

No. 25-324

**In The  
Supreme Court of the United States**

RICHARD WILLIAM KLEINHAMMER,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent

On Petition for a Writ of Certiorari  
To The California Court Of Appeal  
Second Appellate District,  
Division Six

**PETITION FOR WRIT OF CERTIORARI**

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**ORIGINAL**

FILED

SEP 09 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

RECEIVED  
SEP 16 2025  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## QUESTIONS PRESENTED:

Self representation for a postconviction collateral appeal was denied applying People v. Scott as a policy which is at loggerheads with actual innocence claims case law which is unconcerned with threats to judicial resources, finality, and comity, a conflict which has not been resolved.

There needs to be a review of Feretta yet to be extended to self representation on appeal pursuant to case law that has sketchy conflicting support in determining that the subsequently created court of appeals as a check on unconstitutional/unfair trials is less important after trial in view of the State court self-representation bar test or lack of test.

There are due process and equal protection issues where civil appeals may file self represented while postconviction appeal considered civil in nature by the court may not file in propria persona plus the lack of consideration never given to attorney impediments or the adequacy of self representation.

1. Can a postconviction appellate court create by case law a bar to self-representation without exception that does not consider nor make a discretionary review of the merits of a leave to file in propria persona regarding the issue of adequacy and/or impediments to finding adequate appellate counsel?

2. Did the California courts abuse their discretion and/or have a sua sponte duty to make an assessment of a leave to file in propria persona rather than merely applying a bar to self representation without discretionary considering of the circumstances and underlying claim required by due process particularly innocence claims as an overriding case law?

3. Whether there was an abuse of discretion violating the first, fifth, six and/or fourteenth amendments when California Supreme Court and Court of appeal bars self-representation for collateral appeals without the court considering petitioner impediments and circumstances including there was no appellate attorney available/knowledgeable to file an actual innocence appeal further coupled with evidence that appellant could provide adequate self representation?

4. Whether equal protection of the 14<sup>th</sup> amendment is violated when the state creates an appellate court policy (by case law) prohibits self-representation on direct appeal but assumes the policy extends to postconviction collateral appeals which is consider civil in nature and far removed from the criminal case creating an as applied policy which is in conflict with the state permitting civil appeals by self-represented which is unresolved policy conflict?

5. Does the state courts violate Fourteenth Amendment equal protect clause and be allowed avoid addressing the Sixth amendment protection to self representation at every stage of the proceedings by ruling solely on the fourteenth amendment where substantial rights (historic and codified) are at issues conflicting with policy bar to self representation? Are the same violations more pronounced if the self representation bar is grounded in being outweigh by efficacy and adequacy of counsel which basis is pure speculation that would it fail the substantial evidence test particularly in extending a direct appeal policy to collateral postconviction appeals which are considered civil in nature for which self-representation is allowed but there is a filing fee ?

6. The State courts nor the United States Supreme court has addressed whether actual innocence claims that disregard efficacy and court resources burdens overrides California case law that bars self-representation on the same grounds given the California Supreme Court upheld the application denying review while neither court reviewed the merits of the appeal?

7. Whether the state and federal court policy from case law violates self-representation due process protections of *Feretta* (self-represent) pursuant to the sixth amendment which should be extended to protect against unconstitutional trials by in propria persona appeal rather than a vanishing due process and autonomy right that only appellate counsel can appeal (exercising clients rights) merely because a trial occurred and using the same grounds overriden by *Faretta*, which is without even a scintilla of evidence that appellate counsel would be more adequate or effective and instead merely assume a complexity (technical) and layman comparison without assessing the self-representation adequacy particularly when the defense attorney, hearing judge, and appellate court (all of whom applied and erroneous assessment standard of law nor made make a discretionary review) further violating of due process of the fourteenth amendment, autonomy, and liberty interest, and does not take serious actual innocence claims or a decision on he merits.

**LIST OF PARTIES**

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**PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Richard William Kleinhammer, petitions this court for a Writ of to review the denied petition for review by the California Supreme court that did not address a single issue presented other than writing denied on June 11, 2025, Court En Banc Case no. S290408 (Appendix A at App.1). On Jan 29, 2025, the California Court of Appeal, Second district division six denied petitioners leave to file in propria persona citing *People v. Scott* (1998) 64 Cal.App.-4th 550 (Appendix D at App.6) and thereafter on March 12, 2025 denied petitioners motion for reconsideration (Appendix C at App.4) without assessment of circumstances of adequacy nor impediments much less the underlying actual innocence claim case law that conflict with the policy applied and went on to dismiss the appeal without ruling on the merits.

**OPINIONS BELOW**

April 8, 2025, the California court of Appeal ,Second District, Division Six petitioner appeal was DISMISSED in case B342060 (appendix B at App.2) (by Justice Arthur Gilbert same judge that denied appeal in 1997 a tainted judgment).

Prior to that on March 12, 2025 petitioners motion for reconsideration was denied by the same court of appeal justice Arthur Gilbert (Appendix C at App.4)

On January 29, 2025, in the same California Court of Appeal Justice Athur Gilbert denied the motion for leave to file (Appendix D at app. 8) a none direct appeal in propria persona that had an attachment of a sample appeal of the actual innocence appeal (see Appendix F at App.11). The leave to file in propria persona denial was without assessing or addressing

issues raised and other exception argued.

#### **STATEMENT OF JURISDICTION**

The California Supreme Court entered its judgment on June 11, 2024 Appendix A at App.1. On. Jurisdiction of this court is invoked under 28 U.S.C. §1257.

#### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

##### **First Amendment, U.S. Constitution**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

##### **Fifth Amendment, U.S. Constitution**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

##### **Sixth Amendment, U.S. Constitution.**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall

have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

**Fourteenth Amendment, U.S. Constitution**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**STAEMENT OF THE CASE**

The California court of appeal second district division six (herein "Cal. Court of appeal") applied *People v. Scott* supra as if all direct and post conviction appeals can only be filed by an appellate counsel. Furthermore both the California Supreme court and Court of Appeals failed address the issues raised such as

- a) Adequacy of self representation,
- b) the underlying actual innocence claim case law that ignores and is in conflict with the efficacy and administrative burdens of the *People v. Scott* policy (case law) that only addressed direct appeals but noted exercise of discretion for self represented rather than absolute bar,
- c) Self representation bar as applied ignores

impediments, there was no appellate counsel available/knowledgeable for an actual innocence claim

- d) Civil appellants may file an appeal in propria persona while civil in nature post convictions none direct appeals may not in application of *People v. Scott* (a direct appeal as of right case)
- e) Within *People v. Scott* there is an understanding that many states legislate to allow self-representation on appeal by choice, yet there is little to no historic support for a bar to self-representation in subsequent created courts such as California court of appeal yet the *People v Scott* policy completely eliminates self-representation on appeals for efficacy/adequacy grounds contrary to substantial rights history and codification. The policy further fails to review the circumstance and would fail the substantial evidence test to support *People v.* required by due process.

The record of case law for denying self representation tends to assert an appeal as being less important to maintain autonomy and choice to self represent in review of unfair trials by the Cal. Court of Appeal *People v. Scott* application once there has been a trial self-representation ends. In California, there has not been any exception to the self-representation bar despite the textual case law history taken from the United States Supreme court that the court may still exercise it's discretion to allow self representation, showing the *People v. Scott* bar does not comply with due process.

#### Background

- 1) Appel Issues from 2024 Superior Court

### prejudicial hearing errors

In November 2024 the hearing judge Federman was suppose to act as the 13th juror in an objective review of the new evidence but instead said the jury resolved as required in actual innocence claims. There was no application of judicial discretion for a scale titling determination. *People v. Superior Court of Santa Clara County*, (March 14, 2024) 100 Cal.App.5th 679, 697 (required to objectively assess as thirteenth juror even if evidence is conflicting).

The hearing judge Federman instead of applying the preponderance standard to a motion to vacate applied the wrong law in citing *In re Lawley* (Cal. Sup. 2008) 42 Cal.4th 1231 and *In re Reno* (Cal. Sup 2012) 55 Cal.4th 428 (unerringly) cases which were prior to enactment of cal. Pen code 1473.7 in the year 2017 and prior to the 2021 amendment effective in the year 2022 lessening the standard to preponderance for out of custody who went to trial. For example See *Larsen v. California Victim Comp. Bd.*, 64 Cal.App.5th 112, 132 (2021)) [2]. (changes to penal code 1473 and 1485.55). Prior to Senate Bill 1134's enactment, a prisoner in California could obtain state habeas corpus relief based on newly discovered evidence that "under-mine[s] the entire prosecution case and point[s] unerringly to innocence or reduced culpability." The 2021 amendment for the motion to vacate at issue at the 2024 hearing was pursuant to Cal. Pen. Code 1473.7 which extended the preponderance standard of proof for those who went to jury trial not merely peal bargains for out of custody petitioners.

Under California law, a motion to vacate a conviction based on actual innocence can be filed

under Cal. Pen. Code § 1473.7. This statute allows a person who is no longer in criminal custody to file a motion to vacate a conviction or sentence if newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice (*People v. Bravo*, 69 Cal.App.5th 1063 (2021)) The burden of proof is on the defendant to demonstrate entitlement to relief under this statute by a preponderance of the evidence (*People v. Perez*, 47 Cal.App.5th 994 (2020)) [3]

The hearing judge Federman failed to weigh evidence the jury did not have. *In re Sagin*, (2019) 39 Cal.App.5th 570, 578-580, 578-580..(small factors might have tipped the scales ... we are not reviewing the superior decision on the previous petition and owe it no deference under independent review). The alleged victims recant under the penalty of perjury that she was not raped and gave consent: See *Lawrence*, the state cannot criminalize private consensual sexual conduct between adults, recognizing a right to liberty under the Due Process Clause that protects private sexual conduct from government intervention (*Lawrence v. Texas*, 539 U.S. 558 (2003)).

On November 5, 2024 San Luis Obispo County Hearing judge Rita Federman denied the motion to vacate with the above described errors and a few more.

- 2) Circumstances, impediments and Adequacy
  - a. The Cal. court of appeal in the year 2024 and 2025

The leave to file appeal raised the issues that ap-

pellant could provide adequate self-representation on appeal.

The adequacy list included having a

- a) prescription to westlaw cocounsel for legal research,
- b) knowledge of the case and errors,
- c) conferred a juris doctorate in 2006,
- d) prior habeas corpus filings
- e) was pro se in federal litigation (inverse condemnation) as well as
- f) self-employed as a certiorari petition printer since 2009.
- g) Has used the line filing system and pacer.
- h) Provide the court of appeals with an attachment to the leave to file in propria persona which was a sample appeal (See Appendix F) with issues from hearing court applying the wrong standard of law, failing to exercise objection assessment of evidence the jury did not have as a thirteenth juror as required by actual innocence claims, and Ineffective assistance of counsel not knowing the law, excluding documents such as the trial judge describing the jury never heard it from his interpretation, and failure to file a reply or give the other example where accuser used similar tactics in divorce court but only admitted to the court a decade later.

b. There was no available nor knowledgeable appellate counsel to file an appeal

Petitioner could not find any appellate attorney file on appeal for an actual innocence claim after

contacting 14 attorneys including the ACLU and two appellate projects. The answers ranged from we are swamped, no response, do not know the actual innocence claim or never heard of Cal. Pen. Code 1473.7, were retired, and have trials back to back. There was no available and qualified appellate counsel to file an appeal yet the appeal was dismissed without consideration, partly due nothing else could be filed in the case.

- 3) The actual innocence claim ignores comity, finality, efficacy, use of judicial resources which overrides but is at loggerheads with *People v. Scott* (1998) 64 Cal.App.-4th 550 bar to self representation in violation of due process.

After reading the bar to self representation case law is unsupported by facts for efficacy and adequacy considerations. The conjecture use is without statistics or evidence which appears to completely fail the substantial evidence test as applied also fails the sua sponte duty to exercise discretion to consider self representation facts.

a) There was no appellate counsel available/knowledgeable to file the appeal after contacting 14 different appellate attorneys. The court can hardly claim adequacy when no appellate would take up the appeal.

b) Unresolved is the conflict between CIVIL appeal policy (case law) both state and federal which allows self-representation even on direct appeal while POSTCONVICTION COLLATERAL appeals are considered civil in nature yet self-representation is barred. The civil nature of a postconviction appeal favors permitting self-representation and abridging the right/privilege violates the 14<sup>th</sup> amendment equal

protection and freedom of choice

c) Feretta Sixth amendment right to self representation in trial should be extended to protect self representation on appeal particularly in post conviction appeals to a court which was subsequently created after the U.S. constitution was written court such as the California court of appeals. There is merely conjecture to support the bar to self representation contrary to the United States Supreme Court

d) Even on reconsideration the California court of appeal again made no assessment, did not respond to the issues presented and simply cited *People v. Scott* which describes that on direct appeal appellate counsel must be used and did not address post-conviction appeals for incarcerated either can rise the exact same issues on appeal.

e) Habeas corpus for incarcerated can be filed and pursued in the court of appeals as a post conviction remedy which conflicts with the bar to out of custody self representation from post conviction collateral appeals. such as in this case from a Cal. Pen Code 1473.7 actual innocence claim where the hearing court used the wrong standard of law essentially *Clark* rather than preponderance written in the statute itself.

**Self representation on none direct collateral appeal is at issue for out of custody defendant.**

The gravamen of *People v Scott* bar to self representation does not determine the merits of whether a leave to file in propria persona should be granted and further used speculation and conjecture without any facts to deny self representation using

the following terms without substance

1. Cost and efficacy
2. Adequacy of counsel

Notably there is little to no support for the case law that created rule and no obligation to assess appellants leave to file in *propria persona* despite the United States Supreme Court described discretionary approval.

3. Petition Must be represented by appellate counsel as *People v. Scott* is applied to postconviction collateral appeals despite being a direct appeal case of incarceration. Petitioner is outright denied the choice of self representation and either hires appellate counsel or file out a form and qualify for *informa pauperis* appointment of counsel. The appellate court form is not limited to current income like superior court in determining whether *informa pauperis* is warranted.

Unfortunately the claimed test of efficacy and adequacy (looking out for best interest of defendant/appellant and the government) make little sense when civil defendants can self represent on appeal even on direct appeal. It also makes no sense because there is no review on the merits of a leave to file in *propria persona* but merely a reference to *People v. Scott*.

#### REASONS FOR GRANTING THE WRIT

Discretionary Allowance of Self-Representation was not considered by the Cal. court of appeal and California Supreme Court policy that touts will dismiss if a pro se appeal is accidentally filed it will be dismissed without considering impediments to

obtaining counsel like unavailability nor petitioners adequacy to self represent.

### I.

#### RESOLVE ACTUAL INNOCENCE CLAIM CASE LAW IN CONFLICT WITH COURT BAR TO SELF REPRESENTATION ON THE SAME GROUNDS

Explicitly tying the miscarriage of justice exception to innocence thus accommodates both the systemic interests in finality, comity, and conservation of judicial resources, and the overriding individual interest in doing justice in the "extraordinary case," *Schlup v. Delo* (1995) 513 U.S. 298, 322 citing *Carrier*, 477 U.S., at 496, 106 S.Ct., at 2649. The policy for innocence claims overrides *People v. Scott* blanket policy to apply to appeals and postconviction appeals which is based on efficacy and use of scarce judicial resources that bars self-representation. The *People v Scott* does not apply to actual innocence claims at all and is an unrecognized exception.

#### **Exercise of discretion failure to exercise and abuse**

The United States Supreme court has found that, although criminal defendants have no federal constitutional right to represent themselves on direct appeal from a conviction, courts may exercise their discretion to allow a defendant to proceed pro se on appeal, keeping the best interests of both the defendant and the government in mind. *Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 163-164 (2000).

For example, in *Mawell* the court noted that while there is no constitutional right to self-representation

in mentally disordered offender proceedings, courts retain discretion to permit pro se representation. However, such discretion is rarely exercised in appellate or habeas contexts due to the complexity of legal issues and the need for competent representation. *Maxwell v. Sumner*, 673 F.2d 1031, 1036 (9th Cir. 1982).

The complexity of the case would necessarily require knowledge of the legal issue which on its face is an invalid policy since no issues are raised until the appeal is filed. However in this case the leave to file in propria persona included the legal issues which is the motion to vacate actual innocence claim equating to a rare case that ignores efficacy and judicial resource overriding *People v. Scott* and its progeny which b

Moreoever there was an abuse of discretion where complexity of the actual innocence claim which overrides the court use of *People v. Scott* bar to self-representation which is applied as if there are zero exceptions. It is ironic that the complexity of the issue in an innocence claim an overrides *People v. Scott* including the individual interest in doing justice and ignoring use of judicial resources. A mere citing of *People v. Scott* failed to reach or discuss impediments, adequacy of self-repsentatinon nor the actual innocence exception which favors the self representation choice regardless of efficacy and adequacy issues or other exceptions.

California substantial rights affected is ground for appeal in California.

An Appeal, is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature. See *Fay v. Noia*, 372 U.S. 391, 423-424, 83 S.Ct. 822,

9 L.Ed.2d 837 (1963). It is a collateral attack that normally occurs only after the defendant has failed to secure relief through direct review of his conviction. States have no obligation to provide this avenue of relief, cf. *United States v. MacCollom*, 426 U.S. 317, 323, 96 S.Ct. 2086, 48 L.Ed.2d 666 (1976) (plurality opinion), and when they do, the \*\*\*161 fundamental fairness mandated by the Due Process Clause is required.

Resolution of the conflicting policy between actual innocence and *People v. Scott* on the same ground is requested. There is an apparent due process violation when the court of appeals did not assess or review on the merits the leave to file an appeal self-represented by merely citing *People v. Scott* which applies to direct appeals.

## II.

### **CIVIL IN NATURE: RESOLVE CONFLICTING POLICIES WHICH PERMITS ON ONE HAND SELF-PRESENTATION IN CIVIL CASE APPEALS BUT ON THE OTHER HAND BARS SELF-REPRESENTATION FOR POSTCON- VICTION APPEALS THAT ARE WELL ESTABLISHED TO BE CIVIL ON NATURE VIOLATING EQUAL PROTECTION AND DUE PROCESS**

Habeas corpus relief is also considered civil in nature and is further removed from the criminal trial than appellate review (*Briggs v. Brown*, 3 Cal.5th 808 (2017)).(direct appeal). Furthermore a fortiori, it does not reach collateral postconviction proceedings. *People v. Delgadillo* (2022) 14 Cal.5<sup>th</sup> 216, 226-227, 302 Cal.Rptr.3d 153; *Pennsylvania v. Finley*

(1987) 481 U.S. 551, 555-559; *In re Sade* (1996) 13 Cal.4<sup>th</sup> 952, 978.

In California, individuals have the right to self-presentation in civil proceedings, including appeals. This right is firmly embedded in California jurisprudence and is necessary to protect constitutional rights such as the right to acquire and protect property and access the courts (*Baba v. Board of Supervisors*, 124 Cal.App.4th 504 (2004)). In the case at bar, "Post-conviction relief is even further removed from the criminal trial than is discretionary direct review. It is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature. See *Fay v. Noia*, 372 U.S. 391, 423-424, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963).

From the above *People v. Scott* case law and progeny violate the first amendment right to redress sixth and fourteenth amendment liberty interest and doing justice. Furthermore two conflicting policies treat civil natured appeals differently has not been resolved. Instead there is a clear conflict between the two policies one deny self representation in civil natured postconviction appeals contrary to policy to allow self representation in civil appeals even on direct appeal violating the Fourteenth Amendment equal protection clause.

The First Amendment right to petition and access the courts is crucial for maintaining an ordered and just society, ensuring that the state's monopoly over conflict resolution techniques operates within the bounds of due process (*Miller v. Bonta*, 646 F.Supp.3d 1218 (2022))[5].

The California court have not provided any evidentiary support or reason that civil appeal self-

representation is allowed but civil in nature post-conviction appeals are not requiring a check on the monopoly of resolution techniques such as blanket bar on postconviction appeals yet allowing habeas corpus as well not just civil.

Furthermore, the First Amendment of the U.S. Constitution guarantees the right to petition the government for a redress of grievances, which includes the right of access to courts. This right is an aspect of the broader First Amendment protections (*Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379 (2011))[1]. The right to petition is considered one of the most precious liberties safeguarded by the Bill of Rights and is closely related to other First Amendment rights such as freedom of speech and assembly (*McDonald v. Smith*, 472 U.S. 479 (1985))[2].

### III.

#### **REVIEW *PEOPLE V. SCOTT* UNDER FEDERAL DUE PROCESS LIMITATIONS WHEN AN APPLIED POLICY (case law) IGNORES CIRCUMSTANCES SUCH AS IMPEDIMENTS AND ACTUAL ADEQUACY OF COUNSEL**

It is a collateral attack that normally occurs only after the defendant has failed to secure relief through direct review of his conviction. States have no obligation to provide this avenue of relief, cf. *United States v. MacCollom*, 426 U.S. 317, 323, 96 S.Ct. 2086, 48 L.Ed.2d 666 (1976) (plurality opinion), and when they do, the fundamental fairness mandated by the Due Process Clause does not require that the State supply a lawyer as well."

(*Finley*, at pp. 556–557, 107 S.Ct. 1990.)(meaning full access to court was not an issue) After the first appeal as a right, “the Constitution does not put the State to the difficult choice between affording no counsel whatsoever or following the strict procedural guidelines annunciated in *Anders*.” (Id. at p. 559, 107 S.Ct. 1990., In California automatic direct appeals cannot be filed by pro se appellants but instead by appellate attorneys only Mattson, *supra*, 51 Cal.2d at p. 798, 336 P.2d 937.). The assessment in Mattson included in determining the extent of the right to counsel under state law, considered such matters as the intricacy of the accusatory pleading, the complexity of the law as to the offense charged and included offenses, defendant's intelligence, education, experience including familiarity with the criminal law derived from prior prosecutions... In *People v. Mattson*, *supra*, 51 Cal. 2d 777, at page 789, 336 P. 2d 937, at page 946 the California Supreme Court has emphasized that an inmate's rights regarding legal representation in a state habeas corpus proceeding are even more limited than on an appeal (*Briggs v. Brown*, 3 Cal.5th 808 (2017))[2]. However a Habeas corpus relief is also considered civil in nature and is further removed from the criminal trial than appellate review (*Briggs v. Brown*, 3 Cal.5th 808 (2017)).

The requirement of representation by trained counsel implies no disrespect for the individual inasmuch as it tends to benefit the appellant as well as the court. Courts, of course, may still exercise their discretion to allow a lay person to proceed pro se. We already leave to the appellate courts' discretion, keeping “the best interests of both the prisoner

and the government in mind," the decision whether to allow a pro se appellant to participate in, or even to be present at, oral argument. *Price v. Johnston*, 334 U.S. 266, 284, 68 S.Ct. 1049, 92 L.Ed. 1356 (1948). (incarcerated).

It would be incorrect to label appellant as a lay person nor is appellant in custody.

The court of Appeals provides no avenue to inform the court when ordering nothing further may be filed despite the impediment of lack of unavailability/knowledgeable appellate counsel to file an appeal after denial of reconsideration. Additional evidence was presented regarding adequacy of self-representation including west-law legal research tool which was also not considered given the application of a policy that dismisses a pro se appeal if it is mistakenly filed which fails to assess adequacy on the merits

For example, a Pro se respondent argued, briefed, and prevailed in the Court of Appeals for the Second Circuit and this Court See, e.g., *SEC v. Sloan*, 436 U.S. 103, 98 S.Ct. 1702, 56 L.Ed.2d 148 (1978)). *James Gant v. State of Florida*, 780 So.2d 131 (2000 District Court of Appeal of Florida, Fourth District) Case. No. 4D99-3578.(In Florida Appellate court would allow criminal defendant to represent himself on appeal.).

Petitioner understands a postconviction appeal is permitted when substantial rights are affect in California. Yet there were real and actual impediments to finding appellate counsel for an actual innocence claim that were not determined on the merits. Nor was the adequacy of self-representation determined on the merits instead there is a blanket

application of *People v. Scott* to all post-conviction pro se appellants. The blanket application does not even pretend to meet the required discretionary review as federal cases require to satisfy due process protection. There was also several appeal issues raised in a sample appeal attached to the leave to file in *proria persona* (See Appendix F) to support the adequacy test. Notably the appeal has improved since the draft that predated the record on appeal. Given the past nearly 100 page appeal denied in 1997 by the same court of appeal judge Arthur Gilbert who wrote in his opinion regarding a prejudicial error if she had been asked she would have answered truthfully (Appendix H). The fact is she was asked and lied which the prosecutor only mentioned after trial (APP. I) There is one other relevant fact in the tainted Judge Gilbert ruling in the he said she is just saying she succumbed to his entreaties (App.H) which was also wrong it was a subtle trial admission in which the trial judge described as she was talking about the past, both establish the jury never heard (never understood the recant) (App. N). The hearing judge erred by relying on the jury determination without an object assessment as the thirteenth juror. The jury never heard the accuser say she was not raped and that she told the prosecutor before trial (App.58) the accuser had been constantly telling defendant he was not the biological father of their daughter and waited a over a decade to also admit to that for which a paternity test was ordered. In two cases one criminal and one in family court the accuser/r recanted and admitted to the abuses in by declaration or directly to the family court judge Deputy DA Phil Lowe.

## IV.

**RECONSIDER EXTENDING FERETTA TO POST-CONVICTION APPEALS CHOICE TO SELF REPRESENT WHICH CURRENTLY CONCLUDES THE COURT OF APPEAL TO PROTECT AGAINST UNCONSTITUTIONAL TRIALS AND HEARINGS IS A LESS IMPORTANT AUTONOMY AFTER THE TRIAL OR HEARING IS COMPLETED AND FURTHER ASSUMES EFFICACY, COMPLEXITY, AND ADEQUACY ARE FORGONE CONCLUSIONS WHICH ARE OVERRIDED IN FERETTA AND LACKS SUBSTANTIAL EVIDENCE THAT APPELATE COUNSEL IF ADEQUATE AND EFFECTIVE.**

A fact supporting an issue behind Feretta was that lawyers were scarce and they were distrusted to support self representation pursuant to 6<sup>th</sup> amendment while states avoid that history by applying the 14th amendments due process and equal protection. Times have not changed for example in California the recent 2025 case of Spolin exposed a practice of promising resentencing in many case by misrepresenting the law. In the not to distant past California bar suspended hundreds of will and trust attorneys. My trial attorney was a wills and trust attorney who resigned his license the same year (In Sept. 2023) and was far from a trial lawyer in 1994, In case at bar a motion to vacate filed by attorney Ausman in 2025 yet even after the hearing he believe that the Clark pointing unerringly to innocence was the same as preponderance more likely than not. So when the hearing judge used the wrong standard attorney Ausman did not mention that and cost close to 20,000 dollars. Moreover an in important

document requested by the judge was not provided, Backed by Trial judge Duffys 2007 judgment which was clearly erroneous because the declaration supporting innocence was not taken as true innocence as required at the *prima facie* stage(App G). Instead Trial judge Duffy used what likely the jury misunderstand and the court of appeals the 1997 judgment that "this statement says nothing more than that she sometimes succumbed to Mr. Kleinhammer entreaties to have sex when she did not feel like it. That position is incorrect as anyone reading the declaration describes telling the district attorney she was not raped and she agreed to sex.(Appendix N) The question eliminated the past was likely perceived as the past because she told the jury repeatedly she was raped. Although vague as to time, Busha believed her testimony was she agreed to sex for what Mr. Kleinhammer was charged with as stated in the declaration. Furthermore the court appeals Second District Division 6 judgment by justice

For example in prior years appellate counsel from 1996 filed a nearly 100 page appeal and won nothing, although there was a glaring prejudicial error but the attorney cited the wrongs pages and should have used RT 1181 and RT 2554 (App. I)for which Arthur court of the court of appeals wrote if asked she would have truthfully answered which was wrong she lied, severely tainting the court of appeals judgment.

For trials, in *People v. Fedalizo*, it was noted that efficiency should not take precedence over constitutional rights (*People v. Fedalizo*, 246 Cal.App.4th 98 (2016))[5]. The right to self-representation in criminal trials is a fundamental right guaranteed by the Sixth Amendment of the United States Constitution,

as established in *Faretta v. California*. (*Faretta v. California*, 422 U.S. 806 (1975))[1]

Yet the sixth amendment protection has not been extended to direct or postconviction appeals

In *Martinez v. Court of Appeal of California*, Fourth Appellate Dist. 2000 528 U.S. 152 120 S.Ct. 684 "...I. "There is no constitutional right to self-representation on the initial appeal as of right. The right to counsel on appeal stems from the due process and equal protection clauses of the Fourteenth Amendment, not from the Sixth Amendment, which is the foundation on which *Faretta* is based. The denial of self-representation at this level does not violate due process or equal protection guarantees." *People v. Scott*, 64 Cal.App.4th 550, 554, 75 Cal.Rptr.2d 315, 318 (1998).Id. at 154.. The court emphasized that once a defendant is found guilty, the balance between the defendant's interest in self-representation and the state's interest in ensuring the fair and efficient administration of justice tips in favor of the state (*People v. Blair*, 36 Cal.4th 686 (2005).

The *Faretta*, *Martinez*, *Scott*, and *Blair* limitation to self-represent at trials is a faulty premise (violating the 6 and 14 amendment) because after an unfair and unconstitutional trial the balance somehow tips the scale in favor of fair and efficient administrative of justice. It is merely based on there being a trial.

However, the United States Supreme Court has not extended the *Faretta* right to proceedings other than criminal prosecutions. (See *Martinez*, supra, 528 U.S. at pp. 159-160, 120 S.Ct. 684.) In *Martinez*, the issue before the Supreme Court was whether the *Faretta* right applied in criminal appeals. In addition

to finding no historical basis for a right to appellate counsel, the high court determined that an accused person's rights under the Sixth Amendment are available only "in preparation for trial and at the trial itself" and therefore these rights do not apply in an appellate proceeding. (*Martinez*, *supra*, 528 U.S. at pp. 159-160, 161, 120 S.Ct. 684.).

The constitutional amendment predate (1-10 in 1791,(11 in 1795, 12 in 1804) and (1865-1870 reconstruction Amendments 13, 14, and 15) far before the California Supreme Court in 1849: And subsequently established the California court of appeal in the year 1904: as intermediate appellate courts to help with the state Supreme Court's growing caseload.

Individuals convicted of crimes in state court "have a liberty interest in demonstrating [their] innocence with new evidence under state law." *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 68, 129 S.Ct. 2308, 174 L.Ed.2d 38. For that reason, a state-created right to postconviction procedures can sometimes create rights to other procedures essential to realizing the state-created right. In *Skinner v. Switzer*, 562 U.S. 521, 131 S.Ct. 1289, 179 L.Ed.2d 233, the Court held that a Texas prisoner could file a due process claim under § 1983 against a prosecutor where the prisoner alleged that the prosecutor's refusal to turn over evidence deprived him of his liberty interests in utilizing state procedures to obtain reversal of his conviction or to obtain a pardon or reduction of his sentence.

Petitioner-Appellant has a liberty interest following California enacting Cal. Pen 1473.7 in 2017 and extending to those who went to trial like petitioner-

appellant which was effective in January of 2022. The actual innocence motion to vacate was denied by the hearing judge applying the wrong standard of proof and failing to assess the evidence the jury never had objectively as the thirteenth juror plus additional errors.

#### Historic Substantive Rights Policy'

This was not a failure to file it was a court of appeals blocking in propria persona filing of an appeal which is conflict with prior policy without mentioning the hear upon the merits and avoid technical forfeiture of substantial rights.

The decision in *In re Parker* (Cal.Sup. 1968) further emphasized the policy of the court to hear appeals upon the merits and to avoid, if possible, all forfeiture of substantial rights upon technical grounds. *In re Parker* (Cal.Sup. 1968) 68 Cal.2d 756, 760-761, 441 P.2d 90569 Cal.Rptr. 65 citing *People v. Megugorac*, (1938) 12 Cal.2d 208, 210, 82 P.2d 1108, 1109.)

Notably judges as well as attorneys sometimes misread the technical rules of appellate procedure see *In re parker* Supra, 68 Cal.2d 756 Id at 761

In a habeas filing the case goes on to explain It has been suggested "(i)n criminal cases the interest of the state that justice be done should reinforce the appellant's claim that his appeal be considered on the merits. There late appeals might well be permitted wherever appellant has not been guilty of culpable negligence." (*People v. Aresen*, (1949 Dist.1, div. 1) 91 Cal.App.2d 26, 30, 204 P.2d 389, 391, 957, quoting from 36 Cal.L.Rev. 303.) Such policy has been applied where, through the neglect of his

attorney, a litigant has been placed in default on an appeal. In *Strong v. Mack*, 58 Cal.App.2d 805, 137 P.2d 748, 750, the respondent moved to dismiss for failure to file an opening brief.

The court of appeal moved to dismiss unless appellate counsel filed the postconviction appeal which conflicts with the historic policy to hear on the merits and avoid forfeiture of substantial rights upon technical grounds *Rosales-Mireles v. United States* (June 18, 2018) 585 U.S. 129 Headnote: To satisfy the condition that an error affected the defendant's substantial rights, as required for a court of appeals to exercise its discretion to correct a plain error that was not brought to the district court's attention, the defendant ordinarily must show a reasonable probability that, but for the error, the outcome of the proceeding would have been different. Fed.Rules Cr.Proc.Rule 52(b), 18 U.S.C.A.

In *Henderson v. U.S* (February 20, 2013) 568 U.S. 266, 133 S.Ct. 1121, 185 L.Ed.2d 85

Neither does precedent answer the temporal question at least not directly. *Olano* is clearly relevant. There, we said that Rule 52(b) authorizes an appeals court to correct a forfeited error only if (1) there is "an error," (2) the error is "plain," and (3) the error "affect[s] substantial rights." 507 U.S., at 732, 113 S.Ct. 1770 (internal quotation marks omitted). Pointing out that Rule 52 "is permissive, not mandatory," id., at 735, 113 S.Ct. 1770, we added (4) that "the standard that should guide the exercise of remedial discretion under Rule 52(b)" is whether "the error 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings,' " id., at 736, 113 S.Ct. 1770 (quoting *United States v. Atkinson*, 297

U.S. 157, 160, 56 S.Ct. 391, 80 L.Ed. 555 (1936);  
*Henderson* *supra* *Id.* at 1126-1127.

**California Codified Substantial Rights**

California Penal Code Section 1473.7(f) from an order granting or denying the motion is appealable under subdivision (b) of Section 1237 as an order after judgment affecting the substantial rights of a party.

I am requesting my appeal be heard on the merits preferably by the United States Supreme Court following brief order regarding the actual innocence claim for which the California state courts refused to decide on the merits or remand to the Cal. court of appeal. to allow pro se filing of appeal ,if remanded send to any California court of appeal other than Second District, division 6.

There has been a denial of due process throughout the judicial process even if mishaps cannot be condoned. See *U.S. v. Jones* 492 F.2d 239, 242 (1974).  
*Floyd v. Meachum* 907 F.2d 347, 353 (2nd Cir.1990)

**CONCLUSION**

The Petitioner request the United States Supreme Court grant the petition for writ of certiorari to review conflicting case laws which favors self representation be civil in nature and in particular for actual innocence, the facile and as applied challenges to case law that provides no exception for in propria persona filling conflicts with historic policy and several other policies such as civil in nature can file, overriding actual innocence claims in violations of an appeal, fifth amendment structural defect which oust appellant without review on the merits, in addition the Sixth and fourteenth constitutional due process

are abridge when the State can blanketly apply People. Scott when no appellate counsel was available/knowledgeable to file an appeal which resulted in dismissal by the courts regardless of adequacy of self-representation asserted in leave to file.

The equal protection of Fourteenth is abridged when postconviction appeals which are civil in nature, are not allowed to file in *propria persona* while civil appeals may. There are substantial rights at issue with obvious liberty interest and miscarriage of justice remedy sought which are ignored by the California courts bar.

The first amendment broader access to court protection against limitation to filing an appeal such as being required to hire an appellate counsel (or qualify as indigent) to have only an attorney file an appeal is contrary to historic policy regarding actual innocence claims and historic policy that would review the leave to file underlying claims which are step the *People v. Scott* policy skips and did not foresee or provide a test for.

Petitioner request the United Supreme Court make a decision of the merit of the underlying actual innocence claims since the California courts chose not make a discretionary review on the merits of the actual innocence claim given there is a written record that can be assessed as an objective thirteenth juror or remand to a different California court of appeals so that a Justice other than Arthur Gilbert will exercising discretion to permit in *propria persona* filing of an appeal under the circumstances.

The bar to self-representation conflicts with the historic and codified substantial rights policy; actual

innocence policy; conflicts with the same *Farreta* grounds which overrides efficacy and adequacy to a degree under the *Farella* test which has been made out to be less important after an unconstitutional trial particularly when the subsequently created court of appeals (to lessen the burden on the California Supreme Court) no longer must determine the merits of the claim(s) on appeal or even know what the claims are when allowed to dismiss all postconviction in propria persona appeals even when an actual innocence is at issue when appellate attorneys are unavailable which lacks the necessary due process protections and broader first amendment protection access to court.

Respectfully submitted,

DATED: September 8, 2025

s/  
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