

15-71566

ALLICAN
5/26/15

Salutations Clerk of the Court of Appeals. ORIGINAL

I AM AN indigent inmate proceeding pro per in the court...

Enclosed is an "Application" to a Three Judge Panel for an authorization order pursuant to 28 U.S.C. § 2244(b)(3) and Exhibit A in support of the Application.

15-71566

I was only able to obtain 2 copies of the Application for the court and 1 copy to honor the proof of service.

I was unable to make a copy of the proof of service.

Because I was unable to obtain the original Application, I wrote out the Application and provided all the necessary information for the court to decide the matter.

In the event that I did not enclose the required amount of copies, would you please take in consideration that I'm indigent and proceeding pro per, and make the required copies to appease the court rules.

I can't express the gravity of my appreciation for your understanding and assistance enough... thank you... from the heart, thank you. I'm fighting a non-violent 3-strike case I've been incarcerated on for two decades. So thank you...

God Bless

Curtis O'Neil Clayton

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

MAY 26 2015

FILED DOCKETED 5/26/15 AM
DATE INITIAL

ORIGINAL

"Proof of Service"

Petitioner hereby notify the Respondent that the Application enclosed has been filed in the 9th Circuit Court of Appeals via institutional mail to the address below:

15-71566

RECEIVED
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U.S. COURT OF APPEALS

MAY 26 2015

Michael L. Keller

300 South Spring Street, Suite 1702
Los Angeles, California
90013

FILED DOCKETED 5/26/15 AM
DATE INITIAL

I, Curtis O'Neil Clayton, declare under the penalty and perjury that the foregoing is true and correct...

Executed on: MAY 18, 2015

Curtis O'Neil Clayton

ORIGINAL

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

MAY 26 2015

FILED _____
DOCKETED _____
DATE 5/26/15 INITIAL AM

Lurtis ^{CAVELL} CLAYTON
A.K.A
Lurtis MOORE * E-69650
K.N.S.P
P.O. Box 5101
Jelano, CALIFORNIA
93216

15-71566

In The
United States Court of Appeals
For The
Ninth Circuit

Lurtis ^{CAVELL} CLAYTON,
Applicant,

v.

MJ Biter (WARDEN),
Respondent.

Application to a Three Judge Panel for an authorization
order pursuant to 28 U.S.C. § 2244
(b) (3).

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"PROCEDURAL HISTORY."

JULY 31, 2014, I FILED A FEDERAL HABEAS CORPUS PETITION IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. THE PETITION DEMONSTRATED THAT THE STATE DEPRIVED ME OF A LIBERTY INTEREST PROTECTED BY THE 14TH AMENDMENT. SEE, LOWER COURT CASE NO. CV 14-6001 (JFM) (JFM).

AUGUST 14, 2014, THE DISTRICT COURT ISSUED AN ORDER TO RETURN TO THE PETITION. SEE, APPENDIX PAGE 1.

AUGUST 28, 2014, RESPONDENT FILED A MOTION TO VACATE THE ORDER TO RETURN TO THE HABEAS CORPUS... ALLEGING THAT THE HABEAS CORPUS IS A SECOND OR SUCCESSIVE PETITION BECAUSE IN MARCH OF 2002 I FILED A HABEAS CORPUS CHALLENGING THE UNDERLYING CONVICTION IN CASE NO. 02-1846-JFM. SEE, APPENDIX PAGE 2.

SEPTEMBER 12, 2014, I FILED AN OPPOSITION TO RESPONDENT'S MOTION AND DEMONSTRATED THAT THE HABEAS CORPUS IS NOT A SECOND OR SUCCESSIVE PETITION BASED ON:

- 1) THE HABEAS CORPUS DOES NOT CHALLENGE THE UNDERLYING CONVICTION, IT ASSERTS A DEPRIVATION OF A LIBERTY INTEREST CREATED BY THE CALIFORNIA THREE STRIKE REFORM ACT OF 2012 THAT CONSTITUTES A NEW JUDGMENT FOR NON-VIOLENT THIRD STRIKERS TO BE RESENTENCED AS A SECOND STRIKE OFFENDER, UNLESS, THE GOVERNMENT CAN ESTABLISH THAT THE DEFENDANT IS AN UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY PURSUANT TO CALIFORNIA PENAL CODE SECTION § 1170.126 (F);

- 2) THE HABEAS CORPUS IS NOT A SECOND OR SUCCESSIVE PETITION ACCORDING TO THE NINTH CIRCUIT COURT OF APPEALS DECISION IN HILL V. STATE OF ALASKA, 297 F.3d 895, 897-99 (9th Cir 2002), "FINDING HABEAS PETITION CHALLENGING THE CALCULATION OF PETITIONERS RELEASE DATE UNDER STATE MANDATORY PAROLE PROVISIONS HELD NOT TO CONSTITUTE A SECOND OR SUCCESSIVE PETITION DESPITE EARLIER HABEAS PETITIONS CHALLENGING THE UNDERLYING CONVICTION;" AND

3) The California Central District Court agreed in the matter of Johnson v. Davis, No 14-3050 (2014) WL 2586883 at 2 C-1 June 9, 2014, "concluding that a petition challenging denial of being resentenced under California Penal Code Section 261170.126 Three Strikes Reform Act was not a second or successive petition."

September 23, 2014, the Magistrate Judge entered reports recommending that the habeas corpus be dismissed without prejudice for lack of jurisdiction. The Magistrate Judge noted for the record that different Central District Court Judges have reached conflicting conclusions as to whether a habeas corpus alleging a deprivation of being resentenced under the Three Strikes Reform Act of 2012 constitute a second or successive petition. See, Appendix Pages 3 and 4.

October 22, 2014, the District Court Judge dismissed the habeas corpus petition without prejudice, and denied certificate of appealability pursuant to the Magistrate Judge reports and recommendation. See, Appendix Pages 5, 6, and 7.

October 28, 2014, I filed a notice of appeal in the District Court.

November 12, 2014, I filed a motion for certificate of appealability in the Ninth Circuit Court of Appeals on the grounds that the Central District Court procedural ruling is debatable among a jurist of reason, that different judges in the Central District Court have even reached conflicting conclusions regarding the issue, and that the habeas corpus claim makes a substantial showing of the denial of a constitutional right to receive a COA pursuant to 28 USC (c). See, Docket No: 14-56762.

March 20, 2015, the Ninth Circuit Court of Appeals denied the motion for COA.

March 29, 2015, I filed an application for COA in the United States
Page 2 of 5

SUPREME COURT.... THE APPLICATION WAS DENIED MAY 1, 2015.... AND I WAS NOTIFIED OF THE COURT ACTION ON MAY 8, 2015 VIA INSTITUTIONAL MAIL SYSTEM. SEE, APPENDIX PAGE 8.

I NOW COME BEFORE THE NINTH CIRCUIT COURT OF APPEALS REQUESTING TO BE EXCUSED FOR ANY TIME DELAY IN FILING THIS APPLICATION PURSUANT TO § 2244 (b) FOR GOOD CAUSE SHOWN IN LIGHT OF THE PROCEDURAL HISTORY OF THIS CASE.

"APPLICABLE STANDARD OF REVIEW."

A SECOND OR SUCCESSIVE PETITION MUST PASS THROUGH A GATE-KEEPING SYSTEM THAT REQUIRE AN APPLICANT TO MOVE FOR AN AUTHORIZATION ORDER BEFORE A THREE JUDGE PANEL IN THE APPROPRIATE COURT OF APPEALS.

AT THE GATE-KEEPING STAGE, AN APPLICANT, IN ORDER TO OBTAIN AN AUTHORIZATION ORDER MUST MAKE A PRIMA FACIE SHOWING OF THE REQUIREMENTS CONTAINED IN § 2244 (b).

FIRST, AN APPLICANT MUST MAKE A PRIMA FACIE SHOWING THAT THE CLAIM WAS NOT PRESENTED IN A PREVIOUS FEDERAL HABEAS PETITION. SEE, § 2244 (b) (1).

SECOND, THE APPLICANT MUST MAKE A PRIMA FACIE SHOWING THAT (1) THE NEW CLAIM RELIES ON A NEW RULE OF CONSTITUTIONAL LAW THAT WAS PREVIOUSLY UNAVAILABLE, SEE (§ 2244 (b) (2) (A)); OR (2) THE FACTUAL BASIS FOR THE NEW CLAIM "COULD NOT HAVE BEEN DISCOVERED PREVIOUSLY THROUGH THE EXERCISE OF DUE DILIGENCE", SEE § 2244 (b) (2) (B).

"THE APPLICATION MAKES A PRIMA FACIE SHOWING OF THE REQUIREMENTS NEEDED TO OBTAIN AN AUTHORIZATION ORDER PURSUANT TO 28 U.S.C. § 2244 (b)."

IN THE ORIGINAL PETITION FILED IN MARCH OF 2002, I COULD NOT HAVE RAISED
PAGE 3 OF 5

the claim in the current petition because the liberty interest was not available until November 4, 2012, enactment of the Three Strikes Reform Act of 2012. Thus, the current petition satisfies the first requirement of § 2244(b)(1). See, Exhibit A (Current Habeas Corpus Petition).

The factual predicate for the claim in the current petition could not have been discovered previously to November 4, 2012, enactment of the Three Strike Reform Act. Thus, the current petition satisfies the second requirement of § 2244(b)(2)(B)(i), because the factual predicate for the claim could not have been discovered previously through the exercise of due diligence. Compare, Harris v. Puley, 885 F.2d 1354, 1370-71 (9th Cir 1988), "finding new claim that requiring potential juror not to be against death penalty violated 6th Amendment justified because statistical evidence not reasonably ascertainable when first petition filed," cert. denied 493 U.S. 1051 (1990).

Pursuant to § 2254 rules supra note 1 rule 9(A), it was improper for the Central District Court to dismiss the current petition. Compare, Alexander v. Maryland, 719 F.2d 1241, 1245-47 (4th Cir 1983), "dismissal of juvenile waiver claim improper when petitioner convicted in 1961 and right to challenge waiver did not arise until 1972 because state failed to show prejudice arising arising after 1972."

"Belief Sought."

I respectfully and humbly seek to obtain an authorization order from the

9th Circuit Court of Appeals to file the current federal habeas corpus petition shown at Exhibit A in the Central District Court.

"Declaration."

I, Lurtis O'Veil Clayton, declare under the penalty of perjury that the foregoing information is true and correct.

Executed on: MAY 18, 2015

Signature: Lurtis O'Veil Clayton.

Appendix - in support of Application Pursuant to § 2244(b)(3).

MIME-Version: 1.0 From: cacd_ecfmail@cacd.uscourts.gov To: ecfnef@cacd.uscourts.gov Bcc: Curtis Lavell Clayton
CDC E-69650
Kern Valley State Prison
P O Box 5101
Delano CA 93216

--Case Participants: Judge John F. Walter (crd_walter@cacd.uscourts.gov), Magistrate Judge Frederick F. Mumm (crd_mumm@cacd.uscourts.gov)

--Non Case Participants: Federal Habeas Corpus Attorney General Office (federalhabeaslaawt@doj.ca.gov), Los Angeles Court Attorney General Office (docketinglaawt@doj.ca.gov)

--No Notice Sent:

Message-Id: <17996658@cacd.uscourts.gov> Subject: Activity in Case 2:14-cv-06001-JFW-FFM
Curtis Lavell Clayton v. Biter Order Requiring Return/Answer to Petition Content-Type: text/html

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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 8/14/2014 at 4:24 PM PDT and filed on 8/14/2014

Case Name: Curtis Lavell Clayton v. Biter

Case Number: 2:14-cv-06001-JFW-FFM

Filer:

Document Number: 4

Docket Text:

ORDER REQUIRING ANSWER/RETURN TO PETITION by Magistrate Judge Frederick F. Mumm. that Respondent M. J. Biter file Answer to the Petition not later than 10/14/2014.

Notice: The court has issued a ruling on preliminary review. Pursuant to the Agreement on Acceptance of Service between the Clerk of Court and the California Attorney Generals Office, this Notice constitutes service under Fed. R. Civ. P. 4. Motions to Dismiss shall be filed by 9/15/2014. (copy of pet, mtn, order)(jm)

2:14-cv-06001-JFW-FFM Notice has been electronically mailed to:

2:14-cv-06001-JFW-FFM Notice has been delivered by First Class U. S. Mail or by other means

BY THE FILER to :

Curtis Lavell Clayton

CDC E-69650

Kern Valley State Prison

CERTIFICATE OF SERVICE

Case Name: Curtis Clayton v. M.J.Biter No. CV 14-6001 JFW (FFM)

I hereby certify that on August 28, 2014, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MOTION TO VACATE ORDER REQUIRING RETURN; MEMORANDUM OF POINTS AND AUTHORITIES

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On August 28, 2014, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Curtis Lavell Clayton
CDC #E-69650
K.V.S.P.
P.O. Box 5101
Delano, CA 93216
Pro se

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 28, 2014, at Los Angeles, California.

Linda Sarenas
Declarant

/s/ Linda Sarenas
Signature

LA2014614089
51586335.doc

Page 2

MIME-Version:1.0 From:cad_email@cad.uscourts.gov To:ecfnf@cad.uscourts.gov Bcc: Curtis Lavell Clayton
CDC E-69650
Kern Valley State Prison
P O Box 5101
Delano CA 93216
--Case Participants: Michael C Keller (docketinglaawt@doj.ca.gov, michael.keller@doj.ca.gov),
Magistrate Judge Frederick F. Mumm (crd_mumm@cad.uscourts.gov), Judge John F. Walter
(crd_walter@cad.uscourts.gov)
--Non Case Participants:
--No Notice Sent:
Message-Id:<18208158@cad.uscourts.gov>Subject:Activity in Case 2:14-cv-06001-JFW-FFM
Curtis Lavell Clayton v. Biter Notice of Report and Recommendation Content-Type: text/html

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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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Case Name: Curtis Lavell Clayton v. Biter

Case Number: 2:14-cv-06001-JFW-FFM

Filer:

Document Number: 14

Docket Text:

NOTICE OF FILING REPORT AND RECOMMENDATION by Magistrate Judge Frederick F. Mumm. Objections to R&R due by 10/14/2014(jm)

2:14-cv-06001-JFW-FFM Notice has been electronically mailed to:

Michael C Keller docketinglaawt@doj.ca.gov, michael.keller@doj.ca.gov

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Curtis Lavell Clayton
CDC E-69650
Kern Valley State Prison
P O Box 5101
Delano CA 93216

1 2244(b) would considerably undermine - if not render superfluous - the exceptions
2 to dismissals set forth in § 2244(b)(2).” *Id.*

3 Hence, *Magwood* makes clear that the “second or successive” analysis
4 should be focused more on what is being challenged than on whether the
5 challenge could have been raised in a prior petition. Here, petitioner is, at bottom,
6 challenging his original sentence. Had the state court re-sentenced him pursuant
7 to his application based on the Three Strikes Reform Act, petitioner could
8 persuasively contend that he was challenging a new judgment. However, no new
9 judgment has been entered and petitioner merely claims that he is entitled to a
10 change in his *original* sentence because of a change in the law. Therefore, this
11 Court has no jurisdiction over petitioner’s claim.¹

12 **B. Petitioner’s Claim Is Not Cognizable on Federal Habeas Corpus**
13 **Review**

14 If this Court had jurisdiction to consider the claim, it would nonetheless
15 deny the claim as noncognizable. Petitioner’s contention is that the state courts
16 misapplied California sentencing law. The Supreme Court has held that federal
17 habeas relief is not available for mere errors by a state court in the interpretation
18 or application of its own laws. *See Estelle v. McGuire*, 502 U.S. 62, 67-68, 112 S.
19 Ct. 475, 116 L. Ed. 2d 385 (1991); *Holley v. Yarborough*, 568 F.3d 1091, 1101
20 (9th Cir. 2009) (“Simple errors of state law do not warrant habeas relief.”).

21
22
23 ¹ The Court notes that different judges in this Court have reached conflicting
24 conclusions as to whether a petition asserting a violation of the Three Strikes
25 Reform Act challenges the original judgment or a new judgment. *Compare*
26 *Cooper v. Supreme Court of California*, 2014 WL 198708, at *2 (C.D. Cal. 2014)
27 (petition asserting such a claim is second or successive) *with Hill v. Warden*, 2014
28 WL 1093041, at *2 (C.D. Cal. 2014) (such a claim is not directed to underlying
conviction). For the reasons stated above, the undersigned finds the argument
more persuasive that such a claim is a challenge to the underlying conviction and
sentence.

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CDC E-69650
Kern Valley State Prison
P O Box 5101
Delano CA 93216
--Case Participants: Michael C Keller (docketinglaawt@doj.ca.gov, michael.keller@doj.ca.gov),
Judge John F. Walter (crd_walter@cacd.uscourts.gov), Magistrate Judge Frederick F. Mumm
(crd_mumm@cacd.uscourts.gov)
--Non Case Participants:
--No Notice Sent:
Message-Id:<18362969@cacd.uscourts.gov>Subject:Activity in Case 2:14-cv-06001-JFW-FFM
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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

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Case Name: Curtis Lavell Clayton v. Biter

Case Number: 2:14-cv-06001-JFW-FFM

Filer:

Document Number: 20

Docket Text:

ORDER ACCEPTING REPORT AND RECOMMENDATIONS by Judge John F. Walter: IT IS ORDERED that judgment be entered denying the petition without prejudice.(jm)

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Delano CA 93216

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--Case Participants: Michael C Keller (docketinglaawt@doj.ca.gov, michael.keller@doj.ca.gov),
Magistrate Judge Frederick F. Mumm (crd_mumm@cacd.uscourts.gov), Judge John F. Walter
(crd_walter@cacd.uscourts.gov)
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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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Case Name: Curtis Lavell Clayton v. Biter

Case Number: 2:14-cv-06001-JFW-FFM

Filer:

WARNING: CASE CLOSED on 10/22/2014

Document Number: 21

Docket Text:

JUDGMENT by Judge John F. Walter: IT IS ADJUDGED that the Petition is dismissed without prejudice. (MD JS-6, Case Terminated).(jm)

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BY THE FILER to :

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CDC E-69650
Kern Valley State Prison
P O Box 5101
Delano CA 93216

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CDC E-69650
Kern Valley State Prison
P O Box 5101
Delano CA 93216
--Case Participants: Michael C Keller (docketinglaawt@doj.ca.gov, michael.keller@doj.ca.gov),
Judge John F. Walter (crd_walter@cacd.uscourts.gov), Magistrate Judge Frederick F. Mumm
(crd_mumm@cacd.uscourts.gov)
--Non Case Participants: Clerk, U S Court of Appeals - 9th Circuit, Pasadena
(pasa_noa@ca9.uscourts.gov)
--No Notice Sent:
Message-Id:<18375443@cacd.uscourts.gov>Subject:Activity in Case 2:14-cv-06001-JFW-FFM
Curtis Lavell Clayton v. Biter Order on Petition for Certificate of Appealability Content-Type:
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UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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Case Name: Curtis Lavell Clayton v. Biter

Case Number: 2:14-cv-06001-JFW-FFM

Filer:

WARNING: CASE CLOSED on 10/22/2014

Document Number: 22

Docket Text:

Order by Judge John F. Walter denying Certificate of Appealability.(mat)

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BY THE FILER to :

Curtis Lavell Clayton

CDC E-69650

Kern Valley State Prison

P O Box 5101

Delano CA 93216

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

May 1, 2015

Mr. Curtis L. Clayton
Prisoner ID E-69650
Kern Valley State Prison
P.O. Box 5101
Delano, CA 93216

Re: Curtis Lavell Clayton
v. M.J. Biter, Warden
Application No. 14A1112

Dear Mr. Clayton:

The application for a certificate of appealability in the above-entitled case has been presented to Justice Kennedy, who on May 1, 2015, denied the application.

Sincerely,

Scott S. Harris, Clerk

by



Mara Silver
Advising Attorney/Emergency
Applications Clerk

CURTIS O'NEILL CLAYTON

A.K.A

CURTIS MOORE *E-69650

H.V.S.P

P.O. Box 5101

Telano, CALIFORNIA

93216

Exhibit A - in support of Application Pursuant to 2244 (b).

Lurtis O'Veil Clayton
 NAME
*E-69650
 PRISON IDENTIFICATION/BOOKING NO.
K.V.S.F
 ADDRESS OR PLACE OF CONFINEMENT
P.O. Box 5101, Jelano, California, 93216
 Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

Lurtis O'Veil Clayton
 FULL NAME (Include name under which you were convicted)
 Petitioner,
 v.
M.J. Ruter
 NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED
 PERSON HAVING CUSTODY OF PETITIONER
 Respondent.

CASE NUMBER:
 CV _____
 To be supplied by the Clerk of the United States District Court

AMENDED

**PETITION FOR WRIT OF HABEAS CORPUS
 BY A PERSON IN STATE CUSTODY**
 28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION Los Angeles
 PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
 (List by case number)
 CV 02-1846 JFW
 CV 14-6001 JFW

INSTRUCTIONS - PLEASE READ CAREFULLY

- To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
- In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
- Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
- Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
- You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
- You must pay a fee of \$5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds \$25.00, you must pay the filing fee.
- When you have completed the form, send the original and two copies to the following address:
 Clerk of the United States District Court for the Central District of California
 United States Courthouse
 ATTN: Intake/Docket Section
 312 North Spring Street
 Los Angeles, California 90012

PLEASE COMPLETE THE FOLLOWING: (Check appropriate number)

This petition concerns:

- 1. a conviction and/or sentence.
- 2. prison discipline.
- 3. a parole problem.
- 4. other.

PETITION

1. Venue

- a. Place of detention BERN VALLEY STATE PRISON
- b. Place of conviction and sentence LONG BEACH SUPERIOR COURT

2. Conviction on which the petition is based (a separate petition must be filed for each conviction being attacked).

- a. Nature of offenses involved (include all counts): COUNT 1... SECTION 211 (2ND DEGREE RESIDENTIAL ROBBERY);
COUNT 2... SECTION 215(A) (THE MOTOR VEH. POSS. OTHER); AND
COUNT 3... SECTION 2800.2 (EVADING AN OFFICER); 4-7 COUNTS ARE MISDEMEANORS.

b. Penal or other code section or sections: _____

c. Case number: NA 027596-01

d. Date of conviction: _____

e. Date of sentence: 3-4-97

f. Length of sentence on each count: 55 YEARS TO LIFE.

g. Plea (check one):

- Not guilty
- Guilty
- Nolo contendere

h. Kind of trial (check one):

- Jury
- Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? Yes No

If so, give the following information for your appeal (and attach a copy of the Court of Appeal decision if available):

a. Case number: NA 027596-01

b. Grounds raised (list each):

- (1) PETITION FOR RECALL OF SENTENCE UNDER PROP. 36
- (2) _____

- (3) _____
- (4) _____
- (5) _____
- (6) _____

c. Date of decision: MARCH 25, 2013

d. Result POST-CARD DENIAL VIA SUPERIOR COURT MINUTE ORDER

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? Yes No

If so give the following information (and attach copies of the Petition for Review and the Supreme Court ruling if available):

a. Case number: NO 27596-01 / 9217383

b. Grounds raised (list each):

- (1) PETITION FOR WRIT OF MANDATE
- (2) NOTE: PLEASE SEE - LV 14-6001 (UFW) (FWM) Motion - to dispense with
- (3) EXHAUSTION REQUIREMENTS PURSUANT TO
- (4) 28 U.S.C § 2254 (b)(1)(B)(ii).
- (5) _____
- (6) _____

c. Date of decision: N/A

d. Result N/A

5. If you did not appeal:

a. State your reasons N/A

b. Did you seek permission to file a late appeal? Yes No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction? Yes No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

- a. (1) Name of court: N/A
- (2) Case number: _____
- (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

- (a) N/A
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: N/A

(6) Result N/A

(7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: N/A

(2) Case number: N/A

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

- (a) N/A
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: N/A

(6) Result N/A

(7) Was an evidentiary hearing held? Yes No

c. (1) Name of court: N/A

(2) Case number: N/A

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

- (a) N/A
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

(5) Date of decision: N/A
(6) Result N/A

(7) Was an evidentiary hearing held? Yes No

7. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement:* In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: SEE NEXT PAGE ENTITLED 5X OF

(1) Supporting FACTS: SEE NEXT PAGE ENTITLED 5X OF 11 thru 57 OF 11

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

b. Ground two: N/A

(1) Supporting FACTS: N/A

(2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

c. Ground three: _____

STATE DEPRIVED PETITIONER OF HIS 14TH AMENDMENT CONSTITUTIONAL
RIGHT TO DUE PROCESS OF LAW BY DENYING TO RESENTENCE PETITIONER
WITHOUT FOLLOWING MANDATED PROCEDURES PURSUANT TO CALIFORNIA
PENAL CODE SECTION § 1170.126 (F).

THE STATE COURT INTERPRETATION OF CALIFORNIA PENAL CODE SECTION § 1170.126
(e) (1) (2) (3) THREE STRIKE REFORM ACT OF 2012 IS SHOWN IN PEOPLE V.
YEARWOOD. SEE, APPENDIX PAGE 1 (HIGH-LIGHTED PARAGRAPH.)

AS SHOWN....

A PRISONER IS ELIGIBLE FOR RESENTENCING AS A SECOND STRIKE OFFENDER
 IF ALL OF THE FOLLOWING ARE SHOWN:

1) THE PRISONER IS SERVING AN INDETERMINATE LIFE SENTENCE FOR A CRIME THAT
 IS NOT A SERIOUS OR VIOLENT FELONY.

STATE COURT INTERPRETATION REFLECT TWO GROUPS OF INMATES ARE ELIGIBLE
 UNDER THE FIRST FACTOR THOSE WHO THIRD STRIKE IS NON-SERIOUS.... AND THOSE
 WHO THIRD STRIKE IS NON-VIOLENT. PETITIONER CASE IS ELIGIBLE UNDER THE "FIRST
 FACTOR" BECAUSE COUNTS 1 AND 2 OF PETITIONERS CURRENT CONVICTION ARE BOTH
 NON-VIOLENT CRIMES WITHIN THE MEANING OF CALIFORNIA PENAL CODE SECTION §
1192.7 (c) (19) AND (27). SEE, APPENDIX PAGES 2 THRU 4.

2) THE LIFE SENTENCE WAS NOT IMPOSED FOR ANY OF THE OFFENSES APPEARING
 IN PENAL CODE SECTION § 667 (e) (2) (C) OR PENAL CODE SECTION § 1170.12
(c) (2) (C).

PETITIONER CASE IS ELIGIBLE UNDER THE "SECOND FACTOR" BECAUSE ABSTRACT OF
JUDGMENT, AND INFORMATION SUMMARY REPORT, DEMONSTRATE THAT PETITIONER
 PAGE 5 A OF 11

CURRENT SENTENCE WAS NOT IMPOSED FOR ANY OF THE "SPECIFIC SERIOUS FELONIES" REFERRED TO THAT WOULD MAKE AN INMATE INELIGIBLE UNDER THE SECOND FACTOR. SEE, APPENDIX PAGES a THRU b.

3) THE INMATE HAS NO PRIOR CONVICTION FOR ANY OF THE OFFENSES APPEARING IN PENAL CODE SECTION § 667 (e) (2) (C) (iv) OR PENAL CODE SECTION § 1170.12 (c) (2) (C) (iv).

PETITIONER CASE IS ELIGIBLE UNDER THE "THIRD FACTOR" BECAUSE INFORMATION SUMMARY REPORT DEMONSTRATES THAT PETITIONER DOES NOT HAVE ANY OF THE PRIOR CONVICTIONS REFERRED TO THAT WOULD MAKE AN INMATE INELIGIBLE UNDER THE THIRD FACTOR. SEE, APPENDIX PAGES 7 AND 8.

BECAUSE PETITIONER CASE MEETS ALL "THREE FACTORS" TO BE RESENTENCED AS A SECOND STRIKE OFFENDER, THE STATE IS REQUIRED TO HOLD A HEARING PURSUANT TO CALIFORNIA PENAL CODE SECTION § 1170.126 (F) SEE, APPENDIX PAGE 9 (HIGH-LIGHTED AREA).

IT IS MANIFEST THAT CALIFORNIA CREATED A LIBERTY INTEREST FOR PETITIONER WHEN IT ENACTED PENAL CODE SECTION § 1170.126. THE LIBERTY INTEREST CONSIST OF THE OPPORTUNITY TO RECEIVE A DRAMATICALLY LOWER SENTENCE UNLESS THE GOVERNMENT CAN ESTABLISH THAT PETITIONER IS A DANGER TO PUBLIC SAFETY. THIS LIBERTY INTEREST IS SUFFICIENT TO IMPLICATE THE PROTECTION OF THE 14TH AMENDMENT. SWARTZOUT V. LOOKE, (2011) 562 U.S. _____, 178 L.E.2d 732, 936, "ALTHOUGH A STATE NEED NOT ALLOW FOR PAROLE, IT MUST COMPLY WITH PROCEDURAL DUE PROCESS WHEN IT CONDUCTS PAROLE HEARING;" EVITT'S V. DUCEY, (1985) 469 U.S. 387, 400-402, "ALTHOUGH A STATE NEED NOT PROVIDE FOR A

PAGE 5B OF 11

FIRST APPEAL AS OF RIGHT, DUE PROCESS IS VIOLATED WHEN THE STATE FAILS TO PROVIDE AN EFFECTIVE LAWYER FOR THE APPELLANT."

IN THE CONTEXT OF SECTION § 1170.126 (F) HEARING, A FUNDAMENTAL COMPONENT OF THE PROCESS DUE THE PETITIONER IS THAT THE COURT WILL ASSIGN THE BURDEN OF PROOF TO THE PEOPLE, PEOPLE V. SUPERIOR COURT (KAULICK) (2013) 215 CAL. APP. 4TH 1279, 1301, FN 25. HERE, THE COURT PLAINLY ERRED WHEN IT FAILED TO HOLD A HEARING, AND ALLOW THE PEOPLE TO MEET ITS BURDEN OF PROOF.

UNDER THE 14TH AMENDMENT THE STATE IS REQUIRED TO ENFORCE ITS DISCRETIONARY PROCEDURES IN A MANNER THAT ENSURES THAT THE PETITIONER WILL HAVE A FAIR OPPORTUNITY TO SECURE HIS RELEASE, EVILS, SUPRA, 469 U.S. 387, 400-402. THE COURT DEPRIVED PETITIONER OF THAT OPPORTUNITY WHEN IT FAILED TO HOLD A HEARING MANDATED BY SECTION § 1170.126 (F).

THE STATE COURT DEPRIVING PETITIONER OF A HEARING MANDATED BY SECTION § 1170.126 (F) IS A VIOLATION OF STATE LAW THAT ROSE TO THE LEVEL OF A VIOLATION OF THE 14TH AMENDMENT THAT AMOUNTS TO A STRUCTURAL DEFECT.

THE VIOLATIONS OF STATE LAW THAT RISE TO THE LEVEL OF A VIOLATION OF CONSTITUTIONAL MAGNITUDE ARE COGNIZABLE ON FEDERAL HABEAS CORPUS REVIEW. SEE, TURRENTINE V. MULLIN, 390 F.3D 1181, 1194 (10TH CIR. 2004), "FINDING FEDERAL HABEAS CORPUS RELIEF GRANTED BECAUSE JURY INSTRUCTION VIOLATED DUE PROCESS."

RELIEF FOR VIOLATIONS OF FEDERAL LAW BY THE STATE WILL BE GRANTED IF THE VIOLATION RISES TO THE LEVEL OF A FUNDAMENTAL DEFECT WHICH RESULTS IN A MISCARRIAGE OF JUSTICE OR IS INCONSISTENT WITH THE RUDIMENTARY DEMAND OF FAIR PROCEDURE.

See, PEED v. FARLEY, 512 U.S. 339, 348 (1994).

FEDERAL COURTS APPLY THE BRECHT v. ABRAHAMSON STANDARD OF HARMLESS ERROR IN HABEAS PROCEEDINGS. SEE, BRECHT v. ABRAHAMSON, 507 U.S. 619, 623, 629-30 (1993). UNDER THIS STANDARD, HABEAS RELIEF IS AUTOMATICALLY GRANTED FOR STRUCTURAL DEFECT, Buhl v. LOCKSEY, 233 F.3d 787, 806 (3d Cir 2000), "DENIAL OF RIGHT TO SELF-REPRESENTATION CONSTITUTED STRUCTURAL DEFECT."

Relief Sought.

BECAUSE THE VIOLATION DEMONSTRATED HEREIN CONSTITUTE A STRUCTURAL DEFECT THAT WARRANT THE AUTOMATIC GRANTING OF THIS HABEAS CORPUS.... PETITIONER SEEK THAT THE CENTRAL DISTRICT COURT ISSUE AN ORDER UPON THE STATE COURT TO HOLD A HEARING PURSUANT TO SECTION 2 1170.106 (F) WITHIN 30 DAYS OF THE RESPECTIVE ORDER.

PETITIONER PRAY FOR THE RELIEF SOUGHT....

(1) Supporting FACTS: N/A

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No
- (3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No
- (4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

d. Ground four: N/A

(1) Supporting FACTS: N/A

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No
- (3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No
- (4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

e. Ground five: N/A

(1) Supporting FACTS: N/A

- (2) Did you raise this claim on direct appeal to the California Court of Appeal? Yes No
- (3) Did you raise this claim in a Petition for Review to the California Supreme Court? Yes No
- (4) Did you raise this claim in a habeas petition to the California Supreme Court? Yes No

8. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: N/A

9. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?
 Yes No

If so, give the following information for each such petition (use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available):

a. (1) Name of court: CENTRAL DISTRICT COURT
 (2) Case number: CV-14-6001
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): JULY 31, 2014
 (4) Grounds raised (list each):
 (a) VIOLATION OF 14TH AMENDMENT
 (b) _____
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: OCTOBER 22, 2014
 (6) Result: DISMISSED WITHOUT PREJUDICE FOR LACK OF JURISDICTION.
 (7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: N/A
 (2) Case number: N/A
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____
 (4) Grounds raised (list each):
 (a) N/A
 (b) _____
 (c) _____
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: N/A
 (6) Result: N/A
 (7) Was an evidentiary hearing held? Yes No

10. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? Yes No

If so, give the following information (and attach a copy of the petition if available):

(1) Name of court: N/A

(2) Case number: N/A

(3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): _____

(4) Grounds raised (list each):

- (a) N/A
- (b) _____
- (c) _____
- (d) _____
- (e) _____
- (f) _____

11. Are you presently represented by counsel? Yes No

If so, provide name, address and telephone number: N/A

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on MAY 18, 2015
Date

Curtis D'Well Clayton
Signature of Petitioner

THE PEOPLE, Plaintiff and Respondent, v. RICARDO ALEJANDRO YEARWOOD, Defendant and Appellant.

COURT OF APPEAL OF CALIFORNIA, FIFTH APPELLATE DISTRICT
213 Cal. App. 4th 161; 151 Cal. Rptr. 3d 901; 2013 Cal. App. LEXIS 58
F063712

January 29, 2013, Opinion Filed

Editorial Information: Subsequent History

Modified and rehearing denied by People v. Yearwood, 2013 Cal. App. LEXIS 127 (Cal. App. 5th Dist., Feb. 19, 2013) Review denied by People v. Yearwood, 2013 Cal. LEXIS 3964 (Cal., May 1, 2013)

Editorial Information: Prior History

APPEAL from a judgment of the Superior Court of Kern County, No. DF10407A, John W. Lua, Judge.

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

(1) Criminal Law § 689.2-Successive Crimes and Habitual Offenders-Three Strikes Reform Act.-

Prop. 36 (approved Nov. 6, 2012), which enacted the Three Strikes Reform Act of 2012, has substantially changed the way habitual offenders with two or more prior strikes are sentenced after conviction of another felony. Pen. Code, §§ 667, subd. (e)(2)(A), 1170.12, subd. (c)(2)(A), as amended, provide that except as provided in subparagraph (C), a person with two or more prior strikes must be sentenced to an indeterminate term of 25 years to life imprisonment. Sections 667, subd. (e)(2)(C), 1170.12, subd. (c)(2)(C), together provide that if the offender has two or more prior strikes, but the new felony is not a serious or violent felony as defined in §§ 667, subd. (d), 1170.12, subd. (b), the defendant must be sentenced as a second strike offender under § 667, subd. (e)(1), or § 1170.12, subd. (c)(1), irrespective of the number of prior strike convictions. Sections 667, subd. (e)(2)(C), 1170.12, subd. (c)(2)(C), contain four exceptions to the new restriction on imposition of a third strike sentence. Three exceptions relate to the nature of the current felony and one exception relates to the nature of the offender's prior felony convictions. If the prosecution pleads and proves one of the four exceptions, the offender will be sentenced as a third strike offender.

(2) Criminal Law § 689.2-Successive Crimes and Habitual Offenders-Three Strikes Reform Act-Petition for Recall of Sentence.-

A prisoner is eligible for resentencing as a second strike offender if all of the following are shown: (1) the prisoner is serving an indeterminate life sentence for a crime that is not a serious or violent felony, (2) the life sentence was not imposed for any of the offenses appearing in Pen. Code, §§ 667, subd. (e)(2)(C), 1170.12, subd. (c)(2)(C), and (3) the inmate has no prior convictions for any of the offenses appearing in §§ 667, subd. (e)(2)(C)(iv), 1170.12, subd. (c)(2)(C)(iv) (Pen. Code, § 1170.126, subd. (e)). To obtain a

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ABSTRACT OF JUDGMENT - PRISON COMMITMENT
INDETERMINATE SENTENCE

FORM CR 292

SUPERIOR
 MUNICIPAL
 JUSTICE

COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

COURT (I.D.)
1191010108

BRANCH OR JUDICIAL DISTRICT: LONG BEACH

PEOPLE OF THE STATE OF CALIFORNIA versus
DEFENDANT: CLAYTON, CURTIS

PRESENT
 NOT PRESENT

NA027596-01 - A
- B
- C
- D
- E

COMMITMENT TO STATE PRISON

AMENDED
ABSTRACT

ABSTRACT OF JUDGMENT

DATE OF HEARING (MO) (DAY) (YR)
03-04-97

DEPT. NO.

SOK

JUDGE

CHARLES SHELDON

CLERK

D ROUSSEVE

REPORTER

D WEISS

COUNSEL FOR PEOPLE

M ASHEN

COUNSEL FOR DEFENDANT

J GLASER

PROBATION NO. OR PROBATION OFFICER

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES:

ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____ (NUMBER OF PAGES)

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTED BY			CONCURRENT	CONSECUTIVE	654 DAY
					MO	DAY	YEAR	JURY TRIAL	COURT TRIAL	PLEA			
1	PC	211*	2nd deg ROBBERY	96	01	31	97	X				X	
2	PC	215(A)	TRK MOTOR VEH POSS OTHER	96	01	31	97	X				X	
3	PC	2800.2	EVADE POLICE/RECKLESS DRVE	96	01	31	97	X				X	

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.:
For each count list enhancements horizontally. Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add up time for enhancements on each line and enter line total in right-hand column.

Count	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Total

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER:
List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b), list § 667.5(b) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Enhancement	Yrs. or "S"	Total
667-A1	5									5 0

4. Defendant was sentenced to State Prison for an indeterminate term:
A. For LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts _____
B. For LIFE WITH POSSIBILITY OF PAROLE on counts _____
C. For 15 years to life, WITH POSSIBILITY OF PAROLE on counts _____
D. For 25 years to life, WITH POSSIBILITY OF PAROLE on counts 1, 2 & 3
E. For other term prescribed by law on counts _____ (Specify term on separate sheet if necessary.)
PLUS enhancement time shown above.

5. Indeterminate sentence shown on this abstract to be served consecutive to concurrent with any prior incompleated sentence(s).
6. Other Orders: (List all consecutive/concurrent sentence relationships, fines, etc. if not shown above)

As to count 4,5,6 and 7 defendant is sentenced to 6 months, to be served in any State Prison. Counts 4,5,6 and 7 run concurrently with each other and count 1.

As to count 1,2 and 3 defendant is sentenced Pursuant to 1170.12A-D PC.

(Use an additional page if necessary.)

7. The Court advised the defendant of all appeal rights in accordance with rule 470, California Rules of Court. (AFTER TRIAL ONLY)

8. EXECUTION OF SENTENCE IMPOSED:
A. AT INITIAL SENTENCING HEARING
B. AT RESENTENCING PURSUANT TO DECISION ON APPEAL
C. AFTER REVOCATION OF PROBATION
D. AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC § 1170.6)
E. OTHER _____

9. DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR) 03-04-97
CREDIT FOR TIME SPENT IN CUSTODY 469
TOTAL DAYS INCLUDING: ACTUAL LOCAL TIME 391 LOCAL CONDUCT CREDITS 78
STATE INSTITUTIONS DMH CDC

10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:
 FORTHWITH INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:
 AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS
 CALIF. INSTITUTION FOR WOMEN-FRONTERA
 WASCO
 OTHER (SPECIFY) _____
 CCWF-CHOWCHILLA
 SAN QUENTIN
 CALIF. INSTITUTIONS FOR MEN-CHINO
 R.J. DONAVAN
 DEUEL VOC. INST.

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

CLERK OF THE COURT

EXHIBIT A-22

DEPUTY'S SIGNATURE

DATE

03-05-97

Page 2

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

01 CURTIS CLAYTON

Defendant(s).

CASE NO. NA027596

**INFORMATION
ARRAIGNMENT
DATE: 4/15/1996
SOJTH 'M'**

**INFORMATION
SUMMARY**

<u>Ct. No.</u>	<u>Charge</u>	<u>Charge Range</u>	<u>Defendant</u>	<u>Special Allegation</u>	<u>Alleg. Effect</u>
1	PC 211	3-4-6	CLAYTON, CURTIS	PC 1170.12(A)-(D) PC 667(A)(1) PC 667.5(B) PC 667.5(B) PC 1203(E)(4)	MSP Check Code +5 Yrs +1 yr. per prior +1 yr. per prior PSP
2	PC 215(A)	3-5-9	CLAYTON, CURTIS	PC 1170.12(A)-(D) PC 667(A)(1) PC 667.5(B) PC 667.5(B) PC 1203(E)(4)	MSP Check Code +5 Yrs +1 yr. per prior +1 yr. per prior PSP
3	VC 2800.2	16-2-3	CLAYTON, CURTIS	PC 1170.12(A)-(D) PC 667(A)(1) PC 667.5(B) PC 667.5(B) PC 1203(E)(4)	MSP Check Code +5 Yrs +1 yr. per prior +1 yr. per prior PSP
4	VC 20002(A)	6 Mo.	CLAYTON, CURTIS	PC 1170.12(A)-(D) PC 667(A)(1) PC 667.5(B) PC 667.5(B) PC 1203(E)(4)	MSP Check Code +5 Yrs +1 yr. per prior +1 yr. per prior PSP
5	VC 20002(A)	6 Mo.	CLAYTON, CURTIS	PC 1170.12(A)-(D) PC 667(A)(1) PC 667.5(B) PC 667.5(B) PC 1203(E)(4)	MSP Check Code +5 Yrs +1 yr. per prior +1 yr. per prior PSP
6	VC 20002(A)	6 Mo.	CLAYTON, CURTIS	PC 1170.12(A)-(D) PC 667(A)(1) PC 667.5(B) PC 667.5(B) PC 1203(E)(4)	MSP Check Code +5 Yrs +1 yr. per prior +1 yr. per prior PSP

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7 VC 20002(A) 6 Mo. CLAYTON, CURTIS

PC 1170.12(A)-(D)	MSP Check Code
PC 667(A)(1)	+5 Yrs
PC 667.5(B)	+1 yr. per prior
PC 667.5(B)	+1 yr. per prior
PC 1203(E)(4)	PSP

The District Attorney of the County of Los Angeles, by this Information alleges that:

COUNT 1

On or about February 6, 1996, in the County of Los Angeles, the crime of 1ST DEGREE RESIDENTIAL ROBBERY, in violation of PENAL CODE SECTION 211, a Felony, was committed by CURTIS CLAYTON, who did willfully, unlawfully and by means of force and fear take personal property from the person, possession and immediate presence of SCOTT V. SPIZER and said offense was perpetrated in an inhabited dwelling house, trailer coach and inhabited portion of a building.

"NOTICE: The above offense is a serious felony within the meaning of Penal Code section 1192.7(c)."

* * * * *

COUNT 2

On or about February 6, 1996, in the County of Los Angeles, the crime of CARJACKING, in violation of PENAL CODE SECTION 215(A), a Felony, was committed by CURTIS CLAYTON, who did willfully and unlawfully take a motor vehicle in possession of another from his or her person and immediate presence and from the person and immediate presence of a passenger of said motor vehicle, against the will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of the possession and accomplished by means of force and fear.

"NOTICE: The above offense is a serious felony within the meaning of Penal Code section 1192.7(c)."

* * * * *

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COUNT 3

On or about February 6, 1996, in the County of Los Angeles, the crime of EVADING AN OFFICER, WILLFUL DISREGARD, in violation of VEHICLE CODE SECTION 2800.2, a Felony, was committed by CURTIS CLAYTON, who did willfully and unlawfully, while operating a motor vehicle and with the intent to evade, flee and otherwise attempt to elude a pursuing peace officer's motor vehicle while all of the following conditions existed: the peace officer's motor vehicle exhibited at least one lighted red lamp visible from the front and the defendant(s) either saw or reasonably should have seen the lamp, the peace officer's motor vehicle was sounding its siren as was reasonably necessary, the peace officer's motor vehicle was distinctively marked, the peace officer's motor vehicle was operated by a peace officer. It is further alleged that the defendant(s) drove with a willful wanton disregard for the safety of persons and property.

* * * * *

COUNT 4

On or about February 6, 1996, in the County of Los Angeles, the crime of HIT-RUN DRIVING, in violation of VEHICLE CODE SECTION 20002(A), a Misdemeanor, was committed by CURTIS CLAYTON, who was the driver of a vehicle involved in an accident resulting in damage to property, who did willfully and unlawfully fail to stop the vehicle at the scene of the accident and comply with subsection(s) (1) of Vehicle Code section 20002(a).

* * * * *

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COUNT 5

On or about February 6, 1996, in the County of Los Angeles, the crime of HIT-RUN DRIVING, in violation of VEHICLE CODE SECTION 20002(A), a Misdemeanor, was committed by CURTIS CLAYTON, who was the driver of a vehicle involved in an accident resulting in damage to property, who did willfully and unlawfully fail to stop the vehicle at the scene of the accident and comply with subsection (1) of Vehicle Code section 20002(a).

* * * * *

COUNT 6

On or about February 6, 1996, in the County of Los Angeles, the crime of HIT-RUN DRIVING, in violation of VEHICLE CODE SECTION 20002(A), a Misdemeanor, was committed by CURTIS CLAYTON, who was the driver of a vehicle involved in an accident resulting in damage to property, who did willfully and unlawfully fail to stop the vehicle at the scene of the accident and comply with subsection(s) (1) of Vehicle Code section 20002(a).

* * * * *

COUNT 7

On or about February 6, 1996, in the County of Los Angeles, the crime of HIT-RUN DRIVING, in violation of VEHICLE CODE SECTION 20002(A), a Misdemeanor, was committed by CURTIS CLAYTON, who was the driver of a vehicle involved in an accident resulting in damage to property, who did willfully and unlawfully fail to stop the vehicle at the scene of the accident and comply with subsection(s) (1) of Vehicle Code section 20002(a).

It is further alleged pursuant to Penal Code sections 1170.12(a) through (d) and 667(b) through (i) as to count(s) 1, 2, 3, 4, 5, 6, and 7 that said defendant(s), CURTIS CLAYTON, has suffered the following prior convictions of a serious or violent felony or juvenile adjudication:

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<u>Case No.</u>	<u>Charge Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
NA011726	PC 211	06/22/1992	LOS ANGELES	CA	SUPERIOR
NA011726	PC 211	06/22/1992	LOS ANGELES	CA	SUPERIOR
NA011726	PC 211	06/22/1992	LOS ANGELES	CA	SUPERIOR

*Defendant's
acts*

It is further alleged as to count(s) 1, 2, 3, 4, 5, 6, and 7 that said defendant(s), CURTIS CLAYTON, was on and about the 22nd day of June, 1992, in the Superior Court of the State of California, for the County of Los Angeles, convicted of a serious felony, to wit: ROBBERY, in violation of section 211 of the Penal Code, case NA011726 within the meaning of Penal Code Section 667(a)(1).

It is further alleged as to count(s) 1, 2, 3, 4, 5, 6, and 7 pursuant to Penal Code section 667.5(b) that the defendant(s), CURTIS CLAYTON, has suffered the following prior conviction(s):

<u>Case No.</u>	<u>Charge Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
NA011726	PC 211(3 CTS)	6/22/1992	LOS ANGELES	CA	SUPERIOR

and that a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant(s) did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.

It is further alleged as to count(s) 1, 2, 3, 4, 5, 6, and 7 pursuant to Penal Code section 667.5(b) that the defendant(s), CURTIS CLAYTON, has suffered the following prior conviction(s):

<u>Case No.</u>	<u>Charge Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
TA002382	HS 11351	9/18/1990	LOS ANGELES	CA	SUPERIOR

and that a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant(s) did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.


It is further alleged as to count(s) 1, 2, 3, 4, 5, 6, and 7 that said defendant(s), CURTIS CLAYTON, was convicted of the following felonies, within the meaning of Penal Code section 1203(e)(4):

<u>Case No.</u>	<u>Charge Code/Statute</u>	<u>Conv. Date</u>	<u>County of Court</u>	<u>State</u>	<u>Court Type</u>
TA002382	HS 11351	09/18/1990	LOS ANGELES	CA	SUPERIOR
NA011726	PC 211	06/22/1992	LOS ANGELES	CA	SUPERIOR

*** FILED ***
 LOS ANGELES SUPERIOR COURT
 APR 1 1999
 EDWARD M. KRITZMAN, CLERK
 BY A. MATTON

THIS INFORMATION CONSISTS OF 7 COUNT(S).

GIL GARCETTI
DISTRICT ATTORNEY
County of Los Angeles,
State of California

BY: 
PATRICIA S. RYAN
DEPUTY DISTRICT ATTORNEY

Filed in Superior Court,
County of Los Angeles

/W Y

DATED: _____

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defense counsel provide discovery to the People as required by Penal Code Section 1054.3.

1. *The Act*

(1) The court in *Yearwood* concisely explained the key effects of the Act as follows: "The Act changes the requirements for sentencing a third strike offender to an indeterminate term of 25 years to life imprisonment. Under the original version of the three strikes law a recidivist with two or more prior strikes who is convicted of any new felony is subject to an indeterminate life sentence. The Act diluted the three strikes law by reserving the life sentence for cases where the current crime is a serious or violent felony or the prosecution has pled and proved an enumerated disqualifying factor. In all other cases, the recidivist will be sentenced as a second strike offender. [Citations.] The Act also created a postconviction release proceeding whereby a prisoner who is serving an indeterminate life sentence imposed pursuant to the three strikes law for a crime that is not a serious or violent felony and who is not disqualified, may have his or her sentence recalled and be sentenced as a second strike offender unless the court determines that resentencing would pose an unreasonable risk of danger to public safety. [Citation.]" (*Yearwood, supra*, 213 Cal.App.4th at pp. 167-168.)

Thus, there are two parts to the Act: the first part is *prospective* only, reducing the sentence to be imposed in future three strike cases where the third strike is not a serious or violent felony (Pen. Code, §§ 667, 1170.12); the second part is *retrospective*, providing *similar, but not identical*, relief for prisoners already serving third strike sentences in cases where the third strike was not a serious or violent felony (Pen. Code, § 1170.126). We are concerned in this case only with the second part.⁹

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(2) The main difference between the prospective and the retrospective parts of the Act is that the retrospective part of the Act contains an "escape valve" from resentencing for prisoners whose release poses a risk of danger.¹⁰ That is to say, under the prospective part of the Act, if the defendant's current third strike offense is not serious or violent, and none of four enumerated exceptions¹¹ applies, the defendant "shall be" sentenced as if the defendant had only a single prior strike. (Pen. Code, §§ 667, subd. (e)(2)(C), 1170.12, subd. (c)(2)(C).) However, under the retrospective part of the Act, if the prisoner's third strike offense was not serious or violent, and none of the enumerated exceptions applies, the defendant "shall be" sentenced as if the defendant had only a single prior strike, "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety."¹² (Pen. Code, § 1170.126, subd. (f).) The main {215 Cal. App. 4th 1294} issues of dispute in this writ petition surround the means by which the court is to exercise its discretion on the issue of dangerousness.

2. *The Writ Petition Is Properly Before This Court*

(3) Kaulick first contends that this court lacks jurisdiction over the instant writ petition. "As a general rule, the People may not seek an extraordinary writ in circumstances where the Legislature has not provided for an appeal." (*People v. Superior Court (Vidal)* (2007) 40 Cal.4th 999, 1008 [56 Cal. Rptr. 3d 851, 155 P.3d 259].) We therefore consider whether the grant of Kaulick's petition is appealable.

(4) The prosecution's right to appeal a criminal matter is strictly limited by statute. (Pen. Code, § 1238.) There are at least two subdivisions of that statute, however, which allow for the instant challenge.

(5) First, Penal Code section 1238, subdivision (a)(5) permits the prosecution to appeal "[a]n order made after judgment, affecting the substantial rights of the people." A distinction is made in case law between (1) an order recalling the sentence and resentencing the defendant anew and (2) an order modifying the sentence. In the former case, there is no postjudgment order as the new sentence