

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Weible — PETITIONER
(Your Name)

vs.

People of the State of California — RESPONDENT(S)
For the County of San Francisco
ON PETITION FOR A WRIT OF CERTIORARI TO

CALIFORNIA First APPELLATE DISTRICT Division THREE
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael WEIBLE
(Your Name)

P.O. Box 2610
(Address)

California City, CA 93504
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Can the State of California Run an Illegal Hearing
How state that After, they never informed him
of the Hearing, tell him he waited so long, after
violating his Constitutional Rights.
2. Error Gram Nobis.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

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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 _____ to the petition and is

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☐ is unpublished.

The opinion of the United States district 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☐ is unpublished.

☒ 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 SUMMARY DENIED STATE SUPREME COURT; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Appeals Court court appears at Appendix F 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☒ is unpublished.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 _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was December 13, 2017
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: Summary Denial, 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 ____.

NONE.

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

TABLE OF AUTHORITIES CITED

CASES *SEE Attached Brief in Petition* PAGE NUMBER

STATUTES AND RULES *also Attached in Petition.*

OTHER *and all Attached.*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Yes Attached in Petition of Certiorari, in Comm Nohis.
To US Supreme Court.

STATEMENT OF THE CASE

SEE ATTACHED

A CONCISE STATEMENT OF THE CASE.

UNDER RULE 14.1 (c).

THE Plaintiff AND Respondent, "cannot" violate Petitioner's Constitutional Rights. After not giving him ANY Notification of the hearing, or having a waiver from Petitioner, after being Notified by the California Department of Corrections, that the "Plea Bargain" was "ILLEGAL" Made by the Court. ALSO VIOLATING HIS Constitutional Right To Appeal by "No" Notification of the Results of the illegal hearing, so he could file an appeal; To the NEW sentence which was also "ILLEGAL". "STATING THAT Petitioner failed to demonstrate the requisite due diligence in pursuing his claims." "THIS IS IN ERROR." BECAUSE NO TIME LIMIT CAN FIX A Constitutional Error. AS IN. WHEN THE COURT DENIED HIS Constitutional Right To A Trial.

ARTICLE III SECTION 2.

The judicial Power shall extend to all cases, in law, arising under this Constitution, or law of the United States, of which shall be made under their Authority; — to all cases affecting Citizens, of the United States. in all cases affecting in which a state shall be a party. The Supreme Court shall have appellate Jurisdiction, Both as law and fact, The Trial of all crimes shall be by "jury."

ARTICLE VII, AMENDMENT V, of the Constitution, No person shall be held to answer for a crime, Nor be deprived of life, liberty, without due process of law.

ARTICLE VII, AMENDMENT VI; In all criminal prosecutions, the accused shall enjoy the right to a Trial, by an impartial jury of the State, wherein the crime shall have been committed.

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12 AND AUTHORITY.
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1. Grounds for relief;

The Petitioner's Constitutional Rights of the Fourteenth Amendment of Due Process; And the Due Process Clause of the Fourteenth Amendment of the United States Constitution were violated, along with the California Constitution, Article I, Section 8, Subsection (7).

A.) Supporting Facts:

On January 2, 2002 Petitioner was arrested for 459 P.C. § 1° Burglary, of a San Francisco Superior Court Judge, being Robert Dondoro. Before trial Attorney Louis Romero, filed a motion to Exclude All of the San Francisco bench, which the court granted. Brought judge Ksenia Tsening from Santa Clara County. Petitioner was convicted at trial. Petitioner Appaled his conviction, and his conviction was overturned (Forretha v. California.) then remanded for a new trial. On April 26, 2006, Attorney James Senal makes a plea agreement, and Petitioner was resentenced to the plea agreement. On January 14, 2008 California Department of Corrections (Hereafter C.D.C.) Notified the Superior Court of San Francisco, of the fact that the sentence was "Not Legal" then again on Jan. 15, 2008 C.D.C. Faxes the Court "Notice of illegal sentence" (SEE Transcript on Appeal p. 28-29) Then "only nine days later" court holds hearing to resentence Petitioner ("NOT the TEN Days Notice by law") Petitioner never received these transcripts until August 6, 2012. Legal

Mail. SEE (Transcripts on Appeal No: 82) for the first time
Does he have the Court record from the resentencing
hearing of Jan. 23, 2008. And could not have known
of what transpired on this date of Jan 23, 2008
until having a copy of the record. His Attorney
James Senol, "NEVER Contacted Petitioner" Before
OR After this hearing on Jan. 23, 2008, The Court
NEVER gave "NOTICE of Hearing" Before or After
Jan. 23, 2008, Petitioner Does Not Ever Know About
this hearing or results until He received the
record on Aug. 6, 2012. The Court Violated Petitioner's
Constitutional Rights when they waived Petitioner's
right to be present " [W]ithout having a signed
waiver, (P.C. § 977) from Petitioner, the Court sentenced
Petitioner to a plea Agreement that he did not agree
to. Then C.D.C. released Petitioner on Feb. 13, 2008
the date of his "Original plea Agreement". [N]ot
the six month shorter sentence in the Sentencing
from Jan. 23, 2008.

B.) Supporting cases, rules, or other Authority.

When the San Francisco Superior Court held a
hearing without giving Notice to Petitioner, of the hear-
ing, without having a waiver from Petitioner, this gave
the court "No Jurisdiction" at anytime to have a
hearing. Chase v. Superior Court, 154, Cal. 789, 799 p. 355
(1908). Jurisdiction to hear and determine a case
cannot be made to depend on its outcome. People v.

1 BROWN, 10 Cal. App. 3d 169, 88 Cal Rptr 80 (4th Dist) (1970).
2 In reviewing the scope of Due Process Clauses of the
3 California Constitution Art. 1 § 7 Subd. (a) (Cal. Const. Art. 1 §
4 15,) the Court held that Application of the Clauses must
5 be determined in a context of the individual's due
6 process liberty interest in freedom from arbitrary
7 adjudicative procedures. Thus when a person is deprived
8 of a statutorily conferred benefit, due process analysis
9 must start not with a judicial attempt to decide
10 whether the statute has created an "entitlement"
11 that can be defined as "liberty" or "property" but
12 with an assessment of what procedural protections
13 are constitutionally required in light of the govern-
14 mental and private interests at stake. In interpreting
15 the Federal Clause, the Supreme Court has held that a
16 prisoner may be deprived a due process liberty
17 interest from either the Constitution or State law.
18 Meacham v. Fano, (1976) 427 U.S. 215, 226 [49 L.Ed. 2d 451, 460
19 96 S.Ct. 2532]. In determining applicable due process safe-
20 guards, it must be remembered that "Due Process is flexible
21 and calls for such procedural protections as the particular
22 situation demands." Morrissey v. Brewer, (1972) 408 U.S. 471 at
23 pp. 481 [33 L.Ed. 2d.] Accordingly, jurisdiction can be chal-
24 lenged at anytime during the course of an action.
25 Grupo Dataflux, v. Atlas Global Group, L.P., 541 U.S. 567 124
26 S.Ct. (1920) 158 L.Ed. 2d 866 (2004). And now I finish with
27 Thus whenever a writ by the Court examination of the
28 case or otherwise, it is the duty of the Court

1 to consider it, for if the court is without jurisdiction,
2 it is powerless to act in the case. People v. Shaw,
3 81 Cal. App. 3d 253 pp. 74 (3d Dist 1977). A sentence is
4 "Unauthorized" when it could not be imposed under
5 any circumstances in this particular case. People v. Price,
6 Cal. App. (1 Dist 2004) 15 Cal. Rptr. 3d 229, 120 and is void
7 because it is illegal. People v. Cole, (2001) 88 Cal. App. 4th
8 850, 106. Because on Jan. 23, 2008 the court held a
9 sentencing hearing, without notifying petitioner of this
10 hearing. Under the due process clause of the United States
11 Constitution a personal judgment rendered without
12 obtaining jurisdiction of the person by "Service of
13 process" or by an appearance is not merely voidable but
14 absolutely void, and is as ineffective in the state were
15 rendered. City of Los Angeles v. Morgan, 105 Cal. App. 2d 726, 234 P.
16 2d 319 (2d Dist 1951). A person who made no appearance is
17 invalid for lack of jurisdiction, and may constitute denial
18 of due process under federal, and state constitutional laws,
19 because due process requires that all parties be
20 "Notified". Corr. v. Karris, 151 Cal. App. 4th 929, 60 Cal. Rptr.
21 3d 196 (2d Dist 2007). On remand after an illegal sentence,
22 if the court corrects a sentencing error on its att-
23 ention by C.D.C. The Court "must notify the defendant,"
24 and afford the defendant a hearing. People v. Ballou,
25 (1994) 26 Cal. App. 4th 985, 987-88; The Second Appellate
26 District Division Four is of the view that if C.D.C.
27 has brought to a trial court's attention a fact that
28 a portion of the sentence, based on a plea bargain

1 is illegal the trial court has the authority to Amend
2 the Sentence, so long as the court affords the defend-
3 ant an opportunity to be heard on the matter, allow-
4 ing the defendant to withdraw his plea. People v.
5 Tellis, (1991) 230 Cal. App. 3d 1266, 1273-74; The Fourth
6 Appellate district, Division ONE, is of the view that
7 the court may not increase the sentence to correct
8 it without first having a hearing allowing the defendant
9 to withdraw his plea. People v. Tellis, (1991) 230 Cal. App.
10 1266, 1273-74; The fourth appellate district, Division ONE is
11 of the view that the court may not increase the sentence
12 to correct it without first having a hearing in the
13 defendant's presence. People v. Grumble, (1987) 196 Cal. App.
14 3d 1058, 1064 (Cal. Pptr. 382 (Second Appellate Dist.)) "which
15 this court did not do according to law," also
16 that a "Waiver of defendant's Personal Presence"
17 shall be substantially in the following form. Penal Code
18 Section 977; that a defendant's Constitutional and
19 statutory right to be present depends on two
20 conditions: (1) The proceeding is critical to the
21 outcome of the case; (2) The defendant's presence
22 would contribute to the fairness of the proceeding.
23 People v. Kelly, (2007) 68 3d 531, 42 Cal. 4th 763, 171 P.3d 548;
24 also the Fourteenth Amendment of the United States Const.
25 The Court could "Not Legally waive Appellant's
26 right to be present," it did not have the jurisdiction
27 to do so. In Felony Cases (A). "RIGHT TO BE Present"
28 in a felony case, the Defendant has a statutory Right.

(Pen C. §§ 977(b), 1193) and a Constitutional Right (Cal. Const. Art. I, § 15) right to be present for pronouncement of judgment. That right is of substantial importance because the defendant may be able to show cause why the judgment should not be pronounced or that there are grounds for a new trial or for a motion in arrest of judgment. See Pen C. § 1201; IN RE LEVI, (1952) 39 Cal 2d 41, 45. The defendant's presence also provides an opportunity to refute evidence in aggravation of the sentence (Pen C. §§ 1170(b), 1204; Cal Rules of Ct. 4, 433(c)(1), to object to the consideration of improper evidence (See IN RE MILLER, (1959) 176 Cal 2d 75, 78), to present mitigating evidence (Pen C. §§ 1170(b), 1204; Cal. Rules of Court 4, 433(c)(1), and to ensure that the defendant has knowledge of the judgment in sufficient time to file an appeal. (IN RE PORTER, (1971) 6 C 3d 78; IN RE KLEIN, (1961) 197 Cal 2d 58, 65).

If the Defendant is not present in a felony case, the court is not authorized to pronounce judgment unless the defendant waives the right to be present, or a diligent effort has been made to procure the defendant's presence and the court finds that it will be in the interest of justice that judgment be pronounced in the defendant's absence. Pen C. § 1193; People v. White, (1971) 18 Cal 3d 44. See generally, People v. Fizzle, (1968) 112 Cal 4th 1359, 1368 (same rules applied for appearances at trial). Otherwise, a judgment pronounced in the defendant's absence will be set aside.

1 with directions that the defendant be properly arraigned
2 for judgment. People v. Brown, Supra. One exception to this
3 rule is that judgment may be pronounced in the defendant's
4 absence when the defendant has been sentenced
5 to death, and the death penalty has been affirmed on
6 appeal. Pen C § 119.3(a).

7 A defendant may lose the right
8 to be present by voluntarily and deliberately failing
9 to appear. People v. White, (1971) 18 CA3d 44, or through
10 misconduct (see e.g., People v. Barker, (1977) 69 CA3d 654,
11 667).

12 (B.) When Judgment has been rendered in defendant's
13 absence.

14 In felony cases. The court may sentence
15 the defendant in absentia under the following conditions:
16 The defendant in open court, and on the record, or in a
17 notarized writing, has requested that judgment be pronounced
18 in his absence, and that he be represented by
19 an attorney when judgment is pronounced, and the court
20 has approved the defendant's absence. Pen C § 119.3(a);
21 After the exercise of reasonable diligence to procure
22 the defendant's presence, the court finds that it would
23 be in the interest of justice to pronounce judgment in
24 his absence (Pen C § 119.3(a)); see also Julie Jimenez,
25 (1989) 69 CA2d 621; The defendant, who is being held
26 in another county (Pen C § 10.35) or currently on probation
27 (Pen C § 1203.2(a)), executes a written waiver allowing
28 sentencing in absentia.

C.) REQUIRING DEFENDANT'S PRESENCE.

FELONIES. In a felony case, the court may require the defendant to be personally present for sentencing. Pen C. § 977(b)(1). If the defendant is in custody, the court may direct the officer having custody to bring the defendant before the court for judgment. Pen C. § 1194. If no testimony will be taken, the defendant may make an oral waiver in open court prior to the proceeding or may submit a written request to the court to appear instead by two-way electronic audio-video communication. Pen C. § 977(b)(1)(C)(2)(A). If the defendant is at liberty and fails to appear as required bail or own recognizance release may be revoked and a bench warrant issued for the defendant's arrest. See Pen C. §§ 1195, 1305, 1320

Attorney James
Serna is ineffective assistance of counsel, allowing court to waive the right of petitioner, without having a signed waiver by petitioner to be present at resentencing hearing, also allowing the court to resentence petitioner to another "5 1/2 year" sentence. Every criminal defendant is constitutionally entitled to competent legal representation. People v. Grayson, 137, Cal. App. 4th 96, 40 Cal Rptr. 3d 404 (4th Dist 2006). Any local policy, practice, or rule which impinges on the fundamental rights of an accused's right to the effective assistance of counsel is constitutionally invalid.

1 Hall v. Superior Court, 183 Cal. App. 908, 35 Cal. Rptr. 3d 206
2 (2d Dist. 2005). A defendant's Federal Constitutional Right
3 to the assistance of Counsel includes the right to
4 competent (U.S. Const. Amend. VI), and effective assis-
5 tance. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052,
6 80 L. Ed. 2d 674 (1984); People v. Alvarez, 14 Cal. 4th 155, 58
7 Cal. Rptr. 2d 385, 926 P.2d 365 (1996); Rose v. Superior Court, 81 Cal.
8 App. 4th 364, 96 Cal. Rptr. 2d 843 (2d Dist. 2000), as modified and
9 reh'g (July 12, 2000) (holding trial Judges have a duty to pro-
10 tect a defendant's right to Counsel who is effective).
11 A criminal defendant's right to the competent and
12 effective assistance of Counsel is also guaranteed
13 by the State Constitution. People v. Bennett, 17 Cal. 4th
14 373, 70 Cal. Rptr. 2d 850, 949 P.2d 947 (1998) as modified
15 (April 1, 1998); People v. Horton, 11 Cal. 4th 1068, 12 Cal. 4th
16 723 a 47 Cal. Rptr. 2d 516, 906 P.2d 498 (1995) which
17 means the reasonably competent assistance of an
18 attorney acting as the defendant's diligent and
19 conscientious advocate. In re Scott, 29 Cal. 4th
20 738, 129 Cal. Rptr. 2d 605, 61 P.3d 422 (2003) Reasonable
21 competence not perfect advocacy is required.
22 Buchanagh v. Gentry, 540 U.S. 1, 124 S. Ct. 1, 157 L. Ed. 2d
23 1. (2003) Not necessarily Counsel who makes every
24 conceivable motion, but rather realistic representation
25 including the pursuit of avenues of defense that, to the
26 Attorney's best and reasonable professional judgment
27 seem appropriate under the circumstances. People v.
28 Montoya, 149 Cal. App. 4th 1139, 57 Cal. Rptr. 3d 770 (4th Dist. 2007).

1 Counsel are expected to possess the knowledge of
2 those plain and elementary principles of law which
3 are commonly known by well-informed attorneys
4 and to discover those additional rules of law which
5 although no common, only known may readily be
6 found by standard research techniques. People v.
7 Johnson, 100 Cal. Rptr. 2d 544 (App. 2d Dist. 2000); People
8 v. Johnson, 123 Cal. App. 3d 106, 176 Cal. Rptr. 390 (4th Dist
9 1981). When the Court resentence Petitioner on Jan.
10 23, 2008 on page 4 of the sentencing transcripts, the
11 Court Sentence Petitioner to Seven years, and
12 Eight Months, as follows. As to Count one, Mitigated
13 of two years, as to the same Count one, Five years
14 667(c) / 1192.7 Penal Code will apply, to Count two,
15 Mid term of two years, at one third or Eight
16 months for a total of Seven years, 8 months.
17 Which the Court will now strike the prior strike
18 under 667(d)(e) / 1170.12(b) and (c) then states one
19 thing just so the record is clear, the Court is striking
20 the prior strike pursuant to Penal Code Section 8
21 1325 and People v. Romero. "HERE THE SENTENCE
22 IS ILLEGAL". One (1) the trial Court is going
23 to give a five year prior, AND the Petitioner
24 has only "ONE" prior strike, it cannot use
25 (People v. Romero) which would take away Petitioner's
26 "only strike" AND the Court could not sentence
27 petitioner to Seven years, Eight months, because
28 it could not enhance the prior strike for 5 years under

1 Penal Code § Section 667(a) and 1192.7 which would
2 only give the Court 2 years & 8 months, without
3 the prior strike. If the Court "did not strike the
4 prior strike," it had to double the two years to
5 four years, because of the prior strike, which
6 by the three strikes law the Court "most probably"
7 the sentence of two years to four years, which
8 would have given, one of two sentences.
9 (1) Two years, Eight months, (2) Nine years,
10 Eight months, which both are "illegal". In this
11 Hearing on Jan. 23, 2008 the Court could not give
12 any "ILLEGAL" sentence, under the plea bargain
13 agreed to by Petitioner. Which the Court used to
14 sentence, which makes this an "UNAUTHORIZED
15 sentence" which could not be imposed under
16 any circumstances in this particular case.
17 People v. Price, (App 1 Dist. 2004) 15 Cal. Rptr. 3d 229,
18 40 and is "VOID" because it's illegal. People v. Cole,
19 (2001) 88 Cal. App. 4th 850, 106 Cal. Rptr. 2d 174. After
20 Court resentence Petitioner to an illegal sentence.
21 The Court "DID NOT NOTIFY, Petitioner" That
22 it had a resentencing hearing, or of the new
23 sentence. Petitioner was released from prison
24 on Feb 13, 2008 the same date when sentenced
25 in 2006, to the Eight years. Not the sentence
26 from the hearing on Jan 23, 2008 of 7 years & 8 months
27 So C.D.C. keep Petitioner 4 months past his "new"
28 release date, so Petitioner would not know he had been

1 resentence. because he would know that he had been
2 resentence and He could have appealed his illegal
3 sentence, Under the United States Constitution.
4 Now there is a real problem when two govern-
5 ment offices (1) C.D.C. (2) The Courts, Does not "Not-
6 itly" Petitioner he had been resentence, believing
7 that if they released me on my old released date of
8 2006 "that I would never know that the Court
9 resentence him in 2008. AND Petitioner could
10 not appeal this illegal sentence.

11 "A Clear Violation
12 of Petitioner's 'Due Process Right' of the Fourteenth
13 Amendment of the Due Process Clause, also a clear
14 violation of his Constitutional Right Under the
15 Fourteenth Amendment of the United States
16 Constitution."

17 Because when a State like California
18 chooses to provide a system of Appellate review,
19 which such a system must be kept free of any
20 procedures which violate Due Process or Equal
21 protection. In re Walker, (1976) 56 Cal. App. 3d 225, 227
22 128 Cal. App. 2d 296. When the Court, and C.D.C. Did
23 not inform Petitioner that he was resentence,
24 they with "Intent" EXCESSIVELY delayed Peti-
25 tioner's review on Appeal. AND Any Federal Court
26 Must Grant relief "IN CRAM NORTS." GOKE
27 v. Branch, (1995) 574 U.S. 115 S. Ct. 131 L. Ed 2d 152
28 However Petitioner has some Collateral

1 CONSEQUENCES of this conviction that remain,
2 including the fact that the conviction was
3 used to impeach this conviction for a five
4 year prior which was testimony in his hearing
5 of his priors, which subjected Petitioner to
6 prosecution because he went to trial in
7 the conviction he's in prison for "now" and
8 also any other felony charges in the future.
9 Thus this case is "not" "moot." Caracas v. La Valle,
10 391 U.S. 234, 238 20 L. Ed. 2d. 554, 88 S. Ct. 1556
11 (1968); Sibron v. New York, 392 U.S. 40, 55-57, 20
12 L. Ed. 2d. 917, 88 S. Ct. 1889 Ohio ops 2d. 402
13 (1968).

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16 Dated December 26, 2017 In Pro Per.
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