

1 Darryl Dunsmore
2 AD6237 C3A-124
3 Box 32200
4 Stockton Ca 95213
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8 SUPREME COURT OF THE UNITED STATES
9 Darryl Dunsmore
10 Petitioner
11 v
12 California
13 Respondents
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Case # 17-7673

17 Petition for Rehearing
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Grounds for Relief

Due Process

United States v Hicks 669 Fed Appx 213
2016 app Lexis 17626

Argument

It seems clear to me that upon
filing of the writ of Certiorari the
Superior Court promptly declared it would
callender the hearing on Remand after failing
to do so for 7 1/2 years.

This move appears to be only for the
purpose of mooted petitioner's writ of
Certiorari and both the Appellate Court
4th Dist and the Superior Court after
60 plus days continue to fail to
callender said hearing depriving petitioner
of Appellate Review and relief.

The exact same grounds exist in this
case as in Hicks v United States why this
Court is denying petitioner Relief is only
because the lower Courts have convinced
this Court that I have already Reviewed
Relief

1 Petitioner Motions This Court for Relief
2 Through petitioners writ of Mandate / prohibition
3 To ensure petitioner actually receives The
4 Said Callendered hearing The Court stated
5 it would provide or provide any other
6 relief The Court may find Just and fair
7
8
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10 Conclusion

11 Exercise The Courts discretionary powers
12 under writ of Mandate / Prohibition or provide
13 other relief to ensure Remand hearing is
14 actually provided after waiting yet another
15 60 plus days after waiting 7 1/2 years for
16 Said resubmitting hearing on Remand
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4/30/18

DJD -

Verification

I am The petitioner in this action all fact alleged in the above petition not otherwise supported by Citation to The Record Exhibits or other Documents are true of my own personal knowledge

I further Declare said petition for Re hearing is presented in good faith and Not for Delay

I Declare under penalty of perjury under The laws of The State of California That The foregoing is true and correct

4/30/18 DJD -
Daryl Dinsmore

Darryl Dunsware
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Box 32200
Stockton Ca 95213

SUPREME COURT OF THE UNITED STATES
Darryl Dunsware
Petitioner
v
California
Respondents

Case # 17-7673

Memoranda in Support
of Petition for Re hearing

Appendix A

ORDER 3 to Attend hearing - - - 1 page

Appendix B

writ of Mandate/Prohibition - - - 27 pages

4/30/18 DJD -

Appendix A

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

13 
14 STEPHANIE SONTAG
15 JUDGE OF THE SUPERIOR COURT
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Darryl Dunsmore

AD6237 C3A 124

Box 32200

Stockton Ca 95213

Appendix B

SUPREME COURT OF THE UNITED STATES

IN RE

Darryl Dunsmore

Case # 17-7673

Petition for Writ of
Mandate / Prohibition

1 Darryl Dunsmore
2 AD6237 C3A-124
3 Box 32200
4 Stockton Ca 95213
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8 SUPREME COURT OF THE UNITED STATES
9 IN RE:
10 Darryl Dunsmore
11

Case# 17-7673

12
13 Petition for writ of
14 Mandate / Prohibition
15

16 After The Granting of writ of Habeas
17 in The Body of The order and Verile of
18 The writ of Habeas on The Caption page of
19 The order By The Honorable Stephanie
20 Santes Judge of The Superior Court County
21 of San Diego Denying petitioner of his
22 Constitutional right to Evidentiary hearing
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1 Darryl Dunsmore
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3 Box 32200
4 Stockton Ca 95213
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8 SUPREME COURT OF THE UNITED STATES
9 IN RE!

Case# 17-2673

10 Darryl Dunsmore
11
12

13 Petition with memorandum
14 of Points and Authorities
15 in Support of Mandate and
16 Prohibition
17

18 To The Honorable Presiding Justice and
19 To The Honorable Associate Justices of The
20 Supreme Court of The United States.
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INTRODUCTION

① The petitioner has petitioned The Courts for 7 years concerning The Remand issued By The Appellate Court of The 4th District on Dec 22 2011 Appendix F Petitioner filed a writ of Habeas Solely on this issue Appendix C on 1/24/18 The Court clearly Granted The writ of Habeas Appendix A order 3 on 2/7/18 line 4-9

However The Caption page Denied The writ of Habeas Appendix A order 1 line 13-14

② Petitioner Has also filed Numerous petitions concerning Clerical issues incomplete and inaccurate Records for Appellate Review concerning the transcripts and Missing Declarations from Counsel as to such

③ Petitioner has also filed Numerous petitions concerning His unauthorized Sentence in which he was to be Sentence as a Serious offender as argued in The people Sentencing Brief Appendix E P114 line 18 stating (his current offences are Serious Felony Convictions)

Petition

Petitioner Darryl Dunsmore respectfully
Petitions This Court for a writ of Prohibition
/mandate Directed to Respondent Court and
by This Verified petition Alleges that:

① No other Remedy at Law is available
The Dist Court Refused Habeas as Successive
Appendix G

② Refused Motion To Alter or Amend and
erroneously changed petition into Motion for
Reconsideration Appendix H

③ The Ninth Circuit has Declared pending
Motions as moot Appendix I

④ Petitioner is The Defendant in The above
entitled Action now pending in The Respondent
Court

⑤ Petitioner filed a writ of Habeas Concerning
The removal of The 4th Dist Court of Appeals
file Stamped 12/22/11 Appendix P The writ
of Habeas was filed on 1/24/18 and an
order issued granting relief in The Body
of The order Dated 2/7/18 Appendix A
order 3 line 4-9 stating (However a Review
of The Court Docket appears to confirm That a
Removal Hearing to address Mandatory fines, fees

1 surcharges and penalty assessments has not
2 been conducted. Accordingly The Matter will
3 soon be calendared)

4 Yet Denying The writ of Habeas on The
5 Caption page Appendix A Order 1 Line 12-14
6 in order to Deny petitioner of an
7 evidentiary Hearing he is Constitutionally
8 entitled Too

9 ⑥ By This petition an order is sought from
10 This Court Prohibiting The Respondent Court
11 from scheduling any other proceeding other
12 Than an OSC Evidentiary hearing and Mandating
13 The Court to Calendar said hearing in conjunction
14 with The granting of The writ of habeas
15 as outlined in The Body of The order
16 (Order 3) Appendix A Line 4-9

17 ⑦ Petitioner is particularly aggrieved by
18 Respondent Courts Actions which will result
19 in irreparable damage to petitioner in That
20 Petitioner will Continue to be denied Appellate
21 Review and Due process in The Hearing
22 Process of which The Court wishes to
23 schedule at This time and will Continue to
24 be denied accurate and Complete records
25 and Most of All The Continued Suffering of
26 an excessive Sentence not Authorized in
27 which petitioner was clearly to be Sentenced
28 as a serious offender, Not Violent as supported

1 by The Face of The record Appendix 2
2 P114 line 18 (His current offenses are Serious
3 Felony Conviction) (People sentencing Brief)

4 Appendix 1 (charging Complaint) citing each
5 allegation as 1192.7(C)(23) as alleged by The
6 Prosecution and argued in The Sentencing
7 Brief by the prosecution

8 If petitioner had known he would be
9 sentenced as a violent offender he would have
10 Plea Bargained

11 ⑧ The parties directly affected by the
12 instant proceedings now pending in respondent
13 Court are petitioner, respondent Court and real
14 Party in interest The people of The State of
15 California

16 All The proceedings about which this
17 Petition is concerned have occurred within
18 The territorial Jurisdiction of Respondent
19 Court and of this Court

20 ⑨ Unfortunately petitioner has abused The
21 Court with petitions Seeking Relief of The
22 matter before This Court. Petitioner is
23 justified in filing The instant petition because
24 because The Court has granted a writ of
25 Habeas but wishes to Misconstruct Said order
26 in a way to Continue to Deprive petitioner
27 of his Constitutional rights to an Evidentiary
28 Hearing

1 ⑩ Petitioner has no other plain or
2 adequate remedy at law. The Fourth
3 Dist Court of appeals has contrarily
4 stated to petitioner he has no Appellate
5 Rights.

6 ⑪ Respondent Court should be restrained
7 from further proceedings for the reasons that
8 hearing and order as portrayed would
9 violate petitioner's Constitutional Right
10 to an evidentiary hearing or granting
11 of a writ of Habeas.

12 ⑫ Respondent Court should be ordered to
13 grant petitioner's Motion because the denial
14 of petitioner's Motion to Amend the Judgment
15 would be error on the part of the respondent
16 Court and Abuse of Discretion in that petitioner
17 would be denied an evidentiary hearing
18 or the granting of a writ of habeas and
19 continue to suffer an excessive unauthorized
20 sentence. Denial of Appellate Review Accurate
21 and Complete records and Counsel.

22
23 WHEREFORE, petitioner prays That:

24 ① This prayer should be deemed Notice That
25 Petitioner seeks a peremptory writ of prohibition
26 in the first instant restraining the respondent
27
28

1 Court, its officers and agents and all persons
2 acting by and Through from taking any further
3 steps or proceedings including Trial in The above
4 captioned criminal action against petitioner.
5 Other Than an evidentiary hearing on The granting
6 of writ of Habeas as outlined in Order 3
7 of Appendix A

8 ② An Alternative writ of prohibition issue
9 directing and requiring respondent Court to
10 act as set forth above or in The Alternative
11 To Show Cause before This Court at a specified
12 time and place why it should not be absolutely
13 and forever restrained from taking any further
14 proceedings against or making any other
15 orders affecting petitioner in The proceedings
16 above described until further order of This
17 Court

18 ③ This prayer should be deemed notice That
19 petitioner seeks a peremptory writ of Mandate in
20 The first instance directing and compelling Respondent
21 Court To schedule an Ose Evidentiary hearing
22 on The granting of a writ of Habeas and
23 To amend its orders on The Caption page
24 and The Body to conform to The granting of
25 The writ of Habeas ordering an evidentiary
26 hearing.

④ An Alternative writ of Mandate issue
Directing and requiring respondent Court to act
in a Manner Set Forth above or in The Alternative
To Show cause before This Court at a specified
Time and place why The relief prayed for
should not be granted.

4/4/18

Respectfully
Submitted
D-JD

VERIFICATION

I am The petitioner in This action all
facts alleged in The above petition not other
wise supported by Citations To The record
Exhibits or other Documents are True of
My own personal knowledge

I Declare under penalty of perjury under
The laws of The State of California That
The foregoing is true and correct.

4/4/18

DJD →
Daryl Daisure

Memorandum of
Points & Authorities
in Support of Writ
of Mandate / Prohibition

As stated in The petition The body of
The order appendix A Order 3 line 3-9 Clearly
grants The writ of Habeas Appendix C
(On granting of a writ of Habeas an OSC
must issue) in Re Hochberg (1970) 2 C3d 870 873
874 n2 87 CR 681 (it is not proper for The
Court to grant relief without issuing a writ
or order to show Cause) People v Romero (1994)
8 C4TH 728 741 35 CR2d 270

(The issuance of an OSC signifies The Courts
preliminary determination That The petitioner
has pleaded sufficient facts that if true
would entitle him to relief) People v Duvall
(1995) C4TH 464 474 37 CR2d 259 (The writ or
OSC directs The petitioners custodians To file
a written Return and initiates a Judicial
proceedings within The meaning of Cal Const Art
V § 14 People v Romero (1994) 8 4TH 728 740
35 CR2d 270)

Said errors also deny The respondents Rights
To file a return and its legal basis for The
Restraint of petitioner People v Romero (1994)
8 4TH 728 738 35 CR2d 270

Here as we argued in petitioners Supplemental Brief on writ of Certiorari, petitioners cited UNITED STATES v HICKS 669 Fed Appx 213 2016 US App Lexis 17626 (on petition for writ of Certiorari)

Justice Gorsuch Concurring:
stated everyone here agrees that Mr Hicks was wrongly sentenced.

(Here petitioners also complains he was wrongly sentenced as a violent offender when he should have been sentence as a serious offender)

10 The instant petition petitioners was already remanded by the 4th Dist Court of appeals for Re sentencing

(Again petitioners was also remanded by the 4th Dist Court of Appeals for Re sentencing)

Although the resentencing was only for fines and fees Justice Gorsuch cited The plain error standard under United States v Olano 507 US 725 732 113 Sct 1770 173 L ed 2d 508 (1993) (1) discern an error, That error (2) must be plain (3) effect the defendants substantial Rights and (4) implicate the fairness integrity, or public reputation of Judicial Proceedings)

(As above petitioners has suffered the same exact fate and the fact the record clearly

indicates petitioner is suffering from an
Unauthorized excessive Sentence)

Here as in Hicks case as stated by
Justice Gorsuch The 4th Dist Court already
Decided The four prong test above. However
Due to petitioners; petitioners The Court has
Come to find the error goes much deeper
Then fines and fees

(The Court will also find The Same to be
true in this petition)

and That by upholding its remand petition
will object and all petitioners claims on
Previous appeal will have undisputable Merit
(and as portrayed in Mr Hicks Case
Petitioner will also receive a Much lower
Sentence at The Very least if not outright
reversal which clearly effects petitioners
substantial rights) Molina v United States
578 US 136 S ct 1338 194 L ed 2d 444
(2016) as in Hicks petitioner has been
wrongly Sentenced to a 22 year sentence
as a Violent felon when he was tried
Arranged and Convicted as a Serious
offender

1 Although The Court did not refer The
2 Case on remand for this said error petitioner
3 has a clear Constitutional right to object
4 to The new sentence on remand and argue
5 such excessive sentence

6 This is why petitioner feels he must Move
7 The Court of The United States Supreme
8 for relief for he is certain The lower
9 Courts intentions are willful misconduct
10 to prevent such action and continue to
11 deny petitioner relief in those courts. as
12 They have done for 7 years fully aware
13 that They were just admonished of said
14 conduct in Mr Hicks case in (2016)

15 Gorsuch reasoned (it is clear Mr Hicks
16 also enjoys a reasonable probability of
17 success for who wouldn't hold a rightly
18 diminished view of our Courts if we allowed
19 individuals to linger longer in prison than
20 The law requires only because we were
21 unwilling to correct our own obvious
22 mistakes United States v Sabillon-Umaria
23 772 F3d 1328 1333 (CA10 2014)

24 The face of The Record clearly supports
25 petitioner's position as being a serious labor
26 and not violent but even if it didn't

1 petitioner still has a right to be resentenced
2 as the 4th Dist Court Remanded To be
3 Present and represented by Counsel at said
4 hearing and to object and raise Those issues
5 on New Appellate review all of which The
6 State Court has refused since 2011. As in
7 Hicks Case The Court is simply unwilling
8 To Correct its own obvious Mistakes

9 See Amended Abstract of Judgment not
10 citing Count 1 or 3 as serious or violent
11 clerical error Appendix J See Verdicts
12 Petitioner acquitted of enhancement allegation
13 in Count 1 12022 (b)(1) and 12022.7(f) barring
14 further prosecution and The record on polling
15 The Jurors is absent Appendix K and each
16 allegation presented to The jury and found
17 True 1192.7(C)23 as serious

18 See Appendix L Amended Complaint
19 citing each allegation as 1192.7(C)23 as
20 serious felonies and of course The people
21 Sentencing Brief arguing The Conviction
22 as serious current Conviction Appendix E
23 why Shouldn't Petitioner Be sentenced as a
24 Serious offender.

25 4/4/18 DAD

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SUPREME COURT OF THE UNITED STATES
IN RE:

Case # 17-7673

Darryl Dunsuare

Judgements in Support
of Petition for Mandate
/ Prohibition

Appendix A

Order Granting / Denying writ of Habeas --- 4 pages

Appendix B

Motion To Amend The Judgment ----- 7 Pages

Appendix C

writ of Habeas or Remand - - - - - 5 pages

Appendix D

Amended Motion for Correction
of clerical errors - - - - -

6 pages

1 Appendix E

2 Sentencing Brief of The People - - - - 8 pages

3 Appendix F

4 Recusal order 4th Dist - - - - - 1 page

5 Appendix G

6 Summary Dismissal Southern Dist - - - - 18 pages
7 of Habeas

8 Appendix H

9 Motion for Reconsideration - - - - 7 pages

10 Appendix I

11 9th cir order - - - - - 1 page

12 Appendix J

13 Amended Abstract of Judgment - - - - 2 pages

14 Appendix K

15 verdicts - - - - - 4 pages

16 Appendix L

17 Amended Complaint - - - - - 5 pages

26 4/4/18

27 D-1D

28 208