

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re Michael Jay Harris

MICHAEL JAY HARRIS — PETITIONER

vs.

K. SANTORO — RESPONDENT

PETITIONER'S APPENDIX

BY: Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison A1-148
PO BOX 1050
Soledad, California 93960
Petitioner Pro se

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Appendix A

In re Harris 004

PUBLIC DOCKET FOR

United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 25-665

Docketed: 01/31/2025

Case Name: Harris v. Arce

Status: Open

Nature of Suit:

Appeal From: San Francisco, Northern California

Fee Status:

Case Type Information

1. Original Proceeding
2. Original Habeas Corpus
3. 2254 Habeas Corpus

Originating Court Information

District: Northern District of California:

Associated Cases

Role (To)	Case Number (Connected To)	Connected To	Starting	Ending
Prior-Rel	23-3254	Harris v. Atchley, et al.	01/31/2025	
Related	25-741	Harris v. Bailey	02/04/2025	
Prior-Rel	16-15326	Michael Harris v. Connie Gipson	01/31/2025	
Prior-Rel	14-17324	Michael Harris v. Connie Gipson	01/31/2025	
Prior-Rel	22-15163	Michael Harris v. M. Atchley, et al	01/31/2025	
Prior-Rel	22-15159	Michael Harris v. M. Atchley, et al	01/31/2025	

Party and Attorney Listing

MICHAEL JAY HARRIS
AD0793,
Petitioner

Michael Jay Harris
[Pro Se]
Valley State Prison - Inmate Legal Mail
P. O. Box 96
Chowchilla, CA 93610-0096

In re Harris 005

CARLOS ARCE, Warden
Respondent

MICHAEL JAY HARRIS,

Petitioner,

v.

CARLOS ARCE, Warden,

Respondent.

Docket

*LEGEND:
(R) - Restricted Document
(L) - Locked Document*

Date Filed	Entry #	Public Docket Text
01/31/2025	1	PETITION for a Writ of Habeas Corpus filed by Petitioner Michael Jay Harris. [Entered: 01/31/2025 03:27 PM]
01/31/2025	2	PETITION for a Writ of Habeas Corpus filed by Petitioner Michael Jay Harris. [Entered: 01/31/2025 03:27 PM]
01/31/2025	3	PETITION for a Writ of Habeas Corpus filed by Petitioner Michael Jay Harris. [Entered: 01/31/2025 03:27 PM]
01/31/2025	4	CASE OPENED. Your case opening documents have been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit on 1/31/2025 . The U.S. Court of Appeals docket number 25-665 has been assigned to this case. All communications with the court must indicate this Court of Appeals docket number. Please carefully review the docket to ensure the name(s) and contact information are correct. It is your responsibility to alert the court if your contact information changes. Resources Available For more information about case processing and to assist you in preparing your brief, please review the <u>Appellate Practice Guide</u> . Attorneys should consider the court's <u>Appellate Mentoring Program</u> for assistance. [Entered: 01/31/2025 03:29 PM]
01/31/2025	5	SCHEDULE NOTICE for Original Petition for a Writ of Habeas Corpus. [Entered: 01/31/2025 03:31 PM]
04/29/2025	6	REQUEST for Public Information filed by Petitioner Michael Jay Harris. [Entered: 05/01/2025 11:47 AM]

Docket as of 5/1/2025 11:51 AM

In re Harris 006

PUBLIC DOCKET FOR

United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 25-741

Docketed: 02/04/2025

Case Name: Harris v. Bailey

Status: Open

Nature of Suit:

Appeal From: San Francisco, Northern California

Fee Status: Not Applicable

Case Type Information

1. Original Proceeding
2. Second or Successive Habeas Corpus
3. State

Originating Court Information

District: Northern District of California:

Associated Cases

Role (To)	Case Number (Connected To)	Connected To	Starting	Ending
Related	25-665	Harris v. Arce	02/04/2025	
Prior-Rel	23-3254	Harris v. Atchley, et al.	02/04/2025	
Prior-Rel	16-15326	Michael Harris v. Connie Gipson	02/04/2025	
Prior-Rel	14-17324	Michael Harris v. Connie Gipson	02/04/2025	
Prior-Rel	22-15163	Michael Harris v. M. Atchley, et al	02/04/2025	
Prior-Rel	22-15159	Michael Harris v. M. Atchley, et al	02/04/2025	

Party and Attorney Listing

MICHAEL JAY HARRIS
AD0793,
Petitioner

Michael Jay Harris
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P. O. Box 96
Chowchilla, CA 93610-0096

In re Harris 007

O'BRIAN BAILEY
Respondent

MICHAEL JAY HARRIS,

Petitioner,

v.

O'BRIAN BAILEY,

Respondent.

Docket

LEGEND:
(R) - Restricted Document
(L) - Locked Document

Date Filed	Entry #	Public Docket Text
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02/04/2025	2	CASE OPENED. Your case opening documents have been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit on 2/3/2025 . The U.S. Court of Appeals docket number 25-741 has been assigned to this case. All communications with the court must indicate this Court of Appeals docket number. Please carefully review the docket to ensure the name(s) and contact information are correct. It is your responsibility to alert the court if your contact information changes.
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Resources Available

For more information about case processing and to assist you in preparing your brief, please review the [Appellate Practice Guide](#). Attorneys should consider the court's [Appellate Mentoring Program](#) for assistance. [Entered: 02/04/2025 04:32 PM]

02/04/2025	3	SCHEDULE NOTICE. No briefing schedule is set for this type of case. All subsequent correspondence regarding this matter will be added to your file to be considered at the same time the cause is brought before the court. [Entered: 02/04/2025 04:34 PM]
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02/05/2025	1	APPLICATION for Leave to File 28 U.S.C. § 2254 Second or Successive Petition. (Corrected pdf updated) [Entered: 02/04/2025 04:30 PM] [Edited: 03/18/2025 09:51 AM]
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02/24/2025	4	DISCLOSURE STATEMENT pursuant to FRAP 26.1 and CR 26.1-1 filed by Petitioner Michael Jay Harris. [Entered: 02/24/2025 04:55 PM]
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04/29/2025	5	REQUEST for Public Information filed by Petitioner Michael Jay Harris. [Entered: 05/01/2025 11:50 AM]
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Docket as of 5/1/2025 11:52 AM

In re Harris 008

Appendix B

In re Harris 009

Case: 25-741, 05/23/2025, DktEntry: 10-1, Page 1 of 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 23 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL JAY HARRIS,

Petitioner,

v.

O'BRIAN BAILEY, Warden,

Respondent.

No. 25-665

ORDER

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

Michael Jay Harris has filed a 28 U.S.C. § 2254 habeas petition, along with supplements, that challenges Harris's conviction for numerous sexual offenses in Case No. MFE07004358 in Mono County Superior Court.

We do not transfer the petition and supplements to the district court because Harris challenged this conviction in a § 2254 petition in Case No. 2:13-cv-02604-TLN-CKD in the United States District Court for the Eastern District of California, and the district court adjudicated the petition on the merits and entered judgment on February 19, 2016.

Harris must first obtain authorization from this court to file a second or successive § 2254 petition. *See* 28 U.S.C. § 2244(b)(3)(A). Harris recently filed an application for authorization to file a second or successive § 2254 habeas petition in the district court in Case No. 25-741. We have considered and denied that

In re Harris 010

application by separate order in that case.

Docket Entry Nos. 1, 2, and 3 were provisionally filed under seal because they contain confidential information. The clerk will maintain under seal Docket Entry Nos. 1, 2, and 3 in accordance with Ninth Circuit Rule 27-13.

The clerk will close this original action. Any pending motions are denied as moot. No further filings will be entertained.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 23 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL JAY HARRIS,

No. 25-741

Applicant,

ORDER

v.

O'BRIAN BAILEY,

Respondent.

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

Michael Jay Harris has filed an application for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court. Harris has also filed a § 2254 habeas petition in this court in Case No. 25-665, which we have considered and addressed by separate order in that case.

With respect to the instant application, the applicant has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

In re Harris 012

Docket Entry No. 1 was provisionally filed under seal because it contains confidential information. The clerk will maintain under seal Docket Entry No. 1 in accordance with Ninth Circuit Rule 27-13.

Any pending motions are denied as moot. No further filings will be entertained in this case.

DENIED.

Appendix C

DEC 11 2024

Jorge Navarrete Clerk

S286081

IN THE SUPREME COURT OF CALIFORNIA

Deputy

En Banc

In re MICHAEL JAY HARRIS on Habeas Corpus.

The petition for writ of habeas corpus is denied.

GUERRERO

Chief Justice

In re Harris 015

EXHIBIT 1277

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

In re MICHAEL JAY HARRIS on Habeas Corpus.

Case No. C101324

BY THE COURT:

Petitioner's request to incorporate by reference the record in case number C101086, *Harris v. The Superior Court of Mono County*, is granted. (Petition at p. 13.) The petition for writ of habeas corpus is denied. (See *In re Clark* (1993) 5 Cal.4th 750, 767-769, 797, superseded by statute on other grounds as stated in *Briggs v. Brown* (2017) 3 Cal.5th 808.)


DUARTE, Acting P.J.

cc: See Mailing List

In re Harris 016

EXHIBIT 1250

FILED

FEB 21 2024

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONO

BY: 

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONO

MICHAEL JAY HARRIS,

Plaintiff,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Defendant.

ORDER DENYING WRIT OF HABEAS
CORPUS

CASE NO.: 23HCM3

CRIMINAL CASE NO.: MFE07004358

The Court has read and considered the Petition for Writ of Habeas Corpus filed on October 3, 2023 (17 pages and Exhibits) and also the Petition of Habeas Corpus filed on December 1, 2023 (168 pages). The Court has also reviewed the Informal Response filed by the Mono County District Attorney's Office filed on December 27, 2023 (7 pages) and the Petitioner's Response to the Informal Response of the DA filed on February 9, 2024 (64 pages).

The Petitions of October 3, 2023 and December 1, 2023 and Request for Evidentiary Hearing are denied.

///

ORDER DENYING WRIT OF HABEAS CORPUS

In re Harris 017

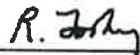
EXHIBIT 1248

1 There is no prima facie case for relief shown as to the Petitioner's claim of Prosecutorial
2 Misconduct, based upon the presentation of false evidence. There is no showing of a miscarriage
3 of justice, based upon the actual innocence of the Petitioner. There is no showing of new
4 evidence which would be a basis for relief.

5
6 The Court would also note that the claims of the Petitioner are barred as they are
7 successive without an exception.

8
9 Accordingly, it is hereby ordered that the Petitions and Request for hearings are
10 DENIED.

11 Dated: Feb 21, 2024

12 
13 Richard Toohey (Feb 21, 2024 12:22 PST)

14
15 Richard Toohey, Judge of the Superior Court
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ORDER DENYING WRIT OF HABEAS CORPUS

In re Harris 018

EXHIBIT 1249

Appendix D

In re Harris 019

28 U.S.C. § 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)

(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained

by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

Current through Public Law 119-20, approved June 20, 2025.

Appendix E

In re Harris 022

28 U.S.C. § 2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255 [28 USCS § 2255].

(b)

(1) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)

(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)

(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Current through Public Law 119-20, approved June 20, 2025.

Appendix F

In re Harris 026

28 U.S.C. § 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)

(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in the State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substance Acts [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of

counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 [28 USCS § 2254].

Current through Public Law 119-20, approved June 20, 2025.

Appendix G

In re Harris 030

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**Form 12. Application for Leave to File Second or Successive
Petition under 28 U.S.C. § 2254 or Motion under 28 U.S.C. § 2255**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form12instructions.pdf>

9th Cir. Case Number (to be provided by court) _____

Applicant Name Michael Jay Harris

Prisoner Registration Number CDCR# AD0793

Address California Correctional Institution C5-126 Box 1905 Tehachapi,
CA 93581

Name of Respondent (Warden) Brian Cates

You MUST answer the following questions:

(1) What conviction(s) are you challenging?

18 Counts Penal Code § 288(a) and 1 Count Penal Code § 269(d)(1)

All references are to the California Penal Code unless otherwise indicated.

(2) In what court(s) were you convicted of these crime(s)?

Mono County, California - Superior Court

(3) What was the date of each of your conviction(s) and what is the length of each sentence?

I was convicted on December 11, 2009 and I was sentenced on April 9, 2010
to 19 consecutive 15-years-to-life terms pursuant to § 667.61.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

For questions (4) through (10), provide information separately for each of your previous §§ 2254 or 2255 proceedings. Use additional pages if necessary.

- (4) Has the judgment of your conviction or sentence been modified or amended? If yes, when and by what court?

My convictions were affirmed on direct appeal to the California Court of Appeal for the Third Appellate District, however, the terms of the sentence were modified to a 5 year term of parole and no STD testing.

- (5) With respect to **each** conviction and sentence, have you ever filed a petition or motion for habeas corpus relief in federal court under **28 U.S.C. § 2254** or **§ 2255**?

Yes ☒ No ☐

- (a) In which federal district court did you file a petition or motion?

Eastern District of California

- (b) What was the docket number?

2:13-cv-02604

- (c) On what date did you file the petition/motion?

December 16, 2013

- (6) What grounds were raised in your previous habeas proceeding?

(list all grounds and issues previously raised in that petition/ motion)

Note: All EXHIBIT(s) referenced below are contained within the attached EXHIBIT(s) in the proposed Petition for Writ of Habeas Corpus.

II. A1. Admission of Evidence (EXHIBIT 083:25)

II. A. 1. Images and Data on Petitioner's Computer (EXHIBIT 084:2)

II. A. 2. CSSAS Evidence (EXHIBIT 087:1)

II. A. 3. Underaged Acts Evidence (EXHIBIT 088:1)

- (7) Did the district court hold an evidentiary hearing?

Yes ☐

No ☒

Continued on

next page →

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Grounds Raised in Previous Proceeding Continued

- II. A. 4. Propensity Evidence (EXHIBIT 089:1)
- II. A. 5. Lay Opinions (EXHIBIT 089:17)
- II. B. CSAAS Instruction (091:21)
- II. C. Consecutive Sentences (093:20)
- II. D. Ineffective Assistance of Counsel (EXHIBIT 096:1)
- II. D. 1. Trial Attorney Claims (EXHIBIT: 096:2)
- II. D. 2. Appellate Attorney Claims (EXHIBIT 098.8)
- II. E. Cumulative Error (EXHIBIT 100.6)

(8) How did the district court rule on your petition/motion?

☐ District court **dismissed** petition/motion. If yes, on what grounds?

☒ District court **denied** petition/motion.

☐ District court **granted** relief. If yes, on what claims and what was the relief?

(9) On what date did the district court decide your petition/motion?

February 18, 2016

(10) Did you file an appeal from that disposition? Yes ☒ No ☐

(a) What was the docket number of your appeal?

16-15326

(b) How did the court of appeals decide your appeal?

EXHIBIT(s) 120, Denied a Certificate of Appealability and Reconsideration Motion
121 12/09/16 01/27/17

EXHIBIT(s) 121, SCOTUS denied cert. 12/11/17 Pet. Reh. Den. 02/20/18 Case No. 17-6244
123 (11) State concisely each and every ground or issue you wish to raise in your
current petition or motion for habeas relief. Summarize briefly the facts
supporting each ground or issue.

Ground One - Actual Innocence - Miscarriage of Justice

Ground Two - False Evidence - Prosecutorial Misconduct

Ground Three - Malicious Prosecution

→ Recapitulation of factual allegations contained on the following pages.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Brief summarization of facts supporting the grounds for relief.

Ground One --

Actual Innocence/Miscarriage of Justice

The sum of the facts in my case, both intrinsic and extrinsic, demonstrate my actual innocence because the accusers have been proven as liars, the propensity evidence has been disproved, and the prosecutor conducted a reckless investigation and prevented local authorities from investigating the case which resulted in false evidence being presented to the jury.

Ground Two --

False Evidence/Prosecutorial Misconduct

The prosecutor in the case ignored facts which did not conform to his beliefs and did not investigate the facts in any meaningful manner even though the accusers admitted lying during their sworn testimony and testified in such a contradictory manner that the prosecutor must have known there were substantial lies being stated in the case and thus he should have at least attempted to verify the veracity of the claims being made.

Ground Three --

Malicious Prosecution

When the accusers' mother testified at my bail review hearing that her daughters were outright liars and the judge cut my bail in half, the prosecutor went beserk and presented false evidence in an unnoticed bail review hearing which eventually resulted in a 26 count Information. At trial the prosecutor was required to dismiss one count and the jury found me not guilty of an additional six counts and thus the maliciousness is proven to a certain extent because the unanimity instruction had been given to the jury and they could have found me guilty of all of the remaining 25 counts with a single vote and yet they did not do so.

(12) For each ground raised, was it raised in the state courts? If so, what did the state courts rule and when? (Attach a copy of all relevant state court decisions, if available)

I have exhausted my state remedies in all state courts and I have attached
copies of all opinions and orders in the attached habeas petition. (see next page)

(13) For each ground/issue raised, was this claim raised in any prior federal petition/motion? (*list each ground separately*)

No.

(14) For each ground/issue raised, does this claim rely on a new rule of constitutional law? (*list each ground separately and give case name and citation for each new rule of law*)

No.

(15) For each ground/issue raised, does this claim rely on newly discovered evidence? What is the evidence and when did you discover it? Why has this newly discovered evidence not been previously available to you? (*list each ground separately*)

Yes, the evidence was discovered in late 2022 and the state hindered me
in presenting my habeas petition to the state court for a year. (see page 4.4)

(12) On February 21, 2024, the Mono County Superior Court denied my petition for writ of habeas corpus and held that: "There is no prima facie case for relief shown as to the Petitioner's claim of Prosecutorial Misconduct, based upon the presentation of false evidence. There is no showing of a miscarriage of justice, based upon the actual innocence of the Petitioner. There is no showing of new evidence which would be a basis for relief." (See EXHIBIT 1249). The Court concluded that "the claims of the Petitioner are barred as they are successive without an exception." (Ibid.).

On or about April 23, 2024, I filed a petition for writ of mandate seeking to compel the Mono County Superior Court to reconsider the habeas petition presented to it on December 1, 2023, and to provide a brief statement as to the reasons for denying Petitioner's federalized claims found therein. See EXHIBIT 1261). The reason I sought mandamus relief was because I understand Shinn v. Ramirez 2022 U.S. LEXIS 2557 to require the factual basis of any habeas claims to be developed in the state courts and under California state law, the only court required to issue a written ruling addressing my claims is the superior court. (See California Rules of Court, Rule 4.551 (h)). I filed the exhibits referenced herein, EXHIBIT(s) 001-1249, with the Third District Court of Appeal, along with a memorandum of law in support thereof. (See EXHIBIT(s) 1258-1268).

On May 24, 2024, the Third District Court of Appeal summarily denied my petition for writ of mandate without explanation. (See EXHIBIT 1269).

On or about June 8, 2024, I filed a petition for writ of habeas corpus in the Third District Court of Appeals and asked the Court to take judicial notice of the mandate case, case no. C101086. I presented the same petition to the Court of Appeals as I did in the Mono County Superior Court. I also included a declaration in support thereof. (See EXHIBIT(s) 1251-1255). In the supporting declaration I clearly articulated that "I filed a Petition for Writ of Mandate in this Court on 5/13/24 because I did not believe Judge Toohey had adequately addressed my claims within the instant petition and he had failed to provide a brief statement as to the reasons for denying my well articulated and federalized claims in a reasonable manner. The denial of my habeas petition based on the grounds that it was successive completely ignore the distinction between and successive habeas petition which is an abuse of the writ process and

UNITED STATES COURT OF APPEALS - NINTH CIRCUIT

Form 12 Attachment Page 4.2

a subsequent habeas petition which is based on new and previously unavailable documents and claims never before presented to any court." In the Third

District Court of Appeal, I presented the same petition as I did to the Mono County Superior Court and I raised the same claims as those raised in the instant proposed petition. On July 8, 2024, the 3rd DCA denied my habeas petition after granting my application and request for the Court to take judicial notice of the mandamus proceedings and exhibits filed therewith. (EXHIBIT 1250).

On or about July 17, 2024, I filed a petition for writ of habeas corpus in the California Supreme Court (EXHIBIT(s) 1008-1177), and I also filed a request for judicial notice of the mandamus proceedings in the 3rd DCA as well as a sworn declaration in support thereof. (EXHIBIT(s) 1270-1276). After I had reviewed the docket entry for my case, Case No. S286081, I was confused as to why my petition was filed and not my request for judicial notice or my declaration in support, I wrote to the Court and asked about this. The Court then sent me a conformed copy of my filed petition without the declaration of request for judicial notice. I then wrote to the California Supreme Court Clerk and asked why I did not receive the conformed copies of the request for judicial notice and declaration on November 20, 2024. I included the documents I considered filed under the mailbox rule as I am an incarcerated person and I also included the petition for writ of mandate as well. (See EXHIBIT(s) 1256-1276). In response, the Clerk sent me another conformed copy of my petition filed July 22, 2024, without the other documents I had requested. I did not receive any verification regarding my judicially noticed documents which I had been unable to send to the Court due to the resource limitations of the CDCR which prevent me from coping large documents. The California Supreme Court received my second letter on November 25, 2024 (EXHIBIT 1256), and then mere days later denied my habeas petition summarily on December 11, 2024 with no reference to the granting of my request for judicial notice. (EXHIBIT 1277). It is reasonable to infer that the California Supreme Court did not consider my judicially notice documents in support of my habeas petition as evidenced by their failure to acknowledge the request in the dispositive order, and I have no other available remedy in the state court due to the fact that the denial of a habeas petition in the California Supreme Court is final upon issuance and no other petitions will be

In re Harris 038

entertained or considered. Important to this statement herein is that the California Superior Courts are the only state courts required by law to issue a brief statement as to the reasons for the denial of a habeas petition (California Rules of Court, Rule 4.551(h)), and this is the only ruling that can be reviewed by the federal courts under AEDPA. Thus I am claiming that the state has thwarted my efforts to develop the factual basis of my well articulated and demonstrated claim of prosecutorial misconduct based on federal law as clearly determined by the Supreme Court of the United States in Napue and its progeny.

- (15) The instant grounds for relief rely exclusively on newly discovered evidence which was withheld by the state of California. It wasn't until the state law changed on January 1, 2019.(Penal Code § 1054.9), that I was able to begin the process of acquiring my case file and discovery materials previously unavailable to me at the time of my prior habeas efforts in the federal courts. As part of the postconviction discovery process I was able to obtain transcripts of interviews, some of which occurred after the trial had begun, and which clearly and unequivocally demonstrate that the prosecutor in the case knew, or should have known that his witnesses, both complaining and corroborating, were lying.

As shown in my proposed petition and exhibits, I requested these materials as soon as I was convicted and before I was sentenced in the case. However, the state through its appointed counsel and the prosecutor himself thwarted and hindered my ability to obtain these exculpatory materials not a part of the record on appeal. As a result, I have been procedurally barred for 15 years in my efforts to obtain a merits based review of my claims of factual innocence.

The evidence which is newly discovered consists of transcribed interviews of the accusers and their friends. Within these transcribed interviews there are multiple statements by the accusers that their friends know nothing about there allegations and yet the prosecutor not only elicited testimony from the friends that related their own personal knowledge of the accusers claims, but the prosecutor asked the accusers directly about the issue of whether they had told their friends and they denied telling them repeatedly.

Critical to the court's understanding of this issue is the colloquy during the trial between the prosecutor and [REDACTED] where she says she lied previously about having told her friends because she didn't want them to get involved and the moments later when asked about this specifically testified that she hadn't told her friends until after she told the CPS worker following her removal from the home into foster care. Pivotal to the prosecutorial misconduct claim is the prosecutors attempt to restate the evidence through a leading question and then his subsequent use of the friends issue during closing before he seemed to realize his problem and changed tack mid argument. I thoroughly presented this new evidence to the state courts in EXHIBIT(s) 1212-1221, 1229-1230.

These transcribed interviews are not the only new evidence obtained which was previously unavailable. There is also video evidence contained on two

In re Harris 040

DVDs (trial exhibits 67 and 72) which were admitted at trial but were never shown to the jury. This is also an important issue in that the jury requested to review the DVDs but when the videos on the DVDs were unavailable due to the failure of the prosecutor and the court's Executive Officer were unable to locate equipment to display the videos, the jury rushed ahead and disregarded the DVDs according to defense counsel's postverdict interview with the jury foreman in the case.

Defense counsel filed a declaration in support of a motion for new trial based upon her interview with the jury foreman. Because the jury foreman was also a deputy clerk in the trial court, he felt that it was necessary to submit a postverdict declaration in the case in an attempt to clarify his statements to defense counsel. I believe that this declaration demonstrates juror misconduct to a certain degree for a couple of reasons.

The first reason is the statement declared by the jury foreman which explains that when the jury was notified that the DVD was available, the jury took another vote and decided not to view the DVD and because no verdicts were reached based on the DVD SART exam evidence, it was not important. My perception is that (a) how was the jury notified except through ex parte methods not permitted under the law, and (b) if no verdicts were reached based on the videos, then no considerations of innocence were made either. And while this goes into the thought process of the jurors, the fact that they found me guilty and not guilty of child rape under a "first time" and "last time" Information, then the issue of the unavailability and supposed availability disclosed to the jury ex parte leads to a discussion of the improper contact with the jurors issue.

This second reason for a finding of juror misconduct is derived from the jury foreman's own sworn declaration where he specifically mentions the pressure being placed upon him by the court's clerk, Margaret White. Thus the issue of improper contact equates to undue pressures being placed on the jurors to get this case wrapped up. And this was the theme of the entire trial as evidenced by the record in this case.

In sum, the evidence was requested from the district attorney's office through the prosecutor in the case as far back as 2010/2011 (See EXHIBIT(s) 001-019). The trial court advised me to take up my extrinsic claims via habeas

and when I did this I was repeatedly told that I should raise these issues in my direct appeal or that because I raised off the record complaints in a post-verdict Marsden motion, I was procedurally barred from raising them again under successive petition/abuse of the writ doctrine.

Therefore, when I presented my newly discovered claims of prosecutorial misconduct in a subsequent habeas petition to the state courts, their findings that my claims of prosecutorial misconduct were successive claims was an unreasonable application of federal law to the facts of the case. Even if this statement appears conclusory, the reality is that I have never raised the prosecutorial misconduct claims before and the factual allegations made for years have not changed, but the legal claims are new and warrant a merits based review because they are based on new evidence, I have been diligent in asserting my factual innocence, and the state has thwarted my every diligent effort to obtain a merits based review of my claims.

(16) For each ground/issue raised, does the newly discovered evidence establish your innocence? How?

My innocence was already clearly established when I was found not guilty of six counts and the prosecutor was obliged to dismiss a seventh count when he apparently realized the lies that were being told. This left 19 counts involving the same crimes, accusers, and time period. (see next page)

(17) For each ground/issue raised, does the newly discovered evidence establish a federal constitutional error? Which provision of the Constitution was violated and how?

I am contending and claiming that my due process right to fundamental fairness was violated by the actions of the prosecution team. Specifically, I am claiming that under clearly determined federal law as determined by the Supreme Court of the United States, false evidence was presented to the jury that the prosecutor knew, or should have known was false.

(18) Provide any other basis for your application not previously stated.

In order to address the previous habeas petitions filed in the state and federal courts, I must explain the distinguishability of those pleadings as compared to the instant application and petition before the Court. At the outset, I want to explain that after the state court denied my second round of habeas petitions, I abstained from seeking review by this Court and did not apply for permission to file a second or successive habeas petition and instead continued to move the trial court to compel the release of all the postconviction discovery I was entitled to under California state law.

Signature _____

Date _____

In capital cases only, proof of service on respondent MUST be attached. A sample proof of service is attached to this form.

Attach proposed section 2254 petition or section 2255 motion to this application.

Mail this form to the court at:

Clerk, U.S. Court of Appeals for the Ninth Circuit, P.O. Box 193939, San Francisco, CA 94119-3939

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

(16) As for the reasons that the new evidence I have only recently discovered establishes my innocence, one must consider the following facts. I have raised three grounds for relief. Two of them establish my innocence while the third establishes liability on the prosecutor in the case.

The first ground, Actual Innocence - Miscarriage of Justice, is presented in order to surmount any and all procedural bars which have been or may be erected and which have been or may be used to deny me a full and fair consideration of the merits of my claims of constitutional violation.

The issue of actual innocence in a case involving child molestation and rape of a child is almost impossible to prove with direct evidence and thus it requires the proving of a negative. As this Court may be aware, proving a negative is often thought of as impossible, at least according to every lawyer with whom I have spoken.

Having said this, I assert that I can nevertheless prove a negative in this case through a thorough, merits based review of the facts as presented in the instant petition and exhibits.. The evidence I have presented to the state courts, and which has been ignored, is authentic and demonstrative of my actual innocence. The facts I have presented, in my opinion, clearly and convincingly demonstrate that a fundamental miscarriage of justice has occurred under the probability standard outlined in Murray v. Carrier, 477 U.S. 478 (1986). There is simply no reasonable explanation to be discerned from the facts presented in the instant petition other than pure deceit. I have presented these facts to all levels of the state of California's courts and I have exhausted each and every claim.

I will now summarize the material points made to the state courts which are based on clearly established law as determined by the Supreme Court of the United States. There are three distinct areas of proof. The first is the video evidence which my expert witness has sworn proves the accusers in the case did not have any injuries which were consistent with the abuse they claimed and which they testified to at trial. The second is the false evidence presented by the prosecutor which he knew was false, as demonstrated by his attempts to elicit further false testimony and evidence from both his complaining witnesses as well as his corroborating witnesses and expert witnesses. I have detailed

In re Harris 044

in summary form the gist of my claims within my informal reply filed in the trial court. (See EXHIBIT(s) 1185-1247). In short, the prosecutor elicited testimony from one of the accusers that she had lied under oath previously, then when questioned specifically about the lies, the accuser contradicted her lie again and then the prosecutor tried to use an incorrect leading question to correct the testimony to his advantage. The informal reply speaks for itself at EXHIBIT(s) 1212-1221. The third is the false evidence presented to the jury involving unauthenticated computer evidence.

The question posed asks how does the newly discovered evidence prove my innocence and the short answer is that the entirety of the instant petition and exhibits show unequivocally that the process was less than fair and therefore deprived me of my constitutional right to fundamental fairness under due process principles. However, in order to address the "how they prove" aspect of my actual innocence I will briefly summarize the factual basis of my claims and delve into a bit of legalese, or theory, in order to contextualize my claims. I truly believe that the state courts ignored my federalized claims and have asserted finality prior to a merits based review of my claims asserting adequate and independent grounds for denying my claims even though my claims, if proven true, would require a reversal, even under the Brown v. Davenport standard.

One of the primary facts in the case is the newly discovered DVD video evidence which was admitted as a trial exhibit yet never was it shown to the jury, even after they requested to view it during their deliberations in the case. The Video DVD evidence consists of SART physical examinations which were hotly contested at trial. Thus, when the jury sought to review the videos in order to decide which expert was correct, they were unable to do so. They then apparently decided to split the difference and found me guilty and not guilty of raping [REDACTED] even though [REDACTED] claimed she was repeatedly raped over the course of many years. As I have already stated, the petition speaks for itself.

One of my main claims related to my factual innocence is that there exists the DVD which was created when two of my accusers were examined by a nurse from U.C. Davis for what is referred to as a Sexual Assault Response Team (SART) exam.

This exam was conducted six months after I was arrested in the case following what I consider to be false allegations and what the People refer to as delayed reporting. This exam became a critical component of the case against me, but it is also a blessing in that my expert testified to a medical degree of certainty that the physical findings from the SART exam were not consistent with the accusers claims against me. I have fully discussed this issue within the instant proposed petition at EXHIBIT(s) 1140-1160 and it is important to note that my expert was and is willing to testify further in a state court proceeding. In fact, I specifically requested an evidentiary hearing related to the newly discovered DVD evidence and I was denied the opportunity to be heard. (See EXHIBIT 117).

The SART exam's materiality was thrown into dispute when the jury requested to view the SART exam video during deliberations (it had not been shown to them during trial), and the jury was told it was unavailable. In a case from the Southern District of Florida, "[a] new trial is required if there is a reasonable possibility that a party is prejudiced by the district court's failure to provide certain exhibits to the jury, even if the exhibits are properly admitted. United States v. Collins, 604 F.3d 481, 489 (7th Cir. 2010)(citing Deichler v. City of Evansville, 545 F.3d 537, 543 (7th Cir. 2008))." My contention is that the failure to provide trial exhibits 67 and 72 to the jury when they requested to view them was prejudicial when considered contextually. My further contention is that the DVD SART exam videos were improperly admitted (not a ground for relief owing to state independence on matters of evidence) and yet never shown to the jury. Because of this fact, the jury requested to view the videos during deliberations and when they were unavailable for viewing, the jury rushed ahead and found me guilty and not guilty of rape of a child under a "first time" and "last time" charging document. (See EXHIBIT 867).

Following the acquittals and convictions in the case, my defense attorney spoke with the jury foreman who was also a deputy clerk in the same court that convicted me. The jury foreman told my attorney that the jury had struggled with the rape charge and had expressed confusion over the way the case was charged. Moreover, there was a declaration filed by the jury foreman in response to my attorney's declaration filed in support of a new trial motion based in part on jury and courthouse personnel misconduct involving improper contact with the jury.

The improper contact issue was an issue that was difficult to understand until after I received the entire case file and was able to review the law as it pertains to the issues in a cogent manner. And while I have not raised these issues as grounds for relief, I have presented them in Ground One, Actual Innocence - Miscarriage of Justice, in order to explain and justify any defects in my prior petitions in the court. As a final note on this DVD issue, appellate counsel raised multiple evidentiary and instruction error claims even though case law permits the trial court to control its courtroom and the evidence presented therein and thus these grounds raised by appellate counsel were incompetent and I have exhausted this issue in the state courts but have never presented it to the federal courts previously. I am informed and believe that the whole issue of jury tampering was proven by the jury foreman's own sworn declaration filed in the case. (See EXHIBIT(s) 162-168). But it is his statement that 'When the DVD was made available' that really illustrates the tampering. This is because nowhere in the record of the case is there any mention of any interaction between the court and the jurors regarding this supposed availability. And while the burden rests heavily upon me to prove my innocence, the trial court had an obligation to conduct a hearing into the actuality of the improper contact and it failed to do so. 'When courts are faced with allegations of improper contact between a juror and an outside party, courts apply a two-step framework. [Citation.] At step one, the court asks whether the contact was 'possibly prejudicial,' meaning it had a 'tendency' to be 'injurious to the defendant.' ... If so, the contact is 'deemed presumptively prejudicial,' and the court proceeds to step two.' (See Murray v. Bacerra, 2019 U.S. Dist. LEXIS 20302).

Appendix H

In re Harris 048

No. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

In re

MICHAEL JAY HARRIS

on Habeas Corpus

DECLARATION OF PETITIONER MICHAEL JAY HARRIS
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

BY: Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison A1-127
PO BOX 1050
Soledad, California 93960
In Pro per

In re Harris 049

EXHIBIT 1251

I, Michael Jay Harris, do hereby declare:

1. I am the petitioner in the above-entitled action and if called upon to testify in this matter I could and would testify truthfully and competently to the following facts.

2. I am a prisoner of the State of California under the custody and control of the California Department of Corrections and Rehabilitation ("CDCR") incarcerated at Salinas Valley State Prison ("SVSP") in Soledad, California. I was transferred to the CDCR on May 3, 2010 following a conviction on December 11, 2009 and I was sentenced to 19 consecutive 15 years-to-life terms on April 9, 2010 in the Mono County Superior Court.

3. I have filed multiple petitions seeking to exonerate myself from what I know to be a false conviction because not only am I innocent of all charges in the case at issue here, but I was found not guilty of 6 charges at trial and the prosecutor was forced to dismiss a seventh charge. The not guilty findings and the dismissal ~~were~~ all based on the same criminal transactions as alleged involving the same accusers and time spans under a novel "first time" and "last time" charging document.

4. I have never sought to abuse the writ process and I have only proceeded based on the information (limited) available to me by the State of California.

5. As I have stated in the attached HC-001 state habeas form, I have filed habeas petitions in both the state and federal courts to no avail.

6. I believe that I am excepted from any procedural bars due to the fact that I was subjected to legal errors before, during, and after trial of a constitutional magnitude and I have specifically asserted my factual 1

innocence in ground number one of the instant petition.

7. I was unable to gain access to my attorney-client case file until 2020 and I was unable to get my missing discovery until late 2022 due to the former Penal Code § 1054.9 which only applied to LWOP and condemned prisoners prior to January 1, 2019.

8. Once I had obtained the missing documents and had located the DVD which contained video of the SART examinations of the accusers never before seen by the court or jury, I sought to present this evidence in support of my claim of factual innocence but I was denied procedurally.

9. When Penal Code § 1473 was amended in 2023 and again in 2024 I sought to take advantage of the enhanced language which permitted me to prosecute a writ of habeas corpus based on the fact that a significant dispute had emerged or further developed in my favor regarding expert medical, and forensic evidence and testimony that was introduced at trial and that testimony and evidence more likely than not affected the outcome of the case.

10. After much difficulty in presenting my new and subsequent claims to the court below I was finally able to present my claims of constitutional error and proof of my factual innocence on or about December 1, 2023.

11. Assigned to the case was the Honorable Richard F. Toohey who who was assigned for all-purposes by the Judicial Council because both of the judges in Mono County had recused themselves from hearing any habeas petitions owing to their prior representation of adverse interest in the underlying case.

12. I do not believe that the Honorable Richard F. Toohey took the time to review the myriad papers filed in the matter and took the easy way out much like the prior assigned judge the Honorable Burt Pines had done. Judge Pines had specifically stated on the record in the discovery matters that he was not going to take judicial notice of prior documents filed in the prior

In re Harris 051

EXHIBIT 1253

habeas petitions because that was too much work for him to have to do in the case.

13. I filed a Petition for Writ of Mandate in this Court on 5/13/24 because I did not believe Judge Toohey had adequately addressed my claims within the instant petition and he had failed to provide a brief statement as to the reasons for denying my well articulated and federalized claims in any reasonable manner. The denial of my habeas petition based on the grounds that it was successive completely ignore the distinction between a successive habeas petition which is an abuse of the writ process and a subsequent habeas petition which is based on new and previously unavailable documents and claims never before presented to any court. This Court denied the Petition for Writ of Mandate on 5/24/24.

14. The grounds for relief presented in the instant petition before this court are neither successive nor present frivolous claims in an abuse of the writ process. I am factually innocent as verified by the jury in this case as to six of the 25 counts before them. Any technical deficiencies in my previous efforts to exonerate myself in the various courts do not reflect my guilt or innocence and instead reflect my inability to overcome the hinderances imposed by the State of California in my efforts to overcome what I believe to be the most outrageous example of an oppressive criminal justice system which is well documented in the media.

15. I am asking with all the due respect I can for this Court to fully and fairly consider to totality of the record developed in the case, both intrinsically and extrinsioally, and review the matter de novo in order to evaluate whether the matter should be referred back to the trial court for further proceedings.

In re Harris 052

I, Michael Jay Harris do hereby declare the foregoing to be true and correct under penalty of perjury under the laws of the State of California. As to those things I have stated upon belief, I believe them to be true. I have executed this verification at Salinas Valley State Prison in Soledad, Monterey County, California this 8th day of June, 2024.

Michael Jay Harris CIXR# ADO793
Salinas Valley State Prison A1-128
PO BOX 1050
Soledad, CA 93960

Declarant and Petitioner Pro se

In re Harris 053

To the Clerk of the
California Supreme Court,

11/20/24

On July 22, 2024 you filed a habeas
petition which I mailed to you
(Case No. SZ86081) I also sent
you a Request for Judicial Notice and
a Declaration in Support thereof (separately
captioned) and yet they do not appear
in the docket nor were they attached
to the conformed copy of SZ86081
filed 7/22/24. Can you please
verify these documents have been
filed and send me conformed
copies.
Thank you.

Sincerely,



Michael Jay Harris
CDCE # AD0793
SVSP AI-127
Box 1050
Soledad, CA
93960

RECEIVED

NOV 25 2024

CLERK SUPREME COURT

In re Harris 054

EXHIBIT 1256

California Supreme Court

Case No.

PROOF OF SERVICE BY MAIL

BY PERSON IN STATE CUSTODY

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Michael Jay Harris CDCR# AD0793, declare:

I am over 18 years of age and a party to this action. I am a resident of _____

Salinas Valley State Prison,

in the county of Monterey

State of California. My prison address is: SVSP A1-127 PO BOX 1050 Soledad, CA 93960

On 7/17/24
(DATE)

I served the attached: PETITION FOR WRIT OF HABEAS CORPUS WITH SUPPLEMENTAL
PETITION, DECLARATION IN SUPPORT THEREOF, REQUEST FOR JUDICIAL NOTICE

(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

Honorable Rob Bonta
State Attorney General
PO BOX 944255
Sacramento, CA 94244

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 7/17/24
(DATE)


(DECLARANT'S SIGNATURE)

In re Harris 055

EXHIBIT 1257

NO. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

MICHAEL JAY HARRIS,
Petitioner,

vs.

SUPERIOR COURT OF MONO COUNTY,
Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Party in Interest.

PETITION FOR WRIT OF MANDATE

The Honorable Richard F. Toohey, Judge
Case No. 23HCM3

BY: Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison A4-120
PO BOX 1050
Soledad, CA 93960
Petitioner Pro se

In re Harris 056
EXHIBIT 1258

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES
OF THE COURT OF APPEAL OF THE THIRD APPELLATE DISTRICT OF
THE STATE OF CALIFORNIA:

Petitioner alleges:

1. Petitioner is a prisoner within the custody and control of the California Department of Corrections and Rehabilitation (CDCR) who was convicted in the Mono County Superior Court on December 11, 2009 and who was sentenced to a term of 285 years-to-life on April 9, 2010.

2. Respondent is the Mono County Superior Court.

3. Real Party in Interest is the People of the State of California.

4. On or about December 1, 2023, Petitioner filed a verified petition for writ of habeas corpus challenging his conviction and claiming that his current restraint within the CDCR is illegal.

5. On or about February 21, 2024, the Court issued an order denying the writ of habeas corpus. (In the denial order the Court failed to articulate its reasoning pursuant to California Rules of Court, Rule 4.551(g).

6. In the attached Memorandum of Points and Authorities Petitioner presents detailed argument as to why the Mono County Superior Court is and was required to provide a brief statement as to the reasons for its denial of Petitioner's petition for writ of habeas corpus. (Cal. Rules of Court, Rule 4.551(g).)

7. Petitioner is a person beneficially interested in the issuance of a writ of mandate because he has a clear, present, and substantial right to the performance of respondent's duty in that the Mono County Superior Court's
In re Harris 057

denial of Petitioner's petition for writ of habeas corpus in no way articulated the reasons for the denial nor did the decision address the substantial and material claims made by Petitioner in a reasonable manner. Furthermore, the interest Petitioner seeks to advance is within the zone of interests to be protected by the legal duty asserted because an explanatory order identifying the claims presented and the reasons for denying relief are often necessary in order for a higher court to determine whether a petitioner has meaningfully exhausted their habeas remedy in the superior court. Moreover, as is explained in the attached Memorandum of Points and Authorities, in order to pursue a second or successive petition in the federal courts requires the superior court to articulate its reasons for the denial of federal claims so that the federal court may determine whether the state court's decision was "(1) 'contrary to' or an 'unreasonable application of' clearly established federal law as determined by the [Supreme Court of the United States]; or (2) resulted in a decision that was based on an 'unreasonable determination of the facts' presented in the state court proceeding." (See Brown v. Davenport (2022) 596 U.S. 118, 142 S.Ct. 1510, 1520, 212 L.Ed.2d 463; Cf. 28 U.S.C § 2254(d).)

8. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this petition, in that a petition for writ of habeas corpus in this Court is not a proper venue because it is only the superior court which is required to provide a brief statement as to the reasons for the denial of a petition for writ of habeas corpus pursuant to California Rules of Court, Rule 4.550 and 4.551(g). Petitioner has no right to appeal the denial of a habeas petition. (See In re M. (1975) 14 Cal.3d 783, 789; 122 Cal. Rptr. 531; 537 P.2d 363.)

In re Harris 058

EXHIBIT 1260

WHEREFORE, Petitioner prays:

1. That the Court issue a preemptory writ in the first instance commanding Respondent to reconsider the habeas petition at issue herein and provide a brief statement as to the reasons for denying Petitioner's federalized claims found therein; or
2. That the Court, alternatively, first issue an alternative writ commanding Respondent to reconsider the habeas petition at issue herein and provide a brief statement as to the reasons for denying Petitioner's federalized claims found therein, or, in the alternative, show cause why it should not do so, and thereafter issue a peremptory writ commanding Respondent to reconsider the habeas petition at issue herein and provide a brief statement as to the reasons for denying Petitioner's federalized claims found therein;
3. For such other ~~other~~ and further relief as the Court deems just and proper.

Dated: April 23, 2024

Respectfully Submitted,

Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison A4-120
PO BOX 1050
Soledad, CA 93960
Petitioner Pro se

VERIFICATION

I, Michael Jay Harris, do hereby declare the foregoing to be true and correct and I have personally created this petition and know its contents. I make this declaration under penalty of perjury under the laws of the State of California.
Dated: April 23, 2024 In re Harris 059

EXHIBIT 1261

No. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

MICHAEL JAY HARRIS,

Petitioner,

vs.

SUPERIOR COURT OF MONO COUNTY,

Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION FOR WRIT OF MANDATE

The Honorable Richard F. Toohey, Judge
Case No. 23HCM3

BY: Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison A4-120
PO BOX 1050
Soledad, CA 93960

Petitioner Pro se

In re Harris 060
EXHIBIT 1262

THIS COURT SHOULD ISSUE A WRIT OF MANDATE COMPELLING
RESPONDENT TO RECONSIDER THE HABEAS PETITION AT ISSUE
AND PROVIDE A BRIEF STATEMENT AS TO THE REASONS FOR
DENYING PETITIONER'S FEDERALIZED CLAIMS.

A. When Writ of Mandate May Issue. A writ of mandate may issue from any court to an inferior court to compel the performance of an act that the law specifically enjoins as a duty to be performed by the lower court. The writ must be issued on the verified petition of the party beneficially interested, when there is no plain, speedy, and adequate remedy in the ordinary course of law. (See Code of Civil Procedure §§ 1085 and 1086.)

B. Mandate is Proper When Direct Appeal is Unavailable. The denial of a writ of habeas corpus by a superior court is not appealable. (See In re M. (1975) 14 Cal.3d 783, 789, 122 Cal.Rptr. 531, 537 P.2d 363.)

SUMMARY OF ARGUMENT

Petitioner contends that Respondent court failed to provide a brief statement as to the reasons for denying Petitioner's habeas petition despite the requirement that it do so as codified as California Rules of Court, Rule 4.550 and Rule 4.551(g). Respondent stated its conclusions without any reasoning other than to assert procedural default without more. Because Petitioner arguably demonstrated his claims with substantial and material documentary evidence, Petitioner contends that Respondent thwarted his ability to develop the factual basis of his federalized claims. This prevents him from obtaining review in the federal courts because federal review is only available for those claims which are factually developed in the state court.

In re Harris 061
EXHIBIT 1263

A written ruling is the basis of any subsequent analysis done in the federal courts as to whether the state court's decision was contrary to or an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States; or, the state court's decision was based on an unreasonable determination of the facts presented in the state court proceeding.

Because Respondent failed to provide its reasoning in the denial order, and because this Court is not required to provide a brief statement as to the reasons for a denial of any subsequent habeas petition Petitioner may file on the same facts and law, Respondent should be compelled to reconsider the habeas petition at issue and provide a brief statement as to the reasons for denying Petitioner's federalized claims.

ARGUMENT

I. The prosecutorial misconduct claim presented to Respondent is neither conclusory nor speculative. The evidence and arguments presented fully support the proposition that the prosecutor knew or should have known the complaining witnesses were lying as illustrated in Petitioner's informal reply. (See EXHIBIT(s) 1213-1221.) Thus the holdings of the Supreme Court of the United States support Petitioner's contention that his conviction was obtained illegally and his current restraint is as well.

In addition, the Ninth Circuit Court of Appeals recently held that,

[t]he principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction ... does not cease to apply merely because the false testimony goes only to the credibility of the witness.

(Dickey v. Davis (9th Cir. 2023) 69 F.4th 624, 636, citing Napue v. Illinois (1959) 360 U.S. 264 at p. 269.)

In re Harris 062
EXHIBIT 1264

The Ninth Circuit has also held that,

[w]hen a prosecutor suspects perjury, the prosecutor must at least investigate. The duty to act is not discharged by attempting to finesse the problem by pressing ahead without a diligent and good faith attempt to resolve it. A prosecutor cannot avoid this obligation by refusing to search for the truth and remaining willfully ignorant of the facts.

(See Morris v. Ylst (9th Cir. 2006) 447 F.3d 735 at p. 744.)

Petitioner contends that not only was false testimony presented at trial by the prosecutor, knowingly, but that this is direct evidence of a reckless investigation. A reckless investigation infringes upon a person's liberty interest in a fair criminal proceeding. The Supreme Court of the United States has emphasized time and again that "the touchstone of due process is protection of the individual against arbitrary action of government." (See County of Sacramento v. Lewis (1998) 523 U.S. 833 at p. 846.)

Hence, the totality of the facts and arguments presented to Respondent require more than a claim of procedural default if for no other reason than if Petitioner's claims were given a chance to be proven true, and were proven true, law and justice would require a new trial to be ordered at the very least.

II. In Respondent's denial order (EXHIBIT(s) 1248-1249) the Mono County Superior Court wrote,

There is no prima facie case for relief shown as to the Petitioner's claim of Prosecutorial Misconduct, based upon the presentation of false evidence. There is no showing of a miscarriage of justice, based upon the actual innocence of the Petitioner. There is no showing of new evidence which would be a basis for relief. [¶] The Court would also note that the claims of the Petitioner are barred as they are successive without an exception.

(Ibid.)

In re Harris 063

EXHIBIT 1265

Under California Rules of Court, Rule 4.552(c), Respondent was required to determine whether Petitioner had made a prima facie showing that he was entitled to relief. Respondent was required to take Petitioner's allegations as true and to make a preliminary assessment as to whether Petitioner would be entitled to relief if the factual allegations were proved. If this finding is made, then Respondent was required to issue an order to show cause.

The issue of the issuance of an order to show cause was discussed in detail within Petitioner's informal reply (EXHIBIT(s) 1207-1208), and specifically address the need to formalize the matters in controversy in the absence of a procedural default. Thus it is the procedural defaults found which are the dispositive matters that were not explained in the denial order. According to the California Supreme Court in the case of People v. Romero (1994) 8 Cal.4th 728, "If the court determines that the petition does not state a prima facie case for relief or that the claims are all procedurally barred, the court will deny the petition outright, such dispositions being referred to as 'summary denials'. (In re Clark [1993], 5 Cal.4th 750, 769, fn. 9.)" (Id. at p. 737.)

Of special importance to Petitioner's claims made to Respondent are the detailed and specific references to each and every potential default to be considered and the explanations and justifications of each. Thus the denial order's summary nature is belied by the record before this Court. Therefore law and justice require much more than a simple summary denial in the case.

III. Actual innocence is extremely difficult to prove in a child sexual abuse case such as this case because proving a negative is considered

In re Harris 064

EXHIBIT 1266

impossible. Even so, Respondent has in its possession a DVD which contains video evidence which Petitioner contends proves the virginity of the complaining witnesses. This video evidence was never shown to the jury despite it having been admitted as evidence at trial. This video was never shown to the jury despite their request to view it during their deliberations in the case.

Suffice to say, the recently amended Penal Code § 1473, subds. (b)(1)(D), allow Petitioner to prosecute a habeas petition based on further developed medical and forensic evidence which more likely than not affected the outcome of the case. Because petitioner has claimed this error, he is entitled to an order to show cause so that the claim may be proved. As such, Respondent was required to provide a brief statement as to why an order to show cause was not issued since the proof of virginity would negate any rape conviction on its face.

IV. Respondent stated in the denial order that Petitioner's claims were successive without an exception even though Petitioner clearly argued that his newly discovered claims of prosecutorial malfeasance and the acquisition of relevant and material documentary evidence warranted review of the petition as a subsequent one and not a successive petition. Respondent appears to have completely ignored the distinction between a subsequent and a successive petition as discussed by the California Supreme Court in the case of In re Friend (2021) 11 Cal.5th 720 at pp. 730-731. Under abuse of the writ standards, states do have a right to finality and repose in their convictions, however a safety valve exists for those claims which are fresh and ripe. Petitioner has presented just such an effort and thus Respondent should be compelled to provide a brief statement as to why Petitioner's claims are considered successive rather than subsequent.

In re Harris 065
EXHIBIT 1267

CONCLUSION

Based upon the foregoing, Petitioner humbly requests that this Court to grant the relief requested.

Dated: April 23, 2024

Respectfully Submitted,

Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison A4-120
PO BOX 1050
Soledad, CA 93960
Petitioner Pro se

In re Harris 066
EXHIBIT 1268

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MICHAEL JAY HARRIS,
Petitioner,
v.
THE SUPERIOR COURT
OF MONO COUNTY,
Respondent;
THE PEOPLE,
Real Party in Interest.

C101086
Mono County
No. 23HCM3

BY THE COURT:

The petition for writ of mandate is denied.


RENNER, Acting P.J.

cc: See Mailing List

In re Harris 067

EXHIBIT 1269

No. _____

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

In re

MICHAEL JAY HARRIS

on Habeas Corpus

DECLARATION OF PETITIONER MICHAEL JAY HARRIS
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

BY: Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison
PO BOX 1050
Soledad, CA 93960

PetitionerPro se

In re Harris 068

EXHIBIT 1270

I, Michael Jay Harris, do hereby declare:

1. I am the petitioner in the above-entitled case and if called upon to testify in this matter, I could and would testify truthfully and competently to the following facts.

2. I am a prisoner of the State of California currently incarcerated by the California Department of Corrections and Rehabilitation (CDCR) at Salinas Valley State Prison in Soledad, Monterey County, California. I was transferred to the custody and control of the CDCR on May 3, 2010 following a conviction in the Mono County Superior Court on December 11, 2009. I was sentenced to a term of 285 years-to-life which consisted of 19 consecutive 15 years-to-life terms.

3. I have filed multiple petitions seeking to exonerate myself but I have never abused the writ process because I am alleging my factual innocence. I was found innocent of 7 charges out of the 26 malicious charges filed against me by the Mono County Deputy District Attorney and thus my claims are not frivolous or an abuse of the writ process as I am informed and believe the law to state on this matter.

4. I am informed and believe that I am entitled to an exception to any untimeliness bar and my claims are not successive in any way. I have explained the actions of the state which have thwarted my efforts at every turn and I have justified the need for the court to take up my case due to the claims of factual innocence made in the attached Supplemental Petition for Writ of Habeas Corpus beginning at p. 38.

5. I was unable to gain access to my attorney-client case file until 2020 due to the unavailability of controlling law mandating its return to me. Beginning on January 1, 2019, Penal Code § 1054.9 began to allow for postconviction

In re Harris 069
EXHIBIT 1271

discovery to be ordered and provided to Petitioner.

6. Once I had obtained my attorney-client case file, I determined that there was missing documents as well as missing DVDs which contained the SART physical examinations of the twin accusers. This DVD is critical to this petition, I believe, because the law has changed to allow this DVD evidence to be considered once and for all (see Penal Code § 1473 (b)(1)(D)), and this is important because the jury was never shown the DVD video during the trial and when they requested to view it during deliberations and when the means to view it were unavailable, I am informed and believe that my liberty interests in a fair criminal proceeding were hindered.

7. After much difficulty in obtaining my case file, I had an equally difficult time presenting my petition to the court. This was due to the COVID-19 pandemic and the severe staff shortages and limitations placed on my by the CDCR related to accessing my case file (which was not allowed to be stored in its entirety within my cel.). In addition, the law library limitations including no access to Lexis materials or photocopying services for large swaths of time thwarted my efforts to get out of prison by presenting timely claims to the court.

8. I finally presented my habeas petition to the Mono County Superior Court on December 1, 2023. The court ordered the People to provide an informal response which they did. I then replied informally and the matter was decided on February 21, 2024 with what I believe to be a summary denial. There was certainly no statement of reasoning for the denial of the well federalized claims presented.

9. Because of the failure by the Mono County Court to provide any reasoning for its decision, I filed a Petition for Writ of Mandate in the Third District Court of Appeal seeking to require the trial court to provide a brief

In re Harris 070
EXHIBIT 1272

statement as to the reasons for denying the habeas petition. I attached over 1200 pages of exhibits to this petition in case no. C101086 in the 3rd DCA. I am informed and believe that these exhibits are critical to this Court's understanding of the level of proof I have which counters any assertions by the People that overwhelming evidence of my guilt exists.

10. The denial of my habeas claim because it was successive completely ignores the distinction found by this Court between a successive claim and a subsequent one in the case of In re Friend. My claims being presented years after my conviction became final are based on new evidence which I was never able to present in support of my consistently pled facts. I am informed and believe that my explanation and justification related to procedural default should warrant at least a cursory consideration of the merits of the case in order to fully and fairly assess whether a miscarriage of justice has in fact occurred.

11. On May 24, 2024, the Third District Court of Appeal denied my Petition for Writ of Mandate.

12. On or about June 12, 2024, I filed a habeas petition in the 3rd DCA and within weeks it was denied summarily with a reference to In re Clark (1993) 5 Cal.4th 750, 767-769, 797.

13. I am informed and believe that the references to Clark specifically relate to repetitious and piecemeal claims. And the exceptions available to Petitioner. I have never sought to present my claims piecemeal or unsupported by documentary evidence, but the actions of the state have hindered and thwarted my diligent efforts to put my claims forth in the courts.

14. I am asking this Court to permit me one last final review, de novo, in order that my right to fundamental fairness is preseved.

15. I am informed and believe that if I am granted an Order to Show Cause and allowed to present evidence at an evidentiary hearing, that I can

In re Harris 071
EXHIBIT 1273

demonstrate unequivocally that the DVDs show no evidence of the sexual abuse they claimed before the jury, and that the computer evidence was falsified and its use is direct evidence of a reckless investigation in the case

I, Michael Jay Harris, do hereby declare the foregoing to be true and correct under penalty of perjury under the laws of the State of California. As to those things I have stated based on belief, I believe them to be true. I have executed this verification this 17th day of July, 2024 at Salinas Valley State Prison in Soledad, Monterey County, California.

Michael Jay Harris
Declarant and Petitioner Pro se

No. _____

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

In re

MICHAEL JAY HARRIS

on Habeas Corpus

REQUEST FOR JUDICIAL NOTICE

BY: Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison
PO BOX 1050
Soledad, CA 93960

Petitioner Pro se

In re Harris 073

EXHIBIT 1275

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner Michael Jay Harris, under the provisions of Evidence Code § 452 (d) and § 453, requests that this Court take judicial notice of the taking of judicial notice by the Third District Court of Appeal of all the relevant exhibits referred to in the instant petition and the exhibits themselves which consist of 4 volumes, pages 001 - 1249. These exhibits are contained within the record of Case No. C101086 in the Third District Court of Appeal.

Physical copies of these exhibits have been served upon the People and Petitioner is unable to make copies due to the resource limitations of the prison law library.

Dated: July 17, 2024

Respectfully Submitted,

Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison
PO BOX 1050
Soledad, CA 93960
Petitioner Pro se

In re Harris 074

EXHIBIT 1276