

(Paragraph 18, Page 6, continued.)

On information and belief, and on that basis, I declare that upon prior presentation of the jurisdictional error found herein (Ground 1, Pages 3-3.19, and as summarized, *infra*) to the trial courts, the courts have, without exception, failed to substantively address the fundamental jurisdictional error as raised in the petition (**void judgment**) ... choosing rather to re-phrase the argument and thereby avoid granting relief, or, summarily denying the petition citing irrelevant procedural bar, e.g., "untimely", "could have been raised on appeal", "piecemeal petitions", etc., and thereby avoiding the issue entirely. Subsequent application to the appellate court results in summary denial for the reasons stated in the trial court's denial order. **Review of question of void judgment is required.** "Jurisdiction, once challenged, cannot be assumed, and must be decided."¹ "Once challenged jurisdiction cannot be assumed, it must be proven to exist"² Once challenged, "the burden shifts to the court to prove jurisdiction"³ And "when the grant or denial (of a habeas petition) turns on the validity of the judgment, discretion has no place for operation. If the judgment is void it must be set aside ... "⁴ Federal Rules of Civil Procedure addresses void judgments "where Rule 60 (b)(4) is properly invoked on the basis that the underlying judgment is void, 'relief is not a discretionary matter; it is mandatory'".⁵ "There is no discretion to ignore lack of jurisdiction".⁶ In light of this treatment in the lower courts, it is futile for petitioner to expend time and energy therein, and fits the definition of insanity: Exhaustion requirement is met.⁷

Ground 1 raises the primary issue of **void judgment** for lack of jurisdiction in the trial court in the first instance for want of an authorized accusatory pleading.

The issue presented is simple and straight-forward: the state (District Attorney) is not authorized by law to initiate (file) a criminal action on behalf of the people in the superior court by mode and form of a complaint charging a felony, as it has done in petitioner's

1. Maine v. Thiboutot, 448 U.S. 1 (1980) (65 L.ED 2d 555).
2. Stuck v. Medical Examiners, 94 Ca.2d. 751; 211 P.2d. 389.
3. Rosemond v. Lambert, 469 F.2d. 416.
4. Fisher v. Amaraneni, 565 S02d. 84, 87 (Ala.1990).
5. Orner v. Shalala, 30 F.3d. 1307, 1310 (10th Cir. 1994).
6. Joyce v. U.S., 474 F2d. 215, 219 (1973).
7. Nix v. Whiteside, 475 U.S. 157, 163 N.3 (1986).

case: A violation of a state rule of criminal procedure⁸; and a crime. California Penal Code (PC) §§ 949; 115(a), 182, 236.

The indisputable facts evidenced in Ground 1 are that no constitutional provision, statute, regulation or other authority exists to support the state's practice of prosecutions of felonies via complaint when initiated by the state as a first pleading on the part of the people. To the contrary, the law is firm and settled that felonies shall be prosecuted by indictment or information; not complaint.

The Attorney General's legal position is that "the government may not even be involved in the preparation, investigation and filing of a felony complaint."⁹ And recently Attorney General Xavier Becerra stated "Under California law, a felony complaint does not confer trial jurisdiction."¹⁰ "Jurisdiction is fundamental, without it the courts cannot proceed at all in any case".¹¹

Therefore, petitioner's detention and prosecution initiated by the state by mode and form of complaint, the conviction obtained pursuant thereto is unlawful. Petitioner's guaranteed liberty interest and right to due process of law¹², i.e., to be prosecuted in the mode and form required by law (indictment or information) is violated; the court acquired no jurisdiction¹³ and the judgment is void. "A judgment is void if the court acted in a manner inconsistent with due process. A void judgment is a nullity and may be vacated at any time".¹⁴ There is no time limit for attacking a void judgment under Federal Rules of Civil Procedure § 60(b)(4).¹⁵ "Jurisdiction can be challenged at any time".¹⁶

8. Carter v. McCarthy, 806 F.2d. 1373, 1376 FN2 (9th Cir. 1986).

9. People v. Viray, (2005) 134 Cal.App.4th 1186, 1201.

10. (Citing Serna v. Superior Court, 40 Cal.3d. 239, 257 (1985)). In Re Bush, United States District Court, Central District of California, Case No. cv-19-391 (DSF(JC)) Page 5, Lines 21-24, Document 13 Filed March 7, 2019, Page 7 of 13, Page ID# 209).

11. Ruhrgas v. Marathon Oil, 525 U.S. 574, (1999).

12. California Constitution, Article I §§ 1,7,14,15; U.S. Constitution Amendments 4,5,6 and 14, California Penal Code § 949.

13. Albrecht v. United States, 273 U.S. 1 (1927).

14. In Re Marriage of Hampshire, 261 Kan., 854, 862 (1997).

15. Eggl v. Fleetguard, Inc., (1998) ND 166, 583 N.W.2d. 812.

16. Basso v. Utah Power & Light Co., 495 F.2d. 906, 910 (1974).

Jurisdiction can be challenged in any court, "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court."¹⁷ Petitioner is unlawfully imprisoned and entitled to habeas corpus relief. "Our circuit has held that a collateral attack based on a violation of a state rule of criminal procedure will succeed, and a due process violation will be found when the petitioner shows that he was prejudiced or that his rights were affected thereby." (See FN 8, supra, Carter v. McCarthy, at 1376 FN.2). Petitioner is prejudiced. "In any event, it is the alleged violation of a Constitutional right that triggers a finding of irreparable harm".¹⁸ The writ must issue.

Further, in order to avoid conclusion of misprision of felony (18 U.S.C. § 4) petitioner requests this court note that the filing of a false or forged instrument (felony complaint), conspiracy and false imprisonment by the District Attorney are felonies. (PC §§ 115(a), 182, 236; 18 U.S.C. §§ 241, 242). The state may not violate the law in order to enforce the law, as it did in petitioner's case.

The state court's failure to honor Habeas Corpus raising issue of void judgment for lack of jurisdiction in the trial court, is the epitome of miscarriage of justice and an exception to any procedural bar. The Miscarriage of justice exception is rooted in an even more basic principal, which Justice Kennedy described in the following way in another context: "Our law must not become so caught up in procedural niceties that it fails to sort out simple instances of right from wrong and give some redress from the latter."¹⁹

It is with the greatest respect for the judicial integrity of this court that petitioner makes application for relief at this level.

17. Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 23 27 S. Ct. 236 (1907)).

18. Jolly v. Coughlin, 76 F.3d. 468, 482 (1995).

19. ABF Freight System v. NLRB, 114 S.Ct. 835, 840 (1994)(Kennedy, J., concurring).