

1 Darryl Dunsuare
2 AD6237 C3A-124
3 Box 32200
4 Stockton Ca 95213
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8 THE SUPREME COURT OF THE UNITED STATES
9 Darryl Dunsuare
10 Petitioner
11 v
12 California
13 Respondents
14

Casett 17-7673

15
16 Successive Supplemental
17 Brief in support of
18 writ of Certiorari
19

20 The Superior Court has now Notified
21 petitioner That a hearing will be scheduled
22 on The remand. In Request This court also
23 Mandate Counsel to be present and petitioner
24 for said hearing as both appointed Counsel
25 refuse all communications including Appellate
26 Detenders and The Alternate Detenders
27 in This Matter
28

3/13/18

DJD -

FILED
San Diego Superior Court

FEB 14 2017

Clerk of the Superior Court

By S. Anderson

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

IN THE MATTER OF THE APPLICATION OF:)

DARRYL DUNSMORE,)

Petitioner.)

SCS 215653

ORDER DENYING REHEARING ON
PETITION FOR WRIT OF ERROR
CORAM NOBIS; ORDER DENYING
PETITION FOR WRIT OF HABEAS
CORPUS.

AFTER REVIEWING THE PETITIONS AND THE COURT FILES IN THE ABOVE
REFERENCED MATTER, THE COURT FINDS:

On March 10, 2010, petitioner was convicted by a jury of: one count of attempted voluntary manslaughter (Pen. Code¹ §§ 664/192(a)), with allegations that he personally inflicted great bodily injury and used a deadly or dangerous weapon, a car, (§§ 12022.7(a), 12022(b)(1)); and, two counts of assault with a deadly weapon or force likely to cause great bodily injury (§ 245(a)(1)), with an allegation on one of the counts that he personally inflicted great bodily injury. Petitioner was sentenced to a total term of 22 years in state prison.

Petitioner timely appealed his conviction to the California Court of Appeal, Fourth Appellate District, Division One. (Case No. D057645.) The judgment was reversed in

¹ Unspecified statutory references are to the Penal Code.

1 part and remanded to the trial court with directions to identify and impose all mandatory
2 fines, fees, surcharges, and penalty assessments. Judgment was otherwise affirmed.
3 (*People v. Dunsmore* (4th Dist., Div. 1, Dec. 22, 2011, D057645 [unpub. opn.], review
4 den. Mar. 14, 2012.)

5 On November 28, 2017, petitioner filed a petition for writ of error coram nobis
6 with this court requesting that his conviction be vacated because new information
7 regarding faulty brakes and steering on his car became available in 2014 and would
8 have prevented judgment if presented to the court at the time of his conviction.
9 Petitioner also requested substitution of counsel. The petition and request for substitute
10 counsel were denied on December 15, 2017.

11 In its order denying the petition for writ of error coram nobis the court explained
12 that because petitioner had a petition for writ of habeas corpus challenging his
13 underlying conviction pending in the California Supreme Court (case No. S245664), the
14 trial court lacked the power to interfere with the appellate jurisdiction of a higher court in
15 matters pending before it. (*People v. Mayfield* (1993) 5 Cal. 4th 220, 225; *France v.*
16 *Superior Court* (1927) 201 Cal. 122, 131-32; *In re Carpenter* (1995) 9 Cal.4th 634, 646,
17 as modified on denial of reh'g (May 17, 1995).)

18 On January 10, 2018 petitioner filed a request for rehearing² of his petition for
19 writ of error coram nobis. Petitioner argues that the habeas petition pending in the
20 California Supreme Court relates to sentencing and credit and the petition for writ of
21 error coram nobis attacks the validity of the judgment and therefore they do not conflict.
22 According to the California Courts informational website, the habeas corpus petition is
23 still pending in the California Supreme Court. A review of the validity of the judgment by
24 this court could render the decision of the California Supreme Court on the habeas
25 petition moot. Therefore, the request for rehearing is denied for the same reasons the
26 petition was denied in the first instance.

27
28 ² Petitioner cited Cal. Rules of Court, rule 8.268 in support of this request. This rule governs rehearing in courts of review. It does not apply to this trial court.

1 On February 1, 2018 petitioner also filed a petition for writ of habeas corpus.
2 Petitioner complains that the remand order on his appeal from the conviction has not
3 been addressed by the trial court. This is not a proper basis upon which to seek relief
4 pursuant to a petition for writ of habeas corpus. (§ 1473(a).) However, a review of the
5 court docket appears to confirm that a remand hearing to address mandatory fines,
6 fees, surcharges, and penalty assessments has not been conducted. Accordingly, the
7 matter will soon be calendared in department 16 of the San Diego Superior Court,
8 South County Regional Center, 500 3rd Avenue, Chula Vista, CA 91910 for the purpose
9 of addressing the remand order.

10 A copy of this Order shall be served upon petitioner.

11 IT IS SO ORDERED.

12 DATE: 2/7/18

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14 STEPHANIE SONTAG
15 JUDGE OF THE SUPERIOR COURT
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO ☐ CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 ☐ CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 ☐ CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 ☐ CENTRAL DIVISION, FAMILY COURT, 1555 6TH AVE., SAN DIEGO, CA 92101 ☐ CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 ☐ CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 ☐ CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 ☐ EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 ☐ NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 ☐ NORTH COUNTY DIVISION, JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92081 ☒ SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910		FOR COURT USE ONLY FILED San Diego Superior Court FEB 14 2017 Clerk of the Superior Court By <u>S. Anderson</u>
PLAINTIFF(S)/PETITIONER(S) in the matter of the application of Darryl Dunsmore for petition for writ of Habeas Corpus	JUDGE: STEPHANIE SONTAG DEPT:	
DEFENDANT(S)/RESPONDENT(S)	CASE NUMBER SCS215653	
CLERK'S CERTIFICATE OF SERVICE BY MAIL		

I certify that I am not a party to the above-entitled cause, that I placed a copy of the following document(s):
 ORDER DENYING REHEARING ON PETITION FOR WRIT OF ERROR CORAM NOBIS; ORDER DENYING PETITION
 FOR WRIT OF HABEAS CORPUS

in a sealed envelope addressed to the parties shown with postage prepaid, and deposited it in the United States mail at
☐ Chula Vista ☐ El Cajon ☐ San Diego ☐ Vista, California.

NAME & ADDRESS

Darryl Dunsmore AD6237
 CHCF D3B-112
 P O Box 32200
 Stockton, CA 95213

NAME & ADDRESS

Clerk of the Superior Court

Date: February 14, 2018

by S. Anderson, Deputy
 S. Anderson