

Case No.: _____

SUPREME COURT OF THE UNITED STATES

Derrick Courchaine,
Petitioner.

VS.

State of California,
Respondent.

PETITIONER'S APPENDIX IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

Derrick Courchaine, BL5056
POB-4000, A3-232
Vacaville Ca. 95696-4000

In Propria-Persona

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA**

HON. MONIQUE D MCKEE

Dept. 44/bss

24HB-01131 [18F8106]

**DERRICK JAMES COURCHAINE,
Petitioner,**

vs.

**KATHLEEN ALLISON,
Respondent.**

**NATURE OF PROCEEDINGS: RULING ON PETITION FOR WRIT OF
HABEAS CORPUS**

Procedural History

This case arises out of a home invasion robbery. The complaint in this case was originally filed on December 5, 2018. An Amended complaint was filed on June 7, 2019, and a consolidated information was filed on July 29, 2019. Defendant Derrick Courchaine was charged with the following felony offenses:

1. Residential Robbery in Concert [Penal Code Sections 211/212/5/213(a)]
2. Residential Robbery in Concert [Penal Code Sections 211/212/5/213(a)]
3. First Degree Residential Burglary (Penal Code Section 459)
4. Assault with a semiautomatic firearm [Penal code Section 245(b)]
5. Assault with a semiautomatic firearm [Penal code Section 245(b)]
6. False Imprisonment by Violence (Penal Code Section 236/237)
7. False Imprisonment by Violence (Penal Code Section 236/237)
8. Criminal Threats (Penal Code Section 422)
9. Criminal Threats (Penal Code Section 422)
10. Grand Theft of a Firearm [Penal Code Section 487(d)]
11. Grand Theft of a Firearm [Penal Code Section 487(d)]
12. Assault with a semiautomatic firearm [Penal code Section 245(b)]

Special allegations were alleged, including a strike under Penal Code 1170.12, a prior serious felony [Penal Code Section 667(a)(1)], and armed with a firearm [Penal Code Section 12022(a)(1)].

On December 19, 2019, defendant entered a plea to the two counts of residential robbery in concert alleged in counts one and two, and admitted the strike under 1170.12, for an agreed upon

term of 22 years.¹ (The upper term of 9 years for count 1, and 1/3 the midterm of 6 years for 2 years on count 2. Both doubled for the strike). Defendant was sentenced on January 27, 2020. Defendant did not file a notice of appeal, and the judgment was final March 27, 2020.

Petition

Defendant's Petition for Habeas Corpus claims that his sentence was unlawful for the following reasons:

- 1) no aggravating factors were found to be true,
- 2) the court failed to explain the reason for imposing the upper term,
- 3) the court is required to find at least one aggravating factor to impose the aggravated term,
- 4) a sixth amendment violation occurs where the judge finds the aggravating factors rather than a jury,
- 5) the aggravating factor requirement is not waived by a plea,
- 6) Petitioner is a youthful offender entitled to a presumptive low term,
- 7) the punishment for count 2 is precluded by PC 654, and
- 8) Defendant's maximum possible sentence is 6 years.

Analysis

Defendant contends that his sentence, based on a plea to a specific term, was unauthorized because there were no aggravating factors proven to justify the upper term. The cases cited by the defendant involve cases where the court exercised its discretion in imposing the lower, middle, or upper term. Here, the court did not exercise its discretion; instead, the defendant pleaded to a stipulated sentence for a term of years.

Similarly, the defendant pleaded to 2 counts of robbery. These were the agreed upon charges that totaled the agreed upon term. The defendant was charged with two counts of robbery, in that his conduct involved 2 separate victims. The agreed upon sentence is not precluded by Section 654.

Defendant also contends that his sentence was erroneous because he was a "youthful offender" entitling him to a presumptive low term pursuant to Penal Code Section 1016.7. The Court notes that provision of Penal Code section 1016.7 was amended pursuant to Senate Bill 567, which became effective on January 1, 2022. This amendment would only apply "to all nonfinal convictions on appeal." *People v. Flores* (2022) 73 Cal. App. 5th 1032, 1039, citing *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 308. "Under established law, we 'assume, absent evidence to the contrary, that the Legislature intended an amended statute to apply to all defendants whose judgments are not yet final on the statute's operative date.'" *People v. Flores* (2022) 73 Cal. App. 5th 1032, 1039, citing *People v. Lopez* (2019) 42 Cal.App.5th 337, 341. "For the purpose of determining the retroactive application of an amendment to a criminal statute, the finality of a judgment is extended until the time has passed for petitioning for a writ of certiorari in the United States Supreme Court." *People v. Flores, supra*, at 1039. Unlike The defendant here Defendant did not file a notice of appeal, and the judgment was final March 27, 2020. CRC

¹ Defendant's exposure, if convicted on all counts, was 92 years, even imposing the low term for the primary offense.

8.308. Additionally, the time has long since passed for the defendant to file an appeal. His stipulated sentence is final.

"A defendant may not retain the favorable aspects of a plea bargain and jettison its unfavorable aspects. *People v. Collins* (1978) 21 Cal.3d 208, 215. As stated in *People v. Couch* (1996) 48 Cal.App.4th 1053, 1056-1057, 56 Cal.Rptr.2d 220: "Where defendants have pleaded guilty in return for a *specified sentence*, appellate courts are not inclined to find error...The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to 'trifle with the courts' by attempting to better the bargain through the appellate process."

Conclusion

For the foregoing reasons, the Petition for Writ of Habeas Corpus is **SUMMARILY DENIED**.

Dated: April 25, 2024



MONIQUE D MCKEE
Judge of the Superior Court

CERTIFICATE OF MAILING

State of California, County of Shasta

I, the undersigned, certify under penalty of perjury under the laws of the State of California that I am a deputy clerk of the above-entitled court and not a party to the within action; that I mailed a true and correct copy of the above to each person listed below, by depositing same in the United States Post Office in Redding, California, enclosed in sealed envelopes with postage prepaid.

DERRICK JAMES COURCHAINE #BL5056 PO BOX 4000, A3-232 VACAVILLE, CA 95696

KATHLEEN ALLISON DIRECTOR OF CDCR 901 G STREET SACRAMENTO, CA 95814
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SHON NORTHAM 1650 OREGON STREET, SUITE 116 REDDING, CA 96001

Dated: April 25, 2024

B. Street
Deputy Clerk

IN THE

Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

007

In re DERRICK COURCHAINE on Habeas Corpus.

Case No.: C101063

BY THE COURT:

The petition for writ of habeas corpus is denied. (See *People v. Hester* (2000) 22 Cal.4th 290, 295.)


HULL, Acting P.J.

cc: See Mailing List

JUL 10 2024

Jorge Navarrete Clerk

S285214

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re DERRICK COURCHAINE on Habeas Corpus.

The petition for review is denied.

Kruger, J., was absent and did not participate.

GUERRERO

Chief Justice

**Additional material
from this filing is
available in the
Clerk's Office.**