

EXHIBIT A

The Ninth Circuit Opinion on direct appeal dated April 24, 2026 holding that the 14th Amendment violations as asserted in the Respondent Court Appellate Opinion was insufficient and that the Superior Court as absolute immunity under the Eleventh Amendment

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2026

FOR THE NINTH CIRCUIT

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

HOWARD HERSHIPS,

Plaintiff - Appellant,

v.

CALIFORNIA SUPERIOR COURT;
SANTA CLARA COUNTY OFFICE OF
THE DISTRICT ATTORNEY; COUNTY
OF SANTA CLARA; SANTA CLARA
OFFICE OF THE PUBLIC DEFENDER.

Defendants - Appellees,

and

Sheriff LAURIE SMITH, Sheriff of Santa
Clara County; Judge DREW C.
TAKAICHI, Santa Clara County Superior
Court; KYLE NEDDENRIEP, Santa Clara
County Office of the Public Defender;
COOLEY, LLP; PRISON LAW OFFICE;
SANTA CLARA COUNTY SUPERIOR
COURT; KARIC LOPEZ,

Defendants.

No. 25-3502

D.C. No. 3:20-cv-07208-JD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California

This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

James Donato, District Judge, Presiding

Submitted April 22, 2026**

Before: LEE, DESAI, and JOHNSTONE, Circuit Judges.

Howard Herships appeals pro se from the district court's summary judgment and dismissal order in his action under Title II of the Americans with Disabilities Act ("ADA"), the Rehabilitation Act of 1973, and 42 U.S.C. § 1983 arising out of state court proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011) (cross motions for summary judgment); *Rhoades v. Avon Prods., Inc.*, 504 F.3d 1151, 1156 (9th Cir. 2007) (dismissal under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6)). We affirm.

The district court properly granted summary judgment for Santa Clara County Superior Court on Herships's ADA and Rehabilitation Act claims because Herships failed to raise a genuine dispute of material fact as to whether the Superior Court discriminated against Herships because of his hearing impairment. *See Updike v. Multnomah County*, 870 F.3d 939, 949-51 (9th Cir. 2017) (setting forth elements of discrimination claims under the ADA and Rehabilitation Act).

The district court properly dismissed Herships's other ADA and § 1983

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

claims against Santa Clara County Superior Court because they were barred by the *Rooker-Feldman* doctrine or Eleventh Amendment immunity, or Herships otherwise failed to allege facts sufficient to state a plausible claim. *See T.B. ex rel. Brenneise v. San Diego Unified Sch. Dist.*, 806 F.3d 451, 473 (9th Cir. 2015) (explaining that to establish a prima facie case of retaliation under the ADA, the plaintiff must show a causal link between protected activity and an adverse action); *Munoz v. Superior Ct. of Los Angeles County*, 91 F.4th 977, 980-81 (9th Cir. 2024) (holding that state courts are protected by Eleventh Amendment immunity); *Noel v. Hall*, 341 F.3d 1148, 1163-65 (9th Cir. 2003) (discussing proper application of the *Rooker-Feldman* doctrine, and explaining that “[i]f a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court”).

All pending motions are denied.

AFFIRMED.

EXHIBIT B

The Ninth Circuit denied Applicant's Petition for En Banc Review on August 11, 2026, in this case

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 11 2026

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

HOWARD HERSHIPS,

Plaintiff - Appellant,

v.

CALIFORNIA SUPERIOR COURT; et al.,

Defendants - Appellees,

and

Sheriff LAURIE SMITH, Sheriff of Santa
Clara County; et al.,

Defendants.

No. 25-3502

D.C. No. 3:20-cv-07208-JD
Northern District of California,
San Francisco

ORDER

Before: LEE, DESAI, and JOHNSTONE, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petition (Docket Entry No. 29) for rehearing en banc is denied.

This court will not entertain further filings in this closed case.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 19 2026

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

HOWARD HERSHIPS,

Plaintiff - Appellant,

v.

CALIFORNIA SUPERIOR COURT; et al.,

Defendants - Appellees,

and

Sheriff LAURIE SMITH, Sheriff of Santa
Clara County; et al.,

Defendants.

No. 25-3502

D.C. No.

3:20-cv-07208-JD

Northern District of California,
San Francisco

MANDATE

The judgment of this Court, entered April 24, 2026, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to
Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

EXHIBIT C

During discovery in the Federal Civil Suit Applicant obtain a Santa Clara County Sheriff's Department Mail which has only has one listed item showing that a letter from SCC Public Defender's Office withdrawing from representation because Applicant had filed a Writ of Mandate seeking accommodations for Applicant's disability of being hearing-impaired and unable to communicate

SANTA CLARA COUNTY OFFICE OF THE SHERIFF/DEPARTMENT OF CORRECTION
LEGAL MAIL LOG

	CCW
X	Men's Facility

Date: 2/15/20

Day of week: SATURDAY

[illegible]

Confidential
Do Not Duplicate
Office of the Sheriff, Santa Clara County

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EXHIBIT D

This Rush Request for Calendar Setting was provided at my Deposition by the Attorney for the Superior Court showing that The reason for Issuance of Ex Parte Order denying Applicant's 30 days of custody credits was to prevent a hearing with legal representation done to a hearing impaired defendant and done while a Writ of Mandate was pending with responses due.

Rustt

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 190 W. Hedding Street, San José, CA 95110* MAILING ADDRESS: CITY AND ZIP CODE: San José, CA 95113* BRANCH NAME: HALL OF JUSTICE		FILED 2020 MAR -3 P 1:54 CLERK OF THE COURT SUPERIOR COURT OF CA COUNTY OF SANTA CLARA BY <u>[Signature]</u> DEPUTY <u>NRG/MEN</u>
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: Howard Hershyps		
REQUEST FOR CALENDAR SETTING (Request must be filed at least two (2) court days before requested court date)		CASE NUMBER: BB517233

- Requested by: Kyle Neddenniep, 408.918.7748, kyle.neddenniep@pdo.sccgov.org
(Please Print - Name, Email, Phone Number)
- Nature **AND** detailed explanation of reason for request:
Client's request to correct credits previously awarded: client was in-custody when his probation was terminated and he was sentenced to 6 months CJ minus credits from his most recent incarceration; however, has credits from a previous commitment on the same case that he would like credited toward his sentence.
- Requested Court Date: 3-6-20 Requested Time: 900 Dept: 42
- Opposing counsel was notified of this request on: _____
- Opposing counsel ☐ does ☐ does not oppose setting the matter as requested.
- Interpreter needed: ☐ Yes ☐ No Language: _____
(If applicable)
- The undersigned requests that the court date of _____ be set. If approved: _____
Signature of Requesting Person: [Signature] Date: 2/28/20
Approved: [Signature] Date: 3.3.20
Judicial Officer: GILBERT T. BROWN
- Judicial comments (if any): _____

Bench Warrant NOT to be recalled.

A Bench Warrant may not be recalled without a personal appearance by the Defendant. If the Defendant requests reinstatement of a bail bond, the Defendant must bring a letter of reassumption to the court date approved by the Court. The Court will decide on that date whether to reinstate the bail bond.

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Case No. <u>27</u>
Date <u>11-6-24</u>
Witness: <u>Hershyps</u>
Page 36

EXHIBIT E

Clayton R. Higgins Letter return my Petition for Certiorari because Deputy Clerk Higgins made a Judicial determination that using a Writ of Mandate was a civil proceedings and I could use a Writ of Mandate to obtain relief from a denial of Accommodations in Criminal case.

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

December 21, 2023

Howard Herships
PO Box 1501
Carmichael, CA 95609-1501

RE: Herships v, California Superior Court
No: 23A119

Dear Mr. Herships:

The above-entitled petition for writ of certiorari was originally postmarked October 26, 2023 and received again on December 21, 2023. The papers are returned for the following reason(s):

The petition is returned for the reasons stated in the November 6, 2023 letter.

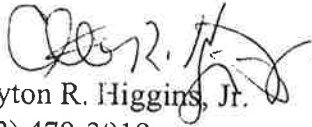
They are returned for failure to reflect the changes requested in prior correspondence.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,

Scott S. Harris, Clerk

By:


Clayton R. Higgins, Jr.

(202) 479-3019

Enclosures

**UNITED STATES
POSTAL SERVICE®**

**PRIORITY®
MAIL**

11/06/2023
USPS TRACKING® \$064.7
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COMMERCIAL BASE PRICING

USPS PRIORITY MAIL®

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
1111 1ST ST NE
WASHINGTON DC 20543

SHIP HOWARD HERSHIPS

TO: PO BOX 1501

CARMICHAEL CA 95609

1501118
VISIT US AT USPS.COM
ORDER FREE SUPPLIES ONLY

OCTOBER TERM 2023

IN THE SUPREME COURT OF THE UNITED STATES

Howard R. Herships,

Petitioner,

vs.

California Superior Court County of Santa Clara

Respondent.

Petition for a Writ of Certiorari to the
California Supreme Court

Howard R. Herships
P.O. Box 1501
Carmichael, Ca 95609-1501
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In Pro Se

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OCTOBER TERM 2023

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P.O. Box 1501
Carmichael, Ca 95609-1501
415 933-5190
hherships@gmail.com
In Pro Se

PARTIES TO THE PROCEEDING

Respondent in this proceedings are the State of California, the California Superior Court County of Santa Clara County and the Appellate Division of the Santa Clara County Superior Court which the United States Solicitor General has an interest as well as the United States Department of Justice ADA Appellate enforcement section.

RELATED PROCEEDINGS

Settlement Agreement between the United States of America and the Santa Clara County Superior Court Department of Justice No. 204-11-90

State of California v. Howard Ralph Herships case No. BB517233

State of California v. Howard Ralph Herships on Appeal No. 20AP002650

California Supreme Court Petition for Review Case No S27978

PETITION FOR WRIT OF CERTIORARI

Petitioner Howard R. Herships, respectfully prays that a writ of Certiorari issue to review the June 14, 2023, denying review of the Santa Clara County Superior Court Appellate Panel affirming the Judgment of Limited Jurisdiction Superior Court in which the Appellate Panel decided the issue of the failure of the trial court to provide accommodations to a hearing impaired defendant which raised to a cause of action by the very “discriminatory animus,” which the Appellant Panel determined on an appeal of right.

Respondent Superior Court was at all times under a “Settlement Agreement” with the United States of America which required the Respondent Court to provide effective communication in the Court system’s programs, services and activities” see A-101-102 at ¶ 5 and ¶ 7.

The “Settlement Agreement” required that the Respondent Superior Court to “develop a written policy when necessary” to provided effective assistance to hearing impaired parties which obviously was never done as the record here shows a systematic denial of accommodations at all levels by the Superior Court and the County Entities.

Moreover, Respondent Court never inquired into Petitioner’s Request for Accommodations on January 17, 2020, which was required by 28 CFR § 35.160 (b) (2) which the Department of Justice was authorized to implementing federal

regulations under Title 29 U.S.C. § 504 and 42 U.S.C. § 12134 as they are codified at 28 CFR Part 35.

Petitioner sought accommodations which are in the Court record and the Respondent Superior Court was required to make an inquiry to Petitioner disability and instead proceed to sentence Petitioner with no opportunity to have any effective communication with Court appointed legal counsel. See A-4- A-10.

This was caused not only by Respondent's Court failure to comply with the terms of the "Settlement Agreement" but also because the Santa Clara County Public Defender's Office never complied with any of the 28 CFR sections 35. 105 (1) (2) (3) which required to the Department to do a "Self-evaluation" of just how the Department was going to represent hearing impaired parties, see A- 80.

Moreover, the Department also never created a staff position required by 28 CFR § 35.107 for an ADA Coordinator, nor did the Department ever created a TTY System required under 28 CFR § 35.161 et. seq. required for real time communications for hearing impaired parties.

These failures of both the Respondent Court as well as Santa Clara County Public entities who systematically denied Petitioner legal representation in this criminal case throughout the entire process and even on an Appeal as legal counsel

never addressed the issue that the Superior Court had to release Petitioner in February as the 30 days of custody credits where statutorily required to be applied.¹

Petitioner in fact had to file his own notice of appeal from the 180 days sentence to county jail because Petitioner sought relief from the sentence to county jail done with no legal representation because Petitioner sought relief from the denial of accommodations by filing a writ of Mandate into the Sixth Appellate District see A-40 and see A-41-A-47.

OPINION BELOW

Respondent Superior Court of California County of Santa Clara at all times was under a "Settlement Agreement with the United States of America" which required the Respondent "Court will develop a written policy for provision of auxiliary aids or services when necessary to ensure effective communication in the Court system's programs, services and activities." See A-1 at pages 1-2 ¶ 5.

The Trial Court's Transcript shows that Petitioner requested accommodations on January 17, 2020 and the Court instead of making an inquiry required by 28 CFR § 35.160 (b) (2) into Petitioner's disability so that Petitioner could have the ability to communicate with the Court appointed legal counsel and have legal representation in a criminal case proceeded to sentencing Petitioner to 180 days in the County Jail, see A-4 at lines 3-11.

¹ Even the bias Appellate Panel opinion states "neither party raises any concern that Herships was not properly release at the conclusion of that sentence. See A-108 at lines 25-26. This is in itself ineffective assistance of legal counsel on this appeal of right attempted to by a totally bias court ruling to protect the trial court from the violations of the ADA/Rehabilitation Act.

Petitioner after being sentenced to the County Jail with no means of any communication with the Public Defender's Office filed a Writ of Mandate alleging the very denial of legal representation in the Superior Court as Petitioner never had any capability to communicate due Petitioner's hearing impairment and the Court not providing any communications ability to Petitioner, into the Sixth Appellate District on January 29, 2020. See A- 11-A-21.

The Sixth Appellate District on Feb. 7, 2020 requested that real parties in interest respond to the denial of legal representation. See A-22-A-23.

The Santa Clara County District Attorney's Office then filed two requests for extensions of time to file any opposition and never served Petitioner with any of the request for extensions of time to reply which was done to run out the clock on Petitioner sentence knowingly that nothing would be adjudicated during a 180 day sentence which was never served upon Petitioner see A-24-A30.

Santa Clara County District Attorney's Office eventually filed an opposition but once against refused to served Petitioner and did so because the opposition misrepresented the Controlling law once a party requests accommodations which requires an inquiry into the Parties disability by the trial court see 28 CFR § 35.160 (b) (2), see A- 31-A-32.

In fact, the Santa Clara County District Attorney's Office willfully misrepresented the controlling case law and the controlling Federal Regulations

which are codified at 28 CFR Part 35, which requires the Court to make an inquiry into a parties request for accommodations as cited by the Duvall v County of Kitsap 260 F. 3d 1124 at 1139-1140 (9th Cir 2001). See A-32.

Santa Clara County District Attorney's Office opposition admitted that total time from appointment to sentencing took all of "ten minutes" all done to a hearing impaired defendant with no means to communicate with Court appointed legal counsel. See A 32.²

The Sixth Appellate District electronically served the Superior Court, and all real parties in interest, and mailed a copy to by U S Mail to Petitioner who was in custody, see A-22.³

Santa Clara County Jail policy, practices was to restrict access to Court as the County prohibited photo copying, prohibited mailing and did not provide any means of preparing motions and filing pleadings to contest the illegal confinement as the Court Jail had no law library and very restricted research ability.

These acts of Santa Clara County District Attorney's Office and that of the Santa Clara County Public Defender's Office to Petitioner's federally protected rights to seek accommodations violated Title 42 U.S.C. sections 12203 (a) and (b) continued throughout this case and where done to interfered and block all means to

² The Santa Clara County never complied with the 28 CFR Part 35 requirements to ensure effective communication throughout this criminal case leaving Petitioner with no means to have effective communicate which denied Petitioner legal representation.

³ Petitioner was blocked from the filing of the Writ of Mandamus and the action taken by the Sixth Appellate District Court of Appeal as the Santa Clara County Jail's policies and practices was to prevent any and all access to court by inmates.

obtain accommodations for a hearing impaired defendant in a criminal case, which states a cause of action under 42 U.S.C. § 12133.⁴

In fact, as proof of these acts the Santa Clara County Public Defender's Office instead of responding to the Writ of Mandate instead simply decided to unilaterally withdraw from legal representation and was never to be heard from again in this criminal case, see A-40.

The Sixth Appellate District gave Petitioner 15 days after service of any opposition by real parties in interest to file a reply however that was blocked by both the acts of the County Jail and those of the Santa Clara County District Attorney's Office who refused to serve Petitioner see A-23 and compare the District Attorney's Office response to Petitioner's Email at A-24-A32.

Petitioner with no legal representation and with time running out for Petitioner to obtain Petitioner's 30 days of custody credits for Petitioner's release filed a Motion pursuant to 28 CFR § 35.173 seeking Voluntary Compliance for the ability for Petitioner to be able to have effective communication with court appointed legal counsel, see A-33-A-38.

The Respondent Court in violations of 28 CFR § 35.173 (5) and 28 CFR § 35.174 refused to respond to Petitioner request for accommodation which required

⁴ Petitioner currently has a civil suit pending in the United States District Court Northern District of California in case No. 20CV-07208 JD and what is most interesting is defendants assert as a defense in their motion to dismiss under Rooker-Feldman Doctrine that the State of California can block a disabled party rights to accommodations in State Court and then take advantage of their own wrong. Respondent Court does not believe in the principle of equity.

the Court to inform the United States Attorney General Office of these violations, see A-39-A-39 a.⁵

Petitioner without any legal representation and already been put on notice by the refusal of the Public Defender's Office that Petitioner had to file his own Notice of Appeal did so see A-41 –A-43.

Petitioner then still with no legal representation and no means of any ability to communicate with the Court or legal counsel filed In Pro Se a Motion for a corrected of custody credits of 30 days into the Santa Clara County Superior Court so that Petitioner could be released as the 180 days sentence had already has been served, see A-44 -A-55.

Respondent Superior Court then took adverse actions against Petitioner in violation of 42 U.S.C. § 12203 (a) and (b) for seeking Voluntary Compliance under 28 CFR § 35.173 as the Respondent Court was fully aware of the filing of said request and knew that custody credits had to have a hearing and with legal representation but instead issued a “Ex Parte Order” denying those credits see A-56-A-57.

The Respondent Court Ex Parte Order shows that the Judge acts by issuance of the “Ex Parte Order” became “part of accusatory process” as custody credits

⁵ Clearly the Settlement Agreement with the United States of American provided for enforcement in the District Court and violations of the any settlement agreement has statutory penalties under Title 42 U.S.C. §12188 (b) (2)(C) Of \$75,000.00 on the first violation and \$125,000.00 for each additional violation. This clearly shows that to permit the Appellate Division of the very Superior Court to hear an appeal on violations of the “Settlement Agreement” i.e. the rights of a hearing impaired defendant to accommodations is a denial of Due Process of Law.

under California law are credited via a report issued by the Sheriff's Department of actual time served in each case and comes under Rule 4.310, California Rules of Court as the trial court has no discretion to deny custody credits.

This is because denials of custody credits must be plead by the prosecution in the form of a motion with the burden on the People to deny those credits and natural a right to a hearing.

These acts of the Respondent Court which shows circumstances under which there is an appearance of actual bias that has violated Due Process of Law in that (1) where an Appellate Panel reviewing these acts on an appeal has a direct, personal, substantial pecuniary interest in reaching a decision against Petitioner because these violations shows an actual "Discriminatory Animus" against Petitioner a hearing impaired defendant to bring a cause of action for damages under the ADA/Rehabilitation Act.

These are acts of actual "Discriminatory Animus" continued as Petitioner made a court appearance on March 6, 2020 and had finally obtained release of Petitioner Hearing Aids and informed the Court that the Court never provided accommodations for Petitioner's hearing impairment, see A 58-A-62 the Court reappointed the "PD" to obtain the Court Record and continued the hearing until March 13, 2020. ⁶

⁶ While the Reporter's Transcript states hearing was before Judge Drew C Takaichi it was actually Judge Brown.

Petitioner made a Court appearance on March 13, 2020 and once again there was no communication with the Santa Clara County Public Defender's Office nor was there any legal representation in any sense of the term just total abandonment of legal representation. See A-63 A-66.

Petitioner then with no prospect of having an appeal heard before a neutral and detached three judge panel who have a direct, personal, substantial pecuniary interest in the outcome of the appeal filed a motion in Pro Per to disqualify the Appellate Panel of the Superior Court of Santa Clara County see A-67-A-76.⁷

California Superior Court County of Santa Clara was already under a "Settlement Agreement" and any violations of that agreement could be enforce in the District Court see A-2 at ¶ 12.

Moreover, violations of a "Settlement Agreement" under ADA have statutory penalties pursuant to Title 42 U.S.C. §12188 (b) (2) (C) of some \$75,000.00 for the first violation and then some \$125,000.00 for each additional violations.

Clearly, Respondent Superior Court choice to totally ignore Petitioner's request for accommodations and Respondent Court who never complied with creating a written policy to ensure effective communications with the Court

⁷ Petitioner requested Appellate Counsel William Safford to do so but the attorney assert that the Appellate Pane can hear an appeal asserting the ADA/Rehabilitation Act has nothing to do in case as Petitioner had the use of the Court's amplification system and the Court does not have to comply with Federal Regulations under 28 CFR Part 35.

system's programs, services and activities for hearing impaired parties shows serious violations of the ADA and the Federal Regulations here as stated above.

Additionally, Petitioner further sought accommodations by requesting Respondent Superior Court enter into Voluntary Compliance pursuant to 28 CFR § 35.173 see A-33-A38 which was completely ignored see A-39-A-39 a.

The Respondent Superior Court just ignore that request even a failures to make voluntary compliance requires the County Entity to submit a report to the United States Attorney General Office pursuant to 28 CFR § 35.173 (5) and 28 CFR §35.174, which was never done.

Petitioner filed In Pro Se a Motion to Disqualify the Appellate Panel based upon the legal theory that the Santa Clara County Superior Court was under a "Settlement Agreement" to ensure effective communication to parties that are hearing impaired appearing in the Court system's programs, services and activities. See A-67-A76.

Respondent Superior Court Appellate Division instead of hearing the motions on the merits decided to issue an "Order Striking Pro Se Filing, see A-77-A-78.

Petitioner then objected to the ineffective assistance of legal counsel on Appeal when legal counsel never addressed Petitioner request for accommodations in open court on January 17, 2020, which the Court never complied with 28 CFR §

35.160 (b) (2) in making an inquiry to Petitioner's disability so the Petitioner could partake in the court process. See A-4-A-10.

This triggered appointed legal counsel William Safford's June 3, 2022 letter to the Appellate Panel requesting an inquiry into a determination if the opening brief was in fact ineffective assistance of legal counsel, see A-81-84.

The Appellate Panel set up a briefing schedule for William Safford to file a response by July 20, 2022 and Petitioner to have until August 29, 2022 to file a reply, see A-85-A-86.

Mr. Safford response simply states that because the Court provided the Court's Amplification audio system was all that was required under the ADA as the record shows that Petitioner was present in court and being assisted by the Court's Amplification system, see A-91.

Mr. Safford omitted that the Santa Clara County Superior Court was already under a "settlement agreement" with the United States of American and which required the Court to provide effective communications with the Court system's programs, services and activities, which includes the services of the Public Defender's Office, see A-1 – A-2 at Paragraph 5.

Mr. Safford does not explain how a headset which only is a direct feed from the Judge's bench somehow permits confidential communication between a hearing impaired defendant and his court appointed attorney.⁸

The problem here is that the Santa Clara County Public Defender's Office never implemented any of the Federal Regulations and hearing impaired defendants have no means of any communication with a Deputy Public Defender, see A-80.⁹

Mr. Safford contentions that by providing the Court Amplification system" meets all ADA requirements shows appellant counsel's total incompetency as Ninth Circuit put it somewhat brutally in *Pineda v. Craven* (9th Cir. 1970) 424 F.2d 369, 372: "**There is nothing strategic or tactical about ignorance**". In this case before us it is difficult to conceive of tactical advantage which could have been served by neglecting to advance a claim so clearly in Petitioner's best interest, "Structural Error" nor does Mr. Safford suggest any.

This is because the very issue has already been decided by the Ninth Circuit in *Duvall v County of Kitsap* supra at 1140 at Footnote 14, where the Court stated:

⁸ The Santa Clara County Public Defender's Office never complied with 28 CFR §35.105 c (1) (2) (3) which required the Public Defender's Office do "Self-evaluation" with disability groups to develop means to provide effective communication with hearing impaired and deaf defendants. Additionally, the Department also never staffed a ADA Coordinator required by 28 CFR § 35.107; nor did the Department create a TTY phone system for hearing impaired and deaf defendants can communicate in real time required by 28 CFR § 35.161 et. seq these violations completely cuts off all means of communications see A-80.

⁹ What is most interesting here is that Petitioner has a Federal District Court complaint suing the Santa Clara County Superior Court and the County entities asserting that the County Entities never implemented any of the Federal Regulations and the County Counsel asserts that the Court and County cannot be enforced by a plaintiff in a civil suit under the ADA/Rehabilitation Act.

“[E]specially when the accommodation is provided based upon stereotyped assumptions about the person's disability, such as the assumption that all hearing-impaired individuals need sign-language interpreters, or all hearing-aid wearers may be accommodated by a sound-amplification system.”

The Duvall Court rejected the accommodations by the Court's Amplification System and held that the Court was required to make an inquiry into the party's disability and ensure hearing impaired party can partake in the Court process.

These facts are undisputed as by denying the ability to communicate with court appointed legal counsel never had any legal representation and the record shows that Petitioner had to serve some additional 30 days in the county jail because there was never any ability to communicate all done in a “discriminatory animus” to a hearing impaired defendant who was denied accommodations while the very Court was under a “Settlement Agreement” all because the Court refused to comply with the ADA/Rehabilitation Act.

This court in *Strickland v Washington* 466 U.S. 668 (1984) created a test (1) whether representation was unreasonable in light of prevailing professional norms; and (2) whether there is a reasonable probability that the outcome of the proceeding would have been different had representation been effective.

William Safford legal representation in this appeal did not meet the professional norms for legal representation as it violated a **“Settlement**

Agreement” which required effective communication in the Court system’s programs, services and activities, which included legal representation.

Appellate Panel was prohibited from hearing an appeal that the Court had a **direct, personal, substantial pecuniary interest in the outcome** the Superior Court as the Appellate Panel’s opinion states that Appellate Counsel on appeal can waive a defendant’s rights to legal representation, which subject Petitioner’s liberty to a judgment which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.” See *Tumey v Ohio* 273 U.S. 510 at 523 (1927), which constitutes “structural error.”

The Appellate Panel decision asserts that Court Appointed legal counsel on Appeal can waive an indigent defendant’s rights to a defendant rights to an impartial adjudication on appeal see A-104 at lines 26-27.

Clearly, Petitioner’s Rights to a neutral decision maker on an Appeal of right has been recognized by this Court in *Williams v Pennsylvania* holding that one member of an appellate panel had to recuse themselves as it constitutes “Structural Error”.

Whereas here all three members of the Appellate Panel of the Superior Court has violated the Settlement Agreement with the United States of America putting these members to rule in their own case.

Additionally, even the bias and prejudiced Appellate Panel even commented that **“neither party raises any concern that Herships’ was not properly released at the conclusion of that sentence.”**¹⁰ See A-108 lines 25-26.

Clearly, court appointed legal counsel William Safford failures to plead the denial of accommodations to a hearing impaired defendant constitutes ineffective assistance of legal counsel was totally incompetent as even stated in the Opinion of the Appellate Panel see A-108 lines 25-26 as Petitioner served some 30 days beyond the sentence imposed due to the Superior Court’s accusatory process.

These violations were addressed by this Court in Ward v. Village of Monroeville 409 U. S. 62 (1972) here Petitioner never had an impartial adjudication in the Superior Court and clearly could not have an impartial adjudication by an appellate panel of the very court members who have no intentions of complying with a Settlement Agreement” with the United States of American under the ADA.

Petitioner on August 29, 2022 filed a letter brief stating serious violations of the “Settlement Agreement” and the Appellate Panel in reaching their opinion against petition ruled that the Santa Clara County does not have to comply with

¹⁰ Petitioner should have been released in February of 2020, as the 180 days would have been served. The Appellate Panel’s self-serving statement **“neither party raises any concern that Herships was not properly released at the conclusion of that sentence.”**This determination by the Appellate Panel was patently false as Petitioner who never had legal representation filed a Motion in Pro Se to obtain the 30 days of Credits on Feb. 2020 see A-48-A-55 in Feb. 2020 to obtain Petitioner’s release and the Court denied the request by Ex Parte Order see A-56-A-57, just another example of the Appellate Panel **“not holding the balance nice clear and true”**

any “settlement agreement” with the United States of America under the ADA and can deny a hearing impaired defendant any and all rights to accommodations.

The Court records in this case shows Petitioner requested accommodations and the Court never complied with the Federal Regulations see 28 CFR § 35.160 (b) (2).

In fact, the Appellate Panel decision on appeal in this case is a classic example of actual bias and prejudice which imposes a cause of action for damages against the very Respondent Superior Court.

The Appellate Panel then determined that the “[S]tate may exercise board discretion when considering what representation to allow and may require an indigent [defendant] to accept against his will a state-appointed a for representation on a direct appeal without violating the federal Constitution. See A-107 at Footnote 1.

The Appellant Panel admits that the Court erroneously denied Petitioner his 30 days of custody credits all done with no legal representation, see A-112 lines 13-19, which shows actual adverse action against Petitioner for seeking accommodations violations of 42 U.S.C. § 12203 (a) and (b) which states a cause of action under 42 U.S.C. § 12133.

These acts of actual “discriminatory animus” by both the Superior Court of Santa Clara County and the Appellate Panel states a cause of action against the

very Superior Court as Petitioner's inability to effectively communicate with county jail staff or even communicate at all with his lawyer or family was caused by the Defendants' failure to provide him with accommodation and meaningful access and which states a cause of action for damages in the District Court.

JURISDICTION

This Court has Jurisdiction pursuant to 28 U.S.C. § 1257 (a). The California Supreme Court denied Review pursuant to Rule 8.508 exhaust all remedies which allowed the Appellate Panel of the very Superior Court to hear and determine if the Superior Court violated ADA/Rehabilitation Act to make a determination on the liability of the Superior Court.

The California Supreme Court denial was entered on June 14, 2023. Petitioner filed an Application for an Extension of Time in Application No.23 A 119, which this Court granted on August 11, 2023, and extended the time until November 11, 2023 to file this Petition for Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

This Court has determined that an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case. This objective risk of bias is reflected in the due process maxim that **“no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.”**

The Question Presented is can an Appellant Panel hear an Appeal from a criminal case which seeks to shield Respondent Superior Court from all liability to a private right of action in the District Court for damages for “discriminatory animus” by actual acts of retaliation for Petitioner seeking accommodations for Petitioner’s Hearing impairment, in violation of 42 U.S.C. sections 12203 (a) and (b).

Here the Respondent Superior Court as well as the Appellate Panel shows that the Santa Clara County Superior Court in fact never complied the “Settlement Agreement” and here in fact the Santa Clara County Superior Court and shows actual acts of **mens rea** "intentional discrimination," to prevail on a § 504 claim, but that that standard may be met by showing "deliberate indifference," and not only by showing "discriminatory animus" and by showing that the Court has knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that likelihood would result in illegal incarceration. See A-56-A-57.

Thus, a public entity can be liable for damages under § 504 if it intentionally or with deliberate indifference fails to provide meaningful access or reasonable accommodation to disabled persons.

This placed the Respondent Superior Court of Santa Clara County into a direct, personal, substantial pecuniary interest in reaching a conclusion against

Petitioner as because respondents' violations of the ADA/Rehabilitation Act created liability against Respondent Superior Court for these violations.

The Fourteenth Amendment of the United States Constitution provides in pertinent part: **“Nor shall any State deprive any person of provides that No State shall deprive a party of life, liberty or property without Due Process of Law.”**

Petitioner a qualified hearing impaired defendant was denied legal representation in a criminal case because of Petitioner Disability which was not only a violation of the ADA/Rehabilitation Act but was also a violation of the Settlement Agreement with the United States of America, which the Appellate Panel decided **“not to hold the balance nice clear and true” and completely ignore the Settlement Agreement.**

The California Supreme Court denied Review Exhausting all State Remedies pursuant to Rule 8.508, California Rules of Court, and see A-111-A-112.

REASONS FOR GRANTING THE WRIT

This Court in Williams v. Pennsylvania held that the failure to recues was unconstitutional for an appellate panel constitutes “structural error” as it denied a criminal defendant an impartial judicial review as guaranteed by Due Process of Law.

The question presented for review in this case is can the California Superior Court County of Santa Clara County Appellate Panel review an issue on appeal of rights that the Trial Court's failure to implement a "Settlement Agreement" requiring the very Superior Court to ensure effective communication in the Court system's programs, services and activities to hearing impaired defendants.

These failures to provide a criminal defendant that denies any and all ability to effective communication with court appointed legal counsel proves a "discriminatory animus" which states a federal cause of action under Americans with Disability Act and the Rehabilitation Act against the very Court reviewing the Appeal of right.

This Court has held since *Tumey v Ohio* 273 U.S. 510 (1927) and *Ward v. Village of Monroe* 409 U.S. 57 (1972) **"[I]t certainly violates the Fourteenth Amendment, and deprives a criminal defendant of due process of law, to subject his liberty or property to the judgment of court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him his case."**

This Court in *Williams* held this rule applicable to review by an appellate panel that if one of the justice of the Appellate Panel had an interest in the outcome of the case requires recusal of the panel then clearly whereas here all three

members of the Appellate Panel all had a direct, personal substantial interest in the outcome of this case.

These acts of the Superior Court shows a willful violation when Petitioner sought repeatedly accommodations and the Court preceded and the County entities block all accommodations for a hearing impaired defendant which caused Petitioner into having to serve some 30 additional days beyond the sentence imposed all done with no legal representation. See A-113.

The Appellate Panel approved of these acts of the Superior Court and the County entities in affirming the lower Court's violations of the ADA/Rehabilitation Act by asserting that the "[S]tate may exercise board discretion when considering what representation to allow and may require an indigent [defendant] to accept against his will a state-appointed attorney for representation on direct appeal without violating the federal Constitution". See A-104- A-105 at footnote 1.

According to the Appellate Panel's decision is clearly "Structural Error" under this Court decision in Williams v Pennsylvania as the Appellate Panel cannot rule on their own case as ruling on whether the Santa Clara County Superior Court can violated the Settlement Agreement under the ADA/Rehabilitation Act required the Appellate Panel to recues itself.

QUESTION PRESENTED FOR REVIEW

**DUE PROCESS CLAUSE REQUIRED
THE RECUSAL OF APPELLATE PANEL
OF THE SANTA CLARA COUNTY
SUPERIOR COURT FROM HEARING
THE APPEAL IN THIS CASE AS THE
REVIEWING COURT HAD A DIRECT,
PERSONAL, SUBSTANTIAL PECUNIARY
INTEREST IN REACHING A CONCLUSION
AGAINST PETITIONER BECAUSE OF THE
VIOLATIONS OF ADA/REHABILITATION ACT**

The Santa Clara County Superior Court was at all times under a “Settlement Agreement” with the United States of America to which required the very Court to comply with 42 U.S.C. sections 12131-12134 the Americans with Disabilities Act, see A-1-A-3.

Specifically the “Settlement Agreement” required “[T]he Court will develop a written policy for provision of auxiliary aids or services when necessary to ensure effective communication in the court system’s programs, services and activities.” See A-1- A-2 at ¶ 5.

Additionally, the Settlement Agreement required “[T]he Court will distribute the policy and procedures outlined in paragraph 5 to all judges and staff, within 90 days of the effective date of this Agreement, the Court will provide training to appropriate staff concerning implementation of these policies and procedures for ensuring effective communication with hard of hearing individuals.” See A-2 at ¶ 7.

Petitioner made a Court appearance on January 17, 2020, into Respondent Superior Court and requested accommodations from Courtroom personnel see A-5.

According to both controlling case law and Federal Regulations which are codified by 28 CFR Part 35 requires the Respondent Court to make an inquiry into a party who request accommodation, see 28 CFR § 35.160 (b) (2) as stated in *Duvall v County of Kitsap* 260 F.3d 1124 at 1139-1140 (9th Cir 2001).

Clearly, the Respondent Superior Court never implemented any **“written policy to ensure effective communications”** for hard of hearing parties and instead chose to ignore these requirement and proceed without provided a disabled hearing impaired defendant any and all ability to communicate with Court appointed legal counsel.

Obviously, Respondent Superior Court also never distributed the written policy and providing training to all judges and staff of the requirements of the ADA, see A-2 ¶7.

This Court in *Geders v United States* 425 U.S. 80 (1976) held that an order prohibiting legal defense counsel from communicating with his criminal client over a 17 hour court recess constitutes a denial of legal representation.

Clearly, a criminal defendant who is hearing impaired and had no means to communicate with Court appointed legal counsel never had legal representation in

a criminal case and was illegal detained by Respondent Court see *Aversinger v Hamlin* 407 U.S. 25 (1972) under the “**rule no attorney no jail**”.

This further caused by Santa Clara County Public Defender’s Office never implements any of the Federal Regulations authorized by the Department of Justice and intended to be consistent with § 504 regulations, 42 U.S.C. § 12134 as they were codified at 28 CFR Part 35.¹¹

This is further shown in that the Santa Clara County Public Defender’s Office never did a “Self-evaluation” pursuant to 28 CFR § 35.105 (c) (1) (2) and (3) of just how the department was going be able to communicate with a hearing impaired client, see A- 80.

Nor did these violations of ADA/Rehabilitation Act stopped here they continued as Petitioner filed a Writ of Mandate into the Sixth Appellate District on January 29, 2020, alleging a denial of legal representation in a criminal case with no ability to communicate because respondent Court denied Accommodations for Petitioner’s Hearing impairment, see A-11-A-21.

The Sixth Appellate District on February 7, 2020, requested that real parties in interest file response to the Petition by Feb. 21, 2020 and that Petition would have 15 days to file any reply. See A-22-A-23.

¹¹ Santa Clara County Public Defender’s Office asserts in Petitioner’s civil litigation in the District Court in the County’s motion to dismiss that the Public Defender’s Office has no legal obligations to comply with the any Federal Regulations under the ADA.

The Superior Court, the Santa Clara County District Attorney's Office and the Santa Clara County Public Defender's Office were served electronically see A-22.

Sixth Appellate District sent a letter by U S. mail to Petitioner in custody but was never received by Petitioner a further violation of 42 U.S.C. § 12203 (a) and (b).

The Public Defender's Office in response to the filing of the Sixth Appellate Writ of Mandate was to unilaterally withdrawing from legal representation in the criminal case and that Petitioner will have to file his own Notice of Appeal. See A-40.

The Santa Clara County District Attorney's Office knowing that Petitioner's sentence was 180 days in the County Jail decided that would run-out the clock by requesting continuances which was done willfully by never serving Petitioner with any of those requests further prejudicing Petitioner's rights under the ADA for relief from a denial legal representation. See A-24-A-30.

The Santa Clara District Attorney's Office after Petitioner was released from custody on April 21, 2020 finally filed an opposition and misrepresented the controlling Federal Regulations as well as the Controlling case law. See A-31-A32.

The Ninth Circuit holds that once a request for accommodations is made to a Court requires that an inquiry into the party's disability under 28 CFR § 35.160

(b) (2) is made to ensure that disabled party can participate in the Court process see *Duvall v County of Kitsap* 260 F. 3d at 1139-1140, (9th Cir 2001).

Not only did the Santa Clara County District Attorney's Office misrepresented the controlling law but the Department refused to serve Petitioner with a copy of the opposition which was done to block and interfere with Petitioner's protective activity in seeking accommodations see 42 U.S.C. sections 12203 (a) and (b) See A-24-A32.

These acts were done to prevent Petitioner from access to court on the merits and to obtain adjudication on the denial of accommodation under the Settlement Agreement requiring effective communication.¹²

Appellant also filed on Feb. 24, 2020, made a request pursuant to 28 CFR § 35.173 for "Voluntary Compliance" requesting the ability to communicate with the Public Defender's Office as Petitioner is hearing impaired and needed to obtain the 30 days of custody credits to be released as the sentence has already has been served, see A-33-A-38.

Respondent Superior Court instead of proceeding to ensure effective communication with the Public Defender's Office as was required under the

¹² This conduct of the public entity is also shown in Petitioner's Civil law suit against the Respondents currently pending in the United States District Court Northern District of California case Nol. 20-cv-07208 JD. Defendants in that law suit assert that because there was an appeal from the conviction and the Appellate Panel ruled that Court Appointed legal counsel can waive a hearing impaired defendants rights to legal representation in a criminal case the Roocker-Feldman Doctrine which precludes Petitioner from bring the ADA action see A-104-A-105 at footnote 1.

Settlement Agreement at A-1-A-2 at ¶ 5 Respondent Court decided to ignore said request, see A-39-A-39a.

These acts of systematic validations of the ADA/Rehabilitation Act continued in this case by the Santa Clara County Superior Court as Petitioner filed In Pro Se a Motion for 30 days of Custody Credits A-48-A-55.

The Motion required both a hearing and legal representation at said hearing under this Court's decision in *Wolff v. McDonnell* 418 U.S.539 (1974) as custody credit have a liberty interest.

Instead the Respondent Superior Court issued an "Ex Parte Order" denying those credits" see A-56-A-57.

Respondent Court took the adverse action against Petitioner and without any lawful authority to support that confinement. See A -110.

Clearly, these facts show that the Appellate Panel of the Santa Clara County refusal to apply the undisputed failures to comply with the Settlement Agreement with the United States precluded the Appellate Panel from hearing this appeal.

This Court has held that all relevant circumstances "must be considered" when deciding whether a party was denied due process because the decisionmaker was biased or appeared to be. In *re Murchison*, 349 U.S. 133 at 136 (1955) see also *Caperton v. A.T. Massey Coal Co.* 556 U.S. 868 872 (2009) finding that due process required recusal based upon "all the circumstances of this case."

This Court in *Aetna Life Ins. Co. v Lavoie*, 475 U.S. 813 at 821-825 (1986) considered the challenged judge's interest and involvement in the case as a whole required disqualification.

In this case the Santa Clara County Superior Court entered into a "Settlement Agreement" with the United States of America over complaints filed against the Court for violations of the Americans with Disability Act see A-1-A-3.

The issue here shows the Petitioner a hearing impaired criminal defendant made a court appearance and requested accommodations on January 17, 2020, and the Court never made an inquiry into Petitioner disability required by 28 CFR § 35.160 (b) (2) and case law, *Duvall v. County of Kitsap* 260 F. 3d 1124 at 1139-1141, (9th Cir 2001). See A-4-A-10

The question presented by these undisputed facts stated above shows that to permit the Appellate Panel of the very same Superior Court to hear an Appeal in which the Appellate Panel must rule if whether the trial court violated the "Settlement Agreement" which would be making a determination that Superior Court of California County of Santa Clara would have to determine liability which would have res judicata consequences against the very Court that all three judges were members of under both the ADA/Rehabilitation Act for a cause of action for damages, see *Udike v. Multnomah* 870 F.3d 939 at 847 (9th Cir 2017 Cert Denied).

Moreover these acts of Respondent Court and the State of California judiciary shows the policy practices and custom systematically opens a yawning breach of the ADA/Rehabilitation Act as an action brought by the DOJ would require penalties under 42 U.S.C. sections 12188 (b) (2) (C) of \$75,000.00 for the first violations and \$125,000.00 for each additional violations.

The Appellate Panel decision on appeal states: “[S]tates may exercise board discretion when considering what representation to allow and may require an indigent [defendant] to accept against his will a state-appointed attorney for representation on a direct appeal without violating the federal Constitution.” See A-104 lines 28.

This determination by the Appellate Panel violates this Court’s decision in Griffin v Illinois 351 U.S. 12 (1956) as if Petitioner had the ability to retain legal counsel Petitioner could assert the denial of accommodation under the ADA for Petitioner’s hearing impairment whereas here because the Appellate Panel decided **“not to hold the balance nice clear and true” ruled that Court Appointed legal counsel on an appeal of right can waive Petitioner’s rights to legal representation in a criminal case. See A- 104-A-105.**

The question presented here shows actual bias and prejudice by the Appellate Panel who asserts that the Court Appointed legal counsel failure to plead the denial of accommodations as “neither parties raised any concern that Herships

was not properly released at the conclusion of that sentence.” See A-108 lines 26-27.

This statement is a self-serving state not supported by the record as in fact Petitioner filed a Pro Se Motion on Feb. 26, 2020, requesting the 30 days of custody credits which would have resulted in Petitioner immediate release as the sentence had fully been completed, see A-44-A-55.

Instead Respondent Court denied the Motion by “Ex Parte Order” which violated this Court’s decision in *Wolff v Mc Donnell* 418 U S. 539 (1974) see A-56—A-57.

The Appellate Panel opinion is not only illogical but actually what length that the Santa Clara County Superior Court will go to violate the ADA/Rehabilitation Act as Petitioner filed In Pro Se a motion to disqualify the Appellate Panel from hearing this appeal see A-67-A-76.

The Appellate Panel instead of hearing Petitioner’s Motion issued an **“Order Striking Pro Se Motion”** see A-77-A-79.

Petitioner also further asserted this very point that the Appellant Panel hearing an appeal violated this Court’s opinion in *Tumey v. Ohio* 273 U.S. 510 (1927) **which offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might**

lead him to hold the balance nice clear and true between the state and the accused” see A-103.

In fact, that is exactly happen here as Appellate Panel **did not hold the balance nice clear and true** and affirmed the appeal holding that the Respondent Superior Court does not have to provide any legal representation in a criminal case to a hearing impaired defendant who never had any ability to communicate with court appointed legal counsel.

The cause and effect of these denial of legal representation is actually confirmed by the Appellate Opinion holding that the denial of Petitioner’s Pro Se Motion for 30 days custody credits which the Respondent Superior Court denied by “Ex Parte Order” while at all times Petitioner never had legal representation as the Public Defender’s Office had unilaterally withdrew from legal representation in this criminal case, see A-56-A-57 and compare A-40.

This Court decision in Williams v. Pennsylvania held that an appeal heard by an Appellate Panel that had one member who had a direct involvement in the lower court process constitutes “structural error”.

Here in this case all three members of the Appellate Panel of the Superior Court of Santa Clara County decided that Santa Clara County Superior Court can totally ignore a “Settlement Agreement” requiring the California Superior Court of

Santa Clara County to ensure effective communication with hearing impaired defendants. See A-98-A-103.

This Court in **Mempa v. Rhay, 389 U.S. 128 (1967)** held at probation violation hearing held; “[T]hat the time of sentencing is a critical stage in a criminal case, and counsel's presence is necessary to ensure that the conviction and sentence are not based on misinformation or a misreading of court records. *Townsend v. Burke*, 334 U. S. 736 (1948); *Gideon v. Wainwright*, 372 U. S. 335 (1963). Pp. 389 U. S. 133-134.

According to the Appellate Panel’s opinion court appointed legal counsel can waive a hearing impaired defendant’s rights to legal representation at the time of sentencing see the Appellate Panel Opinion that Court Appointed legal counsel can waive that right. A-104-A102 Footnote 1.

The Appellate Panel’s opinion states that “**neither party raised any concern that Hershops was not properly released at the conclusion of that sentence.**” see A-108 lines 25-26.

Obviously, Petitioner filed In Pro Se a motion for the 30 days of credits which would resulted in Petitioner immediate release on Feb. 26, 2020, see A-48-A-55.

Respondent Court however denied said request by an “Ex Parte Order” which actually shows that respondent Court acted as part of the “accusatory

process” as a hearing was required and with legal representation. *Wolff v. McDonnell* 418 U.S. 539 (1974) see A-56-A-57.

In *Pierce v. Dist. of Columbia* 128 F. Supp 3d 250 (U.S. District Judge Ketanji Brown Jackson) held:

**“Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”
42 U.S.C. § 12132.”**

The Ninth Circuit decision *Udike v. Multnomah Cnty., Corp.*, 870 F.3d 939, 947 n.5 (9th Cir. 2017) summed up these acts:

“Nor could the County or State really dispute this: The State and County's alleged failure to provide Udike with an ASL interpreter or the use of auxiliary services constitute concrete and particularized injuries sufficient to satisfy Article III. Further, Udike's inability to effectively communicate with corrections staff or even communicate at all with his lawyer or family was caused by the Defendants' failure to provide him with accommodation and meaningful access. Finally, a decision favorable to Udike would redress his injuries. *See Lujan*, 504 U.S. at 560–61, 112 S.Ct. 2130.”

Respondent Court in this case was already under a “Settlement Agreement” requiring the Superior Court to ensure effective communication for hearing impaired parties and instead to deny any all ability to Petitioner even when

Petitioner sought review of that denial of accommodations and the Respondent Court took adverse action, see A-55-A-56.

This Court in *Ward v. Village of Monroe*, 409 U.S. 57 at 62 (1972) held as follows:

“Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication. Petitioner is entitled to a neutral and detached judge in the first instance.”

Petitioner never had the "procedural safeguard" of a fair hearing when the Respondent Court which denied Petitioner his rights to legal counsel due to Petitioner's hearing impairment and then imposed an additional 30 days in the County Jail beyond the original imposed sentence by denying Petitioner request for 30 days of custody credits which was done in retaliation for seeking accommodations a protected activity under 42 U.S.C. § 12203 (a) and (b) and states a cause of action under 42 U.S.C. § 12133.

Clearly, the Appellate Panel's could not hear this Appeal of Right as it shows that the Appellate Panel opinion **“certainly violates the Fourteenth Amendment, and deprives a defendant in a criminal case of due process of law, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.”***Tumey v. Ohio* 273 U. S. 510 at 273 (1927).

This is equally applicable to an Appellate Panel see Williams v. Pennsylvania 579 U.S. __ (2016) which holds:

“[T]he unconstitutional failure to recues constitutes structural error that is not amenable to harmless error review.”

The Opinion by the Appellant Panel decision gave to Rule that the Santa Clara County Superior Court does not have to comply with the “Settlement Agreement” to provide effective communication for hearing impaired defendant by Ruling that Herships did not need legal representation in the criminal case.

The Appellate Panel by ruling that the Court Appointed legal counsel to and indigent [defendant] the State may waive a indigent criminal defendant’s rights under the ADA/Rehabilitation Act violates this Court’s decision in Griffin v. Illinois 351 U.S. 12 (1956) i.e. the Equal Protection of Clause of the Fourteenth Amendment an defendant who had retained counsel would have to raise the issue.

This shows just how far the Appellate Panel will go in their denial under the ADA/Rehabilitation Act does not apply to indigent’s defendants in California.

Here the Appellate Panel shows their “temptation to the average man as a judge to forget the burden of proof required to convict the defendant, which might lead him not to hold the balance nice, clear and true between the State and the accused. . .”Tumey at 273 U. S. 532.

Here the Appellant Panel decided to totally ignore Herships’ August 29, 2022 letter brief which directly point to the controlling law as well as the terms of the “Settlement Agreement” and the Appellate Panel decided “not to hold the balance nice, clear and true between the State and the accused”. Tumey at 273 U. S. 532 in affirming petitioner’s conviction.

Holding that the “[S]tate may exercise board discretion when considering what representation to allow and may require an indigent [defendant] to accept against his will a state-appointed attorney for representation on a direct appeal without violating the federal Constitution.” See A-104.

The Respondent Court as was required under the Settlement Agreement was to ensure effective communication with the Court system’s programs, services and activities and here both the Respondent Court and the Appellate Panel’s willful failure to comply with the ADA/Rehabilitation Act denied Petitioner’s rights to legal representation in a criminal case and done to a hearing impaired defendant denied Petitioner’s rights to legal representation in a criminal case.

The cause and effect resulted in Petitioner being held without any lawful authority to support that confinement. See *McNeil v. Patuxent Institution*, 407 U.S. 245 at 252 (1972)

Respondent Superior Court and that of the Appellate Panel was done in a systematic effort to interfere with Petitioner’s obtaining accommodations all done to hearing impaired defendant in violations of ADA/Rehabilitation Act while under a “Settlement Agreement” with the United States of American prohibiting that very conduct and also violated 42 U.S.C. § 12203 (a) and (b) which is a violation for a cause of action under 42U.S.C. § 12133.

CONCLUSION

WHEREFORE, for all the reasons set forth above Mr. Herships respectfully requests that the Court issue a Writ of Certiorari to the California Supreme Court on the question presented that it violated Due Process of Law to have an Appellate Panel of the very Superior Court rule on their own violations of a “Settlement Agreement” with the United States of America under the ADA/Rehabilitation Act which denied Petitioner legal representation in a criminal case because the Superior Court never ensured effective communication of Court system’s programs, services and activities. The decision on appeal in this by the Appellate Panel of the Superior Court of California County of Santa Clara was “structural error” under Williams v Pennsylvania 579 U.S. __ (2016) and be reversed as it violates “the rule that no judge can rule in their own case”.

Dated

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Petitioner In Pro SE

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Reporter's Transcript of March 6, 2020, before Judge Brown of the Santa Clara County Superior Court once again appointing the Public Defender's Office to get the record January 17, 2020 Court appearance on the issue of denial of accommodations and obtain proper custody credits and the Court continued the case to March 13, 2020.	A-58-A-62
Reporters Transcript of March 13, 2020 which the Santa Clara County Public Defender's Office never obtained a copy of the Records of January 17, 2020 and never prepared for the Court Hearing or even obtaining the 30 days of custody credits.	A-63-A-66
Petitioner filed In Pro Se an Application into the Santa Clara County Superior Court Appellate Division for disqualification of Appellate Panel To hear this Appeal of right when the issue before The Appellate Panel was did the Superior Court of Santa Clara County violate the Settlement Agreement to provide effective communication in the Court system's programs and activities and permit the Court to rule in their own case.	A-67-A-77
The Appellant Panel in response to Petitioner's Motion to Disqualify the Appellant Panel from hearing an appeal in which the Court must rule on the Court's violation of a Settlement Agreement under the ADA issued an "Order Striking Pro Se Filing"	A-77 – A79

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Petitioner then did a Request for Public Records on the Santa Clara County Public Defender's Office requesting pursuant to 28 CFR § 35.105 (c) (1)(2) (3) the a copy of the "Self-evaluation" the department did on how the Public Defender's Office was going to engage the ability to communicate with hearing impaired clients.	PAGE[S] A-80
Stafford Legal letter to the Appellate Panel that Petition has asserted that court appointed legal Counsel has excluded a crucial defense from the appeal and that Court appointed Attorney on appeal requests that the Appellate Panel make a determination of adequacy of legal representation	A-81-A-84
Appellant Panel order directing Mr. Safford to respond to Mr. Herships about claims of ineffective assistance of legal counsel by July 20, 2022 and Mr. Herships shall have until August 29, 2022 to Respond.	A-85-A86
Mr. Safford July 20, 2022 letter response to Petitioner's claims of infective assistance of legal counsel on an appeal of right when legal counsel never addressed the denial of accommodations when requested by Petitioner a hearing impaired defendant which was in the record.	A-87-A-97

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Petitioner submitted a reply to Appellate Counsel on appeal regarding the ineffective assistance of legal counsel failure to raise the denial of any ability to communicate with the court and court and appointed legal counsel due to Petitioner being hearing impaired and additionally Petitioner raised the issue that the Superior Court never complied with the “Settlement Agreement” as the Court never implemented a written policy to ensure effective communication in the Court system’s programs, services and activities.

A-98 - A-103

Respondent Superior Court County of Santa Clara Appellate Division heard the appeal and ruled that that the appellant can be denied his rights to accommodations for Petitioner’s hearing impairment as court appointed legal counsel can waive a criminal defendant who is hearing impaired rights to legal representation which resulted in a denial of custody credits causing Petitioner to be illegally incarcerated for some 30 days done with no legal representation.

A-104-A-110

Petitioner sought review to exhaust State Remedies Pursuant Rule 8.508 in the California Supreme Court of having an Appellate Panel hear an Appeal in which the reviewing Court has a direct, personal substantial pecuniary interest in the outcome in that the very issue on appeal was did the trial court violate a Settlement Agreement with the United States of America in denying accommodations and if so would subject the Superior Court to a cause of action for damages under the ADA/Rehabilitation Act.

A-111

The California Supreme Court denied review on Jun. 14, 2023

A-112

Proof of Service by Mail

I certify I caused to mailed to the following parties a Petition for Writ of Certiorari to the United States Supreme Court on _____, 2023 addressed as follows as parties of interest and respondents;

Elizabeth B. Prelogar
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue,
NW Washington, DC 20530-0001

U.S. Department of Justice
Appellate Section
ADA & Section 504 Rehabilitation Act
Civil Rights Division
P.O. Box 14403
Washington, D.C. 20044-4403

California Attorney General's Office
455 Golden Gate Avenue Suite 11000
San Francisco, Ca 94102-7004

I declare under penalty of Penalty of perjury that all of the above is true and correct.

Dated

H.R. Herships

SETTLEMENT AGREEMENT**A-1****BETWEEN****THE UNITED STATES OF AMERICA****AND****THE SANTA CLARA COUNTY SUPERIOR COURT**Department of Justice Complaint Number 204-11-90

This Settlement Agreement ("Agreement") fully resolves the issues raised in a complaint filed under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131 - 12134, with the United States Department of Justice ("Department") against the Santa Clara County Superior Court ("Court"). The complaint alleges that the Court's policies and procedures for providing assistive listening systems and other auxiliary aids and services do not ensure effective communication with hard of hearing persons. This limits the participation of hard of hearing individuals in the Court's programs, services and activities. The parties have engaged in extensive discussion concerning the issues and determined that the agreements made herein will resolve this complaint.

The parties hereby agree as follows:

1. The subject of this Settlement Agreement is the provision of appropriate auxiliary aids and services to ensure effective communication and an equal opportunity for hard of hearing persons to participate in the programs, services and activities conducted by the Court.
2. The Court will furnish appropriate auxiliary aids and services when necessary to afford hard of hearing individuals the opportunity to participate in Court activities in accordance with California State Rule of Court 989.3, Requests for Accommodations by Persons With Disabilities. Auxiliary aids and services may include qualified sign or oral interpreters, assistive listening devices or systems, real time transcription, written materials, note pads and other effective methods of making aurally delivered materials available to hard of hearing individuals.
3. The Court will provide an opportunity for hard of hearing individuals to request the auxiliary aid or service of their choice, and will give primary consideration to the choice expressed. "Primary consideration" means that the Court will honor the choice, unless it can be shown that another equally effective means of communication is available, or that the use of the means chosen would result in a fundamental alteration in the nature of the program, service or activity, or in an undue financial or administrative burden.
4. The Santa Clara County Court system consists of 54 courtrooms, located in six buildings throughout the county. The Court will provide appropriate assistive listening technology for any courtroom in the system to meet the needs of hard of hearing persons for effective communication.
5. The Court will develop a written policy for provision of auxiliary aids or services when necessary to ensure

effective communication in the Court system's programs, services and activities. The policy and its implementing procedures will include the following:

A-2

A) the name, office address and telephone number of the individual(s) responsible for providing appropriate auxiliary aids and services;

B) procedures delineating how one requests an aid or service, including:

- * the name, office address and telephone number of the individual(s) directly responsible for responding to the request;

- * where one calls or writes to make a request;

- * the date by which the requester will be informed of the outcome of his or her request;

C) specific procedures regarding maintenance of auxiliary aids and services, including assistive listening systems. These procedures must detail when, where and how the equipment will be maintained in good operating order and who is responsible for such maintenance.

In each Court Clerk's office, the Court will post a notice in a conspicuous location advising individuals with disabilities of the procedures to make a request for an auxiliary aid or service.

6. The Court will ensure that availability of auxiliary aids and services will be well posted in all Superior Court buildings. Appropriate written notices, signage, and other communications with the public will include information regarding the policy for providing special accommodations. Written notices will identify responsible staff and explain how to acquire services.

7. The Court will distribute the policy and procedures outlined in paragraph 5 to all judges and staff. Within 90 days of the effective date of this Agreement, the Court will provide training to appropriate staff concerning implementation of these policies and procedures for ensuring effective communication with hard of hearing individuals. The training will emphasize the differences in the communication needs of hard of hearing individuals as compared with deaf persons, and the different methods of communicating with hard of hearing persons via telephone and in the courtroom. The training will also cover operation, use and maintenance of auxiliary aids and services, including a plan of scheduled maintenance.

8. The Court will monitor the implementation of the policy and procedures outlined in paragraph 5 for two years. The Court will continue to compile statistics on all required information and report monthly to the Judicial Council. The Court will update its assistive listening technology and/or obtain additional equipment when deemed appropriate by the Court, and consistent with the ADA, to meet the needs of individuals with hearing disabilities.

9. Within 60 days of the effective date of this Agreement, the Court will submit a report to the Department of Justice describing the actions taken to implement the provisions of this Agreement.

10. The Department of Justice may review compliance with this Agreement at any time. If it believes that this Agreement or any requirement thereof has been violated, the Department of Justice may institute civil action seeking specific performance of the provisions of this Agreement in an appropriate United States District Court.

11. The effective date of this Agreement is the date of the last signature below.

12. This Agreement constitutes the entire agreement between the parties on the matters addressed herein. No other statement, promise or agreement, either written or oral, made by either party or agents of either party, that is not contained in the written Agreement, will be enforceable.

For the United States of America:

A -3

Deval L. Patrick

By:

Joan Magagna, Deputy Chief
Sheila Foran, Attorney
Thomas Esbrook, Equal Opportunity Specialist
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738
(202) 307-0663

Dated:

For the Santa Clara County Superior Court:

Judge Biafore
Presiding Judge
Santa Clara County Superior Court

Stephen V. Love
Court Executive Officer

Melanie C. Conroy
Facilities Manager

John Longabaugh
Equal Opportunity Division

Dated:

[Cases & Matters by ADA Title Coverage](#) | [Legal Documents by Type & Date](#) | [archive.ADA.gov Home Page](#)

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

BEFORE THE HONORABLE DREW C. TAKAICHI, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

VS.

HOWARD RALPH HERSHIPS,

DEFENDANT.

Case No.: BB517233

TRANSCRIPT OF PROCEEDINGS

JANUARY 17, 2020

Volume 3, Pages 601-607

(START BB517233 People vs. Herships 1-17-20 D42.mp3)

MALE VOICE 1: -calendar, (unintelligible), the matter of Mr. Herships.

JUDGE DREW TAKAICHI: Just one moment.

MALE VOICE 1: (unintelligible) 9:15 or nine o'clock?

THE CLERK: 9:15.

MALE VOICE 1: Okay, (unintelligible)?

JUDGE TAKAICHI: Yes. And the Defendant is present, in custody, being assisted by the amplification audio system of the court.

MALE VOICE 1: Hi, I'm (unintelligible) on behalf of the person who is presently in custody. Your Honor, this was not a previously Public Defender matter, but the Public Defender is happy to receive or - or be appointed to represent Mr. Herships since he is in custody and is not presently (unintelligible).

This matter is quite old. Probation would have terminated years ago, but it has been sitting in revoked status. Mr. Herships indicates to me he (unintelligible) (crosstalk)

MS. STORTON: [Interposing] Your Honor, I'm sorry, I couldn't hear counsel, Your Honor.

MALE VOICE 1: Sure. He was being transported from Plasser [phonetic] County on January 2nd, so he has been sitting in custody on this 2005 case, I believe originally, for a number of days. He is not in a

position to pay the restitution today. He continues to receive disability benefits. I believe that the People's request is that he be sentenced to a year in custody.

Our request is that Mr. Herships be released as he has been in custody, as he represents, since the 2nd of this month.

JUDGE TAKAICHI: Ms. Storton?

MS. STORTON: So, the Defendant owes \$5,615.13 to Victim's [unintelligible]. He has never made a payment. Throughout the probationary pre - before he disappeared, Your Honor, for over eight years, he falsely claimed, on numerous occasions that payments had been stayed pending appeal. That was never proven. He played games for years on this case until being convicted, and then played games even after being convicted. He was at large for eight and a half years.

Even while he was at large, he had the ability - this man has the ability to work, Your Honor, and do something productive, but chooses not to. While he was at large, he filed a document in 2018 complaining about a couple of our judges in this county, which was sort of consistent with his behavior throughout the pendency of this case.

We know that he committed, in July of 2019, out of county, a vehicular violation of 23123.5, driving while using a cellphone. So, he is paying money for a cellphone. He is filing documents. He is on the lam.

But he is not paying restitution. So, we are asking the Court, either sentence him to the maximum term of one year in county jail, or if the Defendant wants to start getting serious about paying restitution, the Court should impose a new three year grant requiring him to make payments and keep him on a monthly court review schedule. That is the only thing that might - might bring forth some money. But to date, he has done nothing on this case.

JUDGE TAKAICHI: And counsel?

MALE VOICE 1: Your Honor, it is the Defense's position that Mr. Herships' conduct in alleging that certain judges are biased against him, and claiming that [unintelligible] pending appeal has a lot more to do with a like a 1368 type status rather than any malice by Mr. Herships. He continues to have sort of beliefs that I don't necessarily argue the reality with respect to some federal lawsuits that he has pending against both his victim and various government agencies.

Based on my brief discussion with him here, and [unintelligible] he receives disability benefits, I don't think he is in a position to pay. I don't think he has been fleeing the jurisdiction. I think, quite frankly, he just had no idea that this matter was pending, and he is sort of moved to a different county and living [unintelligible].

JUDGE TAKAICHI: So, let me ask, do we need to

formally set a hearing for a BOP and or sentencing? So, I can hear all the circumstances? It doesn't sound like there is going to be agreement plan proposed. So,-

MS. STORTON: [Interposing] Well, is the - is the Defendant going to tell the Court that he is now going to be in agreement to follow the Court's orders, which are to pay restitution?

JUDGE TAKAICHI: Well, I'm hearing that, that doesn't sound like it is going to be the case, because the - the inference from the offer of proof is he is claiming he may not have ability to pay.

MS. STORTON: Well, if he is rejecting probation, and probation conditions, Your Honor, the Court should simply sentence him. Which the Court has the right to do, whether he is in violation or not.

JUDGE TAKAICHI: That is true. So, why don't we go ahead then with sentencing on this matter. Anything further to add to your offer of proof, regarding the Court's consideration for sentencing?

MS. STORTON: No, Your Honor, I will submit the matter.

JUDGE TAKAICHI: Anything further, counsel, on the issue of sentencing?

MALE VOICE 1: No, Your Honor, submitted.

JUDGE TAKAICHI: All right. So, probation, by its terms - well, first of all, was in revoke status. It has since expired. So, probation is terminated. Based on

the circumstances presented, to the Court, relatively larger sum of restitution owed, has nothing paid since 2005 on restitution.

I am hearing that the Defendant was receiving disability benefits. He had some limited ability to make payments on restitution, but chose not to. I did not hear any information that would contradict the People's argument that the Defendant was at large for eight and a half years. I didn't hear anything that would controvert that he also incurred another violation of the law.

Under these circumstances, the Court will impose a six month county jail sentence. Probation is, of course, terminated. Defendant will get his credits for his recent in custody status. I think I heard January 2nd-

MS. STORTON: [Interposing] 16 plus 16, for 32, Your Honor.

JUDGE TAKAICHI: I will credit, for time served, 16 plus 16. And that will conclude the matter.

[END BB517233 People vs. Herships 1-17-20 D42.mp3]

People v. Howard Ralph Hershops

Case# B8517233

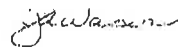
Hearing Date: January 17, 2020

C E R T I F I C A T E

I, Joyce A. Waser, a transcriber for Ubiquis do hereby certify: That said proceeding were listened to and transcribed by me and were prepared using standard electronic transcription equipment under my direction and supervision; and I hereby certify that the foregoing transcript of the proceedings is a full, true, and accurate transcript to the best of my ability.

I further certify that I am neither counsel for nor related to any party to said action, not in any way interested in the outcomes thereof.

In witness whereof, I have hereunto subscribed my name this 23rd day of June 2020.



Signature of Transcriber

JAN 29 2020

A-11

THE COURT OF APPEAL
STATE OF CALIFORNIA
SIXTH APPELLANT DISTRICT

HOWARD HERSHENS

PETITIONER,

VS

SUPERIOR COURT OF
CALIFORNIA, COUNTY OF
SANTA CLARA, JUDGE
DREW TAKACHIA,
SANTA CLARA SHERIFF'S
DEPT.

REAL PARTY IN INTEREST
PEOPLE OF CALIFORNIA,

SC# BB519233

PETITION FOR

WRIT OF HABEAS

IMMEDIATE
RELEASE AS
FAILURE TO
MAKE RESTITUTION
IS NOT A CRIME
WHEN A DEFENDANT
HAS NO ABILITY
TO DO SO.

PETITIONER HAS BEEN SENTENCE TO
COUNTY JAIL FOR SIX MONTHS WITHOUT
THE RESPOND COURT NEVER MAKING
A DETERMINATION THAT PETITIONER
HAD AN ABILITY TO PAY THE \$7,560.00
FROM THE ONLY SOURCE OF PETITIONERS
INCOME OF A DISABILITY OF \$920.00.
PER MONTH. RESPONDENT'S COURT
JUDGMENT IN THIS CASE CREATES
A DEFORS. PRISON FOR ANYBODY
THAT CANNOT PAY RESTITUTION.

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BRANDEN V. GEORGIA

PASSIM

461 US 660

THE COURT OF APPEAL

STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

SET NO. BB 519233

HOWARD MERSHES,

PETITIONER,

SUPERIOR COURT OF

CALIFORNIA, COUNTY OF

SANTA CLARA, JUDGE

DREW TANABUCHI, AND

SANTA CLARA COUNTY

SHERIFF SMITH,

RESPONDENTS,

PEOPLE OF CALIFORNIA

REAL PARTY IN INTEREST

PETITION FOR

WRIT OF HABEAS

PURSUAULT TO CCP

SECTION 1385

AND 1386, THEREUPON

ACTION AS PETITIONER

AS PETITIONER'S

SENTENCE VIOLATES

CLEARLY ESTABLISHED

LAW.

BY VERIFIED PETITION STATES AS
FOLLOWS:

JURISDICTION

1) THIS COURT HAS JURISDICTION ON PURSUANT
TO CCP SECTIONS 1385 + 1386, OF RESPONDENTS,
WHICH ARE IN EXCESS OF
THE JURISDICTION OF CLEARLY ESTABLISHED
LAW.

6) PETITIONER ATTEMPTED TO
CONVAY TO THE PUBLIC DEFENDER
OF THE CONFLICT OF INTEREST
BUT COULD NOT HAVE UNDERSTANDING
DUE TO THE LACK OF ADA
HEARING DEVICES PROVIDED BY
RESPONDENT SUPERIOR COURT

7) RESPONDENT AT 11/17/20 COURT
HEARING SEVERELY PETITIONER TO
SIX MONTHS IN COUNTY JAIL FOR
FAILURE TO MAKE RESITUTION
WITHOUT EVER MAKING A
DETERMINATION OF PETITIONER'S
ABILITY TO MAKE PAYMENT KIRSH
OF \$7,560.00 OUT OF PETITIONER'S
VA MONTHLY DISABILITY PAYS OF
\$920.00 MONTHLY.

8) PETITIONER, WAS NOT PERMITTED
TO PRESENT ANY EVIDENCE
BECAUSE RESPONDENT COURT
IS NOT ADA COMPLAINT.

9) PETITIONER REQUESTED THE PUBLIC DEFENDER TO FILE A NOTICE OF APPEAL, AND THE PUBLIC DEFENDER AT ALL TIMES HAS REFUSED AND CONTINUE TO RESPOND TO RESPOND TO PETITIONER'S MANY MESSAGES.

10) RESPONDENT SUPERIOR COURT MUST MAKE A DETERMINATION THAT PETITIONER HAD AN ABILITY TO PAY THE \$5,760.00 RESTITUTION FROM PUBLIC BENEFITS OF \$920.00 MONTHLY, WHICH RESPONDENT NEVER DID.

11) PETITIONER'S FEDERAL BENEFITS ARE PREEMPTED BY FEDERAL LAW SECTION 407a OF 42 USC FROM ANY LEVY.

12) RESPONDENT SUPERIOR COURT WAS PROHIBITED BY OPERATION OF LAW OF IMPOSING A JAIL SENTENCE FOR FAILURE TO MAKE RESTITUTION.

13) RESPONDENT SUPERIOR COURT WAS IN COMPLETE EXCESS OF ITS JURISDICTION AS IT VIOLATED THE DECISION IN BRANDEN V. GEORGIA 461 U.S. 660 (1983).

14) RESPONDENTS' FAILURE TO PROVIDE ADA COMPLAINT LISTENING DEVICES FOR HAND OF HEARING FURTHER COMPLICATED THE PROCESS.

15) PETITIONER, HAS A BENEFICIAL RIGHT TO A HEARING ON THE ABILITY TO PAY RESTITUTES, WHICH RESPONDENTS AT ALL TIMES, WHICH RESPONDENTS REFUSED TO HOLD.

16) PETITIONER HAS NO ADEQUATE REMEDY IN THIS CASE AS THE PUBLIC DEFENDER REFUSES TO APPEAL THE SENTENCE IMPOSED AND DOES SO TO CONVEY THE PUBLIC DEFENDERS' CANCELLATION OF ARREST.

17) PETITIONER HAS NO REMEDY
OTHER THAN THIS WRIT OF HABEAS
TO CORRECT THE BLIND DESPOTISM
OF RESPONDENT SUPERIOR COURT
JUDGE SENTENCE TO COUNTY JAIL
FOR FAILURE TO MAKE RESTITUTION
WHEN PETITIONER NEVER HAD ANY
ABILITY TO DO SO.

18) RESPONDENT SHERIFF'S DEPT
REFUSAL TO PROVIDE ACCESS
TO COURT TO FILE THIS WRIT
OF HABEAS ACCORDING TO
THE RULES OF COURT.

19) PETITIONER IS BEING PRESUMED
BY RESPONDENT'S ILLEGAL ACTS OF
RECEIVING A COUNTY JAIL
SENTENCE WHEN NONE COULD
BE LAPPED AS A MATTER OF
LAW, BRANDEN V GEORGIA, 441
US 660, (1982).

20) PETITIONER, UNDER THE CURRENT VIOLATIONS BY RESPONDENTS, HAS NO ACCESS TO COURT, AS RESPONDENT SHERIFF'S DEPT. DEPRIVES PETITIONER ACCESS TO COURT TO LITIGATE THREE ISSUES,

21) RESPONDENT SUPERIOR COURT ALSO REFUSES TO PROVIDE AN ABILITY TO PAY RESTITUTION BEFORE IMPOSING A JAIL TERM.

22) PETITIONER HAS NO ABILITY TO FILE A NOTICE OF APPEAL AND DESIGNATION OF RECORD ON APPEAL AS THE PUBLIC DEFENDER REFUSES TO DO SO.

23) SANTA CLARA PUBLIC DEFENDER HAD A LEGAL DUTY TO FILE A NOTICE OF APPEAL AS REQUESTED BY PETITIONER BUT HAS REFUSED TO DO SO.

WHEREFORE, PETITIONER PRAYS FOR
THE FOLLOWING ORDER,

(1) FOR AN ORDER GRANTING PETITIONER'S
IMMEDIATE RELEASE PENDING
THE ISSUE OF THIS WRIT.

(2) THIS FAILURE OF THE RESPONDANT
SUPERIOR COURT TO MAKE A FINDING
THAT PETITIONER HAD THE ABILITY
TO PAY RESIDITION PRECLUDED ANY
JAIL TIME, BRANDEN V. GEORGIA
461 US 660 (1983).

(3) FOR RESPONDANT SHERIFF'S DEPT
TO PROVIDE ACCESS TO LEGAL
ACCESS I.E. LAW LIBRARY, AND SUPPLIES
TO CONTEST ILLEGAL SENTENCE.

(4) FOR SUCH OTHER RELIEF THAT
THIS COURT DEEMS JUST.

DATED 1/24/20

HOWARD HERSHIS DVA
719

Howard Hersh

701 S. ABEL ST
MILPITAS, CA 95035

VERIFICATION

I DECLARE AS FOLLOWS;
I HAVE READ THE ABOVE WRIT OF
MANDATE, AND KNOW THE CONTENTS BASED
UPON PERSONAL KNOWLEDGE, AND THEY
ARE TRUE AND CORRECT.

I DECLARE UNDER PENALTY OF PERJURY
UNDER THE LAWS OF THE STATE OF
CALIFORNIA THAT THE FOLLOW IS TRUE
AND CORRECT,

ON 1/24/20
AT SAN JOSE, CA

Howard Hoelke

OFFICE OF THE CLERK
CALIFORNIA COURT OF APPEAL
SIXTH APPELLATE DISTRICT
333 West Santa Clara Street, Suite 1060
San Jose, CA 95113
www.courts.ca.gov
Phone: (408) 277-1004
February 7, 2020

****If you have been served electronically, this will be your only notice.
You will not receive a paper notice in the mail.****

Howard Herships
CDC #: DVW719
70: S. Abel St.
Milpitas, CA 95035

Office of the Attorney General
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102
SFAGDocketing@doj.ca.gov

Re H047816 Herships v. Superior Court
Santa Clara County Super. Ct. No. BB519233

Gentlepersons:

The court requests that real party in interest serve and file on or before February 21, 2020, points and authorities in preliminary opposition to the petition.

Petitioner may serve and file a reply within 15 days after the preliminary opposition is filed in this court.

Very truly yours,

Baltazar Vazquez
Assistant CEO

cc. Santa Clara County Superior Court
Santa Clara County District Attorney
Santa Clara County Public Defender

Appellate Courts Case Information

A-23

6th Appellate District

Change court ▼

Parties and Attorneys

Herships v. Superior Court
Case Number H047816

Party

Howard Herships : Petitioner
701 S. Abel St.
Milpitas, CA 95035

The Superior Court of Santa Clara County : Respondent

The People : Real Party in Interest

Attorney**Pro Per**

Office of the Attorney General
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102

Office of the District Attorney
70 West Hedding Street, West Wing
San Jose, CA 95110

Kyle J. Neddenriep
Santa Clara County Public Defender
120 W Mission St
San Jose, CA 95110

Kaci Rebecca Lopez
Office of District Attorney
70 West Hedding Street, West Wing
San Jose, CA 95110

[Click here](#) to request automatic e-mail notifications about this case.



Howard Hershships <hhershships@gmail.com>

hERSHIPS VS sUPERIOR cOURT CASE nO. h047816

3 messages

Howard Hershships <hhershships@gmail.com>

Tue, Jul 14, 2020 at 2:40 PM

To: klopez@dao.sccgov.org

Ms Lopez,

I am requesting copies of your request for extension of time dated 2/19.20, 3/23/20 and your opposition submitted 4.21.2020 all done with proof of service on myself.

I am requesting said documents because I never received anything from the Court of Appeal Sixth Appellate District nor from your office.

I am in the process of filing a Civil Rights complaint against the various state entities under the ADA Act and will be including a civil rights complaint showing the violations of denial of the delivery of legal mail while in custody

Your prompt response will alleviate me filing for a federal subpoena duces tecum in the smatter.

—
Howard Hershships

.opez, Kaci <klopez@dao.sccgov.org>

Wed, Jul 15, 2020 at 10:28 AM

To: Howard Hershships <hhershships@gmail.com>

Cc: "Neddenriep, Kyle" <kyle.neddenriep@pdo.sccgov.org>, "saffordlegal@gmail.com" <saffordlegal@gmail.com>

Mr. Hershships —

Attached are the documents you requested.

Kaci Lopez

Kaci R. Lopez

Supervising Deputy District Attorney

Santa Clara County D.A.'s Office

Law & Motion Unit

70 West Hedding Street, West Wing

San Jose, CA 95110

T: (408) 792-2805; F: (408) 279-3547

[Quoted text hidden]

3 attachments

 **EOT to 4-21-2020.pdf**
448K

 **Herships Preliminary Opposition.pdf**
1274K

 **EOT.Herships.pdf**
122K

Howard Herships <hherships@gmail.com>

Wed, Jul 15, 2020 at 11:29 AM

To: "Lopez, Kaci" <klopez@dao.sccgov.org>

I have now received the response that you have filed.

However, there where no proof of service on myself which has denied me access to court in violation of my federally protected rights.

Moreover, because both the Sheriff's Dept and the Superior Court violated 28 CFR section 35.160 when they refused to provide my federally issued hearing aids for the ability to communicate with both the Court and legal counsel.

The trial court denied me assisted listening devices which were also addressed in my writ.

The interesting facts here are that the Superior court entered into a settlement with the United States Department of Justice Civil Rights Division ADA Enforcement team and there is right now a pending action against the Superior Court Santa Clara County, which the Justice Department has agreed to join my action as I will be filing next week.

Additionally, Santa Clara County entered into a consent Decree in Chavez vs Santa Clara County which also prevents the Sheriff's Dept. from denying hearing Impaired inmates there hearing Aids.

It is full intentions to also sue under Title 42 USC section 1983 as it is the custom and policy of the Sheriff's Dept. to obstruct inmates' access to court and they do so on a routine basis.

It is axiomatic "{A}ny deliberate impediment to access [to the courts], even a delay of access, may constitute a constitutional deprivation"). In the present case, plaintiff's claim that a right of access to the courts has been impeded requires him to allege intentional conduct interfering with his legal mail, and does not require an additional showing of malicious motive".

[Quoted text hidden]

Howard Herships

COURT OF APPEAL SIXTH APPELLATE DISTRICT, DIVISION

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 173,659 NAME: Kaci R. Lopez FIRM NAME: Santa Clara County Office of the District Attorney STREET ADDRESS: 70 West Medding Street, West wing CITY: San Jose STATE: CA ZIP CODE: 95110 TELEPHONE NO.: (408) 792-2805 FAX NO.: E-MAIL ADDRESS: klopez@dao.sccgov.org ATTORNEY FOR (name): The People	COURT OF APPEAL CASE NUMBER: H047816 SUPERIOR COURT CASE NUMBER: BB517233
APPELLANT: HOWARD HERSHIPS RESPONDENT: THE PEOPLE OF THE STATE OF CALIFORNIA	
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CRIMINAL CASE)	

1. I (name): Kaci R. Lopez request that the time to file (check one)
- ☐ appellant's opening brief (AOB)
☒ respondent's brief (RB)
☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
☐ combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
☐ appellant's reply brief (ARB)
- now due on (date): 3/20/2020 be extended to (date): 4/21/2020
2. I ☐ have ☐ have not received a rule 8.360(c)(5) notice.
3. I have received
☐ no previous extensions to file this brief.
☒ the following previous extensions:
(number of extensions): 1 extensions from the court totaling (total number of days): 28 days
Did the court mark any previous extension "no further?" ☐ Yes ☒ No
4. The last brief filed by any party was: ☒ AOB ☐ RB ☐ RB and AOB ☐ ARB and RB
filed on (date): January 29, 2020
5. The record in this case is:
- | | Volumes (#) | Pages (#) | Date filed |
|------------------------|-------------|-----------|------------|
| Clerk's Transcript: | | | TBD |
| Reporter's Transcript: | | | TBD |
| Augmentation/Other: | | | |
6. Defendant was convicted of (specify):
A misdemeanor count of violating Penal Code section 594(a)/(b)(1) on December 17, 2008.
7. The conviction is based on a (check one):
☒ jury verdict
☐ plea of guilty or no contest

APPELLANT: HOWARD HERSHIPS
RESPONDENT: THE PEOPLE OF THE STATE OF CALIFORNIA

COURT OF APPEAL CASE NUMBER:
H047816

8. The court imposed the following punishment:
One year county jail (335 days suspended), 3 years formal probation, fines, fees and restitution to the victim

9. The defendant ☐ is ☒ is not on bail pending appeal.

10. The reasons that I need an extension to file this brief are stated

☒ below.

☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see rule 8.63 for factors used in determining whether to grant extensions):

The People are still awaiting the electronic recording/transcript of the proceedings that are the subject of this writ, held in Santa Clara County Superior Court on 1/17/2020. As previously noted, the People submitted a request for the record on 2/13/2020 and received an automatic response from the court that I would be "contacted within two weeks about the cost and how long it will take to complete the transcript." To date, I have not received any response from the court. I attempted to follow up with the court on 3/20/2020 via email indicating that the record was needed for the preparation of a response to an appellate court order and, as of today, I have not received a response. I did not previously submit this request because I saw the order on this Court's website extending time by 30 days for any deadlines that occurred between 3/18 and 4/17/2020. I was advised by the Clerk of this Court this afternoon that a request for extension of time would need to be submitted. The People submit that the record of the underlying proceedings is necessary for a proper evaluation of and response to Mr. Hershyps' claims and, therefore, request an additional extension of time to April 21, 2020 for the Superior Court to provide the People with the record of the underlying proceedings.

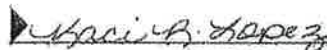
11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: 3/23/2020

Kaci R. Lopez

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☒ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS:

☒ Granted to (date): 04/21/2020
☐ Denied

Date: 03/25/2020



ACTING (SIGNATURE OF PRESIDING JUSTICE)

APPELLANT: HOWARD HERSHIPS
RESPONDENT THE PEOPLE OF THE STATE OF CALIFORNIA

COURT OF APPEAL CASE NUMBER:
H047816

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☒ below.

☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see rule 8.63 for factors used in determining whether to grant extensions):

The People need additional time to obtain the transcript/recording of the most recent proceeding held in the Santa Clara County Superior Court on January 17, 2020. The People submitted a request for the record on 2/13/20 and received an automatic reply that we would be contacted "within two weeks about the cost and how long it will take to complete the transcript." We requested that the record be "rushed," but we have not yet been contacted by the court. Since the record is necessary to evaluate Mr. Hershyps claims, the People are requesting an additional 60 days - to April 21, 2020 - to receive and review the record and submit a preliminary opposition to this Court.

11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: 2/19/2020

Kaci R. Lopez

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☒ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS:

☐ Granted to (date): _____
☐ Denied

Date: _____

(SIGNATURE OF PRESIDING JUSTICE)

Court of Appeal, Sixth Appellate District
 Baltazar Vazquez, Assistant Clerk/Executive Officer
 Electronically RECEIVED on 3/23/2020 on 4:13:30 PM

IN THE COURT OF

COURT OF APPEAL SIXTH APPELLATE DISTRICT, DIVISION

Court of Appeal, Sixth Appellate District
 Baltazar Vazquez, Assistant Clerk/Executive Officer
 Electronically FILED on 3/23/2020 by J. Segura, Deputy Clerk
 COURT OF APPEAL CASE NUMBER:
 H047816

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 173,659
 NAME: Kaci R. Lopez
 FIRM NAME: Santa Clara County Office of the District Attorney
 STREET ADDRESS: 70 West Hedding Street, West wing
 CITY: San Jose STATE: CA ZIP CODE: 95110
 TELEPHONE NO.: (408) 792-2805 FAX NO.:
 E-MAIL ADDRESS: klopez@dao.sccgov.org
 ATTORNEY FOR (name): The People

SUPERIOR COURT CASE NUMBER:
 BB517233

APPELLANT: HOWARD HERSHIPS

RESPONDENT: THE PEOPLE OF THE STATE OF CALIFORNIA

APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF
 (CRIMINAL CASE)

1. I (name): Kaci R. Lopez

request that the time to file (check one)

- ☐ appellant's opening brief (AOB)
☒ respondent's brief (RB)
☐ combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
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now due on (date): 3/20/2020

be extended to (date): 4/21/2020

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5. The record in this case is:

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Clerk's Transcript:			TBD
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6. Defendant was convicted of (specify):

A misdemeanor count of violating Penal Code section 594(a)/(b)(1) on December 17, 2008.

7. The conviction is based on a (check one):

- ☒ jury verdict
☐ plea of guilty or no contest

APPELLANT: HOWARD HERSHIPS
RESPONDENT THE PEOPLE OF THE STATE OF CALIFORNIA

COURT OF APPEAL CASE NUMBER:
H047816

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☐ on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

(Please specify; see rule 8.63 for factors used in determining whether to grant extensions):

The People are still awaiting the electronic recording/transcript of the proceedings that are the subject of this writ, held in Santa Clara County Superior Court on 1/17/2020. As previously noted, the People submitted a request for the record on 2/13/2020 and received an automatic response from the court that I would be "contacted within two weeks about the cost and how long it will take to complete the transcript." To date, I have not received any response from the court. I attempted to follow up with the court on 3/20/2020 via email indicating that the record was needed for the preparation of a response to an appellate court order and, as of today, I have not received a response. I did not previously submit this request because I saw the order on this Court's website extending time by 30 days for any deadlines that occurred between 3/18 and 4/17/2020. I was advised by the Clerk of this Court this afternoon that a request for extension of time would need to be submitted. The People submit that the record of the underlying proceedings is necessary for a proper evaluation of and response to Mr. Hershyps' claims and, therefore, request an additional extension of time to April 21, 2020 for the Superior Court to provide the People with the record of the underlying proceedings.

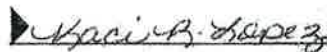
11. A proof of service of this application on all those entitled to receive a copy of the brief under rule 8.360(d)(1), (2), and (3) is attached (see rule 8.360(d)). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: 3/23/2020

Kaci R. Lopez

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is ☒ below ☐ on a separate document

ORDER

EXTENSION OF TIME IS:



Granted

to (date):

04/21/2020



Denied

Date:

03/25/2020



ACTING

(SIGNATURE OF PRESIDING JUSTICE)

County of Santa Clara

Office of the District Attorney

70 West Hedding Street, West Wing, 5th Floor

San Jose, California 95110

Public: (408) 299-7400

Telephone: (408) 792-2805

E-Mail: klopez@dao.sccgov.org

Jeffrey F. Rosen
District Attorney

April 21, 2020

Baltazar Vazquez
Assistant CEO
Court of Appeal of the State of California
Sixth Appellate District
333 W. Santa Clara Street, Suite 1060
San Jose, CA 95113

RE: *Herships v. Superior Court*
Sixth Appellate District, Case No. H047816
Santa Clara County Superior Court, Case No. BB517233

Dear Mr. Vazquez:

This letter serves as the response of the Real Party in Interest to the court's request for opposition to the above-entitled petition for writ of mandate. Petitioner contends that the trial court improperly imposed a six-month county jail sentence without conducting a hearing to determine Petitioner's ability to pay outstanding restitution; that the trial court lacked hearing devices and was, therefore, not compliant with the Americans with Disabilities Act (ADA) at the time of the proceedings on January 17; and that the Public Defender "refused" to file a Notice of Appeal, allegedly to conceal their conflict of interest in this matter. The petition has been rendered moot by Petitioner's release from custody as a result of the County's COVID-19 response. It is also wholly without merit.

A. The Petition Must Be Denied as Moot

In his petition, Petitioner seeks his "immediate release" from custody. On March 26, 2020, in response to the County of Santa Clara's "shelter in place" orders that went into effect on Tuesday, March 17, 2020, at 12:01 a.m. and the recommendation of the Adult Custody Health Medical Director to reduce the county jail population by twenty per cent, the superior court issued an order for the remaining custodial sentences to be stayed for several inmates that the parties deemed appropriate for release. The petitioner was among the inmates who were the subject of this order. (**Attachment A**, without court

order exhibit listing all affected inmates.) Pursuant to this order, Petitioner was released from custody.

B. The Petition Lacks Merit

Additionally, to the extent that Petitioner asserts that the Public Defender “refused” to file a Notice of Appeal on Petitioner’s behalf, Petitioner’s claim is simply untrue. On February 14, 2020, Deputy Public Defender Kyle Neddenriep, who also assisted Petitioner at the hearing on January 17, 2020, filed a Notice of Appeal on Petitioner’s behalf. (**Attachment B**.) That appeal is currently pending before the appellate division of the Santa Clara County Superior Court under docket number 2020-AP-002650.

Finally, Petitioner’s claim regarding the trial court’s failure to comply with the ADA “due to the lack of ADA hearing devices” is without merit. In the electronic recording of the proceedings held on January 17, 2020, at the beginning of the hearing, the court specifically noted on the record that Petitioner was “being assisted by the amplification audio system of the court.” (**Attachment C**; *see* Order for the Preparation of the Record on Appeal.)¹ At no time during the hearing, which lasted for approximately ten minutes, did Petitioner assert any difficulty communicating with his attorney or the court.

Petitioner’s release from custody renders this petition moot. The petition also fails on the merits. Therefore, the petition for writ of mandate should be summarily denied.

Sincerely,

/s/ Kaci R. Lopez

Kaci R. Lopez
Supervising Deputy District Attorney
State Bar No. 173659

For JEFFREY F. ROSEN
District Attorney, Santa Clara County

¹ Real Party in Interest received the Electronic Recording (ER) of the January 17, 2020 proceedings on April 20, 2020. The citation to that electronic record for the trial court’s statement is ER 1/17/20: 13-21. Currently, the electronic record is the only record of those proceedings available, but it is believed that a written transcript of those proceedings will be prepared in conjunction with Petitioner’s misdemeanor appeal. If requested by this Court, the electronic recording will be made available to this Court upon request.

FILED
FEB 24 2020

Clerk of the Court
Superior Court of Santa Clara County
BY J. [Signature] DEPUTY
P. Abogado

OWARD HERSHIPS (OVW 179)

7015 ABEL ST

MILPITAS, CA 95035

FEB. 10, 2020

EXECUTIVE OFFICE OF THE COURT

SANTA CLARA COUNTY SUPERIOR COURT

191 N. FIRST ST.

SAN JOSE, CA 95113

RE: TO INITIATE NEGOTIATIONS WITH PUBLIC ENTITY TO
SECURE COMPLIANCE BY VOLUNTARY MEANS, 28CFR 35.173c

DEARSIRS,

THIS LETTER IS TO PUT YOUR ADA COORDINATOR THAT THIS
COURT PROCEEDINGS IN DEPT. 42, IN CASE BB 517233,
DISCRIMINATED AGAINST A DEFENDANT IN A CRIMINAL HEARING
IN VIOLATION OF ADA.

DEFENDANT HERSHIPS, HAS AND USES HEARING AIDS TO
COMMUNICATE WITH. DEFENDANT HERSHIPS EMPLOYED THE
DIVERSITY OFFICE OF HIS EMPLOYER. HOWEVER THERE
NO ASSISTIVE DEVICES, OR SOUND AMPLIFICATION DEVICES
TO LESSEN AND COMMUNICATE WITH LEGAL COUNSEL.

THE COURT HEARING OF 1/17/20, PROCEEDED WITHOUT ANY OPPORTUNITY FOR DEFENDANT HERSHIPS TO DISCUSS ANY ISSUES IN THIS CASE, DUE TO THE FAILURE OF PROVIDING REASONABLE ACCOMMODATIONS UNDER ADA.

THE COURT JUDGE DREW C. TAKACHIE, FAILED TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS BY SHOWING THAT: (1) THE JUDGE KNEW OF DEFENDANT'S DISABILITY; (2) THE DEFENDANT REQUESTED ACCOMMODATION AND ASSISTANCE OF DISABILITY AND THE JUDGE REFUSED; (3) THE JUDGE ACTED WITH A DELIBERATE INDIFFERENCE IN VIOLATION OF DEFENDANT'S 6TH AND 14TH AMENDMENTS RIGHT TO LEGAL COUNSEL IN CRIMINAL CASES.

THE JUDGE PROCEEDED TO SENTENCE DEFENDANT TO 6 MONTHS IN COUNTY JAIL FOR FAILURE TO MAKE RESTITUTION, WHEN CLEARLY ESTABLISHED U.S. SUPREME COURT LAW PROHIBITS SAID ACTS UNTIL THERE IS A HEARING ON THE ABILITY TO PAY HEARREN, BEARDEN & GORRGA, 461 US 660 (1993).

EVEN MORE BEYOND THE PAIN, IS THAT DEFENDANT'S WAS NO LONGER ON POSTRELEASE SUPERVISION, THE JUDGMENT OF RELEGATION EXCEEDED AS IT WAS OVER THE PAIN, PENAL CODE 1214.

THESE ACTS OF JUDGE ALL DONE TO DENY DEFENDANT ANY
AND ALL ABILITY TO HAVE ANY MEANINGFUL ACCESS
TO LEGAL COUNSEL, BY ACCOMMODATING DUE TO THE
JUDGE'S LACK OF GOOD FAITH, AS THE ONLY LISTENING DEVICE
IS WHAT THE JUDGE IS SAYING, AND ACTUALLY BLOCKS ALL COMMUNICATION.
THIS INABILITY TO MEANINGFUL ACCESS TO LEGAL
COUNSEL UNDER ADA REQUIREMENTS, WAS A COGNIZABLE
INJURY, WHICH DENIED DEFENDANT HERSHIPS, HIS RIGHT
TO LEGAL REPRESENTATION, IN A CRIMINAL CASE.

VIOLATIONS OF ADA ACT OF 1990 SECTION 2,

① 42 USC SECT. 12101 ET SEQ. (THOMPSON V DRUGS 152 F.2d 94)

② ADA 1990 SECT. 502, 42 USC SECT. 12202.
PARKER V LUDLOW, 100 F. SUPP. 2d 661.

③ A DELIBERATE INDIFFERENCE BY DENYING ALL
ACCOMMODATIONS VIOLATION OF ADA 1990,
102 (b)(5)(A), 42 USC 12112 (b)(5)(A).

④ NOT EXCEEDING \$35,000.00 FOR 1/7/20
NOT EXCEEDING \$110,000 FOR 1/17/20
42 USC 12138

⑤ FILING A SUIT IN FEDERAL COURT
28 CFR 34.501, FOR RELIEF, WHAT IS SIGNIFICANT
IS F. SUPP. 3d 1062 (CD Cal 2007).

WHEN HERSHIPS NOTIFIED THE COURT THAT HE NEEDED ACCOMMODATIONS FOR AMPLIFICATION DEVICES FOR THE COURT HEARINGS OF 1/9/20 AND 1/17/20, HERSHIPS IS A QUALIFIED INDIVIDUAL WITH A DISABILITY AS HE IS A DEFENDANT IN A CRIMINAL CASE SEEKING A COURT HEARING ON THE ABILITY TO PAY RESTITUTION.

FAILING TO ACCOMMODATE THE COURT'S ACTS MEET THE FIRST TEST OF "DELIBERATE INDIFFERENCE"

THE SECOND TEST IS THE COURT DELIBERATELY SATISFY ITS DUTY TO ACT IN RESPONSE TO ACCOMMODATE HERSHIPS' REQUEST, DUVALL, 260 F3D AT 1139-40. IT WAS THE COURT'S DUTY TO UNDERTAKE A FACT-SPECIFIC INVESTIGATION TO HERSHIPS' DISABILITY. AT 1039.

THESE FAILURES OF THE SUPERIOR COURT, DENIED LEGAL REPRESENTATION IN CRIMINAL CASE AS HERSHIPS CANNOT BE SUBJECTED TO A FORFEITURE OF LIBERTY WITHOUT LEGAL REPRESENTATION WHEREAS HERE THAT IS WHAT THE COURT DID AND SENTENCED HERSHIPS TO 6 MONTHS COURT JAIL FOR FAILURE TO MAKE RESTITUTION, WHEN THE COURT MUST FIRST DETERMINE THAT HERSHIPS HAD THE ABILITY TO DO SO. BEADEN V GEORGIA 461 US 660 (1983).

IT IS AXIOMATIC THAT A CRIMINAL DEFENDANT
HAS RIGHT TO COMMUNICATE WITH APPOINTED
LEGAL COUNSEL. HERE LEGAL COUNSEL NEVER
COULD COMMUNICATE WITH HERSHAPS AS NO
AMPLIFICATION DEVICE WAS EVER PROVIDED.

THE COURT'S CONDUCT VIOLATES THE
14TH AMENDMENT, AS THIS CONDUCT
PREVENTED A LEGAL ARGUMENT THAT
HERSHAPS HAD NO ABILITY TO PAY
RESTITUTION AS HERSHAPS ONLY INCOME
VA DISABILITY BENEFITS, WHICH KIRSCH
ATTEMPTED TO ATTACH TWICE AND
WAS REJECTED.

HERSHAPS HAS A DISABILITY UNDER 42 USC
12131(2) HARD OF HEARING LIMITING IN A
MAJOR LIFE ACTIVITY ADA SECT 504, 42 USC
12102C(1)(2), AND IS PROTECTED BY THE
ADA, AND THAT THIS COURT REFUSED
ACCOMMODATIONS TO PREVENT ALL DONE
IN BAD FAITH EFFORT TO PREVENT
A HEARING ON ABILITY TO PAY HEARINGS
REQUIRED BY BEARDEN RULES.

THE SUPERIOR COURT KNEW THAT IF THERE
WAS A HEARING ON ABILITY TO PAY
HERSHAPS WOULD PREVAIL SO THE COURT
BLOCK THE HEARING, A 504 VIOLATION

THE COURT'S DELIBERATE INDIFFERENCE DOCUMENTS
THE COURT'S DISCRIMINATION GIVEN THE FUNDAMENTAL
RIGHT THAT WAS AT ISSUE I.E. THE RIGHT TO LEGAL
REPRESENTATION IN A CRIMINAL CASE.

HERE HERSHAPS NEVER WAS PERMITTED TO
COMMUNICATE WITH APPOINTED LEGAL COUNSEL
AS THE COURT NEVER PROVIDED ANY AMPLIFICATION
DEVICES, AND MADE NO ENQUIRY INTO HERSHAPS
REQUEST.

TITLE II, AS APPLIES TO THE CLASS OF CASES
IMPLICATING THE FUNDAMENTAL RIGHTS OF PERSONS
IN JUDICIAL PROCEEDINGS, CONSTITUTES A VALID EXERCISE OF
CONGRESS' SECTION 5 AUTHORITY TO ENFORCE
THE GUARANTEES OF THE 14TH AMENDMENT,
TENNESSEE V LANE 541 US AT 532-34.

HERE THE COURT SENTENCED HERSHAPS
TO 6 MONTH COUNTY JAIL WITH NO LEGAL
COUNSEL REPRESENTING THE DEFENDANT.
I AM REQUESTING A RESPONSE WITHIN
5 DAY, AND ENFORCEMENT BY US ATTORNEY'S
OFFICE.

2/14/20

J. Harlow



A-39

Howard Hershships <hhershships@gmail.com>

CONFIDENTIAL Re: I have not received conformation of my Informal Request under 28 CFR section 35. 173 (a)

1 message

ADA Coordinator <adacoordinator@scscourt.org>
To: Howard Hershships <hhershships@gmail.com>

Wed, Apr 8, 2020 at 10:47 AM

M. Hershships,

Attached is the Court's response to your recent request.

ADA Coordinator
Superior Court of California
County of Santa Clara
Main (408) 882-2700
e-mail: adacoordinator@scscourt.org

From: Howard Hershships <hhershships@gmail.com>

Sent: Wednesday, April 1, 2020 10:37 AM

To: ADA Coordinator <adacoordinator@scscourt.org>

Subject: I have not received conformation of my Informal Request under 28 CFR section 35. 173 (a)

If I do not receive confirmation of my informal request I will proceed with filing a complaint with the United States Department of Justice Civil Rights Division ADA enforcement section and file a federal Lawsuit for the under both the ADA and as well as Civil Rights Complaint against various state entities.

--
Howard Hershships

HHershships Response 4-8-2020.pdf
61K

Superior Court of California
County of Santa Clara

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

REBECCA J FLEMING
Chief Executive Officer

ADMINISTRATION



A-39 a

April 8, 2020

CONFIDENTIAL

Howard Herships
701 S. Able Street
Milpitas, CA 95035
Email: hherships@gmail.com

Re: Correspondence regarding Case Number BB517233

Dear Mr. Herships,

This is in response to the correspondence the Court received on February 24, 2020 in case #BB517233. Due to recent events, it has taken some time to look into this matter. I apologize for the delayed response.

Pursuant to California Rules of Court 1.100(c)(3), an ADA Request (MC-410) must be made as far in advance as possible, and in any event must be made no fewer than five court days before the requested implementation date.

Court records indicate no ADA Request (MC-410) was made with the Court's ADA Coordinator prior to the scheduled hearing of January 17, 2020. Likewise, there is no record of a request made, in court, with the Judge for a listening device on the day of the hearing. Assistive listening devices are available in all courtrooms at the Hall of Justice.

In the future, you may contact the ADA Coordinator directly for assistance of your ADA Request by e-mail at adacoordinator@scscourt.org or by phone at (408) 882-2755. If you have any questions regarding the Court's response, please let me know.

Sincerely,

Georgia Ku

Georgia Ku
ADA Coordinator
Superior Court of California,
County of Santa Clara

County of Santa Clara
Law Offices of the Public Defender
120 West Mission Street
San Jose, California 95110
(408) 299-7700 FAX (408) 938-1106



Molly O'Neal
Public Defender

February 4, 2020

Santa Clara County Department of Correction
Elmwood Complex Facility
Howard Herships BB51723 DVW719
701 South Abel Street
Milpitas, CA 95035

RE: Your Case

Dear Mr. Herships,

During our in-custody meeting you informed me that you have filed a writ to the Sixth Appellate District on your own behalf. You indicated that you intended to proceed pro per in that matter or secure private counsel.

At your direction I have contacted your wife, Karen Fletcher, who has informed me of the following: 1) your primary interest is litigating the validity of the underlying order for restitution (this is not something I can assist you with), 2) you are no longer interested in me filing any motions on your behalf (she indicated that after speaking with you on 2/3/2020, you no longer want me to represent you), 3) the two of you were trying to secure private counsel.

Based on your requests, I will not file a notice of appeal in your matter. Please be advised that should you elect to appeal your sentence, your notice of appeal must be filed within 30 days of the sentence.

Sincerely,


Kyle Weddenriep
Deputy Public Defender

HOWARD HERSHERS
701 S. ABEL ST
ELMWOOD COMPLEX
MILPITAS, CA 95035
IN PRO PER

FILED
FEB 26 2020

CALIFORNIA SUPERIOR COURT
COUNTY OF SANTA CLARA
Clerk of the Court
Superior Court of California County of Santa Clara
STEPHANIE ALEMAN DEPUTY

PEOPLE OF THE
STATE OF CALIFORNIA
PLAINTIFFS
VS
HOWARD HERSHERS,
DEFENDANT

SC# NO. BB 517233
NOTICE OF APPEAL

DEFENDANT HOWARD HERSHERS, HEREBY
FILES THIS NOTICE OF APPEAL FROM THE
SENTENCE ENTERED ON 1/17/20, TO THE
APPELLANT DIVISION OF THE SUPERIOR
COURT.

DATED 2/19/20

Howard Herschers

HOWARD HERSHIPS
701 S. ABEL ST
ELMWOOD COMPLEX
MILPITAS, CA 95035

IN PRO PER

FILED
FEB 20 2020

Clerk of the Court
Superior Court of the County of Santa Clara
BY *[Signature]* DEPUTY
Stephanie Aleman

CALIFORNIA SUPERIOR COURT
COUNTY OF SANTA CLARA

PEOPLE OF CALIFORNIA,
PLAINTIFF,
VS
HOWARD HERSHIPS
DEFENDANT

SGT. NO. B3517233
DESIGNATION OF
RECORD ON APPEAL

DEFENDANT HERSHIPS HEREBY DESIGNATE
THE RECORD ON APPEAL AS THE REPORTER'S
TRANSCRIPT ON APPEAL OF JAN 9, 2020, AND
JAN 17, 2020,

DATED 2/14/20

[Signature]

PROOF OF MAIL

FILED

FEB 26 2020

I DECLARE AS FOLLOWS:

Clerk of the Court
 Superior Court of California, County of Santa Clara
 BY: [Signature] DEPUTY
 Stephanie Aleman

I PLACED A COPY OF DEFENDANTS NOTICE
 OF APPEAL AND DESIGNATION OF RECORD
 ON APPEAL IN A SEALED ENVELOPE
 ADDRESSED AS FOLLOWS:

SANTA CLARA COUNTY
 DISTRICT ATTORNEY
 70 WEST HEDDING
 SAN JOSE, CA 95113

I THEN PLACED SAID ENVELOPE IN
 THE MAIL MAIL BOX ON 2/14/20,

I DECLARE AS FOLLOW UNDER PENALTY
 OF PERJURY THAT ALL OF THE
 ABOVE ARE TRUE AND CORRECT;

2/14/20

At [Signature]

[Signature]

FILED

FEB 26 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

HOWARD HERSHERS (DVW179)

701 S. ABEL ST
ELMWOOD COMPLEX

MILPITAS, CA 95035.

IN PRO PER

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

PEOPLE OF CALIFORNIA

CASE NO. BA 517233

PLAINTIFF,

DECLARATION IN SUPPORT
OF MOTION TO CORRECT
PRESENTENCE CREDIT'S

VS

HOWARD HERSHERS,

DATE: FEB 28, 2020
FBI: CUST DIA

DEFENDANT.

DEPT. 42

I, HOWARD HERSHERS, DECLARE AS FOLLOWS:

1) I AM THE DEFENDANT IN THE ABOVE
ENTITLED MATTER.2) IF CALLED TO TESTIFY, I CAN DO SO BASED
UPON FIRST HAND PERSONAL KNOWLEDGE.3) THAT I HAVE A DISABILITY, AS I MUST WEAR
HEARING IMPAIRMENT TO COMMUNICATE
THE SANTA CLARA SUPERIOR COURT
REFUSED TO RELEASE THEM TO ME.

1. The first part of the report is a summary of the work done during the period covered by the report. It is a brief statement of the facts and figures, and is intended to give a general impression of the work done.

2. The second part of the report is a detailed account of the work done. It is a full and complete statement of the facts and figures, and is intended to give a detailed impression of the work done.

3. The third part of the report is a summary of the results of the work done. It is a brief statement of the facts and figures, and is intended to give a general impression of the results of the work done.

4. The fourth part of the report is a detailed account of the results of the work done. It is a full and complete statement of the facts and figures, and is intended to give a detailed impression of the results of the work done.

5. The fifth part of the report is a summary of the conclusions reached. It is a brief statement of the facts and figures, and is intended to give a general impression of the conclusions reached.

6. The sixth part of the report is a detailed account of the conclusions reached. It is a full and complete statement of the facts and figures, and is intended to give a detailed impression of the conclusions reached.

7. The seventh part of the report is a summary of the recommendations made. It is a brief statement of the facts and figures, and is intended to give a general impression of the recommendations made.

8. The eighth part of the report is a detailed account of the recommendations made. It is a full and complete statement of the facts and figures, and is intended to give a detailed impression of the recommendations made.

9. The ninth part of the report is a summary of the conclusions reached. It is a brief statement of the facts and figures, and is intended to give a general impression of the conclusions reached.

10. The tenth part of the report is a detailed account of the conclusions reached. It is a full and complete statement of the facts and figures, and is intended to give a detailed impression of the conclusions reached.

4) I INFORMED THE DEPUTY OF THOSE
FACTS AND THE COURT ACKNOWLEDGED
THAT FACT.

5) THAT AT NO TIME WAS I ABLE TO
COMMUNICATE WITH THE DEPUTY
PUBLIC DEFENDER IN THIS CASE.
ALL DUE TO MY HEARING-IMPAIRMENT
AND THE SHERIFFS DEPT FAILURE
TO RELEASE MY HEARING-AIDS,

6) THAT I WAS UNABLE TO HEAR
ANYTHING THAT THE PUBLIC DEFENDER
SAID AND COULD NOT RESPOND,

7) I WAS UNABLE TO INFORM THE
PUBLIC DEFENDER OF THE 21 DAY
SPENT IN CUSTODY IN THIS CASE.
TO BE ADDED TO THE 16 DAY MAKING
37 DAYS UNDER PENAL CODE 2.900.5

8) THE PROPER NUMBER OF BOTH
2900 AND 4900 CREDITS
SHOULD BE 74 DAYS.

9) I AM REQUESTING A COURT
HEARING TO CORRECT THESE
AND I WANT TO BE PRESENT.

Page 36

10) THIS IS BECAUSE THAT I HAVE
DEFENDER HAS SENT TWO LETTERS
THAT HE WILL NOT BRING THIS
MOTION.

11) I WILL BE PREJUDICED BY NOT
RECEIVING A CORRECTION OF
ACTUAL TIME SPENT IN THIS
CASE.

12) THAT IF THIS REQUEST IS NOT GRANTED, I WILL
BE DENIED THE CREDITS BECAUSE OF THIS.
COURT'S FAILURE TO PROVIDE "MEANINGFUL ACCESS" OR
"REASONABLE ACCOMMODATION" TO LISTENING ISSUES
DUE SOLELY TO MY HEARING IMPAIRMENT.

I DECARE UNDER PENALTY OF PERJURY
THAT ALL THE ABOVE IS TRUE AND CORRECT
UNDER THE LAWS OF THE STATE OF
CALIFORNIA.

DATED 2/21/20

Howard H. Hays

AT WILLAMITS, CA

HOWARD HERSHIPS (DOW179)

701 S ABLE ST

ELMWOOD COURT

MILPITAS, CA 95035

IN PRO PER

FILED

FEB 26 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTYSUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

PEOPLE OF CALIFORNIA

PLAINTIFF

VS

HOWARD HERSHIPS

DEFENDANT

CASE NO. BB517233

POINTS AND AUTHORITIES

IN SUPPORT OF

MOTION TO CORRECT
PRESENTENCE CREDITS

DATE: FEB. 28, 2020

TIME: 9:15

DEPT: 42

DEFENDANT SUBMITS THE FOLLOWING:

POINTS AND AUTHORITIES IN SUPPORT OF
THE REQUEST THAT THE COURT CORRECT
THE ABSTRACT OF JUDGMENT TO SHOW THE
CORRECT COMPUTATION OF PRESENTENCE CREDITS
ACTUALLY SERVED IN THIS CASE.

I. THE COURT IS EMPOWERED TO CORRECT
AN ERROR IN THE COMPUTATION OF
PRESENTENCE CREDITS

PENAL CODE SECTION 1257.1 PROVIDES THAT IF AN ERROR IN THE COMPUTATION OF PRESENCE CREDITS IS NOT DISCOVERED UNTIL AFTER SENTENCING, THE DEFENDANT MUST FIRST MAKE A MOTION FOR CORRECTION OF THE RECORD IN THE TRIAL COURT TO PERFECT THE ISSUE ON APPEAL. IN THIS CASE, DEFENDANT'S DECLARATION ESTABLISHES THAT DEFENDANT WAS AT HIS HEARING IMPAIRED AND HAD NO COMMUNICATION WITH THE PUBLIC DEFENDER, AND AS SUCH DEFENDANT HAD NO ABILITY TO COMMUNICATE ANYTHING TO LEGAL COUNSEL.

ACCORDINGLY, THIS COURT HAS A DUTY TO DETERMINE THE APPROPRIATE PRESENCE CREDITS APPLICABLE TO THE SENTENCE IMPOSED ON DEFENDANT. SEE PEOPLE V. DUESLER 203 Cal. app.3d 273, 276 (4/15/78).

IF THE DEFENDANT IS ENTITLED TO 37 DAYS OF PRESENCE CREDITS UNDER 2900.5 AND 37 DAYS UNDER 4900.

DEFENDANT SERVED 20 DAYS AS A COUNTERPART
OF PROBATION IN OCTOBER OF 2009,
WHICH WAS NOT FULL SERVICE FOR
ON THE ABSTRACT IN JUDGMENT.

THERE IS ALSO 1 DAY UPON ARREST
WHEN DEFENDANT WAS RELEASED ON BAIL.

THAT BECAUSE DEFENDANT WAS NEVER
RELEASED HIS HEARING AIDS, AS DEFENDANT
IS HEARING IMPAIRED AS SUCH DEFENDANT
HAD NO COMMUNICATION CAPABILITY WITH
THE PUBLIC DEFENDER,

A DEFENDANT WHO WAS SENTENCED TO
SERVED COUNTY JAIL TIME AS A COUNTERPART OF
PROBATION IS ENTITLED FOR CREDIT TO HIS
TERM.

DEFENDANT IS CURRENTLY IN CUSTODY
AND IS REQUESTING ORAL ARGUMENT ON

FEB. 28, 2020, FOR THE TOTAL OF 74 DAYS
CREDIT UNDER 2900.5 AND 4019

CREDIT. REQUESTED BY

DATED-2/24/20

Thomas J. [Signature]

THIS MOTION WILL BE BASED ON THE GROUND
THAT THE PRESENTENCE CREDITS PREVIOUSLY
ORDERED BY THE COURT WERE ERRONEOUS
AND THE ERROR WAS NOT DISCOVERED UNTIL
AFTER THE IMPOSITION OF SENTENCE.

THIS MOTION IS BASED NOTED, THE ATTACHED
MEMORANDUM OF POINTS AND AUTHORITIES AND
SUCH ORAL AND DOCUMENTARY EVIDENCE AS
MAY BE PRESENTED AT THE HEARING ON THE
MOTION.

DATED 2/21/20

Howard Thodiga

PROOF OF SERVICE

FILED

FEB 26 2020

I DECLARE AS FOLLOWS

Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

I HAVE PLACED IN SEALED ENVELOPE
COPIES OF NOTICE OF MOTION TO CORRECT
ERROR IN PRESENCE CREDITS, POINTS AND
AUTHORITIES, AND DECLARATION IN SUPPORT,
ADDRESSED AS FOLLOWS:

SANTA CLARA COUNTY DISTRICT ATTORNEY
70 WEST HEDDING ST. WEST WING
SAN JOSE, CA 95110

I HAVE PLACED SAID ENVELOPE
IN THE JAILS MAIL BOX ON
2/21/20.

I DECLARE THAT THE FOREGOING
IS TRUE AND CORRECTLY
PREPARED BY ME OR
THE LAWS OF SANTA CLARA
COUNTY.

Dated: 2/21/20

[Signature]

AT MENLO PARK, CA

© USP 9 2010

RECEIVED
FEB 26 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY LIANA J. HERRERA DEPUTY

THIS ENVELOPE IS RECYCLED AND MADE WITH 100% POST CONSUMER WASTE. 4



A-56

FILED
MAR 03 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY Kenny Hesz DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

In re

Case No. BB517233

HOWARD HERSHIPS,

ORDER

Ex Parte.

Howard Hershships, hereinafter referred to as Defendant, has filed an ex parte motion in which he claims that he is entitled to additional credits based upon the terms and conditions of probation that were initially imposed in this matter on October 2, 2009.

At sentencing in 2009, Defendant was placed on formal probation, and a one-year jail sentence was imposed and suspended. As a condition of probation, Defendant was ordered to serve thirty (30) days in jail.

On January 17, 2020, this Court imposed a six-month jail term based upon Defendant's violation of probation, and further ordered that probation will terminate upon Defendant's release from custody. Because the Court did not terminate probation and reinstate the previously imposed one-year term,

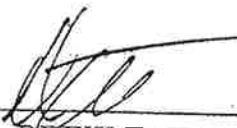
ORDER

(HOWARD HERSHIPS: BB517233)

1 Defendant is not entitled to his prior credits against his present sentence, which is
2 a term of his probation and a consequence of his violation of that probation.

3 Based upon the orders that this Court issued on January 17, 2020, the
4 sentence of one-year in the county jail, imposed on October 2, 2009, is hereby
5 deleted.

6
7
8 Dated: 03.03, 2020.


HON. DREW TAKAICHI
JUDGE OF THE SUPERIOR COURT

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10 cc Petitioner
11 District Attorney
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE DREW C. TAKAICHI, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, }
PLAINTIFF, }

VS.

Case No.: BB517233

HOWARD RALPH HERSHIPS,

DEFENDANT. }

TRANSCRIPT OF PROCEEDINGS

MARCH 6, 2020

Volume 4, Pages 901-905

[START BB517233 People vs. Hershships 3-06-20 D42.mp3]

MALE VOICE 1: This is Mr. Hershships. Line 19. Your Honor, Judge Takaichi had sentenced Mr. Hershships to PTOR six months, from the restitution calendar, I believe. Mr. Hershships filed a motion directly to the Judge, asking for certain credits that he had gotten from the original sentence, to be added to this sentence. Judge Takaichi filed an Order, which I have given to Mr. Hershships, denying that request. I believe this motion - I believe that precludes this Court from doing - taking any action on it today. But Mr. Hershships would like to address the Court.

MR. HOWARD HERSHIPS: I (unintelligible) well, this is an area is regarding a (unintelligible) by another Judge, I can't overrule (unintelligible). The problem we have here, Your Honor, is the fact that I wasn't really represented in - in the original proceedings, because I didn't have my hearing aids. And the Court couldn't give me my - any (unintelligible) rights.

JUDGE DREW TAKAICHI: Did you ask for one?

MR. HERSHIPS: Yes, I did.

JUDGE TAKAICHI: And what proof of that do you have?

MR. HERSHIPS: Excuse me?

JUDGE TAKAICHI: What is your proof that you asked for a hearing aid device?

MR. HERSHIPS: I asked for the bell. I told him I couldn't hear anything.

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MALE VOICE 1: So, if you'd like, (unintelligible)
we can pull the recording from that day. And
(unintelligible). If you would like to do that. But
that's not-

JUDGE TAKAICHI: (Interposing) Do you want to put it
over-

MALE VOICE 1: -rule on it today.

MR. HERSHIPS: Well, you know,-

JUDGE TAKAICHI: (Interposing) He is basically
asking for a reconsideration.

MR. HERSHIPS: Yeah, I was asking for a
reconsideration.

JUDGE TAKAICHI: All right. Then, we are going to
put it over, so your attorney can investigate your
obligations.

MR. HERSHIPS: First of all, I never had a hearing-

JUDGE TAKAICHI: (Interposing) Okay. I don't think
you are hearing me at all. So, I am going to say it
again. We are putting it over so your attorney can
investigate your allegation. And also make a motion for
reconsideration. What date would you like?

MALE VOICE 1: How much longer do we have-

MR. HERSHIPS: (Interposing) As soon as possible,
because if I get my (unintelligible) I'm being released
on Monday.

MALE VOICE 1: Let's try next week.

JUDGE TAKAICHI: Say it again.

A-61

MALE VOICE 1: Let's try next Friday.

JUDGE TAKAICHI: Okay. All right. We will put the matter over until March 13 at nine o'clock for further proceedings.

MALE VOICE 1: Thank you, Your Honor.

THE CLERK: [unintelligible]?

JUDGE TAKAICHI: PD is appointed.

[END BB517233 People vs. Herships 3-06-20 042.mp3]

62

A-62

People v. Howard Ralph Hershops

Case# BB517233

Hearing Date: March 6, 2020

C E R T I F I C A T E

I, Joyce A. Waser, a transcriber for Ubiquis do hereby
certify: That said proceeding were listened to and
transcribed by me and were prepared using standard
electronic transcription equipment under my direction and
supervision; and I hereby certify that the foregoing
transcript of the proceedings is a full, true, and accurate
transcript to the best of my ability.

I further certify that I am neither counsel for nor
related to any party to said action, not in any way
interested in the outcomes thereof.
In witness whereof, I have hereunto subscribed my name this
23rd day of June 2020.

J. Waser

Signature of Transcriber

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2
3 IN AND FOR THE COUNTY OF SANTA CLARA
4
5 BEFORE THE HONORABLE DREW C. TAKAICHI, JUDGE

6 THE PEOPLE OF THE STATE OF CALIFORNIA,)

7 PLAINTIFF,)

8 VS.)

Case No.: BB517233

9 HOWARD RALPH MERSHIPS,)

10 DEFENDANT.)

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16 TRANSCRIPT OF PROCEEDINGS

17
18 MARCH 13, 2020

19
20 Volume 5, Pages 1201-1204
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[START BB517233 People vs. Hershops 3-13-20 D42.mp3]

JUDGE DREW TAKAICHI: All right. That is Howard Hershops, Line 12.

MR. STEWART: Your Honor, this is a matter where there was a credits issue. Judge Takaichi issued an ex-parte ruling in this matter last week. This continued it a week for the - for the Public Defender to look into it.

JUDGE TAKAICHI: Okay.

MR. STEWART: We believe that a court date in front of Judge Takaichi would be the best way to resolve this.

JUDGE TAKAICHI: Okay.

MR. STEWART: May we have one next week?

JUDGE TAKAICHI: I don't know where he is now.

MR. STEWART: I don't either.

MS. STORTON: Your Honor, we will object to that. Judge Takaichi currently already made a ruling. He was the one who sentenced the Defendant in the case. There is nothing wrong with the credits. The Defendant currently has an appeal. All issues are going to be addressed through the appeal.

[CROSSTALK]

JUDGE TAKAICHI: When did - when did Judge Takaichi make a ruling?

MR. STEWART: So, Judge Takaichi made a ruling to remand my client originally, without a hearing - without a finding of BOP. Then issued a ruling on client's ex-parte contact regarding reconsideration. We believe that

1 both of those required a hearing. And we would like to
2 see Judge Takaichi to at least have the reconsideration
3 be done in open court rather than ex-parte.

4 MS. STORTON: The People disagree with Mr. Stewart's
5 characterization of what has happened, Your Honor. The
6 Defendant was sentenced. The Judge ordered probation to
7 terminate upon release. He filed an appeal. His request
8 for additional credits has been denied. We believe the
9 case should go off calendar.

10 JUDGE TAKAICHI: The matter is off calendar.
11 Request is denied.

12 MR. HERSHIPS: Can I address the issue, Your Honor?

13 JUDGE TAKAICHI: No, we are done. All right, next
14 matter.

15 [END BB517233 People vs. Hershops 3-13-20 D42.mp3]
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1 People v. Howard Ralph Hershops

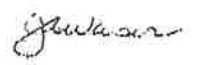
2 Case# BB517233

3 Hearing Date: March 13, 2020

4
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6 C E R T I F I C A T E

7
8 I, Joyce A. Waser, a transcriber for Ubiquis do hereby
9 certify: That said proceeding were listened to and
10 transcribed by me and were prepared using standard
11 electronic transcription equipment under my direction and
12 supervision; and I hereby certify that the foregoing
13 transcript of the proceedings is a full, true, and accurate
14 transcript to the best of my ability.

15 I further certify that I am neither counsel for nor
16 related to any party to said action, not in any way
17 interested in the outcomes thereof.
18 In witness whereof, I have hereunto subscribed my name this
19 23rd day of June 2020.

20
21
22 

23 Signature of Transcriber

Howard R. Herships
 P.O. Box 1501
 Carmichael, Ca 95609-1501
 Ph. 415 933-5190
hherships@gmail.com

In Pro Se

IN THE SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA CLARA
 APPELLATE DIVISION

People of the State of California,

Plaintiff,

vs.

Howard Ralph Herships,

Defendant

Case No.: 1-20-AP-002650

DEFENDANT'S APPLICATION AND
 MOTION PURSUANT TO RULES 8.806 &
 8.808 TO DISQUALIFY THE
 APPELLATE DIVISION OF THE SANTA
 CLARA COUNTY SUPERIOR COURT
 TO HEAR THIS APPEAL OF RIGHT AS
 THE COURT HAS A "DIRECT,
 PERSONAL, SUBSTANTIAL, [AND],
 PECUNIARY" INTEREST IN THE CASE
 CONSTITUTIONALLY PROHIBITING
 ANY MEMBER OF THE SANTA CLARA
 COUNTY SUPERIOR COURT FROM
 HEARING AN APPEAL OF RIGHT

To the Presiding Judge of the Appellate Division of the Superior Court of Santa Clara
 County, the Clerk of the above entitled Court, and all involved counsel:

Defendant moves this Court for an order disqualifying the Appellate Division of this
 Court to hear this appeal of right as the issues on the face of the record shows and proves
 that the Santa Clara County Superior Court violated Defendants rights under the
 Americans with Disability Act when at all times the Santa Clara County Superior Court

MOTION TO DISQUALIFY THE SANTA CLARA SUPERIOR COURT APPELLATE PANEL

PAGE 11

1 was already under a "Settlement" with the United States Department of Justice see Exhibit
2 1.

3
4 Defendant asked for assisted listening devices and the Court never made any
5 inquiries and proceeded in its untoward ways, which violated the conditions of the
6 settlement.

7 The records of the January 17, 2020, court transcript show these violations of Title
8 28 CFR § 35.160 (b) (2) by the Superior Court of both the Settlement Agreement with the
9 United States Department of Justice and 28 CFR § 35.160 (b) (2).and attached as Exhibit 1.
10

11 The record in this case presented more than mere allegations of violations of ADA
12 but by actual denial to disabled defendant the use of his hearing aids which denied legal
13 representation in a criminal case. Appellant also presents proof that Santa Clara County
14 never implemented a Federal Consent Decree requiring the implementation since March
15 20, 2019 see Exhibit 2.
16

17 The Santa Clara County Jail who at all times was under a Federal Consent Decree
18 in Chavez vs. Santa Clara County requiring that the County comply with 28 CFR § 35.160
19 (b) (2) for prisoner in custody who posses their own hearing aids.

20 These acts done by the Santa Clara County Superior Court who was already on
21 notice of the "Settlement with the United States of America" shows a "Discriminator
22 Animus" by the Santa Clara County Superior Court.
23

24 These violations after the United States Department of Justice Settlement put the
25 Court on record of their obligations and did nothing to protect the disabled defendant.

26 In fact, the Judge Drew Takaichi further retaliated against the disabled defendant
27

1 when the Judge refused to hold a hearing mandated by both a California Supreme Court
2 decision in People vs. Lara 54 Cal 4th 896 at 903, (2012) that required a hearing with legal
3 representation as the United States Supreme Court in Wolff vs. Mc Donnell 418 U.S. 539 at
4 566-567 (1974) held that prisoner has a liberty interest in receive prisoner's conduct credits.
5

6 Defendant filed in Pro Se motion for conduct credits with the Superior Court Santa
7 Clara County requesting a hearing on Feb. 26, 2020.

8 On March 3, 2020, the trial court denied those credits Ex Parte which was in excess
9 of the Court's jurisdiction under All Auto Equity Sales vs. Superior Court 57 Cal 2nd 450
10 (1962) as the California Supreme Court in People vs. Lara 54 Cal 4th 896 at 903, held that
11 2900.5 credit vest with the prisoner and that the Court has no discretion to deny those
12 credits as California Rules of Court, Rule 4.130 requires the Sheriff to calculate those days
13 a prisoner in being held in custody. See Exhibit 3
14

15 Additionally, the California Supreme Court held that the controlling Federal Law
16 requires that a "liberty interest" applies under Wolff vs. Mc Donnell 418 U.S. 539 at 566-
17 567 and that a Superior Court is required to hold a hearing.
18

19 However, here the Superior Court Judge decided to retaliate against Defendant
20 knowing that Defendant being hearing impaired would have no ability to contest the
21 Court's retaliation, which the Court proceeded to further punish Defendant due solely
22 because of defendant's disability without any means of contesting the Judge's ruling.¹
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27 ¹ Petitioner had filed a Writ of Mandate on Jan. 29, 2020 with the Sixth Appellate District
addressing Petitioner's hearing impairments and the denial of any ability to communicate with either the Court or
appointed legal counsel. The Court was served electronically so the Judge knew at all times that defendant was

1 These acts shows actual retaliation as defined by Title 42 U.S.C. sections 12203,
2 12132 and 12133

3
4 Moreover, Defendant filed a Writ of Mandate in to the Sixth Appellate District and
5 the Court order responsive pleading on Feb. 7, 2020, and gave Defendant 15 days to file
6 any reply.

7 In fact, the Deputy District Attorney Kaci Lopez refused to serve any responsive
8 pleading on defendants and then falsely represented to the Sixth Appellate Court (1) that
9 the violations under the ADA were "moot" because Defendant was released and (2) that by
10 proving a direct feed from the Judge's bench complied with 28 CFR § 35.160 (b) (2) both
11 contentions were actually beyond frivolous but were actually done to retaliate against
12 Defendant in violation of Title 42 U.S.C. sections 12203, 12132, and 12133.

13
14 Moreover, Deputy District Attorney Kaci Lopez actually concealed from the Sixth
15 Appellate District that the Santa Clara County Superior Court was in violation of a
16 Settlement Agreement with the United States of America under the ADA which requires
17 the Court to inquire the best assisted hearing deceives so that the party can communicate,
18 whereas here all Defendant was requiring was Defendants hearing aids specially set for
19 Defendants hearing impairment, which was denied.

20
21 These acts were also done in retaliation by the Santa Clara Public entity as (1) there
22 is no "mootness" from violations such as these as acts of retaliations are a cause of action
23 under Title 42 U.S.C. section 12133 pursuant to Title 29 U.S.C. § 794 (a) for damages as
24

25
26
27 hearing impaired and decided to retaliate against Defendant in violation of 42 U.S.C. sections 12203, 12132 and
28 12133.