

Appendix

XB

WRIT OF PROHIBITION;
IN DEFEAT OF JURISDICTION
OF STATE OF CALIFORNIA

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Lake Carriers' Ass'n v. Macmullan, 406 U.S. 498
at 510 "In thus establishing jurisdiction for the exercise of federal judicial power, Congress imposed the duty upon all levels of the federal judiciary to give due respect to a Suitor's choice of a federal forum for the hearing and decision of his federal constitutional claims. Plainly, escape from that duty is not permissible merely because State courts also have the solemn responsibility, equally with the federal courts to guard, enforce, and protect every right granted or secured by the Constitution of the United States.
Robb v. Connolly, 111 U.S. 624, 637

at 223 "Perhaps it was not quite fully remembered that the laws of the United States are a part of the *lex fori* of a State. But however that may be, it has been decided by a series of cases that when the courts of a State are given general jurisdiction over a certain class of controversies the power of the State over its own courts cannot be used to exclude a party from what otherwise is a constitutional right."

PER CLERK'S TRANSCRIPT Volume 7 of 8

page 1998 excerpt from "People's Opposition to Defendant's Motion for New Trial and Writ of Habeas Corpus": "Defense counsel Christine Voss declared a conflict based upon the defendant's claim of ineffective assistance of counsel as the basis for a motion for a new trial. Conflict Counsel was provisionally appointed in Department 10 by Judge Clifford Anderson."

PER CLERK'S TRANSCRIPT Volume 6 of 8

page 1774 "Application By Defendant To Exercise His Right To Self-Representation And Declaration Of Counsel": "On January 24, 2022, the court determined that appropriate course of action was to hold an in-camera hearing pursuant to Marsden prior to determining if it was appropriate to appoint conflict counsel. At the conclusion of that hearing, the court found that THE ISSUES WERE TOO COMPLEX AND WOULD TAKE TOO MUCH TIME FOR A LAWYER WHO WAS NOT PRESENT AT TRIAL OR INVOLVED IN THE PREPARATION of the case for trial to be able to analyze in a timely fashion. Therefore, Judge Hill declined to appoint counsel and suggested that any concerns about

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ineffective assistance of counsel could be handled by "writ or on appeal."

PER CONFIDENTIAL Reporter's Transcript of Marsden Proceeding (ONLY U.S. SUPREME COURT supplied COPY, Plaintiff/Petitioner will not agree to supply RESPONDENTS with UNREDACTED COPY- EXCEPT UPON REQUEST BY COURT)

page 3103 THE COURT (lines 6-9): "... We're not going to have somebody like yourself convicted of these serious charges where there's a question about fairness."

(Note: Petitioner/Plaintiff was convicted by a Bench Trial and the Judge no longer stands by his verdict)

page 3100 THE COURT (lines 1-5): "Miss Voss, let me ask you just procedurally, in this circumstance have you researched the appropriate vehicle for addressing Mr. Haobsh's concerns? Would it be a motion for a new trial that would be filed by you?"

page 3101 MS. VOSS (lines 18-27): "Your Honor, I think one of the things that led us to today's hearing is that Mr. Haobsh has expressed and given me authority to share with the Court right now, that he does not want a motion for a new trial, he wants some other vehicle that would allow us to expand upon the evidence that the Court has already

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heard and just sort of supplement the trial that we already had. And I am not aware of any legal vehicle for that to occur."

LEGAL VEHICLES DID HOWEVER EXIST

People v. Shorts, 32 Cal. 2d 502

at 506 "It is to be remembered that a motion in the nature of an application for the writ of coram nobis is an extraordinary remedy. Its availability - or the availability of other corrective judicial process, such as habeas corpus - to enable a convicted person, even after appeal and affirmance of a judgment of conviction, to establish that in truth the judgment was procured under circumstances which offend "the fundamental conceptions of justice which lie at the base of our civil and political institutions" has been recognized as constituting a part of the protection afforded by the due process clause of the Fourteenth Amendment (SEE Mooney v. Holohan (1935), 294 U.S. 103, 110 [55 S. Ct. 340, 79 L. Ed. 791, 98 A.L.R. 406]; Taylor v. Alabama (1940), 335 U.S. 252 [68 S. Ct. 1415, 92 L. Ed.]. But it approaches triteness to point out that the fact that the state must furnish a corrective process."

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Banister v. Davis, 140 S. Ct. 1698

at 1706 "The judge had plenary power while the term was in existence to modify his judgment or revoke it altogether."

Goddard v. Ordway, 101 U.S. 745

at 752 "the general power of the court over its own judgments, orders, and decrees, in both civil and criminal cases, during the existence of the term at which they are first made, is undeniable."

Bronson v. Schulten, 104 U.S. 400

at 415 "It is a general rule of the law that all the judgments, decrees, or other orders of the courts, however conclusive in their character, are under the control of the court which pronounces them during the term at which they are rendered or entered of record, and they may then be set aside, vacated, modified, or annulled by that court."

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Russell v. Farley, 105 U.S. 433

at 442 "Besides, the power to impose a condition implies the power to relieve from it."

PER Criminal Minute Order (Clerk's Transcript Volume 6 of 8 page 1746-1747) - As then Defendant, was Convicted on November 24th 2021

PER Cal. Pen. Code §1191 Time for pronouncing judgment; Extensions of time for certain purposes:

"In a felony case, after a plea, finding or verdict of guilty, or after a finding of verdict against the defendant on a plea of a former conviction or acquittal or once in jeopardy, the court shall appoint a time for pronouncing judgment, which shall be within 20 JUDICIAL DAYS after the Verdict, finding, or plea of guilty, during which time the court shall refer the case to the probation officer for a report IF ELIGIBLE FOR PROBATION and pursuant to Section 1203. ...

Note: As then Defendant was NOT ELIGIBLE for probation with 3 x LWOP (Life without possibility of parole) to be served consecutively with multiple 75 to Life sentence enhancements.

... "However, the Court may extend the time not more than 10 days for the purpose of hearing or determining any motion for a new trial, OR IN ARREST OF JUDGMENT, and may further extend the time until the probation officer's report is received and until any proceedings for granting or denying probation have been disposed of..."

Note: Since then Defendant was NOT ELIGIBLE for probation the statute of limitations to pronounce judgment could not be extended until the probation officer's report is received.

PER Clerk's Transcript Volume 7 of 8 page 2017 Criminal Minutes - Then Defendant was sentenced to 3 consecutive indeterminate sentences of LWOP on April 15, 2022 with multiple enhancements.



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THUS nearly 5 months elapsed since the conviction, rendering the Trial Court without Jurisdiction to pronounce Judgment according to Cal. Pen. Code § 1191.

JEOPARDY ENDED when Court lost Jurisdiction to pronounce Judgment, thus Double Jeopardy forclodes reprosecution.

(Benton v. Maryland, 395 U.S. 784 at 794 Double Jeopardy of Fifth Amendment applicable to States through Fourteenth Amendment)

In re Nielson, 131 U.S. 176

at 182 "If the court which renders a judgment has not jurisdiction to render it, either because the proceedings, or the law under which they are taken are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally, and a defendant who is imprisoned under and by virtue of it may be discharged from custody on habeas corpus."



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Abelleira v. District Court of Appeal
17 Cal. 2d 280

at 291 "Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction."

at 288 "But in its ordinary usage the phrase "lack of jurisdiction" is not limited to these fundamental situations. "Here it may be applied to a case where, though the court has jurisdiction over the subject matter and the parties in the fundamental sense, it has no "jurisdiction" (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites."

at 290 "Some confusion exists with reference to what constitutes an excess, and what constitutes an error, in the exercise of jurisdiction. However

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it seems well settled (and there appears to be no case holding to the contrary) that when a statute authorizes prescribed procedure, and the courts act contrary to the authority thus conferred, it has exceeded its jurisdiction."

In re Marriage of Goddard, 33 Cal. 4th 49 at 56 "most procedural errors are not jurisdictional"
at 57 "Nonetheless, certain procedural errors are jurisdictional"

PER Cal. Pen. § 681

"No person can be punished for a public offense, except upon a legal conviction in Court having JURISDICTION thereof."

People v. Williams, 24 Cal. 2d 948 at 950 "Although section 1191 provides that the judgment must be pronounced within a designated period, it has been consistently held that failure to pronounce judgment within the time specified is not JURISDICTIONAL."

THIS IS THE EPITOME OF ABSURD

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Legal Argument, contravening a bulwark of U.S. Supreme Court precedent including this Court's refusal to entertain Habeas applications for jurisdictional defects and statute of limitations. HOWEVER, it should be NOTED, the arguments in *People v. Williams*, 24 Cal. 2d 848 at 850 do not apply to petitioner's Case and Circumstances, i.e. DUE to LWOP, the probation report exception is non-applicable.

Article VI § 13 of California Constitution
"No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

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A Judgment rendered without Jurisdiction is not simply erroneous, it is VOID.

For an error to exist, the Court must have Jurisdiction. Once a Court loses Jurisdiction, all subsequent action is not erroneous but VOID.

Galpin v. Page, 85 U.S. 350

at 373 "Judgment without jurisdiction is unavailing for any purpose."

Roman Catholic Archdiocese of San Juan v. Feliciano, 140 S. Ct. 696

at 700 "The State Court loses all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment are not simply erroneous, but absolutely void."

A VOID Judgment for purposes of enforcement neither satisfies requirements of Due Process (14th Amend. U.S. Const.) nor Full Faith and Credit (Art. IV §1 U.S. Const.)

Art. VI §13 of Cal. Const. does not confer general Jurisdiction once lost, nor cure a Jurisdictional defect, precipitated

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by procedural error. Art. VI § 13 of Cal. Const. contemplates erroneous judgment rendered within limits of Courts Jurisdiction - NOT Judgment pronounced under color of judicial authority in proceeding without or in excess of jurisdiction.

Bandini Petroleum Co. v. Superior Court, Los Angeles County, 248 U.S. 8

at 14-15 "In California, in accordance with the general conception of the province of the writ, prohibition is for the purpose of arresting the proceedings of any tribunal exercising judicial functions when such proceedings are without, or in excess of jurisdiction."

Ex parte Bokelie Corp, 279 U.S. 436

at 461 "Of course, a writ of prohibition does not lie to a court which is proceeding within the limits of its jurisdiction."

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In re Marriage of Goddard, 33 Cal. 4th
49

at 56 "It is helpful to observe that jurisdictional errors can be of two types. A court can lack fundamental authority over the subject matter, question presented, or party, making its judgment void, or it can merely act in excess of its jurisdiction or defined power rendering the judgment voidable.

at 56 "In addressing this contention, we observe that most procedural errors are not jurisdictional. Once a court has established its power to hear a case, it may make errors with respect to areas of procedure, pleading, evidence, and substantive law. Jurisdiction over the subject, being the power to hear and determine, implies power to decide a question wrong as well as right. Thus a failure to state a cause of action, insufficiency of evidence, abuse of discretion, and mistakes of law have been held nonjurisdictional errors."

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at 56-57 "Moreover, the presumption in the California Constitution is that the "improper admission or rejection of evidence ... or ... any error as to matter of procedure," is subject to harmless error analysis and must have resulted in a "miscarriage of justice" in order for the judgment to be set aside (Cal. Const., art VI §13). Code of Civil Procedure section 475 contains similar language "The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of the court, does not affect the substantial rights of the parties."

at 57 "Nonetheless, certain procedural errors are jurisdictional ... An error is jurisdictional "only where the clear purpose of the statute is to restrict or limit the power of the court to act and where the effective enforcement of such restrictions requires the use of extraordinary writs of certiorari or prohibition."

PER REPORTERS: TRANSCRIPT Volume 14 of 14
page 3144-3145 Lines 16-28, +1.

MS. VOSS: "So my view of the law is that if we declare a conflict or make that representation as officers of the court then the Court should relieve us for those purposes. If the Court says no, I don't think that a conflict is appropriate and I'm going to hold a Marsden Motion, then, you know, we're bound by your ruling; But I just want to make clear that I don't believe Mr. Harbsh last time I spoke to him is necessarily requesting a Marsden Motion, in other words, he is not saying I don't want counsel to handle my sentencing, I don't want counsel to be involved in my case, it's a specific legal conflict.

THE COURT, page 3145 Lines 2-4

: "And the specific legal conflict is that he's claiming that there's ineffective assistance of counsel."

MS. VOSS, page 3145 Lines 5-7

: "And I think he'd be perfectly happy with Mr. Hanley and I filing such a

1 motion. We have a legal conflict
2 because we cannot.

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4 THE COURT, page 3145 Lines 8
5 : "So it's your conflict."

6
7 MS. VOSS, page 3145 Lines 9-11
8 : "As it always is. The conflict is with
9 counsel as opposed to a Marsden which
10 is an issue generated by a client."

11
12 THE COURT, page 3145 Lines 12-16
13 : "Okay. Well, maybe we're splitting hairs.
14 The conflict that you perceive is that
15 you cannot fairly and objectively
16 evaluate your own performance as
17 trial counsel. That's the conflict."

18
19 MS. VOSS, page 3145 Lines 17-18
20 : "I would -- I think there's more to it
21 than that. But yes."

22
23 THE COURT, page 3145 Lines 19-23
24 : "Well, I mean we've been talking about
25 IAC so I'm assuming that that's what
26 we're talking about in terms of a
27 conflict. That you cannot fairly evaluate
28 and assess your own trial performance."

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MS VOSS, page 3145 Lines 24
: "Yes"

THE COURT, page 3145 Lines 25
: "Okay"

MS. VOSS, page 3145 Lines 26-27
: "And there's more to it than that.
It's not just trial performance
right."

THE DEFENDANT, page 3250 Lines 15-20
: "There are other issues. For example,
the FBI, prior to the trial reached
out to Ms. Voss and said they would
come testify. And the FBI asked to
speak with me. However, you know,
being represented has presented an
issue because my attorneys are not
willing to do that."

THE DEFENDANT, page 3329 Lines 23-28
: "Well, here's the root issue of the
ineffective assistance of counsel,
Judge. My attorneys, and they can
testify to it or whatever, they expressed
safety concerns about going after
evidence surrounding Department of Energy

THE COURT, pg. 3292, lines 8-12

"You understand there's some very technical rules regarding sentencing, you're going to be required to follow them, you're not as learned in the law as your attorney Miss Voss, you understand that?"

THE COURT, pg. 3292, lines 14-23

"You understand even with regard to the probation report that's been prepared there's certain kinds of objections that you might make, you might not, I don't know..." "...but it's going to be difficult for you to know what to object to, you're not learned in the law and the Court is not going to be your attorney for you. You understand that?"

THE COURT, pg. 3292, lines 24-26

"In other words, that's another way of saying you're not going to get any special treatment from the Court."

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THE District Attorney filed a probation report at the last minute in a disguised attempt to reacquire Jurisdiction under Cal. Pen. Code §1191 and reset the tolling on the Statute of Limitations.

THE probation report was not authorized by Law. (LWOP x 3)

THE Judge was hinting and suggesting then Defendant should object to the probation report which would automatically defeat the gamesmanship of the District Attorney.

Ben Ladinig (Prosecutor) pg. 3261-3262
lines 21-23: "Now, while he was on the
stand for two days -- and his testimony
was as farfetched as one can even
fathom. I understand that. But the bottom line..."

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lines 9-26: "...Again, we're going to be six
years past the murders. We're going --
we're already set for sentencing now four
months after the verdict. This gets to a
level of unacceptability to the sense that we
are simply kowtowing to Mr. Haobsh's whims
as to "Well, I want a Marsden. I want
Conflict Counsel." "Well, I want to reschedule
that and have another hearing on that."
"Well, now I want to represent myself."

lines 18-26: "Victims have rights. The Community
has rights. This is getting to a point of
nonsense. And again, Judge, this is not --
you're having to deal with somebody of
which you've heard two days of testimony
that was so farfetched. And he is an
admitted manipulator, liar, and con
artist. [NOT TRUE!] I have a
feeling that this whole thing is just another
con, and we're all getting conned. And
now you're getting conned..."