

ORIGINAL

FILED

TYRONE SMITH
 NAME
E 28131
 PRISON IDENTIFICATION/BOOKING NO.
P.O. Box 3030 (BS-2334)
 ADDRESS OR PLACE OF CONFINEMENT
SUSANVILLE, CALIFORNIA 96122
 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.

Fee Due

2011 APR 27 AM 10:31

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

AF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TYRONE SMITH
 FULL NAME (Include name under which you were convicted)
 Petitioner,
 v.
M. D. McDONALD
 NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED
 PERSON HAVING CUSTODY OF PETITIONER
 Respondent.

CASE NUMBER:
 CV LA CV 11-3605-JSL-GC
 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 COUNTY
 PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
 (List by case number)
 CV _____
 CV _____

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.

LODGED
CLERK, U.S. DISTRICT COURT

APR 18 2011

AF

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

CENTRAL DISTRICT OF CALIFORNIA
BY _____

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

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 High Desert State Prison
- b. Place of conviction and sentence Santa Monica 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): Robbery / 2nd Degree / Two
Prior Felony Convictions imposed under California's
"Three Strikes" Law
- b. Penal or other code section or sections: California Penal Code Sections
212.5, 667 (a), 667 (B-I)
- c. Case number: LA-SA 025544
- d. Date of conviction: 1-9-97
- e. Date of sentence: 2-13-97
- f. Length of sentence on each count: 25 years to life, 5 years
consecutive / 2 Prior Felony Counts / Total: 35 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: B114682
- b. Grounds raised (list each):
(1) Error - Not disqualifying entire jury panel

- (2) Three Strikes law violates separation of powers doctrine
- (3) Non-Instructional Error (Prior Felonies as Strikes)
- (4) Three Strikes Law constitutes Cruel & Unusual Punishment
- (5) (Prejudicial Error: Three Strikes Law Predicated on
- (6) Prior Felony Convictions before Law was enacted)

c. Date of decision: 4-20-98

d. Result AFFIRMED

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 Unknown

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

a. Case number: _____

b. Grounds raised (list each):

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

c. Date of decision: _____

d. Result _____

5. If you did not appeal:

a. State your reasons N/A

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

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: Santa Monica Superior Court
 (2) Case number: SA 025544
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): Approx. 2/10
 (4) Grounds raised (list each):
 (a) - 1997 Conviction was in violation of State and
 (b) Federal law regarding imposition of 1989
 (c) Prior Felony Conviction -
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: 6-15-10
 (6) Result Denied
 (7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: Calif. Court of Appeal-2nd App. Dist.- Div. Four
 (2) Case number: B225670
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): 7-9-10
 (4) Grounds raised (list each):
 (a) - 1997 Conviction was in violation of State and
 (b) Federal law regarding imposition of 1989
 (c) Prior Felony Conviction -
 (d) _____
 (e) _____
 (f) _____
 (5) Date of decision: 7-29-10
 (6) Result Denied
 (7) Was an evidentiary hearing held? Yes No

c. (1) Name of court: California Supreme Court
 (2) Case number: 5185621
 (3) Date filed (or if mailed, the date the petition was turned over to the prison authorities for mailing): 8-20-10
 (4) Grounds raised (list each):
 (a) - Petitioner's Life Sentence illegally imposed
 (b) Under State and Federal law -

- (c) - A Single-Specific-Separate Analysis was
 - (d) required under state law in respect to the 1989
 - (e) Prior Felony Conviction For Second Degree Robbery
 - (f) Under The Strikes Law Imposing the Life Sentence.
- (5) Date of decision: 3-23-11
- (6) Result Denied
-
- (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: PETITIONER'S LIFE SENTENCE (THREE STRIKES LAW) HAS BEEN ILLEGALLY IMPOSED UNDER BOTH FEDERAL AND STATE LAW.

(1) Supporting FACTS: Petitioner first challenges the validity of the state's sentencing court as to his 1992 conviction being imposed as a "strike" (for enhancement purposes) under California's "Three strikes law". Such imposition of this prior felony conviction led not only to a life sentence (See Page 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: STATE SENTENCING ANALYSIS (THREE STRIKES LAW) VIOLATES BOTH STATE AND FEDERAL CONSTITUTIONAL PROVISIONS

(1) Supporting FACTS: On state habeas review, petitioner contended that his 1989 prior felony conviction for second degree robbery required a single-specific-separate analysis which was not done by the sentencing court when the court exercised their discretion to impose this (see Page 17)

- (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: _____

(1) Supporting FACTS: _____

(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: _____

(1) Supporting FACTS: _____

(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: _____

(1) Supporting FACTS: _____

(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: _____

9. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?
 Yes No *If so, I am unaware of this*

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: _____
(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) _____
(b) _____
(c) _____
(d) _____
(e) _____
(f) _____
(5) Date of decision: _____
(6) Result _____

(7) Was an evidentiary hearing held? Yes No

b. (1) Name of court: _____
(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) _____
(b) _____
(c) _____
(d) _____
(e) _____
(f) _____
(5) Date of decision: _____
(6) Result _____

(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: _____

(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) _____

(b) _____

(c) _____

(d) _____

(e) _____

(f) _____

11. Are you presently represented by counsel? Yes No

If so, provide name, address and telephone number: _____

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 April 13th, 2011
Date


Signature of Petitioner

Not ~~SIGNED~~ SIGNED - NO NOT Process - Filing fee will be Paid by Family members when case is assigned

TYRONE SMITH

Petitioner

DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

M-D-McDONALD

Respondent(s)

I, TYRONE SMITH, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? [] Yes [X] No

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received. 1990s - Unknown As To Salary / Wages

2. Have you received, within the past twelve months, any money from any of the following sources?

- a. Business, profession or form of self-employment? [] Yes [X] No
b. Rent payments, interest or dividends? [] Yes [X] No
c. Pensions, annuities or life insurance payments? [] Yes [X] No
d. Gifts or inheritances? [] Yes [X] No
e. Any other sources? [] Yes [X] No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months: N/A

3. Do you own any cash, or do you have money in a checking or savings account? (Include any funds in prison accounts)

[] Yes [X] No

If the answer is yes, state the total value of the items owned: N/A

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property? (*Excluding ordinary household furnishings and clothing*) Yes No

If the answer is yes, describe the property and state its approximate value: _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support: NONE

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

Executed on _____

Date

Signature of Petitioner

CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ _____ on account to his credit at the _____ institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records of said institution: _____

Date

Authorized Officer of Institution/Title of Officer

(Ground one: cont.) under the Three Strikes Law, but an additional 5-year enhancement as to this very same prior felony conviction

Petitioner is well aware of federal habeas review and statutes regarding state sentencing errors. Petitioner does believe that such error is relevant on Federal habeas review, based on:

(1) Both trial and appellate counsel were ineffective in addressing the imposition of the 1997 prior felony conviction at trial, sentencing, and on direct appeal.

(2) The imposition of a life sentence when illegally and erroneously imposed violates equal protection, due process, and in fact, constitutes a "miscarriage of justice" when such sentence is illegally imposed.

(3) The state-court's adjudication of this matter was contrary to, and involved an unreasonable application of clearly established law, as determined by The United States Supreme Court.

The relevant "Statement of Facts" and "Standard for Review" have been set forth in "Exhibit A" to conform with unnecessary duplication as to briefly set forth specific facts, as outlined to proceed in the

"instructional" guideline portion, of the Federal habeas petition.

The premisis for petitioner's "Ineffective Assistance of Counsel" claim, regarding the erroneous imposition of this 1992 prior felony conviction is as follows.

Under California Law, petitioner's 1992 prior felony conviction for assault with a deadly weapon, with force likely to produce great bodily injury (ADW/GBI) cannot be found true on the sole basis of the Abstract of Judgment to constitute a "serious prior felony" under the Three Strikes Law.

As held by the states High Court, the sole use of the Abstract of Judgment, was (is) insufficient to establish the serious prior felony conviction as it shows the "least adjudicated elements" which, in itself, cannot meet the burden of proof required to enact such Three Strikes Statute.

This is exactly what occurred when the sentencing court, found the 1992 ADW/GBI prior felony conviction true, for three strike purposes and sentencing.

Trial counsel's failure to object or have the 1992 prior felony conviction stricken on the sole basis of the presentation of the Abstract of Judgment cannot be deemed "reasonable", "tactical", "strategic", or any other type conduct to infer that their action's fell within the range of "effective

representation" as counsel's non-action regarding this matter resulted in a life sentence for petitioner

Appellate counsel's failure to raise such issue during the pendency of petitioner's direct appeal is just as significant.

Not only did appellate counsel not raise the issue, they had the benefit of a California Supreme Court decision^{#1}, which defined the very core of the Abstract of Judgment issue (sole basis inadmissible for three strike purposes) which set forth the statute during the pendency of petitioner's direct appeal.

Hence, appellate counsel's omissions cannot be deemed as reasonable to overcome ineffective representation.

These omissions by trial and appellate counsel are crucial when supported with additional argument that this 1992 prior felony conviction for ADW/GBI was not a "serious prior felony" based on the laws when petitioner suffered the conviction, and when such was brought and tried as a "strike" to impose the life sentence.

Petitioner asserts that at the time of his ADW/GBI conviction in 1992, California Law defining this conviction, read as follows:

^{#1} - People v. Rodriguez (1998) 17 CAL. 4th 253

" Any person who commits assault upon the person of another, with a deadly weapon or instrument other than a firearm, or by any means of force likely to produce great bodily injury, shall be punished by imprisonment in the state prison" #2

The ambiguity in resolving if this Penal Code Section constituted a serious prior felony conviction, for three strike purposes, was not resolved until March 8th, 2000, when California Proposition 21 became effective resolving numerous conflicting opinions as to California's definition of "assault" crimes, which now listed petitioner's ADW/GBI 1992 prior felony conviction as a serious prior felony.

Such issue has never been resolved by the state's high court and the only opinion as to such issue was a written opinion by The California Court of Appeal holding that petitioner's conviction could be deemed a prior (serious felony) conviction for three strike purposes #3

If such is indeed the case, then the holdings of Rodriguez become more apparent as the California's

#2 California Penal Code Section 245(a)(1)

#3 People v. Winters (2001) 93 Cal.App.4th 273

Court of Appeals Opinion in Winters (ADW/GBI serious prior Felony for enhancement purposes) is based on the principles of Rodriguez.

The Rodriguez Opinion does not state in any way, shape, or form that petitioner's 1992 prior Felony conviction for ADW/GBI constitutes a serious prior Felony to constitute a strike to impose a life sentence, as was done to petitioner under California's Three Strikes Law.

Just as with the Abstract of Judgment analysis which was and is now shown to have erroneously and illegally implemented a "three strikes life sentence" both trial and appellate counsel did nothing to resolve the ambiguity as to this 1992 prior Felony conviction.

In fact had they raised such issue, the Abstract of Judgment analysis and such error would have been brought to the attention of reviewing courts years, perhaps a decade earlier to eliminate any proponents of the inevitable "Motion to Dismiss" by Respondent regarding time constraints.

Yet absent Respondent's own employees who actually brought such issue and resolution to this constitutional claim, petitioner would have had no knowledge as to the basis of this constitutional claim, and the erroneous and illegal imposition of his life sentence.

The disparity in sentences with the imposition of such life sentence is clear. Petitioner would not have received the life sentence had the sentencing court not allowed the 1992 ADW/GBI prior Felony conviction to be counted as a "strike" for three strike purposes based solely on the Abstract of Judgment. This is something that clearly should have been brought forth by trial counsel both before and at sentencing, and by appellate counsel on direct appeal.

Such error now gives rise to an additional constitutional claim as nowhere can it be said that petitioner was afforded due process or equal protection (liberty interests) with the illegally imposed life sentence, resulting in a "miscarriage of justice" significant to initiate proceedings under Federal habeas review statutes and guidelines.

(GROUND TWO: cont.) conviction as a "strike" under the three strikes law. ^{#4}

Specifically, petitioner addressed the state's high court asserting that the implementation of the 1989 prior felony conviction deemed "serious" to initiate a strike and subsequent life sentence, violated federal constitutional holdings regarding due process.

Since the state Supreme Court denied such issue on merits, and the federal courts have already deemed California's Three Strikes Law does not constitute "cruel and unusual punishment", ^{#5} petitioner addresses the exact specifics of the 1989 prior felony conviction in relation to due process holdings and provisions.

In 1989, pursuant to a plea agreement, petitioner pled guilty to second degree robbery. As a result of this conviction, petitioner was sentenced to a term of two years state prison.

At the time of this plea and conviction, California already had in place, a recidivist statute of up to five years for persons convicted of certain felonies.

Second Degree Robbery was one of the felonies that "fell under" this 5-year recidivist statute.

#4 People v. SUPERIOR COURT (Romero) (1996) 13 CAL 4th 497

#5 - This Court may in fact, circumstances prevailing show the imposition of the 1989 Prior Felony Conviction constitutes cruel and unusual punishment

In 1992, after a trial by jury, petitioner was convicted of the aforementioned ADW/GBI and given a three year prison sentence.

Petitioner was also given a 5-year prior felony enhancement as to his 1989 Second Degree Robbery conviction for a total term of eight years.

Following petitioner's 1997 conviction for robbery, petitioner again received a 5-year enhancement for the 1989 robbery conviction, and then a subsequent life sentence under the three strikes law when the 1989 conviction was submitted as a "strike" for the life sentence enhancement.

With the 1989 2-year second degree robbery conviction being imposed under recidivist statutes three times in less than ten years, petitioner's assertion before the court is as follows:

(1) Did the implementation of the 1989 prior felony conviction, when being imposed a third time, under California's Three Strikes Law require a "single-specific-separate" analysis under the state court's discretionary powers as to not violate federal due process holdings and provisions

and,

(2) Does the implementation of a 2-year (low term) prior Felony conviction that was the result of a plea agreement, violates due process holdings and provisions when applied three times in less than ten years resulting in a life sentence under California's Three Strikes Law.

Petitioner asserts that both contentions are meritorious as to the violation of due process holdings and provisions requiring the reversal of his life sentence when granting his Federal habeas petition.

EXHIBIT COVER PAGE

A
EXHIBIT

Description of this Exhibit:

1. Statement of Facts
2. Standard of Review

Number of pages to this Exhibit: 2 pages.

JURISDICTION: (Check only one)

- Municipal Court
- Superior Court
- Appellate Court
- State Supreme Court
- United States District Court
- State Circuit Court
- United States Supreme Court
- Grand Jury

Statement of Facts

In August of 1997, Petitioner was convicted of Second Degree Robbery. After a separate hearing regarding the validity of petitioner prior felony convictions, the trial court found both serious prior felony convictions to be true under both penal code section 667(a) and 667(c) this made petitioner eligible to be sentenced under California three strikes law.

Accordingly, petitioner was sentenced to a term of twenty five years to life/ penal code section 667(c) / and an additional ten years in accordance with penal code section 667(a). Petitioner attempt to address and attack the validity of the three strikes conviction on direct appeal was not successful as his thirty five years to life conviction was upheld and affirmed by the California Court of Appeal Second Appellate District. Habeas petitions have ever been filed by petitioner regarding the validity of his sentence. No issues at bar have ever been raised in a reviewing court of law. On November 10th 2009, petitioner housed at High Desert State Prison-B-Facility appeared before the unit classification committee (UCC) for purpose of his yearly "annual" review (see pgs 3a of 6). After a discussion regarding petitioner prison status and case summary, the (UCC) panel noted that the only information that they had before them in respect to petitioner was prior felony conviction for assault with a deadly weapon by means of force likely to produce great bodily injury was the abstract of judgment.

Petitioner after the conclusion of the hearing requested an "Olson" review through his correctional counselor to see if indeed there was any court documentation to show that his sentencing court relied on any information outside the abstract of judgment to have found him guilty of the ADW/GBJ prior to constitute a serious prior felony conviction to enact the three strikes statute.

Petitioner could find no such documentation, it should be noted that the Unit Classification

Committee informed petitioner that if indeed there had been a sentencing error, the time limitations as to such inquiry by their agency had long since passed. Petitioner was told that if indeed any remedy, such would have to be done by petitioning the court's in order to obtain any relief from his imposed life sentence.

Statement of Review

Petitioner is well aware of the holdings of the United States Supreme Court in relation to "illegal sentences"/ illegal maximum terms of confinement/ that are "pre-Blakeley" / Blakeley v. Washington/ when they meet the criteria set forth in "Cunningham"/Cunningham v California/ as petitioners case clearly does.

The fact that the action at bar is pre Blakeley however does not render such issue moot. Petitioner can find no case law to substantiate his claim that the ADW/GBI can meet the "actual innocence" exception in respect to the validity of such charge when it pertains to a serious prior felony conviction when such was not brought forth when the court found the prior "serious" in determining punishment and a subsequent life sentence, as such is not the basis for his claim(s) at bar.

Petitioners claim does however fall under the "miscarriage of justice" exception as had the facts regarding the prior felony conviction been set forth properly, it is more likely than not that no trial of fact would have found the prior to be a serious prior, under California three strikes law and statute.

This is because the abstract of judgment is the only document the court found "binding" to substantiate the ADW/GBI prior felony conviction as serious under California three strikes law.

To: The United States District Court

Central District of California

Re: Smith V. McDonald

Processing of Federal Habeas Petition Filing Fee

Attn: Clerk of The Court

Enclosed are 3 Copies of my Federal Habeas
Petition with Exhibits. I have not signed the Fee Waiver
Form. Upon your Filing, I will have my Family
send your office The Filing Fee. The Fee Waiver Form is
enclosed. Thank You For Your Time and Effort regarding
this matter.

DATED: APRIL 13th, 2011

Respectfully submitted,
Myron Smith
PETITIONER - Pro se

PROOF OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(Fed. R. Civ. P.5; 28 U.S.C. § 1746)

I, Tyrone Smith, declare:

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

High Desert State Prison, in the County of
LASSEN, State of California.

My prison address is:

Tyrone Smith P.O. Box 3030 (B5-233¹)
Susanville, California 96127-3030

On 13th day of April, 2011

I served the attached document:

Federal Habeas Petition

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

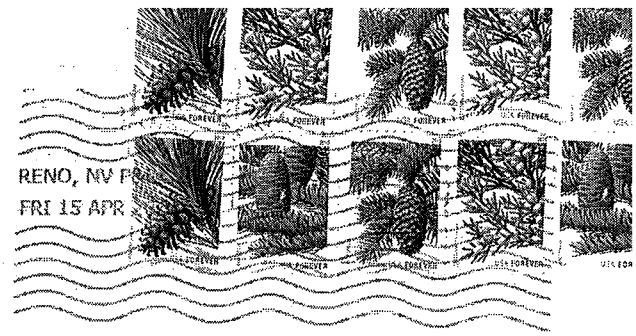
U.S. District Court / C.D. CAL / Attn: Clerk of The Court
312 W. Spring St. Rm 58. LA. CAL 90012

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

EXECUTED ON: 13th day of April, 2011

Tyrone Smith
Signature of Declarant

LYNCH
E2813
H. J. S. P.
P.O. BOX 3030
SUSANVILLE, CALIF 96127



4522

United States District Court
Central District of California
Office of the Clerk
312 North Spring St. Room 6-8
Los Angeles, California 90012

STATE PRISON

3

B5

LEGAL MAIL



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8 Los
Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

TERRY NAFISI

District Court Executive
and Clerk of Court

Wednesday, April 27, 2011

EASTERN DIVISION

3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

TYRONE SMITH
E-28131
P.O. BOX 3030 (B5-233L)
SUSANVILLE, CA 96127

Dear Sir/Madam:

Your petition has been filed and assigned civil case number CV11- 3605 JSL (CW)

Upon the submission of your petition, it was noted that the following discrepancies exist:

- 1. You did not pay the appropriate filing fee of \$5.00. Submit a cashier's check, certified bank check, business or corporate check, government issued check, or money order drawn on a major American bank or the United States Postal Service payable to 'Clerk U.S. District Court'. If you are unable to pay the entire filing fee at this time, you must sign and complete this court's Prisoner's Declaration In Support of Request to Proceed In Forma Pauperis in its entirety. The Clerk's Office will also accept credit cards (Mastercard, Visa, Discover, American Express) for filing fees and miscellaneous fees. Credit card payments may be made at all payment windows where receipts are issued.
- 2. The Declaration in Support of Request to Proceed in Forma Pauperis is insufficient because:
 - (a) You did not sign your Declaration in Support of Request to Proceed in Forma Pauperis.
 - (b) Your Declaration in Support of Request to Proceed in Forma Pauperis was not completed in its entirety.
 - (c) You did not submit a Certificate of Prisoner's Funds completed and signed by an authorized officer at the prison.
 - (d) You did not use the correct form. You must submit this court's current Declaration in Support of Request to Proceed in Forma Pauperis.
 - (e) Other: _____

Enclosed you will find this court's current Prisoner's Declaration in Support of Request to Proceed in Forma Pauperis, which includes a Certificate of Funds in Prisoner's Account Form.

Sincerely,
Clerk, U.S. District Court
AFELIX

By: _____
Deputy Clerk



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8 Los Angeles, CA 90012
Tel: (213) 894-7984

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

TERRY NAFISI

District Court Executive
and Clerk of Court

EASTERN DIVISION

3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

Wednesday, April 27, 2011

TYRONE SMITH
E-28131
P.O. BOX 3030 (B5-233L)
SUSANVILLE, CA 96127

Dear Sir/Madam:

- A Petition for Writ of Habeas Corpus was filed today on your behalf and assigned civil case number CV11- 3605 JSL (CW)
- A Motion pursuant to Title 28, United States Code, Section 2255, was filed today in criminal case number _____ and also assigned the civil case number _____
- A Motion for Extension of Time to File Habeas Corpus Petition was filed today on your behalf and assigned civil case number _____

Please refer to these case numbers in all future communications.

Please Address all correspondence to the attention of the Courtroom Deputy for:

- District Court Judge _____
- Magistrate Judge Carla Woehrle

at the following address:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> U.S. District Court
312 N. Spring Street
Civil Section, Room G-8
Los Angeles, CA 90012 | <input type="checkbox"/> Ronald Reagan Federal
Building and U.S. Courthouse
411 West Fourth St., Suite 1053
Santa Ana, CA 92701-4516 | <input type="checkbox"/> U.S. District Court
3470 Twelfth Street
Room 134
Riverside, CA 92501 |
|---|---|--|

The Court must be notified within fifteen (15) days of any address change. If mail directed to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the case with or without prejudice for want of prosecution.

Very truly yours,
Clerk, U.S. District Court

By: AFELIX
Deputy Clerk