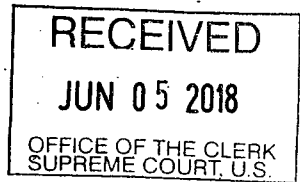


1 Michael Lee Weible 2-143
2 CDCR NO. AG-788
3 P.O. Box 7500
4 Crescent City, CA 95532-7000



SUPREME COURT OF THE UNITED STATES

7 Michael Lee Weible, } CASE No: 17-7921
8 Petitioner, }
9 } PETITION FOR REHEARING
10 VS. } WITH GROUNDS TO BE
11 California, defendant. } REHEARD. REVIEWING THE
12 } WHOLE RECORD. CERTIORARI UNIT
13 } PETITION FOR REHEARING AND JUDICIAL REVIEW

14 Petitioner Now Comes, briefly and distin-
15 ctly stating its Grounds in this petition.
16

17 THE Court will find that Petitioner's Const-
18itutional Rights of DUE PROCESS under the four-
19teenth Amendment, AND THE DUE PROCESS Clause of
20 the Fourteenth Amendment of the United States
21 Constitution.

22 As the Court reviews the whole record it
23 will see that, Petitioner, when accepting the plea
24 agreement, accepted the plea as a "Conditional
25 plea". (SEE transcripts FROM April 24 2006 p.18-26), which
26 part of the Conditional plea allows the plea to
27 "NOT BE BINDING" AND petitioner would be permitted
28

1 to withdraw his plea of guilty, and his Not guilty
2 plea would be re-entered. The petitioner's sentence
3 of the manner in which it was determined violated
4 his Constitutional Rights of Due Process in this re-sentencing.
5 See e.g. Mc Millan v. Pennsylvania, (1986) 479 U.S. 79, 106
6 S. CT 2411 Due process requires that the material facts
7 relied upon by the judge be correct or supported by the
8 evidence. U.S. v. Tucker, (1972) 404 U.S. 443, 447, 92 S. CT
9 589; Townsend v. Burke, (1948) 344 U.S. 736, 741, 68 S. CT 1232.
10 FED. R. of CRIM. P. 11(a)(2) See: U.S. v. Stevens, 487 F.3d
11 232, 238 (5th Cir 2007) BECAUSE A conditional guilty plea not
12 absolute. The 11th Circuit in U.S. v. Pierre, 120 F.3d 1132, 1153,
13 1155 (11 Cir 1997) Court's express consent required to pre-
14 serve right to appeal non jurisdictional claims. And the
15 Court "Not" giving Either "Notice of Hearing," or "Finding of
16 Hearing" violated Petitioner's Constitutional Right to Appeal under
17 the Fourteenth Amendment, and The Due Process Clause of
18 the Fourteenth Amendment of the United States Constitution.
19 The second Circuit has recommended that courts exercise
20 Caution in accepting Conditional guilty pleas that are
21 subject to conditions, because such pleas undercut the
22 finality of judgments and create UNNECESSARY Appellate
23 litigation. See: e.g. U.S. v. Hebriguez, 731 F.2d 131, 133
24 and 161 (2d Cir 1984) And Petitioner could not file an
25 appeal without any Notice of Hearing. There is no Constitutional
26 right to an appeal in a criminal case, unless However, the
27 Federal Constitution does come into play when a state like
28 California chooses to provide a system of Appellate review,

1 which such a system must be kept free of ANY procedures
2 which violate DUE PROCESS, or Equal protection. SEE:
3 TUNE WALKER, (1976) 56 Cal App. 3d 225, 227, 128 Cal. Rptr 291.
4 The Court having cautioned, against accepting condition-
5 al guilty plea preserving subject matter jurisdiction,
6 constitutionality of underlying Statute, and failure
7 to preserve evidence. FED. R. CRIM. P. 11(c)(2) for
8 Rule 11 purposes, silence or inaction by the government
9 is not consent. The government must give express
10 approval for a defendant to plead conditionally. SEE:
11 e.g. U.S. v. Wise, 179 F.3d 184, 186-87 (5th Cir 1999).
12 Consent required because right to conditional guilty
13 plea not absolute; U.S. v. Betanibost, 554 F.3d 1329,
14 1332 (11th Cir 2009) government's lack of "consent" renders
15 guilty plea unconditional. Which is supported by U.S. v.
16 Garcia-Robles, 640 F.3d 159, 164-65 (6th Cir 2011) Court
17 erred by failing to hold resentencing hearing where
18 defendant had right to be present. After the court
19 imposes the sentence it "must" "advise" the def-
20 endant of any right to appeal. SEE: FED. R. CRIM. P.
21 32 (j)(1)(A); U.S. v. Valentine, 21 F.3d 395, 398 (11th Cir 1994)
22 DUE PROCESS ~~was~~ violated when sentence
23 based on mistaken factual conclusions of which
24 defendant received "NO ADVANCE NOTICE"

25 Now if the
26 Court will take notice that on January 23rd 2008 that
27 the sentence the Court corrected, is "ILLEGAL".
28 The Court "Cannot" sentence Petitioner to the

Mitigated term in Count ONE, of two years, without
Doubling it for the prior strike pursuant to Penal
Code 667 (a) / 1192.7. And give a five (5) year
prior, And then to Count two (2) which the mid-term
is 16 months, they must also be Doubled And 1/3
would be over 10 months. Not Eight months. which
the Sentence would be more than 10-years. Which
is "greater than the plea bargain". Then I "Don't under-
stand what the Court is trying to do when the
Court states that it's NECESSITATED, the Court
striking the allegation made pursuant to Penal Code
Sections 667 (d) and (e) AND 1170.12 (b) AND (c)
commonly known as the prior strike on p. 4 Lines
19-23 (Struck Lines 1-23-2008) The Court is striking the
prior strike pursuant to Penal Code 1385 and PEOPLE
V. ROMERO." This is unlawful "The petitioner only
had ONE (1) prior strike, now the five-year (5)
Sentence next is "unlawful". Once the Court strikes
the prior strike under Romero, the stricken strike
"cannot be used for ANY purpose".

This is A Plain
Error. And A reviewing Court may grant relief
for "Plain Error" even if the error was not
raised at sentencing. FED. R. (CRIM. P. 52 SEE:
Rock-H v. U.S., 556 U.S. 129, 133 Plain error review
applies to claims that government fail to meet
its obligations under plea agreement. SEE: U.S. v.
HANSHAW, 626 F.3d. 613, 617 (8th Cir 2012) Error clear

1 or obvious when Court proceeded without
2 defendant present as specified in plea agree-
3 ment, which affects the defendant's "Substantial
4 rights". SEE: U.S. V. BENJAMIN, 711 F.3d 371, 379
5 (3d Cir 2013) error affected defendant's substantial
6 rights when defendant was convicted of a
7 second improper conviction, though second
8 conviction did not extend defendant's sentence.

11 Dated May 28, 2018

Michael Lee Weible
12 ~~Wiley~~ La ~~Wiley~~
13 In Pro. Per.