motion"), and the COA returned it unfiled in violation of Supreme Court authority (See In re Clark, 3 Cal.4th 41, 86 (1992)(right of Marsden motion during the appeal)). On Feb. 14, 2023, Pet. brought a lengthy Marsden motion that was also returned unfiled after several months.

(F. On June 12, 2023, Pet. filed a mandate petition. The COA immediately replaced Strnad with another IAAC who would also not answer Pet.'s telephone calls, replace the missing record on appeal, or bring the more substantial claims. The petition was refiled with the "Judical Counsel of Cal." as an additional respondent, which forced the COA to issue an order denying the petition (B332052).

(G. On April 5, 2024 (before the COA issued an opinion in the appeal), Pet. brought a petition containing all the substantial claims not brought by IAAC, which was denied on June 5, 2024 (B338076). Pet. filed a Petition for Review in the Cal. Supreme Court, which was denied on July 24, 2024 (S285560). This is the order being challenged. Should the COA: (1. taken judicial notice of the mandate petitions (brought pretrial) containing the substantial claims, and incorporated the claims be reference into the appeal; or (2. considered the substantial claims brought in B338076?

(H. Although the COA denied the appeal containing the two watered down less substantial claims on June 24, 2024 (B317362), this order is not being challenged in this petition and is currently pending in the California Supreme Court (S285627).

III.
STATEMENT OF THE CASE

3. Pet. was prohibited from bringing a "perfect storm" of: (a. reprehensible prosecutor misconduct (including criminal eavesdropping); (b. judicial embroilment amounting to partisan advocacy; and (c. attorney abandonment.

(a. Claims Not Permitted or Included in Appeal:

4. Civil "court services division" officer Sarkis Ohannessian was not a peace officer under Cal. law; as his job duties were to supervise civil subordinates (PTV3: 47:4-7; PC-830.36(c) People v. Pennington, 3 Cal. 5th 768, 792-95 (2018)), yet was the architect of this criminal case.

5. On Jan. 20, 2015, a Madera County deputy emailed two "writs of execution" ("writs") to a "San Bernardino" ("SB") clerk, who emailed them to Ohannessian (PTV4: 46:5-8) who decided to conduct a criminal investigation (PTV4: 34:8-12), even though admittingly, the writs had nothing to do his County ("SB")(3/3/2016 Lodged Trs, 49:20-27), and he had no jurisdiction to investigate a Madera County crime (PC-830.1(a)(3)). 20 days into the investigation, he discovered 4 writs linked to SB, and brought 5 related counts. He was promoted to "Chief Deputy Sheriff" ("Chief") of SB.

6. On Mar. 10, 2015, Pet. was arrested in Idaho, and called a friend from jail advising her that he intended to use all of his assets to hire a good lawyer to investigate the police misconduct that led to the charges. On Mar. 12, 2015, the Chief was permitted to eavesdrop on this call, and sent out numerous eamils stating that he intended to seize Pet.'s legitimate assets, opinioning that it was perfectly legal to do so (PTV5: 35:22-37:4) even though no money had been taken in any crime that he was investigating (PTV5: 37:5-8). Within hours of eavesdropping on the call, he drafted 5 orders under the "Criminal Profiteering Act" ("CPA"), permitting him to seize assets in other sovergn states. One of the bogas orders is included in the Appendix, and the judicial signature is materially different:

Judge Pacheco's Signature on Search Warrants	Judge Pacheco's Signature on Seizure Orders
JUDGE OF THE SUPERIOR COURT COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA	JUDGE OF THE SUPERIOR COURT CENTRAL DIVISION COUNTY OF SAN BERNARDINO STATE OF CALIFORNIA

Yet the prelim court quashed a subpoena for Judge Pacheco to testify if his signature had been forged, even though if forged, it would require the dismissal of the case (Devereaux v. Abbey, 263 F.3d. 1070, 1074 (9th Cir. 2003)(en banc)). Under the CPA, a court only has jurisdiction to seize a defendant's assets after:

(a. A criminal conviction (PC-186.5(c)(2)).

(b. A filed forfeiture petition served upon the defendant (PC-186.4(a)).

(c. A pattern of criminal conduct proven beyond a reasonable doubt before a jury (PC-186.4(a), 186.5(b), 186.7(a)) and

(d. The proposed order must be submitted to the judge by a prosecutor (PC-186.2(c)).

7. As Pet. had never been arraigned, nor was there a petition, notice or a jury determination, the orders that seized assets out of banks in other sovereign states were completely fraudulent, and as they were never filed in court, they cannot be deemed a judicial document. The prelim court, and prosecutor, both agreed the bogas orders were completely unlawful (PTV8: 54:26-59:22, PTV9: 10:20-11:9), and the court ordered the money ($12,257.42) returned immediately (PTV9: 29:24-30-5). The Chief refused, and it was not until a senior judge threatened him with sanctions (that included jail time), that the money was returned 54 months after the seizure on Aug. 5, 2019. Bank assets seized in this manner constitutes federal bank fraud (United States v. Muho, 978 F.3d. 1212, 1223 (11th Cir. 2020)).

8. The Chief orchistrated search warrants on Pet.'s Idaho home, bank and safety deposit boxes seizing $60,000, even though no money was taken in any crime he was investigating (PTV6: 37:5-8). Over 95% of the evidence came from the search warrants, yet Pet. was prohibited from challenging the substance of the affidavits under Frank v. Delaware, 438 US 154 (1978) because the People asserted that Idaho authorities lost the them. The Idaho prosecutor, however, testified he had the affidavits, but the People NEVER requested them (9/10/2020 Trs, 69:6-19). Pet. then requested the affidavits, and the People refused to produce them. The court held the People could use the fruit of the search warrants at trial, but did not

have to produce the affidavits to allow challenge, because the People had no control over Idaho authorities who conducted the searches on behalf of People (10/15/2020 Trs, 55:16-56:6). The Cal. Supreme Court petition contains a much better explanation of these isses, including this one ("Appendix" "A" 7-10).

9. Pet. also moved for dismissal of the case under the grounds that seizing over 72,000 of legitimate assets "Undermines the fundamental right tp assistance of counsel of the defendant's choice." (Luis v. United State, 136 S.Ct.1083 (2016) and United States v. Gonzalas-Lopez, 548 US 140 (2006) (such an error is not quantifiable)), yet the motion was denied.

(b. Criminal Eavesdropping Evidentiary Hearings:

10. The jail telephone vender's audit records can determine who logged on to eavesdrop on specific calls. In California, it is a felony to eavesdrop on a detainee call to a lawyer (PC-636), and a misdemeanor to a defense investigator (PC-632). The problems arose by a technical glitch in the jail telephone vender's recording system. In United States v. Carter, 429 F.Supp.3d. 788, 793-98, fn.298, fn.281, fn.371 (D. Kan. 2019), the court found (with one of the vender's at issue here) that: (1. 197,757 attorney-client calls were recorded; (2. the warning advisements don't always work; (3. attorneys were told the warning advisements do not apply privileged calls; (4. 9,430 attorney-client calls in the non-record status were none-the-less recorded anyway (meaning there were no advisements that would alert the caller that the call was being recorded); and (5. the warning advisements (if played) fell short of a Sixth Amendment waiver.

11. During an evidentiary hearing, it was established that:

(A. Jail policy prohibited the recording or monitoring of any call made to an attorney or defense investigator from a detainee's housing unit (CT: 3887-88).

(B. Judge Frimpong (now a federal judge) issued a stipulated order that all calls Pet. made from jail to an attorney or defense investigator were privileged (8/3/2018 Order, at 14:17-18 [this order was part of the abundance of missing records from the appellate record]).

(C. Audit records showed that the Chief eavesdropped on 8 calls made to Idaho attorney Doug Phelps from the SB jail (CT: 5267-70).

(D. Audit records showed that a supervising prosecutor eavesdropped 32 calls made to attorneys (CT: 5230, 5238-39, 5250-51). The Chief testified that he possessed, and still possesses, these recordings that were downloaded to a CD (8/5/2020 Trs, 42:25-43:23).

(E. The Chief testified that he eavesdropped on 20 calls made to a defense investigator because: (1. he could; (2. "nobody said it was illegal"; and (3. "there were no penal codes governing me" (8/5/2020 Trs, 85:24-86:8 [RT: Vol.3]).

(F. Cal. Evidence Code 623 procluded the People from inquery that would undermine the privilege they had already stipulated existed (See People v. Chatman, 38 Cal.4th 344, 379-80 (2006)("[i]ts misconduct for a prosecutor [to] intentionally illicit inadmissible testimony.")).

(G. As the People were precluded from undermining the privilege, the court (not Judge Frimpong) illicited this information on behalf of the People. The court queried all the eavesdroppers if there was a warning advisement on the call that would alert the caller the call was being recorded? The eavesdroppers responded there was suppose to be one, but had no personal knowledge (7/17/2020 Trs, 87:1-12, 74:5-17 [RT: Vol.3], 8/5/2020 Trs, 6:3-13 [RT: Vol.3], 9/10/2020 Trs, 21:11-20, 44:2-45, 73:7-74:17 [RT: Vol.4]).

(H. The court then misstated the testimony:

> "I don't see why you keep referring to as privileged calls ... when your told its subject to being monitored, it looses its privileged status." "[Y]ou've got a big problem ... the fact that any of these calls were privileged ... where [there is] a warning." (7/17/2020 Trs, 87:13-17, 9/10/2020 Trs, 75:23-27).

(I. The COA quoted the trial court without acknowledging the trial court was misrepresenting clearly defined law of the Cal. Supreme Court (in Costco v. Superior Court, 47 Cal.4th 725, 733 (2009)):

> "The burden is on you [Mr. Fink] to show the material [in the jail calls] is privileged. If you do that, the burden is to the People to show ... that there was no damage." (B317362, at Pg.20)[it also misrepresents clearly defined law of this Court].

(J. The Chief testified that he eavesdropped on one call made to Pet.'s attorney's law office one minute and 15 seconds after the call was answered saying "law office" to ensure: (1. the law office wasn't criminals; (2. the legal assistant was not Pet.'s girlfriend; and (3. the attorney was Pet.'s counsel [not some other attorney] (8/5/2020 Trs, 25:27-26:27, and 10/15/2020 Trs, 93:1-94:4).

12. The court immediately ordered adjurnment (without notice) in the heat of this adversarial examination. Pet. filed a written objection that this was the second time the court ordered such adjurnment when it appeared the Chief was in too deep (CT: 4643-44). The People filed a written opposition, asserting that a blacked out paragraph (CT: 4644-6-11)

stated contained the following disparaging remark (CT: 4734):

> "[T]he court in all of its wisdom, had to have known [the Chief] was in deep trouble, and if it halted the hearing, it 'could' allow the prosecution to coach him."

13. On Nov. 4, 2020, the court revoked Pet.'s Faretta status without permitting him to say a word (which violated **Mathews v. Eldridge**, 424 US 319, 323 (1976)("[t]he right to be heard before being condemned to suffer grievious loss of any kind")). The court forgot what so offended him, and asked the People for their brief containing their words, and read the People's words into the court record to revoke Pet.'s Faretta rights (11/4/2020 Trs, 2:1-3:13). The COA -- that was only hearing the Faretta issue and not the eavesdropping claim -- changed the People's words into a more egregeous form by removing the word "could" to "allow" (changing a possibility into a reality) (See B317362, at Pg.34) to uphold the revocation.

14. The COA noted that: "[T]he court on its own motion ordered defendant's witness to produce evidence if the warning prompts were operational" (B317362, at Pg.27), without acknowledging tht this amounts to partisan advocacy (See **Lasko v. Valley Pres. Hospital**, 180 Cal.App.3d. 519, 528 (1986)(partisan embroilment accurs when the decisionmaker acts on evidence that had not been subject to the adversarial process) and **Kennedy v. LAPD**, 901 F.2d. 702, 709 (9th Cir. 1989)(same)).

15. As the Chief testified that he destroyed the Securus calls durhis IAD investigation into eavesdropping on the investigator calls, and the call to Pet.'s attorney's law office (8/5/2020 Trs, 25:27-26:7, 10/15/2020 Trs, 93:1-94:4), the court wanted the telephone vender to speculate. In **Romero v. Securus**, 331 FRD 391, 410-414 (S.D. Cal. 2018), the same vender was precluded by the court from speculating whether recorded calls that had been destroyed contained a warning advisement, holding that the party seeking a waiver of privilege (in this case the court) had to produce the calls for an in camera inspection. Naturally, the court speculated that there was a warning advisement on the Securus calls that had been destroyed (CT: 5417(22)).

16. As the GTL/Telmate recorded attorney-client calls were available for the court to review, Pet.'s counsel moved for the court examine the recordings as proof there were no warning advisements. The court refused to do so, and then "speculated" the recordings he would not examine contained a warning advisement (CT: 5377-78, 5415). The court's 18 page order defise gravity itself, and goes far beyond "objectionably unreasonable." Appendix 20-24 was attached to the COA petition (as Appendix-A) outlining the abserdity of the order. Appendix 1-2 is a log of the privileged recordings, depicting the eavesdropper, attonrey or defense investigator.

17. Dismissal was madatory under clearly defined law of this Court (Whetherford v. Bursey, 429 US 545, 558 (1977)("communication of stratgy to the prosecution ... [v]iolates the Sixth Amendment") and United States v. Morrison, 449 US 361, 366 (1981)(dismissal required when there is a threat of use)). In Justice Marshall's decent, he noted that it would be virtually impossible to prove a prosecution team benefitted from the ill gotten gain (429 US at 564). Here, it was proven. The Chief testified:

(A. He did his own legal research on a material suppression issue seven (7) weeks in advance of the issue being raised for the first time, and admitted sharing his research with the prosecutor (8/5/2020 Trs, 120:3-125:26).

(B. He acknowledge that his testimony changed (from SB, to when the was transferred to Los Angeles) on material issues that were dis- in the phone calls (8/5/2020 Trs, 129:15-134:13).

The Chief sat next to the prosecutor during the trial, which was reduced to a farce, or a sham.

(C. Lack of Corpus Delicti to Crimes that Never Existed:

18. The People filed a huge multi-jurisdictional case in Los Angeles without ever interviewing potential victims ["Judgment Creditors" ("JC") and "Judgment Debtors" ("JD")] to first determine whether a crime had even been committed. The People knew that: (1. Pet. owned a collection business (Fink v. Shemtov, 210 Cal.App.4th 993 (2012)); and (2. the initial JC they did interview was an attorney who advised the People it was a lawful assignment of the judgment, recognizing her signature on the assignment form (CT: 1354-56). The People then stopped interviewing potential victims.

19. There were 28 JDs. Only 12 testified, 16 did not, yet the court found guilt in all counts in clear violation of this Court's authority that requires the People to produce a victim if the fraud element contains a "scheme to defraud money or property 'in the victim's hands'" (Pasquantino v. United States, 544 US 349, 355 (2005) and McNally v. United States, 483 US 350, 360 (1987)). And of the JDs who did testify, many testified Pet. had no involvement, yet Judge Hall still found guilt (See A10-12; People v. Ledesma, 39 Cal.4th 641, 721 (2006)("[t]he purpose of the corpus delicti rule is to ensure that the defendant is not convicted of a crime that never existed.")).

(d. Missing $60,000 As Judge Hall Left Bench:

20. Although not one JD testified that they lost anything attributed to Pet., Judge Hall held that Pet. owed $101,883.73 in restitution (RT: 4854:21-4855:12) to victims never named in the information, identified or testified at trial. Unified Parking testified that Pet. had no involvement in their injury, harm or loss (under heavy partisan questioning by Judge Hall) (RT: 3002:26-3003:27, 3005:3-22), who erroneously found Pet. guilty and ordered $22,930.23 in restitution (RT: 4855:5-6, CT: 30). Pickup Stix testified they had no knowledge of any injury, harm or loss (RT: 2126:3-6) and a former attorney for Sears testified that Sears doesnot exist as an entity, and had no knowledge of what his firm did on Sear's behalf (RT: 2706:3-6, 2709:8-12), yet Judge Hall found guilt, and ordered Pet. to pay $6,538.61 in restitution (RT: 48:5510). Glen County civil division clerk testified that they still possessed $4,425.15 from a levy, and the JD did not want the money returned (RT: 1851:11-16). As the clerk was leaving the stand, Judge Hall ordered her to turn the money over to the court (that is not reflected in the transcript), yet this money was not deducted from the restitution.

21. Although the Chief was only involved in 5 out of the 62 counts (RT: 711:16-28), Judge Hall ordered the Chief (the criminal eavesdropper who destroyed material evidence) to divi-up Pet.'s $60,000 to victims as

he sees fit (RT: 4855:13-4856:8), then failed to deduct the $60,000 from the restitution order; so the $64,425.15 just vanished into thin air.

22. Judge Hall allowed the Chief to file pro-per documents as if he were an attorney (CT: 5689), documents that Pet. was prohibited from filing himself. Judge Hall stated on the record that the Chief had requested to distribute the restitution money (RT: 4855:13-4856:8), yet there is no such request in the record. Was the request ex-parte? Should the missing money be construed as a bribe?

23. Judge Hall had 45 reversals in his 10 years on the bench (A33-36), and left the bench when Pet.'s $60,000 disappeared.

(e. The Substantial Right of Appeal:

24. Pet. brought pretrial writs of mandamus to all these major claims, complete with transcripts and bate stamped records, demonstrating clearly that Pet. was being held in violation of clearly defined law of the United States Supreme Court (Case Nos.: S271866/B315900 (eavesdropping), S271624/B315496 (Franks v. Delaware), S265850/B308779 (embroilment), S258-856/B301165 (corpus delicti), S258866/B301166 (counsel of choice), S255370 /B296698 (lack of peace officer jurisdiction)). So why was review not granted to any of these issues?

25. A Lexis-Nexis search shows that in the last 6 years Pet. has been petitioning Division Seven of the Second Appellate District ("Div-7") they have not granted habeas or mandamus review to a single pro-per. They cannot say that none of these cases was without merit. This creates a reasonable inference that Div-7 hates pro-pers, and has essentially suspended habeas corpus and mandamus for poor people.

26. Div-7 is determined that Pet.'s voice will not be heard on appeal, yet continually refer to the appeal claims as Pet.'s claims. Div-7 has appointed attorneys who will not even accept one phone call from their client, while appellate attorney apointed by other divisions routinely accept calls from thier clients.

(f. Prequil to Appeal Shows Pattern of Behavior:

27. After the SB case was dismissed, and before it was refiled in Los Angeles, the prosecutor needed more time to prepare, and Pet. was first tried in San Diego. Pet. exercised his self-representing rights, and the trial was reduced to a farce, or a sham, because:

(A. San Diego implimented a pro-per policy that was found unconstitutional by another COA (Smith v. Superior Court, 52 Cal.App.5th 57 (2020)(suspension of compulary rights violated Sixth Amendment)). Pet. was unable to use the compulsary process that the county proper policy abrogated, and could not compel an exhonorating withness who lived virtually accross the street from the courthouse.

(B. The trial court prohibited Pet. from asking leading questions of his accusers, imposing his own objections, but permitted the prosecutor to ask leading questions on direct; thus violating Pet.'s right of confrontation (See Chambers v. Mississippi, 410 US 298 (1973)).

(C. Over Pet.'s very strong objections, the court ordered Pet. to reveal his trial stradegy to the prosecutor at a PC-987.9 hearing that prohibited the prosecutor from even being present. After hearing Pet.'s reasoning why he needed an expert witness, the prosecutor opposed it (though she had no standing), the court denied the expert; and the prosecutor hired defendant's proposed expert for the People's case (who testified at trial).

28. Pet. was appointed William Holzar on appeal, who led Pet. to believe that he would bring these claims, then hoodwinked him by filing an appeal that contained no substantial issues (42 Cal.App.5th 794). Like here, all the substantial claims were filed in pretrial mandamus petitions. Holzer refused to provide the appellate record to Pet, which let to a drawn out battle requiring the Cal. Appellate Project intervention. Though Pet. had to learn how to write all over again after catching covid, he still was able to submit a habeas petition within a year after the appeal had become final. Pet. was procedurally barred by the COA, Supreme Court, and federal district court because the claims had not been included in the appeal. Although Pet. asserted IAAC on the appeal, these courts absurdly found that Pet.'s ineffective counsel should have asserted IAAC claims in in the appeal before he committed the misconduct (2022.US.Dist.Lexis.18898). Such scewed reasoning would preclude any IAC case in the trial court, or appeal. As lightneing does not strike the same place twice, this is a pattern of behavior.

VI.

REASONS FOR GRANTING THE WRIT

The record overwelmingly establishes that California courts have no respect, only contempt, for this Court's lawful authority:

(1. When no money had been taken in any crime the Chief investigated, he stated that he intended to seize all of Pet.'s legitimate assets he knew were going to hire a counsel of choice (Luis v. United States, 136 S.Ct. 1083 (2016) and United States v. Gonzalas -Lopez, 548 US 140 (2006)).

(2. Used the fruit of illegal searches while unlawfully withholding the affidavit to permit challenge (Franks v. Delaware, 438 US 154 (1978)).

(3. Revoked Pet.'s Faretta status without permitting him to be heard (Mathew v. Eldridge, 424 US 319, 323 (1976)) and violated his right of self-representation (Faretta v. California, 422 US 806 (1975)) while permitting the Chief to file pro-per documents as if he were a prosecutor.

(4. The judge was embroiled in partisan advocacy (Williams v. Pennsylvania, 136 S.Ct. 1899, 1905 (2016)).

(5. The State massively eavesdropped on attorney-client conversations, and used the fruit of the ill-gotten gain at trial (Weatherford v. Bursey, 429 US 545, 558 (1977) and United States v. Morrison, 449 US 361, 366 (1981)).

(6. The State sustained numerous fraud convictions without producing a victim (Pasquantino v. United States, 544 US 349, 355 (2005) and McNally v. United States, 483 US 350, 360 (1987)), and when an alleged victim did appear, disregarded they're testimony.

(7. It abrogated the Sixth Amendment right to compel witnesses that precluded Pet. from calling an exhonorating witness that lived virtually across the street from the courthouse.

(8. It violated the right of confrontation that dates back to the trial of Apostle Paul in the year 60 A.D. (Chambers v. Mississippi, 410 US 298, 302-03 (1973)).

(9. It effectively suspended habeas corpus and mandamus review for poor people.

(10. It reduced the substantial right of appeal into a farce or a sham complete with State actors acting out they're phony roles in their Charade amounting to a fraud on the court in clear violation of the Fourteenth Amendment (Evitts v. Lucey, 469 US 387, 393-94 (1985))

(11. By precluding the substantial claims from the appeal, the State procedurally barred any challenge by holding ineffective counsel would have to be aware of his or her ineffectiveness prior to committing it, and assert it in the appeal.

Pet. respectfully requests, and humbly asks this Court to put a put a stop to these shennanigans, and hold the State's actions in this particular case are so shocking, and reprehensible as to shock the contemparary conscience (Rochin v. California, 342 US 165, 172 (1952) and County of Sacramento v. Lewis, 523 US 838 (1998)), which is the only means from preventing the State committing such criminality in the future.

"An appeal is a substantial right, not a shadow." (Ariadne, 80 US 475, 479 (1872)) protected by the Fourteenth Amendment (Evitts v. Lucey, 469 US 387, 393-94 (1985)). Although s/he has no right of self-representation on appeal (Martinez v. Cal. COA, 528 US 152 (2000)), the State should not be permitted to extinguish his or her voice. An appellant should have the right to assert substantial claims on appeal if his appointed attorney refuses to do so. As IAAC is conclusively established where he or she failed to raise: (1. "potentially meritorious" claims; or (2. one's "stronger than those presented on appeal." (Nguyen v. Curry, 736 F.3d. 1287, 1291 (9th Cir. 2013) and Hurles v. Ryan, 752 F.3d. 768, 783 (9th Cir. 2014)), which should be the bar for an appellant to have his or her voice heard.

No court should every be permitted to procedurally bar a claim of ineffective assistance of counsel on appeal by asserting that ineffective counsel is required to assert his or her ineffectiveness to the COA before it occurs, as such reasoning goes far beyond "objectively unreasonable" and is tantamount to a knowing fraud on the court; which can only be committed by a judicial officer (Trendsettah v. Swisher, 31 F.4th 1124, 1132-34 (9th Cir. 2022)).

A fundamental component of a fair hearing requires a neutral and unbiased decisionmaker (Goldberg v. Kelly, 397 US 554, 571 (1970)). "[A] biased decisionmaker is constitutionally unacceptable." (Withrow v. Larkin, 421 US 35, 47 (1975)) and is tantamount to "appoint[ing] the fox as henhouse guard." (Carillo v. County of Los Angeles, 798 F.3d. 1210, 1226 (9th Cr. 2015)). "A criminal defendant tried by a partial judge is entitled to have his conviction set aside, no matter how strong the evidence is against

him." (Edwards v. Balisok, 520 US 641, 647 (1997)). "[I]n order to reverse for excessive judicial intervention, the record must ... leave the reviewing court with the unbinding impression that the judge's remarks and questioning of witnesses projected ... an appearance of advocacy or partiality." (Kennidy v. LAPD, 901 F.2d. 702, 709 (9th Cir. 1989) and People v. Perkins, 109 Cal.App.4th 1262, 1271-73 (2003)(questioning by court sought to develope and amplify prosecution evidence amounting to prejudical misconduct)).

Partisan embroilment accurs when the decisionmaker acts on evidence that had not been subject to the adversarial process (Lasko v. Valley Pres. Hospital, 180 Cal.App.3d. 519, 528 (1986)). Here, the People entered into a stipulation, that was memorialized in a court order, that all calls Pet. made from jail to an attorney or defense investigator were privileged. Thus, they were precluded from undermining the privilege they stipulated existed. The court, on behalf of the People, attempted to undermine the privilege by questioning the eavesdroppers with open ended questions if there were warning advisements, and ordered the jail telephone venders to submit their speculation as to whether recorded calls, that had been destroyed, contained warning advisements. When defense counsel submitted the recorded attorney-client calls from the other two jail telephone venders, the court refused to listen to them, then speculated they contained a warning advisement.

No better text-book example of partisan advocacy exists.

V.

PRAYER FOR RELIEF

Pet. respectfully and humbly request an order from this Court:

(1. Granting full review and appointing counsel

(2. Answer the fundamentally important questions of law raised in this petition.

(3. Restore the substantial right of appeal, and habeas corpus, to the Great State of California.

(4. As Pet. is 62 years old, already has credit for over 20 years, and is only charged with low-level felonies, and his health is failing, hold a hearing for release during the review process.

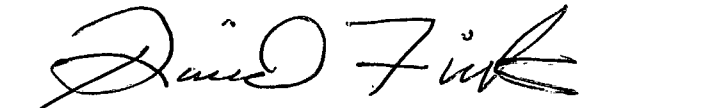
(5. Issue an order for the return of Pet.'s seized assets, if they can be found.

(6. Invalidate the Los Angeles and San Diego convictions.

(7. Any other relief that is just.

VERIFICATION

I, David Fink, declare that the foregoing is true and correct under penalty of perjury. Executed this 4th day of August 2024.



David Fink, Petitioner in Pro-Per

CERTIFICATE OF WORD COUNT

I David Fink, certify that this 14 page typed brief contains no more than 4,200 words.