July 16th, 2023

Hey you all, its a good day. ;)

Attached or even posted separately is the latest push to come home.

It is a Petition for Resentencing goingto the placer County superior Court, the Court that sent me here, askingthem to apply the new laws and let me go becuase they held me responsible for the actions and intentions of my Codefendant 20 years ago.

Lets not get our hopes up though; we all really need to temper our expectations. Placer County has shown over the last 20 years that they dont care a whole lot about doing the right or fair thing. They seem to only be interested in shutting me up and forgetting me if they can.

While it would be great to have a judge say they were motivated to do the fairthing and give a new look at this that would result in a more evenhanded and fair, balanced sentence, like we saw in December last year, that is not the priority for those guys up in Auburn.

Maybe in the neext few weeks I will post some real actual proof of the below the belt and underhanded way they do things up there, but for now I will just say that, while I think this procedure is the wrong one and this court is not the right place, I do understand that the only way to get to the courts above Placer County is to go through them.

Having said that, I urge you all to readd the 21 pages attached, and keep in mind that the law is sound, but the road is not wellmarked; we are kinda trailblazing here, which is really not new to me. lol

On another note, I DID GRADUATE Electronic Systems Technician Level One last week, and am serving the completely unneccesary 80 hour penalty of classroom hours that have been attached to this thing at every turn as a way to slow us down, as a reply to the huge pushback of the law enforcement lobby, who appears to very much hate that the voters decided it was a much better idea to make us employable by teaching us trades so we have less risk of committing a future crime of desperation and coming back... Geee, I wonder why they would hate that idea so much...?

Anyway, politics have interfered with your intentions, you tax payers, so now there are artificial and arbitrary bariers to progress slowing me down.

Owell, I am still forcing my way forward, and I will be sending a copy of my newest Cerificate, my NCCER School transcript and the Formal paper from the CDCR that says I get out 3 weeks earlier as a result of my efforts. (Although, that is yet another constant battle, I am still fighting to get 10 out of 35 days I already earned, and it looks like I will have to go to the San Luis Obispo County Superior Court to ask them to make some employee here admit they forgot to carry the "one" and give me the credit I earned. They are so drunk on their "Authoritay" that they suffer from hubris that clouds their vision, tells them they can never be wrong if it means a "Peice of Shit Inmate" is right, and, you oughta know, any other staff member who disagrees with that notion gets called the slur "Inmate Lover".)

But Im definitely being taught pro social values and am getting rehabilitated, I promise.

Also, the Beatings will continue until morale improves.

Happy reading, and Ill see you allsoon with thenext installment!!!

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Superior Court of the State of California

County of Placer

People of the State of California Plaintiff/Respondent V Shawn Michael Rodriguez Defendant/Petitioner	Case Number 62-034689-A **Petition for Resentencing Pursuant to Senate Bills 1437 and 775, P.C. §1172.6; Declaration in Support**

COMES NOW Defendant and Petitioner Shawn Michael Rodriguez, herein Petitioning for Relief pursuant to the provisions of Senate Bill 1437, Senate Bill 775 and Penal Code Section 1172.6. The Senate Bills having ammended the California Penal Code to add Section 1172.6 and to prohibit aiders and abettors from being convicted of a First Degree Murder-related crime through the use of a "Natural and Probable Consequences" theory of criminal liability. [Penal Code §1172.6 (d)(2); People V. Lewis, (2021) 11 Cal. 5th 952]

In addition to Petitioner's right to be resentenced pursuant to P.C.§ 1172.6, the convictions and sentences for the crimes of Conspiracy to Commit First Degree Murder and for Aggravated Kidnap for Extortion must be reversed based on the recent decision of the California Supreme Court In Re Tyree Ferrell, (April 6, 2023, Case#S265798) 14 Cal 5th 593, Where the California Supreme Court held that, where an alternative theory of guilt in legally incorrect, to instruct the Jury on that theory is a violation of the Defendant's Constitutional Right to a Jury properly instructed inthe relevant law.

Introduction

It is now beyond dispute that, as a matter of Law, our State Legislature has eliminated the use of the "Natural on Probable Consequences Doctrine" at trial as a means to impute liability to a defendant at trial for a First Degree Murder-Related Charge. Period. (People V. Chiu [2014] 59 Cal 4th 155). It is also beyond dispute that theCalifornia Supreme Court has held that, where a Jury has been given the instructions contained in CALJIC 3.02 and CALJIC 6.11, the burden of the threshold articulated in §1172.6 has been met, and appointment of Counsel is required, as is an Evidentiary Hearing to determine whether the error is prejudicial or harmless "under the heightened standard of Chapman v. California, (1967) 386 U.S. 18 (Chapman), the same standard of prjudice applicable to other instuctional errors that misdescribe criminal offenses." (Ferrell, supra) (See, e.g. People v. Lewis, supra, Holding that where Chiu error is alleged, reviewing

courts must "Rigorously review the evidence" to assess harmlessness.

Here, Petitioner has not heretofore sought relief pursuant to the provisions of P.C.§1172.6, but rather Habeas Corpus relief based on the alleged Victim's repeated efforts to recant his testimony at trial by admitting perjury, in writing, on several occasions, both to the placer County District Attorney and the California State Attorney General. Petitioner prosecuted the first such Petition in 2015 and was denied much review of the merits or ability to develop the facts, but was heartened by the Court's mention that there was not evidence that "Even one juror would change their mind in light of the new evidence", and he sought to obtain that eveidence; The second petition, prosecuted in 2022, presented exactly that evidence, but was summarily denied by the court, who adamantly refused to allow facts to be developed in the matter, refusing to see evidence that a juror from the 2003 Trial, Louise Lois Daggett, had read the letters from the Alleged Victim and they had the effect of changing her vote to Not Guilty on several Charges. A further Statement from her can be found in a Public Domain, the "HelpFreeShawn" group on Facebook®. (It reads in part, "It grieves our hearts today as it did 20 years ago when Shawn was given an unjust life sentence. As one of the 12 jurors we were all shocked and very disappointed that the instructions we were given by the court on how we had to make our verdictwould have such a horrible tragic unjust consequences for Shawn. We could not imagine such unfair justice...In light of Nick's Perjury confession, my sincere hope and prayer is that this terrible unjust wrong to Shawn will finally have some mercy..." (it should be noted that the petitioner has refrained from contacting any Jurors, by phone, mail, or contraband cellphone, but after the refusal of the court to entertain any development of the facts here, it was deemed neccesary to have a 3rd party contact the juror to seek eveidence. Just as Noteworthy, it was only the first juror contacted and no further jurors had to be polled on the issue, though they still could, having volunteered contact information in 2003, to Counsel for the Petitioner, and, thus, the Petitioner.)

As such, based on the Declaration attached to this Petition and the fact that Petitioner's jury was not merly presented with two legally invalid theories of "Aiding and Abetting" liability, but also False Testimony, this court must follow the dictates of the Supreme Court in Lewis, Ferrell, Chiu, Lopez, ect.

In the very recent decision of the California Supreme Court, In Re Ferrell, supra, the court undertook the task of differentiating between teories of guilt presented to a jury that are Factually incorrect, as opposed to those that are Legally incorrect. They did so by relying, in part, on recent changes to California Homicide law, made by our Legislature via the passage and enactment of Senate Bills 1437 and 775, the very Bills the Petitioner seeks relief of now. (People V. Lewis, supra; "malice shall not be imputed to a person based solely on his or her participation in a crime.") Accordingly, an Order to Show Cause mus issue and Petitioner must be resentenced based on these Changes in law and his "own level of individual culpability."

Background

In 2003, Petitioner was convicted of Kidnapping for Extortion, Conspiracy to Commit Murder, Vehicle theft and two counts of Using Another's Name to Obtain Credit or Goods.

On December 5th, 2003, Petitioner was sentenced to 25 years to Life in Prison.

For purposes of this Petition for Resentencing, Petitioner would adopt the Statements of both Case and Facts from the Court of Appeal Opinion in People v. Rodriguez, (Third District of Appeal Case Number C045882, January 4th, 2005) and the arguments made on Direct Appeal, reserving the right to augment the record, should a Factual anylysisbecome neccesary.

[Petitioner requests this court take Judicial Notice, pursuant to Evidence Code §452, of the record in People v. Shawn Rodriguez, Placer County case number 62-034689A, including but not limited to the Clerk's and Reporter's Transcripts, all notes from the jury sent during deliberations, to the Judge regarding issues of intent or instructions, and all previous Rulings made in relation to this case relative to Habeas proceedings, on the issues of Intent, juror instruction, and/or the use of False Testimony at Trial. (See, e.g. In Re Shawn Rodriguez on Habeas Corpus, Placer County case number WHC-1400.]

A. Postconviction Changes in the Law

On October 5th, 2021, Senate Bill 775 ("SB775") was signed into Law by California's Governor. The Bill adds significant changes to Penal Code ("PC") sections 188 and 189 created by the passage of Senate Bill 1437. These ammendments limit the reach of the Felony Murder theory of murder liability , and effectively end the role of the "Natural and Probable Consequences" Doctrine in Murder and Attempted Murder cases. Based on these changes in the Law, Petitioner is entitled to be resentenced.

1. Senate Bill 1437

The Legislative findings in SB 1437 are the fruit of Senate Concurrent Resolution ("SCR") 48. (A resolution not being Law but rather a statement by the Legislature about an issue.) SCR-48, passed in 2017, discussed the bedrock priciple of Law and equity that every person should be punished for his or her actions according to their own level of individual culpability. As such, it was recognized that reform was neccesary in both Felony Murder cases and "Aider and Abettor" matter prosecuted under the Natural and Probable Consequences" or "NPC" Doctrine, so that the Law of California fairly addresses the culpability of the individual.

Section 1 of SB 1437 states, in §§(f), that the Legislature finds it neccesary to amend the Felony Murder Rule to ensure that murder liability is not imposed on a person who is "not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony, who acted with reckless indifference to human life." Plainly, this is the very same standard that has been adopted by the California Supreme Court in defining what constitutes sufficient evidence to support a felony murder special circumstance finding (People v. Banks,

[2015] 61 Cal 4th 788; People V. Clark, [2016] 63 Cal 4th 522; see also, In Re Miller, [2017] 14 Cal App 5th 960.)

PC § 189, as amended in SB 1437, now states that a participant in the perpetration of a Subdivision (a) felony, such as Robbery, in which a death occurs, is only liable for murder if he is the actual killer, or, with the intent to kill, he aided and abetted the actual killer in the commision of First Degree Murder, or was a major participant in the felony who acted with reckless indifference to human life, As described in PC § 190 (d). [PC § 189 (e)(3).]

2. Senate Bill 775

By signing SB 775 into Law, California's Governor approved of our Legislature's amendments to PC § 1172.6. Specifically, SB 775 expanded the authorization to allow a person who was convicted of Murder under **any Theory** in which malice is imputed to a person based solely on that person's participation in a crime, Attempted Murder under the NPC Doctrine, or who was convicted of Manslaughter when the prosecution proceeded on a theory of homicide under the NPC Doctrine, to apply to have their sentence vacated and be resentnced if, among other things, the complaint, information, or indictment was filed to allow the prosecution to proceed under a theory of felony murder, murder under the NPC Doctrine, or other theory in which malice is imputed to a person solely based onthat person's participation in a crime, or attempted murder under the NPC Doctrine. As such, California Law now requires the court to 1) reveiw the Petition and determine whether the Petitioner has made a prima facie showing that he or she falls within the resentencing provisions; 2) appoint Counsel to represent the Petitioner if they request the appointment of Counsel; 3) Issue an Order to Show Cause ("OSC") if the Petitioner has made a prima facie showing that they are entitled to relief; and 4) hold a "prima facie Hearing" to determine whether the Petitioner has made a prima facie case for relief or, where a court declines to issue an OSC, to provide a statement fully setting forth the reasons for not doing so.

Petitioner submits that, in view of SB 1437's amendments to the California Penal Code pertaining to murder, and in light of the susequent clarifications articulated in SB 775, relief by way of resentencing is required pursuant to the provisions of newly amended PC § 1172.6.

Argument

1.

Petitioner is Statutorily Eligible for Resentencing Under the Provisions of PC § 1172.6

"Now, remember the Court read to you instuctions about principal and aider and abettor and when there's two People involved in crimes often each does the crime if they know what the purpose is and help in any way, they're just as guilty. And this is kind of an example here. It comes up in some of the rest of the case as well."

(Reporters Transcript page 690)

While the Prosecutor argued to Petitioner's jury what the Law said in regard to prosecuting Aiders and Abettors under the NPC Doctrine was Legitimate and legal, if shaky and unethical, during that trial, that was 20 years ago and that doctrine has been eliminated and called what it is, immoral, unethical and now legitimately illegal, as it applies to the Petitioner in this case.

The currently available records unequivocally confirm that the jury in the Petitioner's trial were infected by an erroneous instructionon Co-Conspirator Liability under the NPC Doctrine in the identical way found, by the California Supreme Court, to be prejudicial in both **Chiu,** supra, and **People V. Rivera,** (2015) 234 Cal. App. 4th 1350.

As the Prosecution in this relied heavily on a co-conspirator theory of liability at trial, the trial Court, durin it's instructions, informed the jury that "Conspiracy is a Crime", instructed the jury on Aiding and Abetting liability per CALJIC 3.00, 3.01, and 3.02 (Clerk's Transcript ["CT"] pages 255, 256, and 257, respectively), and then went on to instruct the jury using CALJIC 6.11 (CT pg. 280), to wit:

"Each member of a criminal conspiracy is liable for each act and bound by each declaration of every member of the conspiracy if that act or declaration is in furtherance of the objective of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspiractors.

A member of a conspiracy is not only guiltyof the particular crime to his knowledge his confederates agree to and commit, but is also liable for the natural and probablee consequences of any crime of a co-conspirator to further the object of the conspiracy, even though that crime was not intended as part of the agreed-upon objective and even though he was not present at the time of the commission of the crime.

You must determine whether the defendant is guilty asa member of a conspiracy to commit the originally agreed-upon crime or crimes and, if so, wheter the crimes alleged in counts one, Two was perpetrated by a co-conspirator in furtherance of that conspiracy and was a natural and probable consequence of the agreed upon criminal objective of that conspiracy." (RT pages 674, line 20 through 675, line 11).

This rhetoric went on and on, and was hotly contested both during trial and after. Both the Prosecutor and Judge pushed the jury to engage in thought paradigms that would impute the intent and liability of codefendant Anna Marie Rugg onto defendant and now Petitioner Shawn Michael Rodriguez, due to his admission that he agreed to be party to a robbery of the victim, Nicholas William Hamman, as shown below:

(Judge, RT 662, line 10)

"Persons who are involved in comitting or attempting to commit a crime are referred to pricipals in that crime. Each principal, regardless of the extent or manner of participation,

is equally guilty."

(Judge, RT 663, line 2)

"One who aids and abets another in the comission of a crime or crimes is not only guilty of any other crime comitted by a pricipal which is a natural and probable consequence of the crimes originally aided and abetted."

(Judge, RT 663, line 24)

"You are not required to unanimously agree as to which originally contemplated crime the defendant aided and abetted so long as you are satisfied beyond a reasonable doubt and unanimously agree that the defendant aided and abetted the comission of an identified and defined target crime, and that the remaining crimes were a natural and probable consequence of the commission of that target crime."

(Judge, RT 675, line 28)

"A member of a conspiracy is liable for the acts and declarations of his co-conspirators until he effectively withdraws from the conspiracy or theconspiracy has ended."

(Prosecutor William Marchi, RT 690, line 16)

"Now, remember the Court read to you the instructions about principal and aider and abettor and when there' two people involved in crimes often each does the crime if they know what the purpose is and they help in any way, they're just as guilty."

(Prosecutor, RT 690, line 24)

"Each principle, regardless of th extent or manner of Participation, equally guilty. Pricipals include those who directly or actively commit or attempt to commit the act constituting the crime and in part, the defendant did part of that. He's the one that got ATM or the PIN number given up by the defendant by his own admission and by the statements of Mr. Hamman; and in addition, he also drove Ms. Rugg to the Rocklin areas to use the card knowing what she was going to do."

(Prosecutor, RT691, line 11)

"And aiding and abetting talks about, okay, if you know what the purpose of what your partner is and you help them in any way, youre just as guilty."

(Prosecutor, RT 691, line 16)

"They're both principals, and they're both equally guilty."

There were evens questions and objections to the use of this device at trial by counsel which went unaddressed:

(Closing Argument, Prosecution Rebuttal, RT 752, line 5)

"...you just committed a crime, may not understand or realize that it is kidnapping, but the specific intent is not that you knew that the specific intent is that you try to extort--"

MR. SERAFIN: Objection. That misstates the law.

MR. MARCHI: No, it doesn't your Honor.

MR. SERAFIN: we can argue about it later, I guess.

THE COURT: Just continue."

Clearly, Counsel for the Defense, Jesse Serafin, was ahead of his time, by at least twenty years it would seem. Too bad he did not live long enough to see the California Supreme Court whole Heartedly agree with his reasoning, as outlined in his breifs described below.

As mentioned above, the issue of imputing intent was hotly contested during and after trial, to wit:

(CT 178, line 14- Counsel's Motion in limine re: 1101 (b) materials)

"In essence, any conduct pertaining to Ms. Rugg's active intent is directly relevant to Mr. Rodriguez's lack of intent."

(CT 180, line 24)

"...a tendency to prove a material fact in Mr. Rodriguez's defense. His defense relies on an ability to show that Anna Rugg is capable of creating this entire scheme, His explanations as to why he did not stand up to her plans and back out earlier is directly related to her past. Anna's past shows what she is capable of in the present case. What she is capable of is directly related to Shawn's actions and whether or not he had the requistite intent to kidnap and kill Nicholas Hamman."

[CT 211, line 10, Counsel's motion to reconsider 1101(b) evidence]

"To prove this case the district attorney must prove that Shawn Rodriguez intended to kidnap and murder Nicholas Hamman."

(CT 211, line 18)

"3. The subsequent acts in furtherance of kidnap, extortion, and murder were done because of the Ms. Rugg's intent. The defendant told police he did not intent those crimes.

Mr. Rodriguez admitted committing certain acts; however, the issue is his intent when committing those acts. His contention that the co-defendent planned and initiated the capture and lockdown of the victim by herself is certainly relevant to his lack of intent. The fact that the co-defendant created the plans of stealing from the victim and later attemptingto kill him is certainly relevant to Mr. Rodriguez' lack of intent. His entire statement to the police is based on the notion that Anna Rugg is the only one who carried the requisite intent to commit these crimes. Evidence that she intended to commit similar crimes in the past is material to support that notion.

The fact that certain acts were taken demands logically that at least one of the two defendants "Intended" a certain result. If a jury does not beleive Shawn's claim tha Anna Rugg had the intent to commit these crimes, then he is automatically guilty. This set of circumstances makes Anna Rugg's intent a critical issue in Mr. rodriguez' claimed lack of intent.

Evidence that the co-defendant has formed similar intent to commit similar crimes in the past is directly material and relevant to defendant's claim that she carried that same intent in the instnt case. The jury verdict in this case is a two-step process. The defendant's intent is only

step two. Ther's no need to address it absent any belief or evidence that the co-defendant carried the requisite intent. It is clear beyond a reasonable doubt that one of these two intended to kidnap, detain, rob, and kill Nicholas Hamman. There is no other explanation for the known facts. It follows that if a jury has no reason to believe that Anna Rugg carried this intent, they must conclude that Shawn did. Therefore , any evidence taht tends to prove Anna's intentbecomes directly relevant."

(CT 213, line 1)

"The point of this motion is to clarify the fact that any evidence material to Anna Rugg's intent is equally as material to Shawn Rodriguez' lack of intent."

(CT 213, line 16)

"The acts themselves do not carry a life term without the required intent. If Anna carried the intent, and not Shawn, he cannot get life in prison."

The Prosecutor vehemently argued against assigning specified blame or intent, as it would cripple his ability to boldter his conviction rate, as shown in his Opposition to the motion in limine:

(CT 190, line 5)

"A reveiw of Cal Jic Sections 6.11 and 6.20 makes it clear that there is no materiality of the evidence of Defendant Rugg trying to talk other s into various crimes and then blamimng them for the matters. Each conspirator is liable not only for the particular crime they agree to but the natural and probable consequences of any crime or act of a co-conspirator."

Clearly, Mr. Marchi was making reference to his use of the NPC Doctrine to assign killer liability to the Petitioner by use of his agreement to rob the victim, and by making sure the jury never heard evidence to thecontrary if he could help it, employing a "win by any means neccesary" strategy long forbidden by the United States Supreme Court and upheld by all courts still.

At CT 192, we can see the response of the Judge to this issue, and she stayed silent, likelyunable or unwilling to support the very tenuous liability theory that was developing against the protests of defense counsel.

The Prosecutor then Doubled down on this now illegal and retroactively reveiwable theory of liability, in his next Opposition, at CT 198, line 16:

"The defense states that defendant told the police that he did not intend those crimes. However, he told them that Anna Rugg did, and that he aided her in that regard. As an aider and abettor he acted with knowledge of her purpose, if we are to beleive defendant Rodriguez, and is equally guilty in the eyes of the law because he aided in extorting the propertyfrom the victim and helped in some of the activities involved in the attempted murder knowing what Rugg's intent was if we are to beleive Rodriguez."

It is worth noting here that the jury did not find guilt on that attempted murder Mr. Marchi

makes reference to, because they did not ever appear to believe that an actual attempt to murder ever took place, so there is a fundamental fallacy in that logic.

Nevertheless, in that same motion, Mr. Marchi feels a need to hedge his bets, so he further muddles things and obfuscates the truth and the law by the last request:

"at the conclusion of the evidence, the people will request a special instruction regarding the fact that it is not neccesary to prove which defendant was the aider and abettor and which was the main perpetrator or to what extent who played what role." (CT 199, line 25)

This was very clearly an effort to trick the jury into assigning every act and/or intention of the codendant to this Petitioner based on his initial agreement to participate in the original target offense of simple robbery.

Indeed, the jury did "Felt tricked into the decisions by the prosecution." (CT 378, Juror Post Trial written statement)

Which brings us to the hot contesting of the issue of assigning the codefendant's intent, post trial.

At the conclusion of the trial, aghast at the verdicts and potential sentence for the defendant, Counsel for the defense approached and polled jurors regarding the unresolved verdict that was polled as 10-2 in favor of not guilty. Only one juror declined to participate; he was more interested in telling Auburn Journal Reporter Ryan McCarthy "My father was a Federal Prison Warden, some people make the right choice and avoid crimes and others don't." (See Attached exibit "A", Auburn Journal news articla dated October 6th, 2003)

The facts revealed duringthis interveiw session by Counsel Serafin startled him, as he wrote in his Motion for a New trial, which can be found at CT 355. He gained the consent of most jurors to provide a series of written qusetions to them, which they then answered, in writing, and the responses were attached to the Motion.

Under the heading "The Jury Verdict is Contrary to the Law", Counsel renewed his attack on the issue of intent. At CT 362, line 5, he stated,

"The evidence has been presented by both sides and the jury reached a 'conclusion'. If that 'Conclusion' was SHAWN RODRIGUEZ never carried specific intent to kill Nicholas Hamman, the their guilty verdict directly contradicts the law and a new trial must be granted as to the Conspiracy charge."

Under the next heading, he continued the attack on the imputed intent result; At CT 363, line 5: " Almost all of the jurors concluded, after hearing all the evidence, that SHAWN RODRIGUEZ at no time had the specific intent to kill Nicholas Hamman. For this reason, the jury hung 10-to 2 in favor of not guilty.

The guilty verdict on Conspiracy to Commit Murder was based on literal interpretation. The found that SHAWN RODRIGUEZ agreed with the plan and took some steps to carry that plan out, and based in part on the Prosecution's misstatement of the law, that was enough for conspiracy regardless of any actual intent to carry out the murder.

...Their conclusion is directly contradictory to their verdict as a matter of law that demands a new trial. The jury concluded that SHAWN RODRIGUEZ took certain steps and agreed to a plan for several reasons. None of the reasons included an intent to actually kill another human being. The law requires this intent for a conspiracy conviction. The jury did not understand that."

Attached to that motion were a handful of the juror declarations/questionairres that were available at the time. (More may have been recieved later, but were not able to be admitted. This motion was addressed at sentencing and the defendant was spirited away on a very special transport, by himself without any other prisoners who had been waiting for weeks or months, to prison on thevery next business day.)

A few relevant quotes from the juror responses are presented below; and full versions are attached as Exibit "B".

In response to the question "Did you conclude that the defendant had the specific intent to murder Nicholas Hamman?":

Juror Leo Lewis (CT 371): "NO"

Juror Jennifer Baran (CT 374) "...I concluded that it was not Shawn Rodriguez' intent to kill Hamman."

Juror "X"(Believed to be Michael Parsons) "I concluded that the defendant had the specific intent to follow through on the initial agreementhe had made with Anna Rugg. It was more about a 'I said I'd help ya, so here I am' type of aggreement." (CT 377)

(Note that this is not Specific Intent to kill; this is initial agreement [To Rob the victim] liability being extended to a convition for the 25-life murder related charge, based on an aggreement to commit the initail target offense of Robbery, due to instructions by Judge and Prosecutor.)

Juror "Y": I felt the defendant had the specific intent to follow through on a promise he had made to his co-conspirator."

(Again note the lack of intent to kill, specifically, but presence of intent from a prior obligation. That is clearly the NPC doctrine at work.)

Juror "Z": "NO"

Also, we can poll the jurors by readingthe sensationalized local media accounts, specifically, that October 6th, 2003 article by Ryan McCarthy of the Auburn Journal:

"Did they plan it? Yes. They conspired," the foreman said. But, "we didn't see the next step, that they really intended to do anything."

(Note that this was the self -elected jury foreman, who, by all accounts, demanded "Guilty verdicts on evrything, without further discussion." [Quoting Leo Lewis, from the reverse side of CT 372] Even this person did not report a finding of Specific Intent to kill, only a derived, or imputed, general intent to commit the other crimes.)

"Juror Parsons said, 'There was no demonstration of intent.'"

(Note that this is the other Juror who wanted those guilty verdicts without further discussion.

And still, the most adversarial jurors to the notion of the Petitioner's innocence, do not say they found the required Specific intent to kill thevictim; they say the opposite.)

"Juror Louise Lois Dagget, 58, of Loomis, said the panle agreed that Rodriguez sought to get along with Rugg during the March 15-17 events at the juvenile hall. "He was kind of appeasing her," Daggett said. "We all felt that."

(Note that this is exactly the defense theory of the case, which indicates this juror too felt that CoDefendant Rugg posessed the Intent, but not this Petitioner.)

The next portion of those juror Statements that deserves attention is the question "Is it your conclusion after hearing all the evidence that Shawn Rodriguez wanted to kill Nicholas Hamman?"

Juror Leo Lewis: "No, he wanted to please ms Rugg, but no I do not beleive there was intent on his behalf." (CT 372)

Juror Jennifer Baran: "No. Upon further reflection, I do not beleive that Shawn ever wanted Nick dead, much less to kill him himself." (CT 376)

Juror "X": "It was my conclusion that Shawn did not 'want' to kill Nicolas..." (CT 378

Juror "Z": "No, I did not beleive Shawn wanted to kill N. Hamman."

Clearly, there was not a unanimous jury finding that there was specific intent to kill the victim on the part of this petitioner. Not even close.

The answers provided by these jurors and their statements to the media, establish that without the confusing instructions provided to them related to the NPC Doctrine, they would not have convicted the Petitioner...At All.

Going back to those juror statements for a minute, more can be found to bolster the application of the new legal postures created by the Chui, Rivera, and Ferrell Courts and the Legislature in Senate Bills 1437 and 775 here:

Juror "Z": "We discussed, but obviously did not understand that the law requires."

When asked "Based on the evidence you heard in this case, do you feel that life imprisonment is a fair punishment for Shawn Rodriguez?", their reply was "It seems very harsh given that I do not believe he intended to kill him. I do believe that Shawn did not want to open the cell door for fear of N. Hamman. shawn obtained a hacksaw to turn the water off. We'll never know if he would have called the police to report. I believe he would have. I don't believe Shawn was part of a plan to entrap the victim that weekend. they just happened to run into him."

This question, "Based on the evidence you heard" includes the fact that the juror heard Nicholas Hamman's false testimony, and it is clear from the questionnaire that this juror, as with a majority of jurors questioned, opined that but for the judge's instructions they would have convicted on False Imprisonment Only.

Juror Leo Lewis, when asked if they discussed and understood the law, responded thusly:"No, I do not beleive so." When asked if the punishment was fair, he expressed shock and answered "It is my opinion that the punishment does not fit the crime. Nobody was hurt, where is the

Justice??" He went further: "It ids also of my opinion that Shawn should spend no more than a year in confinement. there were jurors on our jury whom I felt would not listen to reason, they wanted guilty verdicts on everything, without further discussion...I personallythought Mr. rodriguez was guilty of, false imprisonment, Robbery and auto theft only and innocent on all other charges." He went on to cite jury instructions as the reason he had to change his mind.

These juror statements are part and parcel of the confusion expressed as to the trial court's instructions and belies the previous Court's findings at post-conviction habeas proceedings, as to what these jurors would have determined but for Nicholas hamman's false testimony.

More importantly, the juror questionnaires also unequivocally establish that the jury found the Petitioner **Did Not** possess an intent to kill the victim, establishing in one fell swoop that they relied on the legally invalid theory to convict the petitioner of Conspiracy to commit murder with intent imputed to him through the use of the NPC Doctrine.

So too the jury relied on that legally invalid theory to convict him of Aggravated Kidnap for Extorion.

Let us reveiw in summary: On Friday night, March 14th, 2003, Petitioner agreed to rob Victim Nicholas Hamman with Codefendant Rugg. As a result of that initial agreement to commit the target offense of robbery, both the Judge and the Prosecutor ordered the jury to impute every and all intent or action to the petitioner as if he had done it all himself, including intent to kill the victim possessed by Codefendant Rugg on Monday March 17th 2003, a full 3 days later, even though they believed that Petitioner never had that intent, and that they should throw out any thought to the contrary, like a baby in bathwater, because, Petitioner, accordingto the judge and prosecutor, should have Naturally and Probably foreseen that after that robbery, Codefendant Rugg would then decide to kill the victim and despite a lack of his own personal intent, he would be held liable for that intent his codefendant had.

2.

Post Conviction Changes in Law

In 2014, the California Supreme Court decided People V. Chiu, supra, in which the Court held that "an aider and abettor may not be convicted of first degree premeditated murder under the Natural and Probable Consequences Doctrine. Rather,his or her liability for that crime must be based on direct aiding and abetting priciples." (Id. at 158-159)

In 2015, in People V. Rivera, supra, the Court further held that the reasoning of Chiu applied equally to Conspiracy liability because "the operation of the natural and probable consequences doctrine is analogous" for aiding and abetting conspiracy liability. The Court was quite unambiguous, in its extension of the logic to Conspiracy liability: "The problem with extending a defendant's liability for a first degree premeditated murder to an aider and abettor (and we hold also a coconspirator) under the natural and probable consequences doctrine was explained in **Chiu**..."

The court went further into a subject that bears mention here: "Although we have stated that an aider and abettor's 'punishment need not be finely calibrated to the criminal's mens rea', the connection between the defendants culpability and the perpetrator's premeditative state is too attenuated to impose aider and abettor liability for first degree murder under the natural and probable consequences doctrine, especially in light of the severe penalty involved and vthe above stated policy concern of deterrence." (**Chiu**, supra, at page 166.)

So, let us go back to page 166 of Chiu: The "above stated public policy concern of deterrence" is explained on page 165, thusly: "In the context of murder, the natural and probable consequences doctrine serves the legitimate public policy concern of deterring aiders and abettors from aiding or encouraging the comission of offenses that would naturally, probably, and foreseeably result in an unlawful killing. A primary rationale for punishing such aiders and abettors-to deter them from aiding or encouraging the comission of offenses-is served by holding them culpable for the perpetrator's comission of the non-target offense of second degree murder.(**People V. Knoller**, (2007) 41 Cal 4th 139, 143, 151-152)

The point is taken, yes?

Well, isn't it also that the inverse is true? That the "public policy concern of deterrence" is undermined and not served by punishing, more severely, the codefendant or coconspirator or aider and abettor, whose culpability or mens rea is deemed less than the primary or major participant?

Let us explore a metaphorical "For instance" to show the point, an exercise in "reducto ad absurdum" to show how the public interest is not served and public safety not prioritized by the use of the NPC Doctrine or the exclusion of Conspiracy cases from 1437/775 relief:

Example a)

He-Man and She-Ra are riding in a moving car. He-Man is driving, while She-Ra is in the passener seat. Seeing SpongeBob Squarepants, She-Ra says to He-Man, "Let's kill Spongebob!!". Continuing to drive, He-Man watches as She-Ra pulls out her gun and shoots Spongebob with...Water. Maybe She-Ra believed water would kill Spongebob, maybe not, who cares right now? The Prosecutor will certainly argue that she did.

Example b)

He-Man and She-Ra are riding in a moving car. He-Man is Driving, while She-Ra is in the Passeger seat. Seeing Spongebob, She-Ra says to He-Man, "Let's kill Spongebob!!". Continuing to drive, HeMan watches as She-Ra pulls out her gun and shoots Spongebob with...Real Bullets. Spongebob dies.

Everyone is prosecuted and sent to prison for 25-life; 2 for murder, 2 for conspiracy to commit murder. 20 years passes, and the legislature passes a law to address prison overcrowding and draconian sentencing by curtailing the abuse of legal concepts like the NPC Doctine and overzealous prosecutions by passing SB 1437 and SB 775.

He-Man, having never formed intent, gets out of prison and gets a job, pays taxes and has

a family.

But only in example b.

Because that was a real, actual murder, where someone was killed and died.

In example a, He-Man stays in prison. Because no one was killed. No One Died. It was water.

Who cares, right? Its a technicality. An arbitrary dividing line that keeps He-Man in prison for potentially his whole life, due to a factor in mitigation: NO One Was Hurt. (Can you hear Leo Lewis asking "where is the Justice?")

But what is the net result? Of this arbitrary divisor?

Increased threat to Public Safety, because this arbitrary divisor has now incentivized the comission of murder, as opposed to merely talking about it.

Be He-Man for a moment: Knowing that 1437 and 775 will apply to you if Spongebob dies, would you rather She-Ra has a SuperSoaker® or an AR-15®?

The incentive lies on the side of the AR-15 due to the Placer County Superior Court's position that, as a matter of simple technicality, No 1437, 775, Chiu, Rivera, Ferrell relief is available for coconspirators because of a narrow and inaccurrate interpretation of People V. Medrano, (2021) 68 Cal app 5th 177.

It would appear that, in it's hurry to dispose of this petitioer's habeas proceeding of 2022 in a dispositive way, the Court did not read Medrano closely enough.

Additionally, its a bit of a reach to look in the Second Appellate District for a dispositive ruling to use, when third Appellate District and California Supreme Court rulings that were not dispositive have been available.

In 2021, the 2nd District of Appeal held that Vincent Medrano was not entitled to relief by way of SB 1437 or 775 just because his jury had been instructed with CALJIC 6.11. The Medrano Court found that the underlying felony wasthe murder itself, and that the jury's verdict did not provide any evidence of a lack of intent to kill.

To be clear: Vincent Medrano was convicted of the murder of the same victim he conspired to murder, and no NPC Doctrine methodology had to be used to convict him. The "Target Offense" was the murder in question, not a lesser and underlying felony. "A conviction of first degree murder shows, as a matter of law, that the target offense is murder, not some other lesser offense.

"...A conviction of conspiracy to commit murder requires a finding of intent to kill. All conspiracy to commit premeditated and deliberated first degree murder...Must possess Malice aforethought." the Medrano Court cites People V. Swain, 12 Cal 4th 593, to this point: "A conviction of conspiracy to commit murder requires a finding of intent to kill, and cannot be based on a theory of implied Malice." (Swain @ pg. 607)

It would appear that the Placer County Court in December 2022 sorta read this backward and put the cart before the horse, so to speak: That each Conspiracy to Commit Murder conviction carries with it its very own, inherent intent to kill. That is not so, as Swain makes clear: Each must have its own intent Proven, and not implied or imputed, as it has been in the case

at bar, where the intent came from the Codefendant via the NPC doctrine.

In the case here, the jury was not only presented with several underlying felonies, including kidnapping, but they also **explicitly** stated in post-trial questionnaires that Petitioner **Did Not** possess an intent to kill and that , but for the trial Court's confusing instructions, they would not have voted to convict the Petitioner.

Now, the Prosecutor argued hard to have these post trial submissions ignored and throwninto the trash, much like he tried to do in 2015 when the Victim wrote several letters to the Placer County District Attorney to admit, without varnish, that he commit perjury to get the Petitioner sent to prison for life; and he would have been successful in the attempt to conceal and suppress this exculpatory evidence too, if the victime had not doubled down when he was ignored by the Placer County District Attorney and written at least two letters to the California Attorney General about his false testimony at trial and the Attorney General then disclosed those letters to the Petitioner and everyone else. Alas, that prosecutor lost his bid to suppress these chronicles of fact, and there they are in the record, forever a part of the Clerks Transcript.

To do a bit of bet-hedging of his own, Petitioner would call attention to the Dissenting opinion in Medrano, by Justice Tangeman:

"I respectfully dissent. I do not agree that the conviction for conspiracy to commit murder automatically renders appellant ineligible for Penal Code Section 1170.95 releif under the circumstances extant here. He appeals only from the order that he is ineligible for releif as to the first degree murder convictions (and not the conspiracy conviction).

Appellant was not the actual killer. He was present in the vehicle from which the actual killer sprayed bullets into a group of people during a drive-by shooting. There was evidence at trial that appellant wanted to fire the weapon because he was a "better aim" and could hit the victims in the legs, suggesting he did not share an intent to kill.

The jury did not readily produce a verdict. It appears that they were confused by the instructions. As acknowledged by the majority, the jury was instructed on the first degree murder charges under the natural and probable consequences doctrine (i.e., that death was a natural and probable consequence of a drive-by shooting). As to the separate count of conspiracy, the jury was instructed that "[a] member of a conspiracy is not only guilty of the particular crime that to his knowledge his confederates are contemplating committing"-such as a drive-by shooting-"but is also liable for the natural and probable consequences of any act of a co-conspirator to further the object of the conspiracy"-such as a killing-"even though such act was not intended as a part of the original plan...."

Taken in context, I cannot conclude, with that certainty advanced by the majority here, that the jury 'did not rely on the natural and probable consequences doctrine' in deciding whether appellant was guilty of first degree murder. (Majority Opinion, ante, at page 9.) The majority concludes otherwise because the jury was **also** instructed that the conspiracy count required proof that appellant acted 'with the specific intent to agree to commit the public offense

of first degree murder.' The majority speculates that the jury relied on this conspiracy instruction instead ofthe other conspiracy instruction quoted above (which is based on the natural and probable consequences doctrine)."

There it is, quite plainly: A guilt finding based on instruction that relies on a natural and probable consequences doctrine theory is not a valid legal theory. Even for Conspiracy.

This dissenting opinion comports with what our Supreme Court has now held in the very recent decision of In Re lopez, (2023) 14 Cal 5th 662. The court held that where Chiu error is alleged, that reveiwing court must "rigorously reveiw the veidence" to assess harmlessness. Just days later, the Court issued its decision in Ferrell, supra, holding that where an alternative theory of guilt is legally incorrect, instructions on that theory violate a defendant's right to a jury properly instructed in relevant law. As argued, infra, in addition to being entitled to a prima facie finding of relief andthe cunducting of an evidentiary hearing under PC § 1172.6, Petitioner's conviction is based on a legally invalid theory of aiding and abetting liability, which in and of itself requires reversal of conviction and sentence.

A. Relief and Resentencing pursuant to Penal Code Section 1172.6

When all of the conditions set forth in the new law are met, a defendant convicted of Murder, Attempted Murder, or Manslaughter under the natural and probable consequecnes theory of liability may file a petition to have his conviction vacated and to be sentenced on any remaining counts.

The specific conditions outlined are that "1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder, murder under the natural and probable consequences doctrine or **other theory under whichmaliee is imputed to a person based solely on that person's participation in a crime,** or attempted murder under the natural and probable consequences doctrine; 2)The Petitioner was convicted...following a trial...; 3) The petitioner could not presently be convicted ... because of changes to [Penal Code] section 188 or 189 made effective January 1, 2019."

Petitioner here meets all of the qualifying criteria quoted above from the last version of the law, entitling him to relief by way of resentencing.

B. Youth as a Mitigating Factor

Because of the differences between fully mature adults and young people acknowledged by the United States Supreme Court in recent decisions such as Roper V. Simmons,543 U.S. 551 (2005); Graham V. Florida, 560 U.S. 48 (2010); and J.D.B. V. North Carolina, 564 U.S. 261 (2011), and the California Supreme Court in People V. Caballero, (2012) 55 Cal 4th 262, youth offenders are judicially recognized as not makingthe samecalculations as fully mature adults when they participate in felonies. they are not as likely to be weighing the risks oftheir own involvment includingthe risk that someone might get hurt or killed. When confronted with the prospect of

short-term rewards-from approval of thier peers to any tangible rewards from the felony itself-young people are more likely to prioritize those rewards over any long-term consequences. As a result, there is no legitimate rationale for holding a juvenile offender liable as an aider andabettor based on their participation in a felony. This is especially true in regard to the issue of mens rea, as a young person's risk-taking behavior engaging ina felony should not be equated with malicious intent. (Tison V. Arizona, 481 U.S. 137, 152 (1987.)

As petitioner was 19 years old at the time of the charged offenses, nothing in the prosecutor's arguments at trial can instantly transform the Defendant from a young man into a potential reckless killer, most especially in light of the fact that the alleged victim has repeatedly reached out to The District Attorney's office and the Office of the Attorney General to declare that he falsely testified at the petitioner's trial.(See, e.g., People V. Harris, (2021) 60 Cal App 5th 939.)

C. This Court Must Review The Reporter's Transcript

State Law entitles the Petitioner to an appellate record "Adequate to permit [him or her] to argue" the points raised on appeal. (People V. Rogers, [2007] 39 Cal 4th 826, 857-858; People V. Howard, [1992] 1 Cal 4th 11132.) Federal Constitutional requirements are similar. (Griffin V. Illinois,]1956] 351 U.S. 12; Draper V. Washington, [1963] 372 U.S. 487.) As these decisions establish, the Due Process and Equal Protection Clauses of the Fourteenth Amendment require the State to provide a record suffient to permit adequate and effective appellate review.

It is Petitioner's position that he is entitled, as a matter of Law and absolute right, to have this Court review the entire Reporter's and Clerk's Transcripts, Prepared in compliance with California rules of Court Rule 8.619, and that, in the absence of the reading and review of that transcript, the court cannot properly assess the issues pursuant to the provisions of PC § 1172.6(g). This position is not merely a general principle of appellate practice, but an essential ingredient of the Constitutional doctrine of meaningful appellate review. (Furman V. Georgia, [1972] 408 U.S. 238; Parker V. Duggar, [1991] 498 U.S. 308; People V. Chessman, [1950] 35 Cal 2d 455.)

2.

Petitioner Has Made a Prima Facie Showing of Entitlement to Releif

PC § 1172.6, §§ (c) says, "If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an Order to Show Cause ("OSC"). That section, however, does not define the phrase or term "prima facie showing". Guidance is found in the Habeas Corpus Rules of the courts, in lieu of more accurate guidance specific to PC § 1172.6 (c).

California Rules of Court, Rule 4.551 (c)(1) Provides as follows:

"The court mus issue an order to show cause if the Petitioner has made a showing that he or she is entitled to relief. In so doing, the court takes the Petitioner's factual allegations as true and makes a preliminary assessmentregarding whether the Petitioner would be entitled to relief if his or her factual allegations are proved. If so, the Court must issue an Order to Show Cause."

This means that determinations of credibility, facts, and assimilation of facts and credibility into the bigger picture to determine conclusions is still the function of a jury, not the court, and to make assumptions about juror conclusions after a reveiw of new facts or evidence or to decide an outcome then justify it with stretching of legal precedents is to usurp the function of a jury to squelch reveiw of issues, denies Due Process and Fundamental Fairness.

Accordingly, the "1172.6 Court" likewise takes the Petitioner's factual allegations as true and makes a preliminary assessment regarding whether he would be entitled to relief if the Petition's factual allegations are proved.

Factual isues are not resolved at the prima facie stage. Those are resolved at the hearing on the OSC, at which the parties can offer new or additional evidence, or must be determined at the evidentiary hearing at which parties may rely on the Transcripts or offer new or additional evidence.

In order to obtain relief, the petition for resentencing must include 1) a declaration by the Petitioner that makes a prima facie showing that he meets the conditions for relief; 2) the year of conviction, and; 3) The Case number. [Penal Code Section 1172.6 (b)(1)(A)(C).] The Petition must be served on the Court that imposed the sentence, the District Attorney that prosecuted the Petitioner, and the Public Defender or Attorney who originally represented the Petitioner at Trial. All of these reuirements are met by way of the Declaration of Petitioner Shawn Michael Rodriguez, attached as Exibit "A", attached to this Petition.

3.

Jurors at Petitioner's Trial Were Provided A Legally Incorrect Theory of Attempted Murder and Conspiracy Liability

In in Re Ferrell, Supra, the Supreme Court reveiwed the case of Tyree Ferrell, who, like the Petitioner, was a teenager at the time of his commitment offense, two decades ago, also like the Petitioner. In reviewing the record of Ferrell's case, the Court found thatit presented the type of "Alternative Theory Error" that occurs when " 'a trial court instructs a jury on two theories of guilt, one of which was legally correct and one legally incorrect.' " (citing People V. Aledamat, [2019] 8 Cal 5th 1 and People V. Chiu, supra.) The Court's analysis distinguished between when a theory of guilt is **factually** incorrect, meaning the facts put into evidence

do not support it and where jurors are deemed equipped to detect the shortcoming in proof and reject the unsupported theory, versus when a theory of guilt is **Legally** incorrect, where reviewing Courts confront an incorrect statement of Law. In regard to the Latter, the Court held that jurors are not equipped to detect and account for such erros. When, as here, an alternative theory of guilt is legally incorrect, instructions on that theory violate a defendant's constitutional right to "a jury properly instructed inthe relevant law." (Ferrell, supra.)

Here, the jurors have clearly stated, in writing, on the trial record, that they found the Petitioner **Not Guilty** of Attempted Murder, and that he **Did Not** harbor an intent to kill and that, but for the confusing jury instructions (Which are now outlawed due to their flaws in the same logic complained of by this jury,) given and the prosecutor's arguments based on those confusing instructions and now illegal theory of liability/guilt, they would not have convicted the Petitioner...at all.

4.

The Petitioner Did Not Act with Reckless Indifference to Human Life

SB 775 contained language that prevented certain actions if there had been a finding previously thata Petitioner had been found to have acted with reckless indifference to human life:

Senate Bill 775, §2 states as follows;

1170.95 (c)(2)-

"The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have the murder, attempted murder, or manslaughter conviction vacated and to be resentenced. If there was a prior finding by a court or jury that the petitioner did not act with reckless indifference to human life or was not a major participant in the felony, the court shall vacate the petitioner's convivtion and resentence the petitioner."

In the instant Petition, the action requested of the court would be permitted by law without a resentencing hearing, because the petitioner was not found to have acted with reckless indifference to human life; In fact, the opposite was found by the jury, post trial statements notwithstanding, the jury found not true the special allegation that he "Confined the victim in a manner which exposed him to a substantial likelihood of death".(CT 314)

This dispositive finding serves multiple purposes; Firstly, it absolves the Petitioner of intent to kill, because it requires in explicit wording, on the verdict form, a finding that it was intentionally done, which is not in evidence here; second, if the Petitioner did not "intentionally expose the victim to a substantial likelyhood of death" he must not have been indifferent, recklessly or otherwise, to the victim's human life.

Lastly, with respect to whether or not a jury would decide if the petitionerwas a "Major Participant", that is very clearly a matter for the jury to decide, not the court, but so far

its not looking like they would: across the board, the jurors wrote that he was not or was only trying to "Appease" his codefendant.

In every case though, there was not YET a finding that either of those prohibitive conditions have been found or put on record. (Offhand remarks of the prosecutor dont count.)

5.

Petitioner is Entitled to Review of the Undecided Verdict as to Count Three, Attempted Murder

Consistent with the requirements articulated in SB 775, "A complaint....was filed against the petitioner that allowedthe prosecution to proceed under a...other theory in under which malice is imputed to a person based solely on that person's participation in a crime, or attempted murder under the natural and probable consequences doctrine."

Also consistent with the language in SB 775, "The petitioner could not presently be convicted of murder or attempted murder because of changes to Section 188 or 189made effective January 1, 2018."

Petitioner submits to this court that the 9-2-1 vote on attempted murder could never had happened under present law, and the fact that it did, and that the Pettioner suffers the Prison Classification consequences of not being aquitted, lends standing to him in a claim for reveiw in the context of SB 1437 and SB775.

A hung jury is not the same as an aquittal, and the California Department of Corrections and Rehabilitation is quick to use that logic to impact the Petitioner's classification, and, as well, so would society upon release, including, but not limited to in the cause of securing employment, just for example.

In addition to the reason stated below, the allowance of the prosecution to proceed under now banned theories of liability was the only and sole reason the Jury had it's decisions and reasoning tainted with regard to the charge of Conspiracy to commit murder to begin with.

Had the Prosecutionnot been allowed to proceed under that now illegal theory of liability the jury would likely never been told that they have to find the Petitioner guilty of every wrong they would want to punish the Codefendant for and find him guilty of her crimes, thus a conviction of conspiracy to commit a murder that never happened based on the actions and intent of codefendant Anna Marie Rugg is absolutely impossible and we would not be here having this discussion.

Accordingly, convicted or not, this count is relevant to the inquiry contemplated herein.

6.

Petitioner is Entitled to aSignificant Leeway an filings and must not be Held to High Levels of Technical expectation by the court; the Court Must construe Filings Liberally

This court, having previously placed the verbiage of the Petitioner in Quotation marks in apparent effort to mock the writer, and having previously made decisions based on technical errors instead of merits, does explicitly caution the court that every Court between the Placer County Superior Court and the Untited States Supreme Court has held, and upheld, the notion that the filings of prisoners are to be construed liberally and to ignore this notion is to abuse discretion and engage in misconduct and/or behavior that is unbecoming an officer of the Court.

It should be clear by now that these issues will be reolved in some court at some time; it may as well be in the Superior Court. Having that in mind, it might be worth considering that, if not, a higher court will certainly have occasion to read the record of all these proceedings over the years and would likely not take kindly to the actions, omissions and unfair play that has ensued over the twenty year period the petitioner has sought reveiw of these issues.

In that light, Petitioner would call the court's attention to the following:

"As a prisoner proceeding without counsel, his proceedings are constued liberally and held to a less stringent standard than formal proceedings drafted by lawyers. See Erickson V.Pardus, (2007) 551 U.S. 89, 94 [If the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority [or[his confusion of various legal theories."] White V. Mohr,(2022) LEXIS 206143;

"Pro se pleadings must be construed liberally" [Ratcliff V. Calderone,(2022) LEXIS 204849, Quoting Draper V. Rosario,(9th cir. 2016) 836 F3d 1072 @ 1080.

Conclusion

As it is beyond dispute that the prosecution presented the Petitioner's jury with a legally invalid theory of liability, Petitioner's conviction and sentence cannot stand.

As such, Shawn Rodriguez should have his convictions vacated and set aside, and be resentenced pursuant to the provisions of Senate Bills 1437 and 775 (Penal Code Section 1172.6.)

July 10th, 2023

Respectfully Submitted,

Shawn Rodriguez V16387

EXIBIT A

Declaration of Shawn Michael Rodriguez

Petitioner Shawn Michael Rodriguez, hereby declares as follows:

1) In 2003 an information was filed against me in the Placer county Superior, Case number 62-034689A, which allowed the People to proceed to prosecute me for attempted murder and conspiracy under a natural and probable consequences theory of accomplice liability;

2) Upon jury trial, I was convicted of that Conspiracy to commit murder and kidnap,pursuant to the Natural and Probable Consequences Doctrine, in that 2003 case, number 62-034689A;

3) I could not now be convicted of that conspiracy to commit murder or that kidnap because of changes made to Penal Code Section 188 and 189, made effective and retroactive, as of January 1, 2019;

4) I could not be convicted because of changes to Penal Code Section 189 effective January 1, 2019, for the following reasons:

a) I was not the actual killer;

b) I did not, with intent to kill, aid, abet, counsle, command, induce, solicit, request, or assist an actual killer in the commission of attempted murder, Conspiracy or kidnap;

c)The People did not allege, nor was I found to be a major participant who acted with reckless indifference to human life during the course of the crime; and

d) The victim of the offenses was not a peace officer acting in the performance of his or her duties;

5) Because the foregoing is true, I am entitled to be resentenced pursuant to Penal Code §1172.6(d)(2);

6) I am seeking the appointment of counsel;

7) A copy of this Petition and Declaration has been served on the following:

Office of the District Attorney
County of Placer
10810 Justice Center Drive #240
Roseville, CA 95678

Office of the Public Defender
County of Placer
3785 Placer Corporate Drive #550
Rocklin, CA 95765

I declare under penalty of perjury that the above is true except as to that stated on information or belief, or that which is a legal conclusion, and as to those, I beleive them to be true.

Shawn Rodriguez V16387

Executed this 10th day of July, 2023, at San Luis Obispo, California, By

Shawn Rodriguez V16387

PROOF OF SERVICE BY MAIL

I, Shawn Rodriguez, CDCR# V16387,
in pro se, hereby swear under penalty of perjury of the laws of the state of California (Penal Code §72) and the United States (28 U.S.C. §1746), that I placed a true and correct copy of the foregoing:

Petition for Resentencing pursuant to PC § 1172.6 (SB1437 and SB775)
Declaration in Support

into the hands of Correctional Staff tasked with the duty of collecting and processing Inmate Legal Mail, in accordance with the MAILBOX RULE of California Rules of Court, Rule §8.25(b)(5) and the Federal Rules of Civil Procedure, Rule §6(d); see also Houston v, Lack, (1988) 487 US 266 [108 S.Ct 2379; 101 L.Ed 245]; and Douglas v. Noelle, 567 F.3d 1103, 1106-1107 (9th Cir. 2009), addressed to:

1) Placer County Superior Court
10820 Justice Center Drive
Roseville, CA 95678

2) Placer County Public Defender
3785 Placer Corporate drive #550
Rockiln, CA 95765

3) Placer County District Attorney
10810 Justice Center Drive #240
Roseville, CA 95678

Submitted by and sworn to, by me, this 16th day of July, 2023.

Shawn Rodriguez, V16387
CMC - East - 6220
P.O. Box 8101
San Luis Obispo, CA
93409-8101