

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KENNETH EUGENE GAGE, PETITIONER

v.

SUPERIOR COURT OF SANTA CLARA COUNTY, RESPONDENT

PEOPLE OF THE STATE OF CALIFORNIA

Real Party in Interest

Index to and APPENDICES A through F

(FOR: Petition for Writ of Certiorari)

By In Propria Persona:

KENNETH E. GAGE C-71542

California State Prison-Solano

P.O. Box 4000, 21-22-1L

Vacaville, CA 95696-4000

Prison Administration Phone Number

(707) 451-0182

APPENDICES - COVER

INDEX TO APPENDICES

APPENDIX A - Gage v. People, Court of Appeals, Ninth Circuit. No. 24-6182. Order Filed April 21, 2026. Denying Certificate of Appealability (Docket Entry 3). "pending motions denied as moot." received by petitioner April 25, 2025.

APPENDIX B1 - Gage v. People, U.S. District Court, Northern District California, Civil Docket for Case #4:24-cv-02100-HSG (Two Pages), docket received September 19, 2024.

APPENDIX B2 - Gage v. People, U.S. District Court, Northern District California, Case #4:24-cv-02100-HGS (Five Pages) 9/18/24 Order Denying (court characterized) Habeas Petition, Denying as Moot Request for Counsel, Leave to Enter Evidence; Denying Certificate of Appealability; petitioner received 9/23/24.

APPENDIX B3 - Gage v. People, U.S. District Court, Northern District California, Case #4:24-cv-02100-HGS (One Page), JUDGMENT Dated 9/18/2024 - DISMISSED (court characterized) Petition for Writ of Habeas Corpus as second or successive, DENIED certificate of appealability. Judgment entered in favor of Respondent and against Petitioner. Received by petitioner 9/23/24.

APPENDIX C - Court Characterized Gage on Habeas Corpus, California Supreme Court (habeas characterized) Denial En Banc #S282972 alleging untimely, successive, repetitive.

APPENDIX D1 - California Court of Appeal, Sixth Appellate District #H051556 Santa Clara County Super. Ct. Nos. CC2208713, 79195 (court characterized Gage on Habeas Corpus), Denied 11/17/2023, received by petitioner 11/21/2023.

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APPENDIX D2 - Defendant's 11/26/23, Notice of Appeal, California Court of Appeal, Sixth Appellate District #H051556 Santa Clara County Superior Court, No. 79195, returned-received by applicant 12/05/2023.

APPENDIX E1 - Superior Court of California, County of Santa Clara, Crim. #79195, denial of Motion to Dismiss without opinion; in same - denial of Habeas (characterized) #C220813, dated January 6, 2023, received January 23, 2023.

APPENDIX E2 - Gage v. People, Notice of Appeal, dated January 24, 2023, copy to Superior Court, filed January 31, 2023, returned-received February 7, 2023.

APPENDIX F - Habeas corpus (characterized) is denied March 13, 2023, by California Court of Appeal, Sixth Appellate District #H050770 (Re: Santa Clara County Superior Court, Nos. C2208713, 79195, Solano County Superior Court, #FCR363337; denial received March 23, 2023.

NOTE: Appendices G and H1 thru H6 are attached, limited to this court's discretion under Rule 14.1(h), (i) (vi) "any other material the petitioner believes essential to understanding the petition." These are among those exhibits "terminated" by the District Court. Applicant believes neither their admission or rejection alters the fact of an absent judgment on the trial record and failure of The People to enter and oppose. But no "change in substance" results in either case.

APPENDIX G - FIRST DOCUMENT/DISCOVERY REQUEST for "JUDGMENT" (Cal. Penal Code §§ 1202a, 1207; Cal. Code of Civ. Pro. § 644) TO CLERK, SUPERIOR COURT OF CALIF., COUNTY OF SANTA CLARA, Crim. Case #79195 (following repeated failures of production addressed to multiple state executive branch officials and F.B.I.)

APPENDIX H1-H6: DISCOVERY LETTERS to and responses from Santa Clara County Superior Court Officials (Six Pages): PROOF of no judgment on court records in Crim. Case #79195; archive search fee paid by third party supporter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 21 2025

KENNETH EUGENE GAGE,

Petitioner - Appellant,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent - Appellee.

No. 24-6182

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

D.C. No. 4:24-cv-02100-HSG
Northern District of California,
Oakland

ORDER

Before: CANBY and MILLER, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Before a district court can consider a second or successive 28 U.S.C. § 2254 petition, this court must authorize the district court to do so. See 28 U.S.C. § 2244(b)(3). The clerk will serve this order and Form 12, the standard application for leave to file a second or successive motion, on appellant.

Any pending motions are denied as moot.

DENIED.

Received
4-25-25 Kenneth E. Gage

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH EUGENE GAGE,

Plaintiff,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Defendant.

Case No. 24-cv-02100-HSG

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS;
DENYING AS MOOT REQUEST FOR
COUNSEL AND FOR LEAVE TO
ENTER EVIDENCE; DENYING
CERTIFICATE OF APPEALABILITY**

Re: Dkt. No. 6

Petitioner, an inmate at California State Prison – Solano, filed this *pro se* action seeking a writ of habeas corpus, arguing that his custody violates the federal and state constitutional due process and equal protection clauses. His petition is now before the Court for review pursuant to 28 U.S.C. § 2243. Petitioner has paid the filing fee. Dkt. No. 9.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus on behalf of a prisoner who is in custody in violation of the Constitution or law of the United States. 28 U.S.C. § 2241(c). A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petition

According to the petition, in 1983, Petitioner was convicted of capital murder by a jury and subsequently sentenced by the state trial court, but neither the conviction nor the sentence are valid because the state courts never entered a judgment of conviction. Petitioner argues that the failure to enter a judgment of conviction means that there was no final disposition of guilt and effectively

constitutes “abandonment of prosecution,” and therefore requires the dismissal of the underlying state court criminal case, C No. 79195, and the expungement “of all state and federal action records arising therefrom, or remand in accordance appropriately instructing the lower Court.”

See generally Dkt. No. 1.

C. Case No. 23-cv-02395 HSG, *Gage v. Matteson* (“*Gage I*”)

Petitioner has previously challenged his custody as invalid on the grounds that the the state court never entered a judgment of conviction in C No. 23-cv-02395 HSG, *Gage v. Matteson* (“*Gage I*”). In *Gage I*, Petitioner alleged the following:

The petition alleges that the state court failed to enter a judgment of conviction on the record and that the CDCR and Warden Matteson therefore have no jurisdiction to detain Petitioner because (1) California state law, specifically Cal. Penal Code §§ 1191 *et seq.*, Cal. Penal Code §§ 1202a, 1213(a), 1216, require a judgment of conviction before a person may be detained; (2) state court precedent holds that a warden is without authority to receive or maintain custody of a person without having received a judgment of conviction, citing to *Ex Parte Dobson*, 31 Cal. 497, 499; *In re Application of Bost*, 214 Cal. 150, 153-54 (Cal. 1931); *People v. Sourisseau*, 62 Cal.App.2d 917, 929 (1944); *People v. Banks*, 53 Cal.2d 370, 383 (Cal. 1959); *People v. John*, 36 Cal. App.5th 168, 175 (Cal. Ct. App. 2019), and holds that an abstract is not a judgment of conviction, citing to *People v. Mitchell*, 26 Cal. 4th 181, 186 (Cal. 2001); *People v. Mesa*, 14 Cal.3d 466, 471 (Cal. 1975); *People v. Williams*, 103 Cal. App. 3d 507, 517 (Cal. Ct. App. 1980); and (3) federal law holds that a sentence is not final until a judgment is signed by the judge and entered by the clerk, citing to Fed. R. Crim. P. 32(k)(1); *Payne v. Madigan*, 274 F.2d 702, 704 (9th Cir. 1960); *United States v. Arpaio*, 951 F.3d 1001, 1004 (9th Cir. 2020) and Petitioner’s continued detention by Respondent violates due process and equal protection. Petitioner also argues that his conviction should be expunged because none of the reviewing courts had jurisdiction to review his conviction since there was no final appealable order, citing to *United States v. Battista*, 418 F.2d 572 (3d Cir. 1969); *Chavez-Perez v. Ashcroft*, 386 F.3d 1284, 1288 (9th Cir. 2004); *People v. Gill*, 61 F.3d 688, 693 n.1 (9th Cir. 1995); *United States v. Ripsinski*, 20 F.3d 359, 361-62 (9th Cir. 1994).

Gage I, Dkt. No. 11 at 2. This Court dismissed *Gage I* for failure to state a claim for federal habeas relief because federal habeas relief does not lie for errors of state law; because the federal criminal procedural rules and federal cases cited by Petitioner govern convictions in federal court and do not govern convictions in California courts; because the alleged failure to enter a judgment on the record did not state a violation of either the Due Process Clause or the Equal Protection Clause; and because Petitioner was incorrect that the amended abstract of judgment did not allow the CDCR or Respondent to take him into, and retain him in, custody, and the sufficiency of the abstract in allowing the CDCR to retain Petitioner in custody was a matter of state law, which did not state a claim for federal habeas relief.

United States District Court
Northern District of California

D. Petition

This petition must be dismissed as second or successive because Petitioner has presented the same claim in a prior petition for a writ of habeas corpus. 28 U.S.C. § 2244(b)(1) (“A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.”). To the extent that Petitioner argues that he is raising new arguments as to why the lack of a judgment of conviction renders his custody invalid, the Court finds that the arguments raised are substantively identical. *Compare* Dkt. No. 1 with *Gage I*, Dkt. No. 1. Regardless, this petition remains “second or successive” within the meaning of § 2244 because “the facts underlying the claim occurred by the time of the initial petition, [] and . . . the petition challenges the same state court judgment as the initial petition.” *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018) (citing *Panetti v. Quarterman*, 551 U.S. 930, 945 (2007), and *Magwood v. Patterson*, 561 U.S. 320, 333 (2010)); *see also Woods v. Carey*, 525 F.3d 886, 888 (9th Cir. 2008) (habeas petition second or successive if raises claims that were or could have been adjudicated on merits in prior petition). “A claim presented in a second or successive habeas corpus application under section 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 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.

28 U.S.C. § 2244(b)(2). Even if a petitioner can demonstrate that he qualifies for one of these exceptions, he must seek authorization from the court of appeals before filing his new petition with the district court. 28 U.S.C. § 2244(b)(3) (“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.”); *Chades v.*

United States District Court
Northern District of California

Hill, 976 F.3d 1055, 1056-57 (9th Cir. 2020) (district court is “without power” to entertain second or successive petition unless petitioner first receives authorization from court of appeals).

Petitioner appears to allege that he is entitled to the exception set forth in 28 U.S.C. § 2244(b)(2)(B), conclusorily stating that he has presented a “compelling claim of actual innocence.” Dkt. No. 1-1 at 8. However, the innocence gateway of *Schlup v. Delo*, 513 U.S. 298 (1995) does not provide a gateway past Section 2244(b)(2)’s successive petition restrictions, as Section 2244(b)(2)(B)’s requirements for a second or successive application are stricter than the *Schlup* standard in two ways:

First, § 2244(b)(2)(B)(i) requires that “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence.” There is no requirement under *Schlup* that the factual claim was not discoverable through the exercise of due diligence. Second, § 2244(b)(2)(B)(ii) requires that “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.” (Emphasis added.) *Schlup* requires only that an applicant show that it is “more likely than not” that no reasonable fact-finder would have found him guilty.

Charboneau v. Davis, 87 F.4th 443, 453 (9th Cir. 2023) (quoting *Cooper v. Woodford*, 358 F.3d 1117, 1119 (9th Cir. 2004)). In addition, a conclusory statement is insufficient 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.” Finally, Petitioner overlooks the fact that the jury found him guilty based on the evidence presented at trial: any alleged failure to enter a judgment of conviction after the trial concluded would not make it “more likely than not” that a jury would not have found him guilty.

Regardless, here, the alleged facts underlying the claims in the action – that no judgment of conviction has been entered – were known to Petitioner by the time of *Gage I* and the claims raised here could have been adjudicated in *Gage I*. This petition is therefore second or successive within the meaning of 28 U.S.C. § 2244(b) and must be dismissed. 28 U.S.C. § 2244(b); *Brown*, 889 F.3d at 667; *Woods*, 525 F.3d at 888.

CERTIFICATE OF APPEALABILITY

The federal rules governing habeas cases brought by state prisoners require a district court

1 that issues an order denying a habeas petition to either grant or deny therein a certificate of
2 appealability. *See* Rules Governing § 2254 Case, Rule 11(a).

3 A judge shall grant a certificate of appealability “only if the applicant has made a
4 substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and the
5 certificate must indicate which issues satisfy this standard. *Id.* § 2253(c)(3). “Where a district
6 court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c)
7 is straightforward: [t]he petitioner must demonstrate that reasonable jurists would find the district
8 court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S.
9 473, 484 (2000).

10 Here, Petitioner has not made such a showing, and, accordingly, a certificate of
11 appealability will be denied.


12 CONCLUSION

13 For the foregoing reasons, the Court DISMISSES the petition for a writ of habeas corpus
14 as second or successive, DENIES the pending motions as moot, and DENIES a certificate of
15 appealability. Judgment is entered in favor of Respondent and against Petitioner. The Clerk is
16 directed to close the case.

17 This order terminates Dkt. No. 6.

18 **IT IS SO ORDERED.**

19 Dated: 9/18/2024

20 
21 HAYWOOD S. GILLIAM, JR.
22 United States District Judge

23 Received 9/23/24
24 Kenneth E. Gage
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH EUGENE GAGE,

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.


Case No. 24-cv-02100-HSG

JUDGMENT

The Court has DISMISSED the petition for a writ of habeas corpus as second or successive, and DENIED a certificate of appealability. Judgment is entered in favor of Respondent and against Petitioner. The Clerk is directed to close the case.

IT IS SO ORDERED AND ADJUDGED.

Dated: 9/18/2024


HAYWOOD S. GILLIAM, JR.
United States District Judge

*Received 9/23/24
Kenneth E Gage*

SUPREME COURT
FILED

MAR 12 2024

Jorge Navarrete Clerk

S282972

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re KENNETH EUGENE GAGE on Habeas Corpus.

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780 [courts will not entertain habeas corpus claims that are untimely]; *In re Clark* (1993) 5 Cal.4th 750, 767-769 [courts will not entertain habeas corpus claims that are successive]; *In re Miller* (1941) 17 Cal.2d 734, 735 [courts will not entertain habeas corpus claims that are repetitive].)

GUERRERO

Chief Justice

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

In re KENNETH EUGENE GAGE on Habeas Corpus.

H051556

Santa Clara County Super. Ct. Nos. CC2208713, 79195

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Greenwood, P.J., Bamattre-Manoukian, J., and Bromberg, J.
participated in this decision.)

Received 11-21-23
Kenneth E. Gage

Date: 11/17/2023

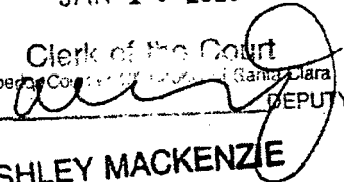
May J. E.

P.J.

HABEAS CHARACTERIZED
STATE APPELLATE

FILED

JAN 13 2023

Clerk of the Court
Superior Court of California, Santa Clara County
BY  DEPUTY

ASHLEY MACKENZIE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

In re

KENNETH GAGE,

Habeas Corpus

Habeas No. C2208713

Trial Ct. No. 79195

ORDER

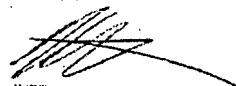
Petitioner Kenneth Gage filed a "Supplement to Motion to Vacate" on November 18, 2022, again challenging this court's prior order denying his habeas petition.

Petitioner thereafter filed a motion to dismiss on December 13, 2022, claiming that his imprisonment is unlawful, and that dismissal of the case is required, due to no "judgment of conviction" (the same assertion he raised in his habeas petition).

The habeas petition remains denied for the reasons stated in August 19, 2022 and October 26, 2022 orders. The motion to dismiss is similarly denied.

It is so ordered.

Dated: 1/6/2023


JUDGE WILLIAM J. MONAHAN

HON. WILLIAM J. MONAHAN
JUDGE OF THE SUPERIOR COURT

cc: Petitioner
District Attorney (via email, motions_dropbox@dao.sccgov.org)
Research (11-18;12-13M; via crimresearch@scscourt.org)

Received Jan 23, 2023
Ken Gage

1-13-23 2

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

In re KENNETH EUGENE GAGE on Habeas Corpus.

H050770

Santa Clara County Super. Ct. Nos. C2208713, 79195,
Solano County Super. Ct. No. FCR363337

BY THE COURT:

The petition for writ of habeas corpus is denied.

*Received March 23, 2023
Kenneth E. Gage*

(Greenwood, P.J., Lie, J., and Bromberg, J.
participated in this decision.)

Date: 03/13/2023

May J. Lie P.J.

STATE APPELLATE

3-23-23

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 21 2025

KENNETH EUGENE GAGE,

Petitioner - Appellant,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent - Appellee.

No. 24-6182

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

D.C. No. 4:24-cv-02100-HSG
Northern District of California,
Oakland

ORDER

Before: CANBY and MILLER, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Before a district court can consider a second or successive 28 U.S.C. § 2254 petition, this court must authorize the district court to do so. See 28 U.S.C. § 2244(b)(3). The clerk will serve this order and Form 12, the standard application for leave to file a second or successive motion, on appellant.

Any pending motions are denied as moot.

DENIED.

Received
4-25-25 Kenneth E. Gage

APPENDIX A

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-

HABEAS, ProSe

U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:24-cv-02100-HSG
Internal Use Only

Gage v. People of the State of California
Assigned to: Judge Haywood S Gilliam, Jr
Referred to: PSLC CHC
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 04/08/2024
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner

Kenneth Eugene Gage

represented by **Kenneth Eugene Gage**
C-71542
California State Prison--Solano
P O Box 4000, 21-2-1L
Vacaville, CA 95696-4000
PRO SE

V.

Respondent

People of the State of California

*Received 9/19/24
Kenneth E Gage*

Date Filed	#	Docket Text
04/08/2024	view1	PETITION for Writ of Habeas Corpus (Filing fee: IFPP). Filed by Kenneth Eugene Gage. (Attachments: # <u>1</u> Memorandum of Points and Authorities, # <u>2</u> Envelope)(slh, COURT STAFF) (Filed on 4/8/2024) (Entered: 04/10/2024)
04/08/2024	view2	MOTION for Leave to Proceed in forma pauperis; MOTION to Appoint Counsel filed by Kenneth Eugene Gage. (Attachments: # <u>1</u> Declaration in Support)(slh, COURT STAFF) (Filed on 4/8/2024) (Entered: 04/10/2024)

04/08/2024	view3	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Kenneth Eugene Gage. (slh, COURT STAFF) (Filed on 4/8/2024) (Entered: 04/10/2024)
04/08/2024	view4	CLERK'S NOTICE re completion of In Forma Pauperis affidavit or payment of filing fee due within 28 days. IFP Form due by 5/16/2024. (slh, COURT STAFF) (Filed on 4/8/2024) Any non-CM/ECF Participants have been served by First Class Mail to the addresses of record listed on the Notice of Electronic Filing (NEF) (Entered: 04/10/2024)
04/19/2024	view5	MOTION for Leave to Proceed in forma pauperis filed by Kenneth Eugene Gage. (Attachments: # <u>1</u> Envelope)(slh, COURT STAFF) (Filed on 4/19/2024) (Entered: 04/19/2024)
05/13/2024	* view6	MOTION for Leave to Enter Newly Discovered Documents/Evidence Supplementing Record; Renewed MOTION to Appoint Counsel filed by Kenneth Eugene Gage. (Attachments: # <u>1</u> Envelope)(slh, COURT STAFF) (Filed on 5/13/2024) (Entered: 05/13/2024)
07/31/2024	view7	ORDER by Judge Haywood S. Gilliam, Jr. DENYING (<u>2</u> and <u>5</u>) LEAVE TO PROCEED IN FORMA PAUPERIS;REQUIRING PETITIONER TO PAY FILING FEE IN FULL. (ndr, COURT STAFF) (Filed on 7/31/2024) Any non-CM/ECF Participants have been served by First Class Mail to the addresses of record listed on the Notice of Electronic Filing (NEF) (Entered: 07/31/2024)
08/19/2024	view8	Letter dated 8/6/2024 from Kenneth E. Gage re filing fee. (tn, COURT STAFF) (Filed on 8/19/2024) (Entered: 08/20/2024)
08/19/2024	view9	Filing fee received re <u>1</u> Petition: \$5.00, receipt number 411018237. (tn, COURT STAFF) (Filed on 8/19/2024) (Entered: 08/20/2024)
09/09/2024	view10	Letter dated 9/3/2024 from Kenneth Eugene Gage. (tn, COURT STAFF) (Filed on 9/9/2024) (Entered: 09/10/2024)
09/12/2024	view	In response to Dkt. No. 10, mailed Petitioner a copy of his docket sheet and a status update letter. (aea, COURT STAFF) (Filed on 9/12/2024) (Entered: 09/12/2024)

*Received 9/19/24
Kenneth E Gage*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH EUGENE GAGE,
Plaintiff,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,
Defendant.

Case No. 24-cv-02100-HSG

**ORDER DENYING PETITION FOR
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APPENDIX B2

constitutes “abandonment of prosecution,” and therefore requires the dismissal of the underlying state court criminal case, C No. 79195, and the expungement “of all state and federal action records arising therefrom, or remand in accordance appropriately instructing the lower Court.”

See generally Dkt. No. 1.

C. Case No. 23-cv-02395 HSG, *Gage v. Matteson* (“*Gage I*”)

Petitioner has previously challenged his custody as invalid on the grounds that the the state court never entered a judgment of conviction in C No. 23-cv-02395 HSG, *Gage v. Matteson* (“*Gage I*”). In *Gage I*, Petitioner alleged the following:

The petition alleges that the state court failed to enter a judgment of conviction on the record and that the CDCR and Warden Matteson therefore have no jurisdiction to detain Petitioner because (1) California state law, specifically Cal. Penal Code §§ 1191 *et seq.*, Cal. Penal Code §§ 1202a, 1213(a), 1216, require a judgment of conviction before a person may be detained; (2) state court precedent holds that a warden is without authority to receive or maintain custody of a person without having received a judgment of conviction, citing to *Ex Parte Dobson*, 31 Cal. 497, 499; *In re Application of Bost*, 214 Cal. 150, 153-54 (Cal. 1931); *People v. Sourisseau*, 62 Cal.App.2d 917, 929 (1944); *People v. Banks*, 53 Cal.2d 370, 383 (Cal. 1959); *People v. John*, 36 Cal. App.5th 168, 175 (Cal. Ct. App. 2019), and holds that an abstract is not a judgment of conviction, citing to *People v. Mitchell*, 26 Cal. 4th 181, 186 (Cal. 2001); *People v. Mesa*, 14 Cal.3d 466, 471 (Cal. 1975); *People v. Williams*, 103 Cal. App. 3d 507, 517 (Cal. Ct. App. 1980); and (3) federal law holds that a sentence is not final until a judgment is signed by the judge and entered by the clerk, citing to Fed. R. Crim. P. 32(k)(1); *Payne v. Madigan*, 274 F.2d 702, 704 (9th Cir. 1960); *United States v. Arpaio*, 951 F.3d 1001, 1004 (9th Cir. 2020) and Petitioner’s continued detention by Respondent violates due process and equal protection. Petitioner also argues that his conviction should be expunged because none of the reviewing courts had jurisdiction to review his conviction since there was no final appealable order, citing to *United States v. Battista*, 418 F.2d 572 (3d Cir. 1969); *Chavez-Perez v. Ashcroft*, 386 F.3d 1284, 1288 (9th Cir. 2004); *People v. Gill*, 61 F.3d 688, 693 n.1 (9th Cir. 1995); *United States v. Ripsinski*, 20 F.3d 359, 361-62 (9th Cir. 1994).

Gage I, Dkt. No. 11 at 2. This Court dismissed *Gage I* for failure to state a claim for federal habeas relief because federal habeas relief does not lie for errors of state law; because the federal criminal procedural rules and federal cases cited by Petitioner govern convictions in federal court and do not govern convictions in California courts; because the alleged failure to enter a judgment on the record did not state a violation of either the Due Process Clause or the Equal Protection Clause; and because Petitioner was incorrect that the amended abstract of judgment did not allow the CDCR or Respondent to take him into, and retain him in, custody, and the sufficiency of the abstract in allowing the CDCR to retain Petitioner in custody was a matter of state law, which did not state a claim for federal habeas relief.

United States District Court
Northern District of California

D. Petition

This petition must be dismissed as second or successive because Petitioner has presented the same claim in a prior petition for a writ of habeas corpus. 28 U.S.C. § 2244(b)(1) (“A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.”). To the extent that Petitioner argues that he is raising new arguments as to why the lack of a judgment of conviction renders his custody invalid, the Court finds that the arguments raised are substantively identical. *Compare* Dkt. No. 1 with *Gage I*, Dkt. No. 1. Regardless, this petition remains “second or successive” within the meaning of § 2244 because “the facts underlying the claim occurred by the time of the initial petition, [] and . . . the petition challenges the same state court judgment as the initial petition.” *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018) (citing *Panetti v. Quarterman*, 551 U.S. 930, 945 (2007), and *Magwood v. Patterson*, 561 U.S. 320, 333 (2010)); *see also Woods v. Carey*, 525 F.3d 886, 888 (9th Cir. 2008) (habeas petition second or successive if raises claims that were or could have been adjudicated on merits in prior petition). “A claim presented in a second or successive habeas corpus application under section 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 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.

28 U.S.C. § 2244(b)(2). Even if a petitioner can demonstrate that he qualifies for one of these exceptions, he must seek authorization from the court of appeals before filing his new petition with the district court. 28 U.S.C. § 2244(b)(3) (“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.”); *Chades v.*

United States District Court
Northern District of California

Hill, 976 F.3d 1055, 1056-57 (9th Cir. 2020) (district court is “without power” to entertain second or successive petition unless petitioner first receives authorization from court of appeals).

Petitioner appears to allege that he is entitled to the exception set forth in 28 U.S.C. § 2244(b)(2)(B), conclusorily stating that he has presented a “compelling claim of actual innocence.” Dkt. No. 1-1 at 8. However, the innocence gateway of *Schlup v. Delo*, 513 U.S. 298 (1995) does not provide a gateway past Section 2244(b)(2)’s successive petition restrictions, as Section 2244(b)(2)(B)’s requirements for a second or successive application are stricter than the *Schlup* standard in two ways:

First, § 2244(b)(2)(B)(i) requires that “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence.” There is no requirement under *Schlup* that the factual claim was not discoverable through the exercise of due diligence. Second, § 2244(b)(2)(B)(ii) requires that “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.” (Emphasis added.) *Schlup* requires only that an applicant show that it is “more likely than not” that no reasonable fact-finder would have found him guilty.

Charboneau v. Davis, 87 F.4th 443, 453 (9th Cir. 2023) (quoting *Cooper v. Woodford*, 358 F.3d 1117, 1119 (9th Cir. 2004)). In addition, a conclusory statement is insufficient 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.” Finally, Petitioner overlooks the fact that the jury found him guilty based on the evidence presented at trial: any alleged failure to enter a judgment of conviction after the trial concluded would not make it “more likely that not” that a jury would not have found him guilty.

Regardless, here, the alleged facts underlying the claims in the action – that no judgment of conviction has been entered – were known to Petitioner by the time of *Gage I* and the claims raised here could have been adjudicated in *Gage I*. This petition is therefore second or successive within the meaning of 28 U.S.C. § 2244(b) and must be dismissed. 28 U.S.C. § 2244(b); *Brown*, 889 F.3d at 667; *Woods*, 525 F.3d at 888.

CERTIFICATE OF APPEALABILITY

The federal rules governing habeas cases brought by state prisoners require a district court

1 that issues an order denying a habeas petition to either grant or deny therein a certificate of
2 appealability. *See* Rules Governing § 2254 Case, Rule 11(a).

3 A judge shall grant a certificate of appealability “only if the applicant has made a
4 substantial showing of the denial of a constitutional right,” 28 U.S.C. § 2253(c)(2), and the
5 certificate must indicate which issues satisfy this standard. *Id.* § 2253(c)(3). “Where a district
6 court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c)
7 is straightforward: [t]he petitioner must demonstrate that reasonable jurists would find the district
8 court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S.
9 473, 484 (2000).

10 Here, Petitioner has not made such a showing, and, accordingly, a certificate of
11 appealability will be denied.


12 CONCLUSION

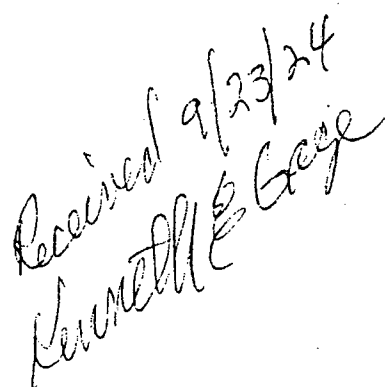
13 For the foregoing reasons, the Court DISMISSES the petition for a writ of habeas corpus
14 as second or successive, DENIES the pending motions as moot, and DENIES a certificate of
15 appealability. Judgment is entered in favor of Respondent and against Petitioner. The Clerk is
16 directed to close the case.

17 This order terminates Dkt. No. 6.

18 **IT IS SO ORDERED.**

19 Dated: 9/18/2024

20 
21 HAYWOOD S. GILLIAM, JR.
22 United States District Judge

23
24
25
26
27
28


United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH EUGENE GAGE,

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.


Case No. 24-cv-02100-HSG

JUDGMENT

The Court has DISMISSED the petition for a writ of habeas corpus as second or successive, and DENIED a certificate of appealability. Judgment is entered in favor of Respondent and against Petitioner. The Clerk is directed to close the case.

IT IS SO ORDERED AND ADJUDGED.

Dated: 9/18/2024


HAYWOOD S. GILLIAM, JR.
United States District Judge

*Received 9/23/24
Kenneth E Gage*

APPENDIX B3

SUPREME COURT
FILED

MAR 12 2024

Jorge Navarrete Clerk

S282972

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re KENNETH EUGENE GAGE on Habeas Corpus.

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780 [courts will not entertain habeas corpus claims that are untimely]; *In re Clark* (1993) 5 Cal.4th 750, 767-769 [courts will not entertain habeas corpus claims that are successive]; *In re Miller* (1941) 17 Cal.2d 734, 735 [courts will not entertain habeas corpus claims that are repetitive].)

GUERRERO

Chief Justice

APPENDIX C

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

In re KENNETH EUGENE GAGE on Habeas Corpus.

H051556

Santa Clara County Super. Ct. Nos. CC2208713, 79195

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Greenwood, P.J., Bamattre-Manoukian, J., and Bromberg, J.
participated in this decision.)

*Received 11-21-23
Kenneth E. Gage*

Date: 11/17/2023

May J. E.

P.J.

HABEAS CHARACTERIZED
STATE APPELLATE

APPENDIX D1

Kenneth E. Gage C-71542
Calif State Prison-Solano
P.O. Box 4000, 21-22-1L
Vacaville, CA 95696

DEFENDANT,
without counsel.

*Returned from Court
Received 12-5-23
Kenneth E. Gage*

CALIFORNIA COURT OF APPEAL

IN AND FOR THE SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)

v.)

KENNETH EUGENE GAGE,)
Defendant.)

No. H051556

NOTICE OF APPEAL.

Santa Clara County Superior
Court Crim. #79195 (1981)

TO THE ABOVE-ENTITLED COURT, CLERK THEREOF and ALL PARTIES HEREIN:

NOTICE IS HEREBY GIVEN that defendant, KENNETH EUGENE GAGE, appeals without counsel (appointed trial counsel having withdrawn in absence of final disposition) from an order of This Court received November 21, 2023, denying defendant's pleading characterized by This Court as a "petition for writ of habeas corpus" requesting dismissal of Santa Clara County Superior Court, Crim. Case #79195, for abandonment of prosecution, abandonment of appointed defense counsel, no judgment of conviction, no final disposition on record.

Respectully,

Kenneth E. Gage

KENNETH E. GAGE, Defendant

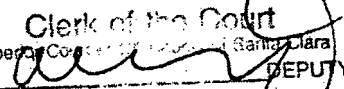
Signed: November 26, 2023

APPENDIX D2

NOTICE OF APPEAL

FILED

JAN 13 2023

Clerk of the Court
Superior Court of California, Santa Clara County
BY  DEPUTY

ASHLEY MACKENZIE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

In re

KENNETH GAGE,

Habeas Corpus

Habeas No. C2208713

Trial Ct. No. 79195

ORDER

Petitioner Kenneth Gage filed a "Supplement to Motion to Vacate" on November 18, 2022, again challenging this court's prior order denying his habeas petition.

Petitioner thereafter filed a motion to dismiss on December 13, 2022, claiming that his imprisonment is unlawful, and that dismissal of the case is required, due to no "judgment of conviction" (the same assertion he raised in his habeas petition).

The habeas petition remains denied for the reasons stated in August 19, 2022 and October 26, 2022 orders. The motion to dismiss is similarly denied.

It is so ordered.

Dated: 1/6/2023


JUDGE WILLIAM J. MONAHAN

HON. WILLIAM J. MONAHAN
JUDGE OF THE SUPERIOR COURT

cc: Petitioner
District Attorney (via email, motions_dropbox@dao.sccgov.org)
Research (11-18;12-13M; via crimresearch@scscourt.org)

*Received Jan 23, 2023
Ken Gage*

Kenneth E. Gage C-71542
Calif State Prison-Solano
P.O. Box 4000, 21-22-1L
Vacaville, CA 95696

PETITIONER,
in propria persona.

FILED
JAN 31 2023

Clerk of the Court
Superior Court of CA County of Santa Clara
BY *Samuel H. Ramirez* DEPUTY
S. RAMIREZ

*Received
2-7-23
Ken Gage*

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

KENNETH EUGENE GAGE,)	No. _____
Petitioner,)	
v.)	Santa Clara County Superior
)	Court Crim. #79195 (1981)
PEOPLE OF THE STATE OF CALIFORNIA,)	
Respondent.)	NOTICE OF APPEAL; PROOF OF
_____)	SERVICE BY MAIL.

TO THE HONORABLE WILLIAM J. MONAHAN, ABOVE-ENTITLED COURT,
CLERK THEREOF & SANTA CLARA COUNTY DISTRICT ATTORNEY:

NOTICE IS HEREBY GIVEN that petitioner KENNETH EUGENE GAGE
appeals in propria persona (appointed counsel having withdrawn
in absence of final disposition) from an order of the Honorable
William J. Monahan, Superior Court of Santa Clara County, dated
January 6, 2023, filed January 13, 2023, received by petitioner
from a Correctional Officer, at California State Prison-Solano, on
January 23, 2023.

Signed: January 24, 2023

Respectfully submitted,

Kenneth E. Gage
KENNETH E. GAGE, petitioner

NOTICE OF APPEAL

APPENDIX E2

1-24-23

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

In re KENNETH EUGENE GAGE on Habeas Corpus.

H050770

Santa Clara County Super. Ct. Nos. C2208713, 79195,
Solano County Super. Ct. No. FCR363337

BY THE COURT:

The petition for writ of habeas corpus is denied.

*Received March 23, 2023
Kenneth E. Gage*

(Greenwood, P.J., Lie, J., and Bromberg, J.
participated in this decision.)

Date: 03/13/2023

May J. Lie P.J.

STATE APPELLATE

APPENDIX F

3-23-23

8-3
27/

RECEIVED

MAY 31 2023

Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
DEPUTY

May 18, 2023

KENNETH E. GAGE C71542
Calif State Prison-Solano
P.O. Box 4000, 21-22-1L
Vacaville, CA 95696

Sent 06/06/23
Returned Cashier # 857649 m2

for \$100.00

(No Remitter Address)

Clerk
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
191 North First Street
San Jose, CA 95113
(408) 882-2700

Re: DOCUMENT/DISCOVERY REQUEST ("JUDGMENT") - PAYMENT ENCLOSED
People v. Gage, Santa Clara County Superior Court, Crim. #79195 (1981)

Superior Court Clerk:

I was the indigent defendant in the above entitled cause and am here engaged in discovery in pursuit of state and federal remedies for unlawful imprisonment.

I am here requesting but one document as mandate of our California Legislature under Penal Code §§ 1202a, 1207 (and C.C.P. § 664), if it exists and was contemporaneously signed and entered on record in the above entitled criminal action. That requested document is:

Sent ✓
A certified copy of the "JUDGMENT" of conviction signed by then presiding Santa Clara County Superior Judge, The Honorable R. Donald Chapman, and witnessing entry on record by signature of the court clerk on duty in that action.

Guilt phase was terminated, without disposition I believe, in late July of 1983, information which time frame may be of some aid in searching court archives.

(No Address included?)
While I am indigent on record, an out-of-state friend and supporter has here enclosed on my behalf payment of one-hundred dollars to cover costs. Please forward this document to me at my above address, and/or advise if search, copy and certification costs should exceed this sum so that arrangements may be swiftly made to provide additional funds.

Thank you,

Kenneth E. Gage
Kenneth E. Gage

ENCLOSED: INSTRUMENT # 857649 in the sum of
one-hundred (\$100.00) dollars

Also ENCLOSED: Self-Addressed Stamped Envelope.

Received 6-9-23
of Ken Gage

APPENDIX G

REQUEST FOR "JUDGMENT"

June 12, 2023

Kenneth E. Gage C71542
CALIF STATE PRISON-SOLANO
P.O. Box 4000, 21-22-1L
Vacaville, CA 95696

Presiding Chief Justice of the
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
191 North First Street
San Jose, CA 95113

Re: YOUR AID SOUGHT IN COMPLIANCE - DOCUMENT DISCOVERY REQUEST ("JUDGMENT")
People v. Gage, Santa Clara County Superior Court, Crim. #79195 (1981)
Gage v. Matteson, Northern Calif (federal) Dist Court #23-cv-02395 HSG

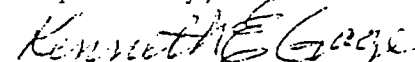
Chief Presiding Justice:

I've attached a copy of my second request for a certified copy of a "judgment" of conviction (a Legislative mandate), or an advisement if it does not exist on record, decades following what appears to be (perhaps unknowing) an abandonment by both defense and prosecution of my criminal trial (Crim. #79195) without the mandated documentation of guilt phase final disposition. Your aid is requested due to non-compliance, or perhaps misunderstanding (mine or court employees) witnessed in the attached letters. I'll assume you agree with California and federal courts that an "abstract" of a judgment (the one here provided, marginably readable and barring suspicious date entries) is not a judgment of conviction, and in fact a nullity in the absence of a supporting judgment entered on record.

Having provided (via a friend/supporter) an initial \$100 dollars in payment for archives/records research, certification and copies fee(s) payment, and offering additional funds if needed, my admittedly layman's reading of state and federal statutes and caselaw leads me to believe that as the defendant in the state criminal action cited above (state and federal actions yet currently pending) I am entitled to a certified copy of this "judgment" which will also determine whether lawful execution/sentencing followed (custody transfer from sheriff to warden). I belief my custody proves unlawful as I've already determined that the warden's prison records do not witness any judgment, the Secretary of CDCR, District Attorney, Attorney General, and Governor all non-responsive upon my past inquiries.

Though not previously invoked, I may also be entitled to this document under California's Public Records Act and Information Practices Act, as well as our federal Freedom of Information Act. In any case, I'm seeking your assistance as dismissal of my request without an on-point response can only serve to further frustrate resolution of litigation on the merits.

Respectfully,


Kenneth E. Gage

cc: G. Matteson, Warden
J. Macomber, Secretary CDCR
R. Bonta, California Attorney General

APPENDIX H1

ATTACHMENTS

DISCOVERY - No. 1

6-12-23

Superior Court of California
County of Santa Clara

191 North First Street
San José, California 95113
(408) 882-2700

DAVID K. WALKER
Executive Secretary to the Presiding Judge



October 4, 2023

Kenneth E. Gage C71542
CALIF STATE PRISON-SOLANO
P.O. Box 4000, 21-22-11
Vacaville, CA 95696

Re: Documents Requested

Dear Mr. Gage:

Please find included the documents you requested in your letter dated June 12, 2023 to Presiding Judge Beth McGowen. Enclosed are certified copies of the Verdict and Amended Abstract of Justice in People v. Gage, Santa Clara County Superior Court, Case 79195.

Sincerely,

A handwritten signature in black ink, appearing to be "David K. Walker", written over a horizontal line.

David K. Walker

*Copy "Judgment" requested 6/12/23
Received 10-9-23, re judgment
Kenneth E. Gage*

Kenneth E. Gage C71542
Calif State Prison-Solano, P.O. Box 4000, 21-22-1L, Vacaville, CA 95696

The Honorable Beth McGowen
PRESIDING JUDGE OF THE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
191 North First Street
San Jose, CA 95113
(408) 882-2340 - 882-2700

October 11, 2023

Re: YOUR AID SOUGHT IN SECURING MY RELEASE FOR LACK OF CONVICTION
People v. Gage, Santa Clara County Superior Court, Crim. #79195 (1981)

Presiding Justice McGowen:

I've just received your letter of 10/04/23 responding to my letter of 06/12/23 seeking your discovery aid in confirming that my trial judge, R. Donald Chapman, following a jury verdict, elected not to enter on record a judgment of conviction (the sole document I've repeatedly requested; ref: Pen. C. §§ 1202a 1207; C.C.P. § 664), perhaps a silent acquittal — at any rate, your letter doubles confirmation that no judgment is entered on record, no docket entry, rendering any sentence and/or abstract a nullity.

As you, your Executive Secretary, and Clerk Margarita Espinosa, also upon fee payment (Receipt #H-2023-02996 7/17/23) for her documented archive search, have acquiesced, I am not convicted of any crime. And now, again providing NOTICE and confirmation of this fact, call on you to take appropriate action to vacate and/or dismiss and secure my immediate release, thereby allowing J. Rosen, the Santa Clara County District Attorney to evaluate any re-filing of charges.

I'm advised that in our nation, persons (sane, adult, citizens) not "convicted" of crime may not be sentenced or imprisoned. Why neither I nor my dependents and family were not advised of this 40 years ago remains a mystery.

Thank you,



Kenneth E. Gage

cc: Jeffrey F. Rosen, District Attorney
Molly O'Neal, Public Defender
Anna L. Stuart, Sixth District Appellate Program
Jeffrey Macomber, Secretary CDCR
Ed Kressy, Supervising Agent FBI

Kenneth E. Gage

P.O. Box 400021-22-1L

Solano State Prison

Vacaville, CA 95696



February 6, 2024

Dear Mr. Gage,

I have received your letter dated October 18, 2023. My office has previously responded to your request for a "judgment" document and has provided the documents sought by you. I am confused as to your conclusion that no judgment exists or was entered by Judge Chapman. The jury verdict and the Amended Abstract of Judgement were provided to you by letter dated October 4, 2023. Both documents confirm the judgment entered by Judge Chapman in 1983.

Thank you for contacting the court, no further action will be taken on your request.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "BMCG", is written over the typed name.

Beth McGowen

*Received 2/20/24 7:15 P.M.
by Kenneth E. Gage*

Kenneth E. Gage C71542
Calif State Prison-Solano, P.O. Box 4000, 21-22-1L. Vacaville, CA 95696

The Honorable Beth McGowen PRESIDING JUDGE OF THE
SUPERIOR COURT OF CALIF-COUNTY OF SANTA CLARA
191 North First Street
San Jose, CA 95113 (408) 882-2340 - 882-2700

February 21, 2024

Re: YOUR AID SOUGHT IN SECURING MY RELEASE FOR LACK OF CONVICTION; 2nd Request
People v. Gage, Santa Clara County Superior Court, Crim. #79195 (1981)
People v. Gage, Calif Supreme Court #S282972
Gage v. Matteson, Ninth Circuit #23-1819

Presiding Justice McGowen:

I've repeatedly requested of you (6/12/23), and Clerk M. Espinosa (5/18/23), discovery of the "judgment" of conviction (Legislative mandate pursuant to Calif Penal Code §§ 1202a, 1207, and C.C.P. § 664), for a direct and on-point judicial response confirming that which is already known (via unanswered requests to the County Public Defender and District Attorney, Calif Attorney General, DOJ and FBI) -- the Honorable R. Donald Chapman presiding over my 1983 trial either (1) elected not have prepared for his signature and that of his on-duty clerk this mandated "JUDGMENT," or (2) may have subsequently elected to remove and destroy the document if it where ever prepared. In either case, under state and federal law there can be no final disposition of guilt in its absence -- any later or other documents you provide are on their face fraudulent or invalid.

By letter (10/04/23) your Exec. Secretary elected to erroneously characterize my request, writing "Please find included the documents you requested in your letter dated June 12, 2023 to Presiding Judge Beth McGowen. Enclosed are certified copies of the Verdict and Amended Abstract of Justice [sic, Judgment (?)] in People v. Gage", not at all what I requested.

Rather than alleging fraud, I viewed that response as official acquiescence that no judgment could be found, no docket entry. But, your letter of February 6, 2024 (received 2/20/24) contains a blatantly false allegation, writing: "My office has previously responded to your request for a 'judgment' document and has provided the documents sought by you. I am confused as to your conclusion that no judgment exists or was entered by Judge Chapman. The jury verdict and the Amended Abstract of Judgment were provided to you by letter dated October 4, 2023. Both documents confirm the judgment entered by Judge Chapman." But where is it? A non-existent "JUDGMENT" of conviction confirms nothing.

Prior to my enlightenment in 2021 I may have fallen for these deceptions, but a verdict "may" be accepted, yet the "final responsibility to see that justice is done rests with the [trial] judge." People v. Carlucci (1979) 23 Cal.3d 249, 255. And, "an abstract of judgment 'is not a judgment of conviction' or even 'an order of the court' but is merely 'a form prepared and signed by the clerk of the court' that cannot add to or modify the judgment which it purports to digest or summarize." People v. Mitchell (2001) 26 Cal.4th 181, 186. If the "JUDGMENT" existed, you might have easily provided a copy.

Respectfully,

Kenneth E. Gage
Kenneth E. Gage

APPENDIX H5

Kenneth E. Gage

C71542

P.O. Box 4000, 21-22-1L

Vacaville, CA 95696

April 8, 2024

Dear Mr. Gage,

I have received and reviewed your fourth letter, dated February 21, 2024. I believe that you are confused about the title and meaning of the court documents which were sent to you on October 4, 2023. The Verdict and Abstract of Judgement previously sent to you are not as you stated "merely a form prepared and signed by the clerk of the court" but rather the final judgment document you seek and upon inspection, you will in fact see the signature of Judge Chapman. The abstract remains the order of the court based on the verdict. Your choosing to argue differently does not make it so. I will not provide copies again, as you have them. This concludes the court's investigation of the matter.

Respectfully,



Beth McGowen

Presiding Judge

Santa Clara County Superior Court