

24-6461

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 04 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

David Lack _____ — PETITIONER
(Your Name)

VS.

Dr. Posson, et al. _____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeal for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Lack
(Your Name)

10105 East Via Linda Unit 453

(Address)

Scottsdale, Arizona, 85258

(City, State, Zip Code)

480-589-98166

(Phone Number)

QUESTION(S) PRESENTED

- 1. Was the Trial Court in Violation of the Plaintiff's State and Federal Speedy-Trial Rights. Plaintiff constantly asking for a speedy trial for over 4 years.**
- 2. Was the Trial Court in Violation of defendant's Medical Treatment after being rushed to the hospital from the prison (twice) and diagnosed with a stomach tumor by Gastrologist Specialist Dr. Tabbaa. Prison Officials and the Trial Court refused to adhere to Dr. Tabbaa's recommendations for further testing and treatment.**
- 3. Was the Trial Court(s) in Violation of Loss of Concurrent Sentences by Trial Court, Kellett, Prop 57, Plata Fed Rule by not ruling on Kellett after setting it aside and did not take it back up as Plaintiff was sent off to State Prison.**
- 4. Is the Trial Court in Violation of Plaintiff's due-process rights by making his sign a plea agreements so he can be released to receive his cancer treatment as recommended by Specialist.**

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

| | | |
|-----------------------|-------------------------|---------------|
| * Brian Cota | * Clifford Anderson III | * Jeff Sanger |
| * Craig Koenig | * Michael Carrozzo | * John Doe |
| * Ronda Skipper-Dotta | * Jean Dandona | |
| * Daniel Moeller | * Robert Sanger | |
| * Thomas P. Anderle | * Neil Levinson | |

RELATED CASES

* Lack v. Posner Dr; et al.,9th Cir. Case #23-55522 Motion for reconsideration Judgment entered Oct 18, 2024

* Lack v. Posner Dr. et al., 9th Cir Case #23-55522 Judgment entered May 23, 2025

* Plea form, with explanations & waiver of rights-felony entered on Dec 13, 2018

TABLE OF CONTENTS

| | |
|--|------|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 2. |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3. |
| STATEMENT OF THE CASE | 4;17 |
| REASONS FOR GRANTING THE WRIT | 18. |
| CONCLUSION..... | 19.. |

INDEX TO APPENDICES

APPENDIX A United States Court of Appeals for the Ninth Circuit

APPENDIX B United States District Court (central division) Los Angeles

APPENDIX C California State Court for the County of Santa Barbara

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

| CASES | PAGE # |
|--|-------------|
| FOR SPEEDY TRIAL RIGHTS. | |
| PC 1381 & 1382 (a) -which was filed to the Trial Court | 4,5,6 |
| Houston V. Lack, 625 F Supp.786 (1986) "MAILBOX RULE" | 4 |
| Rice v. Superior Court, 49 Cal. App. 3rd 200, 122 Cal Rptr. 389 (2nd Dist. 1975) | 4 |
| CJS Criminal Law 832, 842, 844, 853, 856. | 5 |
| US Const Amend 14; Cal Const 1,7, 15 People v. Lazarus, 238 Cal App. 4th 734, | 5 |
| People v. Johnson, 26 Cal 3d 557 (1980) | 5 |
| U.S. v. Marion, 404 US 307-320, 92 S. CT. 455-462-463, 306 ED 2nd. 468 (1971) | 6 |
| Barker v. Wingo 407 U.S. (1971) at pp 531-532 | 6,7 |
| Smith v. Hooey, 393 U.S. 374 (1969) 89S. Ct. 575 L. 2nd 607 | 7 |
| Klopfer v. North Carolina, 386 U.S. 213, 87 S Ct. 988, 18 L Ed. 2d 1 | 7 |
| Doggett v. U.S. 647 (1992) | |
| US Constitution Amendment 6th Cal 1 &15 | |
| For Violation of Serious Medical Needs | |
| Estelle v. Gamble, 429 U.S. 97 103 (1976) bx f 1004-1005 | 10,11,12,13 |
| Lopez v. Smith, 203 F. 3d 1122 (9th Cir 2000) | 11 |
| Scott v. Ambani, 577 F 3 d 642 (6th Cir 2009) | |
| Spruill v. Gillis, 372 F. 3rd 218 (3rd Cir 2004) | 10 |
| Meloy v. Bachmeier, 302 F 3rd 845, 849 (8th Cir. 2002) | 10 |
| Brown v. District of Columbia, 514 F. 3d 1279 (D.C. 2008) | 10 |
| Jett v. Penner, 439 F. 3rd 1091, 1096 (9th Cir. 2006) | 12,13 |
| Gutierrez v. Peters, 111 F. 3d 1364, 1369 (7th Cir. 1997) | 12,13 |
| US Constitution Amendment 8 Cruel & Unusual Punishment | 10-13 |

For Loss of Concurrent Sentences: KELLETT; PROP 57 & PLATA 2 for 1 Federal Rule:

Kellett v. Superior Court, 63 Cal 2d 822 (1966)

People v. Lowe, 24 Cal Rptr. 3d 604 (Cal App, 6th Dist. 1995)

People v Martinez 37 Cal. App 4th 1589, 1594, 44 Cal Rptr. 2d 673 (6th Dist. 1995)

Barker v Municipal Court of Salinas Judicial Dist. Of Monterey County, 64 Cal. 2d 806, 51

Barker v. Municipal Court Supra

Salvador Martinez supra 37 Cal App 4th 1589, 44 Cal. Rptr. 2d 673

Strunk v. US., 412 U.S. 434 (1973) 93 S. Ct 2260

Smith v. Hooey, 393 U.S. (1971)

Hafer v. Melo, 502 U.S. 21 (1991) Judges lose their 11 Amendment Protection

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 18, 2024.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 3, 2024, and a copy of the order denying rehearing appears at Appendix B.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was December 13, 2018. A copy of that decision appears at Appendix C.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U S 2018 code 242 Color of Law

US Constitution Amendment 8 Cruel and Unusual Punishment

US Constitution Amendment 6 Speedy Trial Rights

California Proposition 57

Plata Federal Ruling 2-1 Good time credits

Kellett Ruling

Penal Code 1381 & 1382

STATEMENT OF THE CASE

VIOLATION OF THE PLAINTIFF'S STATE AND FEDERAL SPEEDY-TRIAL RIGHTS

US CONSTITUTION AMENDMENT 6TH by Trial Court

FACT: Plaintiff Lack was incarcerated in Soledad State Prison on Case 1335893

FACT: On September 30, 2015, Plaintiff filed a PC 1381 legal form for case 1446497 and placed it in the Prison mailbox stating, PC 1381 states, "A State Prison must be brought to trial within 90 calendar days." See Houston v. Lack, 625 F Supp.786 (1986) "Mailbox Rule" Besides, brought to the trial, the trial court must be ready with a jury in place. The plaintiff's Lack jury was never in place after 90 days.

FACT: On December 30, 2015, 90 calendar days later. Plaintiff Lack was not brought to trial, and the case should have been dismissed (period) See PC 1381 rules. No more obvious point or authority exists that case # 1446494 should have been dismissed on December 30, 2015! Plaintiff Lack is entitled to relief on case second case #1446494. See exhibits E, 5 pages of 1381 & 1382 trial court filed documents.

FACT: The prosecution has a duty to employ all reasonable means to bring an accused promptly to trial. See Rice v. Superior Court, 49 Cal. App. 3rd 200, 122 Cal Rptr. 389

(2nd Dist. 1975) in dismissing after an 11-month delay. **FACT:** Plaintiff Lack was brought to trial on January 13, 2016, (105 days later) after filing his 1381 with no jury in place or the State Court ready for trial. See Santa Barbara criminal minute order case 1446497 in Department 10. dated 01/13/2016. And exhibit E

FACT: Plaintiff Lack demanded that his case be dismissed as per Penal Code section 1381. Judge Anderson denied the rule after DA Cota said, "Mr. Lack does not have the right to file a PC 1381; only his attorney can do that." Judge Anderson agreed.

FACT: "The constitutional right to a speedy trial belongs to the defendant, rather than his or her attorney, and thus counsel cannot waive the constitutional right over the client's objection." See CJS Criminal Law 832, 842, 844, 853, 856. PC 1381. Besides, Plaintiff Lack had no council at the time. The plaintiff's attorney (Sanger) had quit months before because I could not pay him. Unless this federal court accepts DA Cota as my attorney, then this case 1446497 should be dismissed and this 9th Circuit Federal Court has the jurisdiction to do so.

FACT: Purposeful delay in Prosecution to gain an advantage is tilted unjustified and a relatively weak showing of prejudice would suffice to tip the scales towards finding due process violation based on delay US Const Amend 14; Cal Const 1,7, 15 People.

Lazarus, 238 Cal App. 4th 734, 2015 WL 4208522 (2nd Dist. 2015)

FACT: In People v. Johnson, 26 Cal. 3d 557 (1980), "Federal constitutional right a speedy trial is a fundamental right which can be waived only through a voluntary, knowing, and intelligent decision by the defendant himself. Plaintiff Lack (Defendant at the time) objected to the continuance of the trial beyond 90 days. Neither the appointed public defender's office nor appointed attorney Neil Levinson or DA Cota had the right to delay the trial yet Judge Anderson and Judge Anderle consistently allowed it over the objection of Defendant Lack at every hearing. See Santa Barbara Criminal min orders.

FACT: On 01/13/2016, Plaintiff Lack "demanded that this case be dismissed according to PC 1381, and it is preserved. See Santa Barbara criminal minute order case #1446497.

FACT: On 01/23/2016, Defendant Lack filed a PC 1382(a), "the court must dismiss the action when the specified speedy trial time limits are not met, or unless the defendant waives the time." Judge Anderle denied the motion even though Plaintiff Lack never waived time. Plaintiff Lack never waved time in case 1446497, and well documented.

FACT: Plaintiff Lack never waved time during entire case number #1446497 and continued to mention that the court violated his speedy trial rights at every court appearance until after his physical and verbal abuse by State actors to his settlement agreement on December 13, 2018, so he could receive his medical treatment. Even DA Cota admitted it in ~~Exhibit D~~ Appendix C

FACT: The speedy trial right is triggered when the defendant is accused-when formal indictment or information is filed, or the defendant is arrested. See U.S. v. Marion, 404 US 307-320, 92 S. CT. 455-462-463, 306 ED 2d.468 (1971). Plaintiff was arrested on June 20, 2014, on case number 1446497. For over 4 ½ years, Plaintiff Lack asked for his speedy trial rights and had never waived time during that entire time of 4 ½ years.

FACT: In Barker v. Wingo 407 U.S. (1971) at pp 531-532, "the more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his

speedy trial right is entitled to strong evidential weight in determining whether the defendant is being deprived of the right."

FACT: Also, in Barker, "there may be a situation by incompetent counsel was severely prejudiced, the public defender's office and appointed counsel Neil Levinson would not stand up for plaintiff Lack's speedy trial rights, See Santa Barbara criminal minutes.

FACT: In Smith v. Hooey, 393 U.S. 374(1969) 89S. Ct. 575 L. Ed. 2nd 607 quoting Klopfer v. North Carolina, 386 U.S. 213, 87 S Ct. 988, 18 L Ed. 2d 1 "this court held that, by virtue of the Fourteenth Amendment, the Sixth Amendment right to a speedy trial is enforceable against the States as 'one of the most basic rights preserved by our Constitution. I.e., The State of California must accept Plaintiff Lack's assertion that his speedy trial rights were violated for over 4 ½ years. Also, see Doggett v. U.S. 505 U.S. 647 (1992) Plaintiff Lack is entitled to relief on Case #1446497.

FACT: The due process clause may provide a basis for dismissing an indictment if the defense can show at trial that prosecutorial delay in bringing accusations has prejudiced the right to a fair trial U.S.C.A. Const. Amend 5. Plaintiff Lack will have no problem showing the facts that my trial was delayed by the prosecution if given the opportunity to do so.

FACT: In Barker v Wingo 407 U.S. 514 (1972) The United States Court of Appeals for the Second Circuit has promulgated rules for the district courts in that Circuit establishing

that the government must be ready for trial within six months of the date of arrest, except in unusual circumstances or the charge will be dismissed. Lack was asking for them for over 4 ½ years. Due to arrest in June 2014. I think this court should clearly understand that Plaintiff Lack (a defendant at the time) in case #1446497 speedy trial rights were abused by the Santa Barbara County Courts and is entitled to relief as this case should be dismissed according to the US Constitution Sixth Amendment Right to a Speedy Trial. Plaintiff Lack is entitled to relief in his second case.

Fact: Plaintiff had mailed my speedy trial rights abuse to this federal court on 12.26.2016 and to the US Supreme Court on 12.18.2016 and to the Santa Barbara Case 2:22-cv-02955-County Superior Court many times in 2016 and the 2nd appellate court all stating that they will rule after the trial is over. The plaintiff sent many follow-up letters with no answers to the courts. Fact even Judge Anderle admitted in court that "Mr. Lack I have the right to deny your speedy trial rights under Kozlowski, but Constitutionally I do not". See criminal minute order on 03.11.2016

STATEMENT OF THE CASE:

VIOLATION OF THE PLAINTIFF'S SERIOUS MEDICAL NEEDS

US CONSTITUTIONAL 8TH AMENDMENT

FACT: On Tuesday, March 6, 2018, Plaintiff Lack (a defendant at the time in Soledad State Prison) woke up at 3:00 AM with severe stomach pains and was rushed to Natividad Trauma Hospital in Salinas California as emergency code 1.

FACT: Emergency Hospital Doctors performed a CAT Scan and found a tumor mass (3.0cm) and admitted Plaintiff Lack to conduct additional tests for 3 days with 7 other doctors in review. and Dr. Tabbaa cancer specialist came into Lack's room and told him it was cancer, and he was going to follow up with a recommendation report and treatment and give it to the Prison Dr. That would be Dr. Posson at Soledad State Prison, a defendant in this civil rights case.

FACT: On Friday, March 9, 2018, Plaintiff Lack was discharged from the Natividad Hospital with specific discharge instructions by specialist Dr. Mumtaz Tabbaa confirmed by 7 other Doctors. "We are going to have the prison refer you to UCSF for further evaluation and management" See Exhibit B 2-pages. As you can read, I was to go to UCSF and the prison nurse told me on March 10th that I would be going to UCSF in the next 3-5 days.

FACT: It never happened, but I went off to court where there is no endoscopic ultrasound testing or treatment. Stated Claim against Dr. Posson and Warden Koenig

FACT: Dr. Posson is the Chief Medical Officer at Soledad State Prison, and the Warden is C. Koenig at Soledad State Prison. These two defendants received these instructions. Exhibit B 2 pages.

FACT: Dr. Posson and Warden C. Koenig received all the Natividad Hospital discharge papers but did not follow Dr. Tabbaa's instructions, they never sent plaintiff Lack to UCSF Hospital for further tests and evaluation as prescribed by medical specialist Dr. Tabbaa and 7 of his college's prescribed orders but did allow DA Cota and Judge Michael Carrozzo to bring back to court nearly 7 times not ready for trial which interrupted medical appointments. Plaintiff Lack is entitled to relief because they did not follow Dr. Tabbaa's instructions to treat his stomach-growing stomach tumor.

FACT: The Eighth Amendment protects your right to medical care. The Constitution guarantees prisoners this right, even though it does not guarantee medical care to people outside of prison. The Supreme Court explained that this is because "a} inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, (Dr. Posson, C. Koenig) those needs will not be met. "Estelle v. Gamble, 429 U.S. 97 103 (1976)

FACT: A prison doctor fails to respond appropriately or does not respond at all to your serious medical needs. Scott v Ambani, 577 F.3d 642 (6th Cir 2009) Spruill v. Gillis, 372 F.3d 218 (3rd Cir 2004); Meloy v. Bachmeier, 302 F 3rd 845,849 (8th Cir.2002) and Prison Guards or other non-medical officials intentionally deny or delay your access to medical treatment. Brown v. District of Columbia, 514 F. 3d 1279 (D.C. 2008) Plaintiff

Lack never spoke to Dr. Posson after several medical appointments and attempts to try and see him.

FACT: the same thing happened again with stomach pain on May 8th, 2018, and still nothing was done even as the mass went from 3.0 to 4.4 cm see Exhibit C 2-pages

FACT: All defendants (outside of Dr. Posson) are non-medical officials. They were constantly and administratively notified many times over by the plaintiff and the plaintiff's family members since March 2018 of his serious medical needs through numerous grievances and complaints to Prison officials and the trial courts, these non-medical officials constantly interfered in Plaintiff Lack's serious medical needs by not follow Dr. Tabbaa's Hospital discharged instructions.

FACT: All these non-medical official defendants were deliberately indifferent to the plaintiff's Lack's medical needs in not following Dr. Tabbaa's discharge orders in March of 2018 and in May of 2018. When these same non-medical officials interfere with the treatment that your doctor has ordered you are deliberate indifferences to a prisoner's medical needs. See Estelle, 429 U.S. at 1004-1005; Lopez v. Smith, 203 F. 3d 1122 (9th Cir 2000) Plaintiff Lack is entitled to relief here.

FACT: Under the Eighth Amendment, a prisoner is entitled to medical care for "serious medical needs" A serious medical need is one that is diagnosed by a Physician see Estella v. Gamble, 429 U.S. 97 (1976). Not only is Dr. Tabbaa a Physician he is also a specialist in his field of Gastrologist the main source of stomach tumor problems.

FACT: Dr. Tabbaa is the Physician specialist at Natividad Hospital in Salinas, California that diagnosed Plaintiff Lack and diagnosed that he be sent to UCSF for further tests and treatment of his serious medical needs as they had the proper medical equipment.

FACT: All defendants outside of Dr. Posson are non-medical officials in the State of California and were acutely aware many times over and over since 2018 that plaintiff Lack had serious medical needs and were electronically given those medical orders March 9th and May 8th, 2018, diagnosed discharge instruction by Dr. Tabbaa.

FACT: Even this Federal Central District Court received those Dr. Tabbaa diagnosed instructions back in or around May of 2018 in Plaintiff Lack's Habeas filings to the court.

FACT: A serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention. See *Hill v. Dekalb Reg'l Youth Ctr.*, 40 F. 3d 1176, 1187 (11th Cir. 1994) Defendant Dr. Posson (a medical doctor, but not a specialist) did not follow specific instructions by specialist Dr. Tabbaa March 9th discharge instructions nor on May 8th discharge instructions.

FACT: Failure to treat a prisoner's condition could result in further significant injury or the 'unnecessary and wanton infliction of pain. See: *Estelle*, 429 U.S. at 1004; *Jett v. Penner*, 439 F. 3rd 1091, 1096 (9th Cir. 2006). Plaintiff Lack Tumor mass went from 3.0 cm on March 9th to 4.4 cm on May 8th discharged papers. With constant pain as a significant tumor was growing none of these defendants did anything about it and were always informed that they were in violation of my 8th Amendment rights. And is well documented in the Prison grievances system and notices to the trial court. Plaintiff Lack

is entitled to relief, as he was constantly in stomach pain and along with severe stress as his serious medical needs were not being attended to by prison officials and abused by the stated claim of DA Cota and Judge Carrozzo. Who was very aware of Plaintiff Lack's medical conditions since March of 2018. And reminded of it in May 2018 as the Tumor mass continued growing. Through to December 13, 2018, plea bargain so Plaintiff could seek his medical treatment. See Exhibit D by DA Cota December 13, 2018, to Prop 57 officials. The mass took up 1/4th of my stomach by the time I was released on May 5, 2019.

FACT: to prove deliberate indifference, you must show that (1) prison officials knew about your serious medical need and (2) prison officials failed to respond reasonably to it. Estelle, 429 U.S. at 104; Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997)

FACT: Prison Warden Koenig; DA Cota; Judge Michael Carrozzo and Dr. Posson all knew about the Plaintiff Lack's serious medical needs back in March of 2018 and May of 2018 as they received discharge documents from Dr. Tabbaa at Natividad Hospital. Plaintiff Lack has kept detailed court filings, with medical instructions, and detailed records of every visit to prison nurses and grievance applications to all 3 prison administrative levels of prison medical appeals processes. See prisoners keeping medical records in Farmer v. Brennan, 511 U.S. 825, 842 (1995).

FACT: This 9th Federal Appeals Court does have jurisdiction to review the case records and apply relief to the plaintiff under the 8th Amendment and the 14th Amendment. See Gutierrez v. Peter's III United States Court of Appeals, 7th district (1974) [A] claim of medical mistreatment rises to fourteenth amendment proportions when it asserts a

refusal to provide essential medical care after a prisoner brings his medical complaint to the attention of prison authorities. Stated claim against Dr. Posson and Warden Koenig.

FACT: Plaintiff Lack has stated a claim that is factual. He contacted UCSF Doctors (gave them the exhibits) even during his prison time by mail and was instructed to go to UC System which he did the day he was finally released from Prison on May 4th, 2019. They conducted tests for 6 months along with attending to my skin cancer in the UC system until my operation in November of 2019 as Plaintiff Lack was in the hospital for 9 days and in rehab for over 30 days. Then homeless for 3 months until he was well enough to get a job and now rebuilding his life. Plaintiff is asking for relief for pain & suffering by these defendants in this Civil Case.

STATEMENT OF THE CASE

LOSS OF CONCURRENT SENTENCES KELLETT RULING: PROP 57 & PLATA FED RULE

FACT: It is well established and documented that this federal court and all the state and trial courts do recognize that his Kellett motion was tabled by Judge Dandona as of June 2014 during trial on his first case #1335893 and not addressed by any private or public-appointed attorney's until it was brought up repeatedly by plaintiff Lack during case #1446497 and fallen on deaf ears by all the trial courts which would have consolidated the two cases if properly heard but never had the chance to be. Because defendant Cota had Plaintiff Lack sent off to State Prison on December 14, 2018, and missed his court hearing on Jan 13, 2016, in case #1446497 either way this federal court must recognize the fact that Plaintiff Lack lost his chance to concurrent sentencing by not hearing the Kellett motion which Judge Dandona failed to recover after the end of trial and Plaintiff's attorney Robert Sanger did not address after trial. And because of that 2nd case hanging in the balance, plaintiff Lack lost his rights to be released on 2 for 1 Plata/Colman federal case and his proposition 57 rights.

FACT: A claim that the opportunity was lost to serve the sentence on the current charges concurrent with a sentence for other offenses is sufficient to establish prejudice from the delay in prosecution, amounting to a violation of the state constitutional right to a speedy trial, even if it is speculative that the court would have imposed concurrent sentences. See (people v. Lowe, 24 Cal Rptr. 3d 604 (Cal App, 6th dist. 2005) People v. Martinez 37 Cal. App 4th 1589, 1594, 44 Cal Rptr. 2d 673 (6th Dist. 1995); Barker Municipal Court of Salinas Judicial Dist. Of Monterey County, 64 Cal. 2d 806, 51 Cal. Rptr. 921, 415 P. 2d 809 (1966)

FACT: The Kellett Motion was established belongs to both case(s) 1335893 and 1446497 and was filed in June 2014. And never ruled on as Plaintiff Lack was hauled away to prison and is the genesis of the problem and has been incorporated in all the records of both trials by Plaintiff Lack. So much so that Superior Court Judge Thomas P. Anderle gave an apology in March 2016 by Saying "This court was unaware that the matter had not been handled and apologizes for its oversight". See Santa Barbara County criminal minute order page 293 dated March 11, 2016, where only an apology is to correct the major mistake by Judge Dandona, & Judge Anderle. Yet Plaintiff Lack is just supposed to accept this. It is also a factor in not granting my early release according to the Federal 2 for 1 Plata ruling. Plaintiff lack mentioned this numerous times during court hearings. Plaintiff Lack is entitled to relief here. See Exhibit F 2-pages.

FACT: in Kellett v. Superior Court of Sacramento County, 63 CAL. 2d 822 (1966) it states: "The United States Supreme Court, "clearly warned that prosecution of closely related individuals offenses at separate trials may constitute an impermissible denial of that fundamental fairness required by the due process clause of the Fourteenth Amendment by Traynor, Chief Justice with (Brennan J concurring)" There was no fundamental fairness aloud to Plaintiff Lack when the Santa Barbara court forgets and then only offers an apology for not addressing the Kellett motion. It cost Plaintiff Lack loss of the opportunity to for concurrent sentencing, prop 57 release, and Federal

FACT: People v Lowe, 126 Cal. App 4th 1365 (2005) Loss of concurrent sentencing is a due process violation. **FACT:** The Court of Appeal Mihara held that the defendants claim lost opportunity to serve concurrent sentences was sufficient to establish prejudices.

FACT: In Barker v Municipal Court Supra: The United States Supreme Court has also stated that the "Possibility that a defendant might receive a sentence even partially concurrent constitutes prejudice". FACT: In Salvador Martinez, supra 37 Cal App 4th 1589, 44Cal. Rptr. 2d 673 Trial court granted the defendant's motion to dismiss, finding that he had been denied his State Constitutional Rights to a Speedy Trial and that the defendant had demonstrated prejudice because he lost the opportunity to serve his sentence on the narcotics charges concurrently with the prison term he had been serving during the delay. Plaintiff Lack can easily demonstrate the same motion in a new trial court if given the opportunity.

FACT: In Strunk v. US., 412 U.S.434 (1973) 93 S. Ct 2260 United States Supreme Court says- "the possibility that the defendant already in prison might receive a sentence at least partially 438 concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed. Smith v. Hooey. And indicated that Fed R. Crim. P. 35 provides that the district court may correct an illegal sentence at any time. We choose to treat the sentence here imposed as illegal to the extent of the delay we have characterized as unreasonable. 467 F.2d, at 973. So, this 9th Federal Appeals Court has the jurisdiction to correct the sentence(s) given to Plaintiff Lack.

REASONS FOR GRANTING THE PETITION

First, this court should grant this petition of certiorari because the state trial court has far departed from the rights of a citizen of the United States to a speedy trial, especially since it can be proven in court many times that this petitioner constantly asked for his rights to a speedy trial for over four years.

Second, this court should grant this petition of certiorari because several state trial courts would not accept the recommendations of the Physician for testing and treatment of this petitioner's stomach cancer. This Petitioner had to sign a guilty plea so he could get out of prison to receive his cancer treatment.

Third the prison parole board would not grant this petitioner his right to good time credits to be released per Proposition 57 and Plata Fed Ruling so he could receive his cancer treatment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darl L. L.

Date: 01/04/2025