

JAMES E. LAWRENCE  
NAME

AC9038, P.D. BDX 950  
PRISON IDENTIFICATION/BOOKING NO.

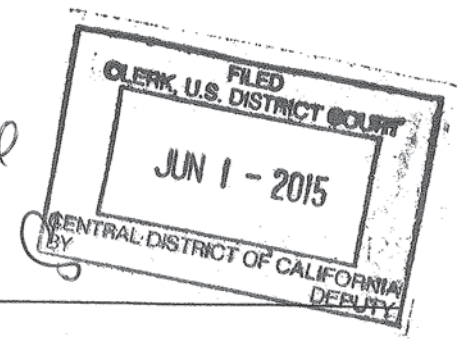
EDLSOM STATE PRISON  
ADDRESS OR PLACE OF CONFINEMENT

EDLSOM CA, 95763

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.

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*Fee  
DUO*



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CASE NUMBER:

ED CV 15-1077-VBF AGR  
To be supplied by the Clerk of the United States District Court

JAMES EDWARD LAWRENCE  
FULL NAME (Include name under which you were convicted)

Petitioner,

v.

RON RACKLEY (WARDEN)  
NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED  
PERSON HAVING CUSTODY OF PETITIONER

Respondent.

AMENDED

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

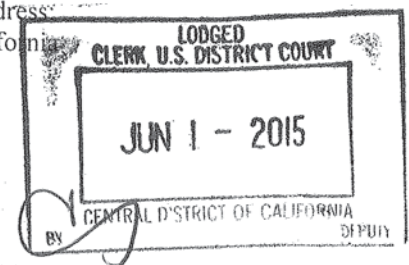
PLACE/COUNTY OF CONVICTION \_\_\_\_\_  
PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT  
(List by case number)

CV SWF025676  
CV ED6193

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 FOLSOM STATE PRISON, FOLSOM CA, 95763
- b. Place of conviction and sentence \_\_\_\_\_

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 PENAL CODE SECTION- 211
- b. Penal or other code section or sections: N/A
- c. Case number: SWFD25676
- d. Date of conviction: 3/2/10
- e. Date of sentence: 3/20/10
- f. Length of sentence on each count: THIRTY-FIVE 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: ED61931
- b. Grounds raised (list each):

- (1) PRISON SPECIAL ALLEGATIONS MAINLY PROVEN WITHIN-
- (2) THE MEANING OF PENAL CODE SECTION 267(c)(e)(2)(A) AND-  
117D.10(c), SECTION (2)(a).

- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_

N  
/A

c. Date of decision: \_\_\_\_\_

d. Result DENIED.

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: 522553D

b. Grounds raised (list each):

- (1) PRTR SPECIAL ALLEGATIONS MAINLY PROVEN - - -
- (2) WITHIN THE MEANING OF PENAL CODE SECTION -
- (3) 667(c)(2)(A) AND IND. 12(c), SECTION (2)(a),
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_

c. Date of decision: MAY-13-2015

d. Result DENIED.

5. If you did not appeal:

a. State your reasons NO ATTORNEY ASSISTANCE

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: \_\_\_\_\_
- (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) \_\_\_\_\_

N/A

(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):

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- (e) \_\_\_\_\_
- (f) \_\_\_\_\_

N/A

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(2) Case number: \_\_\_\_\_

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

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- (c) \_\_\_\_\_
- (d) \_\_\_\_\_
- (e) \_\_\_\_\_
- (f) \_\_\_\_\_

N/A

(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: PRISOR SPECIAL ALLEGATIONS, P.C. SEC. 267(C)(C)(2)(A) - AND 117D.12(C), SEC (2)(a) MATERIALLY PROVEN WITHIN THAT MEANING.

(1) Supporting FACTS: PETITIONER'S PRIOR FELONY CONVICTIONS AROSE FROM THE SAME PRISOR INCIDENT, WERE BASED ON THE ACT. THE TRIAL COURT SHOULD DISMISS ONE OF THE PRIOR CONVICTIONS AND RE-SENTENCE HIM AS IF HE HAD ONE, NOT TWO, QUALIFYING STRIKE'S, CONVICTIONS.

(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: \_\_\_\_\_ 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

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: \_\_\_\_\_ **N/A**

(2) Case number: \_\_\_\_\_ **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) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_ **N**

(d) \_\_\_\_\_

(e) \_\_\_\_\_

(f) \_\_\_\_\_ **A**

(5) Date of decision: \_\_\_\_\_

(6) Result \_\_\_\_\_

(7) Was an evidentiary hearing held?  Yes  No

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

(2) Case number: \_\_\_\_\_ **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) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_ **N**

(d) \_\_\_\_\_

(e) \_\_\_\_\_ **A**

(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: \_\_\_\_\_





PROOF OF SERVICE BY MAIL

I James E. Lawrence, AM A RESIDENT OF FOLSOM STATE PRISON IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA. I AM OVER THE AGE OF 18 YEARS, AND I AM /AM NOT A PARTY TO THIS ACTION.

MY PRISON NUMBER IS: AC9038

MY PRISON ADDRESS IS: P.O. BOX 950, Folsom, Ca. 95763

ON 5-26, 2015 I SERVED A COPY OF THE FOLLOWING DOCUMENT:

ON THE FOLLOWING PARTIES BY PLACING THE DOCUMENTS IN A SEALED ENVELOPE WITH POSTAGE FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT FOLSOM STATE PRISON (MAILBOX RULE), FOLSOM, CALIFORNIA, ADDRESSED AS FOLLOWS:

CENTRAL DISTRICT CALIFORNIA  
312 N. SPRING ST. # G-8  
LOS ANGELES, Ca 90012-4793

Kamala D. Harris ATT. GEN.  
455 Golden Gate Ave. Suite 11000  
San Francisco, Ca 94102-7004

THERE IS DELIVERY SERVICE BY THE UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND/OR THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED 5-26-, 2015 AT FOLSOM, CALIFORNIA..

James E. Lawrence  
Signature here >

1  
2  
3  
4 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

5 James Edward Lawrence  
6 petitioner

Super.Ct.No: SWF025676

Appellate NO: E06193

7 V.

8 Ron Rackley (warden)  
9 respondent  
10 -----/

11 PETITION FOR REVIEW

12 Following Affirmative of Judgment by the Court of Appeal  
13 Fourth Appellate District  
14 Division Two

15  
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19  
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21  
22 James Lawrence #AC9038

23 Folsom State Prison

24 P.O.B. 950

25 Folsom CA, 95763

26 IN Propria Persona  
27  
28

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3 Question Presented  
4 Statement of Proceedings  
5 Bases of Petitioner's Claim  
6 Conclusion

6 TABLE OF AUTHORITIES

7 STATE CASES:

8 People V. Benson (1998) 18 Cal.4th 24  
9 People V. Burgos (2004) 117 Cal.App 4th 1209,1216  
10 People V. Carmony (2004) 33 Cal.4th at pg.377  
11 People V. Sanchez (2001) 24 Cal 4th at pg.983  
12 People V. Williams (1998) 17 Cal 4th at pg.161  
13 People V. Vargas (2014) Dar 9070  
14 Ballot Pamphlet Gen.Elec. Nov 8th (1994)  
15 Neal V. State of California (1960) 55 Cal 2d.11,19  
16  
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14 After the unpublished Decision of the Court of Appeal  
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18 ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

19 Petitioner James Lawrence, apperaing in pro Se, hereby petition  
20 this court for a rehearing En Banc/or review to exhaust state remedies,  
21 this following the opinion from order entered on February 26,2015,  
22 received via institutional legal mail on March 12,2015.

23 Concurrently with this application, petitioner has now filed a  
24 timely petition.  
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1 The trial courts must consider, among other things, the nature and  
2 circumstances of the prior convictions to see whether a petitioner fall  
3 outside the spirit of the **Three strikes** law. See: People V. Carmony-  
4 (2004) 33 Cal.4th at pg.377; People V. Williams (1998) 17 Cal.4th at  
5 pg.161. The nature and circumstances of petitioner's prior convictions  
6 show he committed just one criminal act, not two.

7 The distinction between petitioner's single act, as opposed to  
8 divisible courses of conduct is clear. The prior robberies are inter-  
9 connected with one another, because petitioner forcibly took property,  
10 "less than (950) nine-hundred/fifty dollar" from the immediate presence  
11 of the victim, yet this same force was used to determine the nature of  
12 the committed offense.

13 Therefore, petitioner content that because the element's of a  
14 robbery are force and/or fear under penal code 487, once the trial  
15 court determined that a crime had been committed, it could not then  
16 utilize the same set of operative facts or elements to then  
17 simultaneously determine that a violence/serious offense had occurred,  
18 divisible from the robbery, Vargas,Supra. The nature of the committed  
19 offense is the "force" that perpetrated the robbery.(Id.). Both crimes  
20 stem from the same fact, at the same time and against the same victim.  
21 Neal V. State of California (1960) 55 Cal.2d.11,19; People V. Benson-  
22 (1998) 18 Cal.4th 24 ["Famous Footnote 8"]; People V. Sanchez (2001)-  
23 24 Cal.4th 983. Thus, the two crimes could not be separately punished  
24 then, and cannot be treated as separate strikes now. Vargas,supra.

25 Moreover, in People V. Burgos (2004) 117 Cal.App 4th 1209, the  
26 court relying on Benson,Supra,18 Cal.4th 24,and Sanchez,Supra,24 Cal.4th  
27 983, agreed that the detendant's prior felony convictions were so  
28

1 On April 10, 1984, petitioner "negotiated plea agreement" was con-  
2 victed of seven counts of robbery pursuant to penal code section 211  
3 within the meaning of penal code section 667.(a). Note: The state  
4 expressly agreed to treat the robbery conviction(s), as only "one"  
5 prior strike.

6 The prior special allegations were mainly proven within the meaning  
7 of penal code section 667 (c)(e)(2)(A) and 1170.12(c), section (2)(a),  
8 and sentence him to a term of thirty-five years in state prison.

9 In his current conviction pursuant to penal code section 211,  
10 petitioner was sentence as a third striker, based on the above mention  
11 prior conviction, to a term of twenty-five years to life, plus seven  
12 years in state prison. See: Legal summary status as exhibit.

13 Because petitioner's prior felony convictions arose from the same  
14 prior incident, were based on the same act, the trial court should  
15 dismiss one of the prior convictions, and re-sentence him as if he had  
16 one, not two, qualifying strike(s), convictions.

17 The initiative version of the three strikes law was passed by the  
18 voters in 1994. The baseball metaphor gave [them] the reasonable under  
19 standing that a person would have three swings of the bat "chances"  
20 before receiving the harshest penalty of twenty-five years to life.  
21 Additionally, the voters would have also understood that no one could  
22 be called for two strikes with just one swing. See: Ballot Pamphlet--  
23 Gen.Elec.[Nov 8th 1994], argument in favor of prop.184.

24 When the trial court treated petitioner(s) prior robbery conviction  
25 as separate strikes, regardless of the fact that they were based on a  
26 single criminal act, it contravened the voters understanding of how the  
27 three strikes law was intended to work.

28

1 ..so closely connected, that failure to strike one of them must be  
2 deemed an abuse of discretion. Burgos, Supra, 117 Cal.App.4th at pg.-  
3 1216.

4 CONCLUSION

5 For reason articulated herein, petitioner request that the court  
6 modify his current sentence, "indeterminate term of twenty-five years  
7 to life" pursuant to People V. Vargas (2014) DJDAR 9070.

8 REQUEST FOR APPOINTMENT OF COUNSEL

9 The Sixth amendment provides that "[i]n all criminal prosecutions,  
10 the accused "shall" enjoy the right to have the assistance of counsel  
11 for his defence".

12 The Sixth amendant right to counsel in criminal proceedings applies  
13 to state through fourteenth amendment.

14 Petitioner, James Lawrence, hereïn request appointment of counsel  
15 to assist him in the matter before the court.

16  
17 VERIFICATION

18 Iam the petitioner in the above cause of action. I have read the  
19 statement herein, and declare under penalty of perjury that these state  
20 ment are true and correct.

21  
22 Dated: --- 3/30/15. --- /

23 Respectfully Submitted

24 *James E. Lawrence*  
25 In Propria Persona  
26  
27  
28



**PROOF OF SERVICE BY MAIL**

I, ~~JAMES EDWARD LAWRENCE~~ AM A RESIDENT OF FOLSOM STATE PRISON IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA. I AM OVER THE AGE OF 18 YEARS, AND I AM /AM NOT A PARTY TO THIS ACTION.

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FOURTH APPELLATE DISTRICT  
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ON THE FOLLOWING PARTIES BY PLACING THE DOCUMENTS IN A SEALED ENVELOPE WITH POSTAGE FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT FOLSOM STATE PRISON (MAILBOX RULE), REPRESA, CALIFORNIA, ADDRESSED AS FOLLOWS:

CLERK: SUPREME COURT OF CALIFORNIA  
350 McALLISTER STREET  
SAN FRANCISCO, CA 94102-7303

THERE IS DELIVERY SERVICE BY THE UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND/OR THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.

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EXECUTED 3/30, 2015, at REPRESA, CALIFORNIA.

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signature here

S 225530

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SUPREME COURT  
FILED

APR - 6 2015

Frank A. McGuire Clerk

Deputy

COPY

PETITION FOR REVIEW

Following Affirmative of Judgment by the Court of Appeal  
Fourth Appellate District  
Division Two

James Lawrence #AC9038

Folsom State Prison

P.O.B. 950

Folsom CA, 95763

IN Propria Persona

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APR - 6 2015

CLERK SUPREME COURT

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14 robbery are force and/or fear under penal code 487, once the trial  
15 court determined that a crime had been committed, it could not then  
16 utilize the same set of operative facts or elements to then  
17 simultaneously determine that a violence/serious offense had occurred,  
18 divisible from the robbery, Vargas,Supra. The nature of the committed  
19 offense is the "force" that perpetrated the robbery.(Id.). Both crimes  
20 stem from the same fact, at the same time and against the same victim.  
21 Neal V. State of California (1960) 55 Cal.2d.11,19; People V. Benson-  
22 (1998) 18 Cal.4th 24 ["Famous Footnote 8"]; People V. Sanchez (2001)-  
23 24 Cal.4th 983. Thus, the two crimes could not be separately punished  
24 then, and cannot be treated as separate strikes now. Vargas,supra.

25 Moreover, in People V. Burgos (2004) 117 Cal.App 4th 1209, the  
26 court relying on Benson,Supra,18 Cal.4th 24,and Sanchez,Supra,24 Cal.4th  
27 983, agreed that the defendant's prior felony convictions were so  
28

1 ..so closely connected, that failure to strike one of them must be  
2 deemed an abuse of discretion. Burgos,Supra, 117 Cal.App.4th at pg.-  
3 1216.

4 CONCLUSION

5 For reason articulated herein, petitioner request that the court  
6 modify his current sentence,"indeterminate term of twenty-five years  
7 to life" pursuant to People V. Vargas (2014) DJDAR 9070.

8 REQUEST FOR APPOINTMENT OF COUNSEL

9 ..... The Sixth amendment provides that "[i]n all criminal prosecutions,  
10 the accused "shall" enjoy the right to have the assistance of counsel  
11 for his defence".

12 The Sixth amendant right to counsel in criminal proceedings applies  
13 to state through fourteenth amendment.

14 Petitioner, James Lawrence, hereñn request appointment of counsel  
15 to assist him in the matter before the court.

16  
17 VERIFICATION

18 Iam the petitioner in the above cause of action. I have read the  
19 statement herein, and declare under penalty of perjury that these state  
20 ment are true and correct.

21  
22 Dated: --- 9 3/30/15 /

23 Respectfully Submitted  
24 James Lawrence  
25 In Propria Persona  
26  
27  
28



EXHIBIT "A"

Legal Summary Status  
"Abstract of Judgment"

**SERIOUS PRIOR OFFENSE 1**

It is further alleged that the defendant was on or about April 10, 1984 in the Superior Court of the State of North Carolina, for the County of Cleveland, convicted of the crime of Robbery, a serious felony, in violation of section 211 of the Penal Code, within the meaning of Penal Code section 601, subdivision (a)

**SPECIAL ALLEGATION - 1170.12(c) & (e)(2)(A) and 1170.12(c)(2)(a)**

It is further alleged that prior to the commission of the offense(s) charged herein the defendant was convicted of two or more serious and violent felonies, within the meaning of Penal Code sections 601, subdivision (a) and 1170.12, subdivision (c), subsection (2)(a), to wit:

**FIRST PRIOR**, a conviction on or about April 10, 1984 in the Superior Court of the State of North Carolina, for the County of , for the crime of, **ROBBERY**, in violation of Penal Code section 211, and

**SECOND PRIOR**, a conviction on or about April 10, 1984 in the Superior Court of the State of North Carolina, for the County of Cleveland, for the crime of, Robbery, in violation of Penal Code section 211

**ALLEGATION OF VIOLATION(S) OF PROBATION**

J.F. 04/676

The People of the State of California allege that on March 19, 2008, the defendant violated the terms of probation Case Number SWF017331 by reason of the violation(s) of law alleged above. The District Attorney hereby serves notice upon the defendant that the District Attorney is seeking to have the violation of probation heard at the same time and place as the scheduled hearing in this case, and will seek to have said defendant found in violation of said probation at the conclusion of any hearing.

41

I declare under penalty of perjury upon information and belief and the laws of the State of California that the foregoing is true and correct

Dated: May 12, 2008  
QRB: bvv

*[Signature]*  
Complainant

*[Handwritten signature]*

*[Handwritten signature]*

1/19/11  
AC-9038  
PVP

**ABSTRACT OF JUDGMENT - PRISON COMMITMENT - INDETERMINATE**  
 [NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-292 ATTACHED]

CR-292

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Riverside				FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE  APR 08 2011 <i>Big</i>	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: JAMES EDWARD LAWRENCE		DOB: 05/13/1962	SWF025676	-A	
AKA: JAMES EDWARD LAURENCE				-B	
CII#: A21120596				-C	
BOOKING: 200819556		<input checked="" type="checkbox"/> NOT PRESENT		-D	
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		<input checked="" type="checkbox"/> AMENDED ABSTRACT			
DATE OF HEARING 03/01/2011	DEPT. NO S304	JUDGE F. Paul Dickerson			
CLERK A. Merlo	REPORTER	PROBATION NO. OR PROBATION OFFICER		<input checked="" type="checkbox"/> IMMEDIATE SENTENCING	
COUNSEL FOR PEOPLE		COUNSEL FOR DEFENDANT			
<input type="checkbox"/> APPTD					

1. Defendant was convicted of the commission of the following felonies:  
 Additional counts are listed on attachment  
 \_\_\_\_\_ (number of pages attached)

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			CONCURRENT	CONSECUTIVE	664 STAY
						JURY	COURT	PLEA			
02	PC	211**	2 <sup>ND</sup> Robbery	2008	09/28/10		X				
					- -						
					- -						
					- -						
					- -						

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

COUNT	ENHANCEMENT	TIME IMPOSED OR 'S' FOR STAYED	ENHANCEMENT	TIME IMPOSED OR 'S' FOR STAYED	ENHANCEMENT	TIME IMPOSED OR 'S' FOR STAYED YIS	ENHANCEMENT	TIME IMPOSED OR 'S' FOR STAYED	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	TIME IMPOSED OR 'S' FOR STAYED	ENHANCEMENT	TIME IMPOSED OR 'S' FOR STAYED	ENHANCEMENT	TIME IMPOSED OR 'S' FOR STAYED	ENHANCEMENT	TIME IMPOSED OR 'S' FOR STAYED	TOTAL
PC 667.5(B)	01	PC 667 (A)	05					6 0

Defendant was sentenced to State Prison for an INDETERMINATE TERM as follows:

4.  LIFE WITHOUT THE POSSIBILITY OF PAROLE on counts \_\_\_\_\_  
 5.  LIFE WITH THE POSSIBILITY OF PAROLE on counts \_\_\_\_\_  
 a.  15 years to Life on counts \_\_\_\_\_ c.  \_\_\_\_\_ years to Life on counts \_\_\_\_\_  
 b.  25 years to Life on counts 2 d.  \_\_\_\_\_ years to Life on counts \_\_\_\_\_

PLUS enhancement time shown above.

7.  Additional determinate term (see CR-290).  
 8. Defendant was sentenced pursuant to  PC 667(b)-(i) or PC 1170.12  PC 667.61  PC 667.7  other (specify):

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for indeterminate sentences. Attachments may be used but must be referred to in this document.

PEOPLE OF THE STATE OF CALIFORNIA vs.  
 DEFENDANT: JAMES EDWARD LAWRENCE

SWF02676	-A	-B	-C	-D
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9 FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. Restitution Fine(s):

Case A: \$800.00 per PC 1202.4(b) forthwith per PC 2085.5; \$800.00 per PC1202.45 suspended unless parole is revoked  
 \$\_\_\_\_\_ per PC 1202.44 is now due, probation having been revoked.

Case B: \$\_\_\_\_\_ per PC 1202.4(b) forthwith per PC 2085.5; \$\_\_\_\_\_ per PC1202.45 suspended unless parole is revoked  
 \$\_\_\_\_\_ per PC 1202.44 is now due, probation having been revoked.

Case C: \$\_\_\_\_\_ per PC 1202.4(b) forthwith per PC 2085.5; \$\_\_\_\_\_ per PC1202.45 suspended unless parole is revoked  
 \$\_\_\_\_\_ per PC 1202.44 is now due, probation having been revoked.

Case D: \$\_\_\_\_\_ per PC 1202.4(b) forthwith per PC 2085.5; \$\_\_\_\_\_ per PC1202.45 suspended unless parole is revoked  
 \$\_\_\_\_\_ per PC 1202.44 is now due, probation having been revoked.

b. Restitution per PC 1202.4(f):

Case A: \$\_\_\_\_\_  Amount to be determined to  victim(s)\*  Restitution Fund

Case B: \$\_\_\_\_\_  Amount to be determined to  victim(s)\*  Restitution Fund

Case C: \$\_\_\_\_\_  Amount to be determined to  victim(s)\*  Restitution Fund

Case D: \$\_\_\_\_\_  Amount to be determined to  victim(s)\*  Restitution Fund

\*Victim Name(s), if known, and amount breakdown in item 11, below.  \*Victim name(s) in probation officer's report.

c. Fine(s):

Case A: \$\_\_\_\_\_ per PC 1202.5 \$\_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days  county jail  prison in lieu of fine  concurrent  consecutive  
 includes:  \$50 Lab Fee per HS 11372.5(a)  \$\_\_\_\_\_ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case B: \$\_\_\_\_\_ per PC 1202.5 \$\_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days  county jail  prison in lieu of fine  concurrent  consecutive  
 includes:  \$50 Lab Fee per HS 11372.5(a)  \$\_\_\_\_\_ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case C: \$\_\_\_\_\_ per PC 1202.5 \$\_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days  county jail  prison in lieu of fine  concurrent  consecutive  
 includes:  \$50 Lab Fee per HS 11372.5(a)  \$\_\_\_\_\_ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case D: \$\_\_\_\_\_ per PC 1202.5 \$\_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days  county jail  prison in lieu of fine  concurrent  consecutive  
 includes:  \$50 Lab Fee per HS 11372.5(a)  \$\_\_\_\_\_ Drug Program Fee per HS 11372.7(a) for each qualifying offense

d. Court Security Fee: \$30.00 per PC 1465.8.

10. TESTING: a.  Compliance with PC 296 verified b.  DNA per PC 296 c.  AIDS per PC 1202.1 d.  Other (specify): Other orders

11. Other Orders (Specify):

Pay total of \$30.00 for criminal conviction assessment (70373 GC) (\$30 ea convicted charge): Payable to Division of Adult Institutions.

Prior 1 and 4 to run consecutive to sentence impose in Count 2

12. IMMEDIATE SENTENCING:

Probation to prepare and submit post-sentence report to CDCR per PC 1203c.

Defendant's race/national origin: Black

13. EXECUTION OF SENTENCE IMPOSED

a.  at initial sentencing hearing. \_\_\_\_\_

b.  at resentencing per decision on appeal. \_\_\_\_\_

c.  after revocation of probation. \_\_\_\_\_

d.  at resentencing per recall of commitment. (PC 1170(d).) \_\_\_\_\_

e.  other (specify): \_\_\_\_\_

14. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	782	680	<input type="checkbox"/> 4019 <input checked="" type="checkbox"/> 2933.1
B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1

Date Sentence Pronounced: 03/12/2011

Time Served in State Institution: DMH CDC CRC

15. The defendant is remanded to the custody of the sheriff  forthwith  after 48 hours excluding Saturdays, Sundays, and holidays.  
 To be delivered to  the reception center designated by the director of the California Department of Corrections and Rehabilitation.  
 Other (specify): Delano

CLERK OF THE COURT

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

DEPUTY'S SIGNATURE	DATE
<i>[Signature]</i>	04/08/2011



EXHIBIT "B"

OPINION: COURT of APPEAL FOURTH APPELLATE DISTRICT  
DIVISION TWO

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Court of Appeal  
Fourth Appellate District  
Division Two  
**ELECTRONICALLY FILED**

9:39 am, Feb 26, 2015

By: S. Driller

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES EDWARD LAWRENCE,

Defendant and Appellant.

E061931

(Super.Ct.No. SWF025676)

OPINION

APPEAL from the Superior Court of Riverside County. F. Paul Dickerson III,  
Judge. Affirmed.

Law Offices of John F. Schuck, and John F. Schuck, under appointment by the  
Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant James Edward Lawrence appeals after the trial court  
denied his petition for discretionary three strikes resentencing under Penal Code  
section 1170.126. We affirm.

## FACTS AND PROCEDURAL HISTORY

In 2010, defendant was convicted of a gas station robbery he committed in May 2008. Defendant was sentenced as a third striker for the 2008 robbery, based upon seven prior strike convictions, arising from a series of robberies he had committed in North Carolina in 1983 and 1984. He received a sentence of 25 years to life for the 2008 robbery, with other enhancements, resulting in a total indeterminate term of 31 years to life. This court affirmed the judgment, with minor corrections to the abstract of judgment, in November 2010.

In November 2012, the voters passed Proposition 36, the Three Strikes Reform Act, which created a procedure for third strike offenders to petition for resentencing, if the offender is serving an indeterminate life term for a third strike conviction that is not a serious or violent felony. If the offender meets the criteria set forth in Penal Code section 1170.126, subdivision (e), he or she may be resentenced as a second striker, unless the court determines that such resentencing would pose an unreasonable risk of danger to public safety.

Penal Code section 1170.126, subdivision (b), contains a two-year time limit within which to file a resentencing petition. Defendant mailed a petition, referencing Penal Code section 1170.126, to the Superior Court of Riverside County. The petition was marked "received" on August 3, 2014; the petition was proffered within the appropriate time frame. The trial court characterized the initial petition as "Ex-Parte

Correspondence,” for modification of sentence, and “denie[d] said request,” on August 11, 2014.

Defendant’s petition was marked as “filed” on August 20, 2014. However, although defendant’s petition purported to attack his three strikes sentence, it did so based on dual or multiple use of a particular prior conviction as a prison term prior one-year enhancement, a prior serious felony five-year enhancement, and a qualifying strike conviction.

In September 2014, defendant proceeded to file a notice of appeal from the denial of his request for resentencing under Penal Code section 1170.126. Appellate Defenders, Inc., filed an amended notice of appeal on defendant’s behalf from an “Order after judgment affecting substantial rights of defendant in that the trial court denied defendant’s motion to modify his sentence in which defendant relied on *People v. Vargas* (2014) 59 Cal.4th 635 and Penal Code section 1170.126.”

This court appointed counsel to represent defendant. We now examine the appeal.

#### ANALYSIS

Appointed appellate counsel has filed a brief under authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a brief summary of the facts and a statement of the case. Counsel has also identified two potential arguable issues on appeal: (1) whether defendant is entitled to resentencing pursuant to *People v. Vargas, supra*, 59 Cal.4th 635, 637 (*Vargas*) (two prior convictions arising out of a single act against a single victim



cannot constitute two strikes); (2) whether defendant is entitled to resentencing under Penal Code section 1170.126. Counsel has also requested this court to undertake a review of the entire record.<sup>1</sup>

Defendant has been offered an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and we find no arguable issues.

As to the suggestion that defendant might be entitled to resentencing under *Vargas, supra*, 59 Cal.4th 635, we determine that *Vargas* is inapplicable. The California Supreme Court held in *Vargas* that two prior convictions (robbery and carjacking) were based on the same act, committed at the same time, and against a single victim (a single act of taking the victim's car by force) cannot be treated as two separate strike convictions in a subsequent prosecution. "The typical third strike situation . . . involves a criminal offender who commits a qualifying felony after having been afforded two previous chances to reform his or her antisocial behavior, hence the law's descriptive baseball-related phrase, "Three Strikes and You're Out." ' ' " (*Id.* at p. 638.) When two separate convictions are based on a single act against a single victim on a single occasion, the offender has not been afforded two opportunities for reform, but only one. Accordingly, a trial court abuses its discretion in failing to dismiss one of the strikes; the

---

<sup>1</sup> We have taken judicial notice of the record in the prior appeal (*People v. Lawrence* (Nov. 17, 2010, E050482) [nonpub. opn.] )

court should have sentenced the offender as a second striker, rather than as a third striker. (*Id.* at pp. 647-649.)

Here, by contrast, defendant's strike convictions were the seven robbery offenses he committed in North Carolina. Even though the convictions were obtained in a single trial proceeding, almost all the offenses took place on separate dates (two of the robberies were committed on the same date, July 25, 1984). Under the best case scenario for defendant, he still had six prior strike convictions that unquestionably were not based on the same act. The North Carolina robberies were all properly treated as separate strike convictions.

Defendant's petition shows he was confused about which allegations concerned strike convictions. The thrust of defendant's petition was that one of the 1984 North Carolina robbery convictions was used first for a prior prison term enhancement (one year) under Penal Code section 667.5, subdivision (b), second as a prior serious felony conviction enhancement (five years) under Penal Code section 667, subdivision (a), and third as one of the seven prior strike convictions under the three strikes recidivist sentencing scheme. Defendant mistakenly refers to two of his prison term priors (North Carolina robbery conviction in 1984, and California conviction of burglary in 1999) and the prior serious felony five-year enhancement allegation (North Carolina robbery in 1984) as "strikes." The enhancement allegations were not "strike" allegations, even though the 1984 North Carolina robbery conviction was also used as a strike allegation.

In essence, defendant's petition raised the issue of multiple use of the same conviction, rather than a claim that all seven of his strike priors arose from a single act.

It is not an improper dual use of facts to use the same prior conviction to impose the doubling requirement under Penal Code sections 1170.12, subdivision (c)(1), and 667, subdivision (e)(1) ("Three Strikes" law), and to also impose a five-year serious felony enhancement under section 667, subdivision (a). (*People v. Purata* (1996) 42 Cal.App.4th 489, 498 [concluding the five-year enhancement under Penal Code § 667, subd. (a), is mandatory even though the same prior conviction triggered a doubling of the base term under § 667, subd. (e)].)

In *People v. Jones* (1993) 5 Cal.4th 1142, the California Supreme Court did hold that the electorate did not intend, in enacting Proposition 8, for a sentence to prison to be enhanced both for a prior serious conviction and for a prison term imposed for that conviction. (*Id.* at pp. 1144-1145, 1150.) The premise of defendant's claim in this case is that he was doubly punished, contrary to Penal Code section 654, for both a five-year enhancement and a one-year enhancement based on the same North Carolina 1984 robbery conviction. Defendant is mistaken. The trial court found true two of three alleged prison term priors, as well as the alleged prior serious felony (five-year) enhancement. The five-year enhancement and one of the prison term priors were based on one of the North Carolina robbery convictions. The trial court stayed the one-year enhancement on the duplicative North Carolina enhancement allegation. There was no dual punishment based on the same offense.

Defendant's petition did not address three strikes resentencing under Penal Code section 1170.126 in any substantive way, except to suggest that resentencing under that provision would not pose an unreasonable risk of danger to public safety. An inmate already serving a three strikes indeterminate term may be eligible for resentencing (essentially as a second striker) if the following requirements are met:

“(e) An inmate is eligible for resentencing if:

“(1) The inmate is serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12 for a conviction of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

“(2) The inmate's current sentence was not imposed for any of the offenses appearing in clauses (i) to (iii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clauses (i) to (iii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.

“(3) The inmate has no prior convictions for any of the offenses appearing in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clause (iv) of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.”  
(Pen. Code, § 1170.126, subd. (e).)

Defendant's record shows that he is not eligible for resentencing under Penal Code section 1170.126. His petition stumbles at the first eligibility requirement: Defendant's current offense is second degree robbery, which is defined in Penal Code section 667.5,

subdivision (c)(9), as a violent felony. Defendant is not eligible for resentencing under Penal Code section 1170.126.

DISPOSITION

The trial court properly denied defendant's petition for resentencing. The trial court's order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.