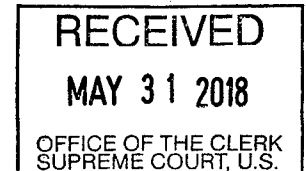


RAYMOND E. PEYTON, #F-87541
R.J. DONOVAN CORRECTIONAL FACILITY
E-24, B-201, 1-L
480 Alta Rd;
San Diego, California 92179
(In Pro-Se)

-Court Original-

IN THE SUPREME COURT
OF
THE UNITED STATES



RAYMOND E. PEYTON,	}	Docket #17-8042
Petitioner,		Appeals Ct. #: 17-55140
v.	}	D.C. #: 5:13-cv-00424-RGK-(JPR)
EDMUND G. BROWN, Jr., et al;		MOTION FOR REHEARING OF ORDER DENYING
Respondants.	}	PETITION FOR WRIT OF CERTIORARI AND
	}	COUNSEL CERTIFICATION

Now comes Petitioner RAYMOND E. PEYTON seeking rehearing of an order denying his petition for a Writ of Certiorari by this court.

Petitioner, (appearing as a pro-se counsel); does hereby certify that this motion for rehearing is presented in good faith, is not presented for purposes of delay and is restricted to the grounds elucidated in Section 2 of Rule 44 of this court.

Petitioner humbly prays for approval of his petition for a Writ of Certiorari in the instant action for the following reasons:

a.) The petition deals with issues of 'extraordinary circumstances' that can only be addressed and corrected by this court.

b.) Adequate relief is unavailable in any other form or from any other court as witnessed by 5+ years of rulings in the lower federal courts that violate the decisions of this body.

c.) To deny review on the merits is to be 'deliberately indifferent' to the on-going violation of the 8th Amendment rights of ALL California inmates and runs contrary to this court's decision in BROWN v. PLATA,

563 U.S. 131 S. CT. 1910, 1922, 1940, 1947 179 L. Ed.2d. 969 (2011).

It also is dismissive of this court's edict in WEEMS v. UNITED STATES, 217 U.S. 349, 382 (1910).

d.) To deny review on the merits allows a continuing 'intracircuit conflict' at the 9th Circuit Court of Appeals. That court's refusal to correct via mandatory 'En Banc' review violated it's own ruling in U.S. v. HARDESTY, 977 F.2d. 1347, 1348 (9th Cir. 1992), thereby leaving the resolution of this conflict with this honorable court.

e.) To deny review on the merits is to allow violations of federal law concerning 'unauthorized sentences' and affecting all 130,000+ inmates in California in addition to potentially millions of inmates across the nation. Though relief must be narrowly drawn, it cannot exclude millions of Americans simply because they are incarcerated. -(CRUZ v. BETO, 405 U.S. 319, 321 (1972)).

f.) To deny review on the merits is to possibly allow an 'unauthorized sentence' by a judge who should have recused himself under California's Code of Civil Procedure of Courts of Justice code # 170.1 §(7).-(see appended motion and exhibit of the censure of Judge Schwartz)

g.) To deny review on the merits is to allow the State of California to go beyond it's jurisdictional authority and violate the Separation of Powers Act.

h.) To deny review on the merits is to allow to stand a sentence that is structural error, prejudicial per se, reviewable at anytime and requiring of complete reversal as a constitutional violation.

i.) To deny review on the merits is to allow 'deliberate indifference,' is egregious behavior, a miscarriage of justice, leaves petitioner with no remedy at law to uphold the clearly established edicts of this honorable body.

Therefore, petitioner humbly begs this court for a fair hearing

of his claims following approval of his petition for Writ of Certiorari.

Petitioner hereby seeks, (one last time); the justice he has thusfar been denied.

Signed: Raymond E. Peyton*
(Raymond E. Peyton/In Pro-Se)

Executed at San Diego, California

Date: May 25th, 2018

#

PROOF OF SERVICE:

I, RAYMOND E. PEYTON, petitioner in the aforementioned matter, do hereby affirm and attest to the fact that I am a party in this matter and that I am over 18 years of age.

On May 25th, 2018, I did mail through the prison mail system, the following:

'MOTION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI & COUNSEL CERTIFICATION,' 'COPY OF ORIGINAL PETITION',

&

'MOTION OF JUDICIAL NOTICE'

TO THE FOLLOWING ADDRESSES:

CLERK, SUPREME COURT OF THE UNITED STATES
1 First Street, N.E. Washington, D.C. 20543

&

Office of the Attorney General
Att: (A.A.G. Julie L. Garland)
600 W. Broadway, Suite #1800
San Diego, California 92101

Signed: Raymond E. Peyton*
(Raymond E. Peyton/In Pro-Se)

Affirmed under penalty of perjury.
Date: May 25th, 2018

Executed at San Diego, California.

RAYMOND E. PEYTON, #F-87541
R.J. DONOVAN CORRECTIONAL FACILITY
E-24, B-201, 1-L
480 Alta Rd;
San Diego, California 92179
(In Pro-Se)

-Court original-

IN THE SUPREME COURT
OF
THE UNITED STATES

RAYMOND E. PEYTON,	}	Docket #: 17-8042
Petitioner,		Appeals Ct. #: 17-55140
v.		D.C. #: 5:13-cv-00424-RGK-(JPR)
EDMUND G. BROWN, Jr., et. al;	}	MOTION OF JUDICIAL NOTICE
Respondants.		

Now comes Petitioner RAYMOND E. PEYTON praying leave of this honorable court to file the appended 'Motion of Judicial Notice.'

May it please the court to hereby take notice that the judge in petitioner's criminal case, (Bernard J. Schwartz); who is a defendant in the instant action, did on the date of July 16th, 2005 in the County of San Luis Obispo, State of California, City of Pismo Beach, undergo arrest for drunk driving in violation of the vehicle code sections 23152(b) and 21460(a) of the California Penal Code. Conviction was entered on September 6th, 2005.

According to the California State Commission on Judicial Performance, defendant Schwartz was at more than twice the legal limit for intoxication at .18. -(see appended 'Exhibit')

The commission also noted that Judge Schwartz made veiled threats to the arresting officers that they might one day find themselves appearing before him in his courtroom and repeatedly sought preferential treatment to protect his career and re-election bid. The commission

deemed his actions to be 'prejudicial misconduct,' and included in their ruling the judge's comments to the arresting officers that: "There's no professional courtesy anymore. This is Bullshit!"

During petitioner's July of 2007 criminal trial, petitioner, petitioner's mother and brother-in-law all bore personal witness to Judge Schwartz perusing wine sites on-line during testimony.

Further, during breaks the judge would regularly engage in conversation with Assistant District Attorney Ambrosio Rodriguez regarding their favorite wines and Rodriguez' desire to retire to his native Brazil and run a vineyard there.

Just prior to petitioner's trial, Judge Schwartz was censured for his arrest and conviction.

During the allocution portion of petitioner's trial, Judge Schwartz violated this court's then 5-month old ruling in CUNNINGHAM v. CALIFORNIA, 548 U.S. 270 166 L.Ed.2d. 856 127 S. CT. 857 (2007) by exceeding the mid-term sentence of 6-years per charge with each charge run concurrently. Instead, the judge issued an unauthorized sentence for a first-time felon of four 15-Life sentences run consecutively.

Additionally, Judge Schwartz stated on the record that 'because the court had failed to prove one of the charges, he would only issue a mid-term 6-year sentence on that charge.'

Petitioner's trial attorney as well as A.D.A. Rodriguez stipulated to the unauthorized term which was later overturned by the state appeals court citing ineffective assistance of counsel.

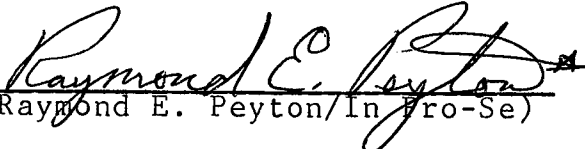
California's Code of Civil Procedure of Courts of Justice, code # 170.1 §(7) states: "A judge ought to disqualify himself from service if, by reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or unable to properly conduct the proceedings."

It is on the record that Judge Schwartz failed to uphold this court's decision in CUNNINGHAM-*supra, and that he issued a sentence of 6-years that was unauthorized and did not comport with jury findings in the case.

In light of the state court's overturning of the illegal 6-year term, the dropping of the 'use of force allegation,' and the improperly conducted proceedings occurring mere weeks after the judge's censure, it is therefore highly probable that petitioner's criminal case was adjudicated by a person who violated court procedure by not disqualifying himself from said position of authority and who may have been impaired during sentencing, thus denying petitioner his 6th Amendment guarantee of a fair trial.

Such actions constitute egregious behavior, are a miscarriage of justice and cannot be excused under the 'harmless error' standard of CHAPMAN v. CALIFORNIA, 386 U.S. 18, 24, 17L.Ed.2d. 705, 710 87 S. CT. 824 (1967).

Affirmed and attested to under penalty of perjury this 25th day of May, 2018.

Signed: 
(Raymond E. Peyton/In Pro-Se)

Dated: May 25th, 2018

Executed at San Diego, California

cc: Office of the Attorney General
Att: A.A.G. Julie L. Garland
600 W. Broadway, Suite #1800
San Diego, California 92101

**Additional material
from this filing is
available in the
Clerk's Office.**