

**No JOC?**  
**Then Set Us Free!**  
**It's the Right Thing to Do... *Right?***

by

Lonnie G. Schmidt  
RFB - Proverbs 21:31  
June 15, 2021

Free those who are wrongly imprisoned.

Isaiah 58:6 NLT

Throughout history in every nation, courts have existed to settle disputes and render a judgment that is reduced to writing, signed by a judge, and recorded in a public place for posterity.

Why should California's government expect the People to believe differently in a criminal action? To accept a substitute for all purposes... an unsigned abstract of judgment... instead of the original judgment? But for over 70 years government has! "Trust us, have faith! There is a judgment to support the abstract ... somewhere ... right?" The original is the authority - not the substitute. So where is the original judgment?

The criminal accusatorial and civil adversary system is one in which contesting parties present a case before an independent decision maker. They go to court. The sole purpose is to obtain a court's final determination of the rights and obligations of the parties; evidenced by a judgment. A judgment includes a written decree or order which may be immediately enforced and from which an appeal lies.

In a criminal case, final determination is evidenced by a judgment of conviction (JOC), signed by a judge and entered in the Court's records. A JOC directs that the defendant be delivered into the custody of the Director of Corrections and fixes the term of imprisonment in the state prison.

A Certified copy of the JOC is the only authority authorizing the transfer of a defendant from the custody of the County Sheriff to the State Director of Corrections.

This treatise is written for the primary purpose of exposing the long-standing unlawful practice of the California Department of Corrections and Rehabilitation's (CDCR) Directors receiving persons from the 58 California County jails and confining them in the state's prisons without a JOC.

This unauthorized conduct is in violation of the Directors' Oath of Office and has violated the civil rights of hundreds of thousands of persons.

The remedy is the immediate release of persons currently confined in the state's prisons, termination of parole status of parolees, and compensation for false imprisonment for all those who do not have a JOC in CDCR's files.

My friend "Butch", 73, Viet Nam Veteran, five times married and divorced, or so he thought, recently found himself to be a four time bigamist! Gathering his divorce decrees from various Courts, it turns out the Judge never filed a Judgment of Divorce in his first marriage! The discovery surprised both Butch and Rhonda, his "wife" of 53 years!

Ever the one to put on a positive spin, Butch said "Now I understand the magnitude of the 'No Judgment - No confinement' issue! I'm innocent! Never proven guilty! For 26 years I've been illegally imprisoned! The Judge never filed a Judgment of Conviction!" "Yep. Whacha gonna do now Pilgrim?" I replied in my best John Wayne drawl. To be continued..

The Memorandum (last page), is CDCR's response to over 100 letters from CSP Solano Inmates in the Fall of 2020 demanding production of a JOC from CDCR's files or release from prison: as an operation of law and as promised by the Governor and CDCR.<sup>1</sup> No JOC has ever been produced.

In personal correspondence with the author, Associate Warden M. Fregoso (AW), Business Services/Records claims the authority to respond on behalf of CSP Solano Warden Gigi Matteson and CDCR and, therefore, the State.

### **A Quick Peek at the Memorandum**

The Memorandum is proof positive that there is no JOC in the possession of CDCR, and, of the state's intentional attempt to conceal that fact as long as possible.

Now that We the People know the truth, it would be easier to hide an elephant under a rug than for the State to allow the practice to continue unabated.

Paragraph One, the AW acknowledges the Inmates' letters bring to CDCR's attention the fact CDCR former Secretary Ralph Diaz has stated "a written Judgment of Conviction has not been created as required by law. Therefore your detention is unlawful." See Footnote (Fn) 1.

Paragraph Two, the AW states "CDCR does not have authority to activate an immediate release without a direct order from the Governor, implementation of new laws, senate bills, or a judicial decision."

In light of CDCR's admission of lack of authority to confine persons for want of a JOC, this statement is ludicrous, deceptive and intended to mislead the reader (Inmate).

CDCR either has the required legal document, a Judgment of Conviction, or, it does not. And the Secretary, (the AW's boss), says they don't. What choice has the CDCR Director but to release inmates or face prison?

No judicial decision need be sought, as it was the Court's failure to follow the law and create and file and finalize the action with a written judgment in the first instance. The trial Court lost jurisdiction. Appeal is not possible without a final judgment; and all appeals so decided are without jurisdiction and void.

CDCR has the authority and legal duty to immediately release all affected inmates... and it appears that includes over 100,000 persons presently imprisoned.

Paragraph Three, the AW evidences that, notwithstanding former CDCR Secretary Diaz' honest admissions, Governor Newsom and CDCR Secretary Kathleen Allison (Director) continue to rely upon fraudulent documents submitted by the Superior Court, such as the Felony Complaint and Abstract of Judgment to determine Inmates were "appropriately convicted and sentenced to serve your term under the jurisdiction of CDCR".

According to the AW, there is no JOC in the Superior Court, CDCR or CSP Solano's files and records: JOC confers jurisdiction.

Without a supporting judgment, an alleged abstract of that judgment cannot exist and becomes a fraudulent document which may not be relied upon to determine the term of imprisonment; which is fixed by the judgment.

The Felony Complaint is an illegal document, incapable by law of initiating a felony prosecution<sup>2</sup>. The inclusion of a Felony Complaint and Abstract of Judgment, both fraudulent documents, in CDCR's records and touted as revelation of an "appropriate conviction", is fraudulently deceitful and negates any authority CDCR might have enjoyed to take custody and confine any person. Minute Orders and Sentencing Transcripts are not felony commitment documents and none are signed by a judge.

Oh what a tangled web we weave when first we practice to deceive! If not intentional fraud and organized crime, why not acknowledge the mistake and move to correct it? Justice delayed is justice denied.

### **The Truth of the Matter**

No Judgment? No conviction. No Prison! **Go HOME!!**

The legal analysis which follows should remove all doubt that a written, tangible, document denominated a "judgment of conviction" having the sanction of the Court and signature of a judge is required to take a person's liberty; direct that person be delivered into the custody of the Director of CDCR; for the Director to receive custody of that person; and, to fix the term of imprisonment in the State's prisons.

A judgment of conviction is the **ONLY** document which lawfully authorizes the Director to take custody of a person and fixes the term of imprisonment. Listening Butch? "Yep".

Pursuant to the Penal Code (PC), after a legal prosecution and valid conviction and the filing and entry of a JOC, here's how transfer of a person from the county to state custody for imprisonment in the state prison should work.

After sentencing and upon remand by the Judge of a convicted person to the Sheriff for delivery to prison, a Certified copy of the JOC is delivered to the Sheriff for delivery with the defendant to the CDCR Director.

For the CDCR Director to receive and take custody of a person without authorization, a JOC, is a crime. It's called kidnaping.

The imprisonment of any person by the CDCR Director without a written JOC directing the defendant into the custody of the Director and describing the offense and fixing the term of imprisonment, is a crime. It's called false imprisonment.

In some jurisdictions these are crimes which call for the death penalty. See Federal Law 18 U.S.C. §§ 241, 242.

By CDCR's own admission, there are no Judgments of Conviction in the possession of CDCR... but there ARE thousands of Grandpas, Fathers, Husbands, Sons and Daughters.

**Only** ONE way into state prison: **Judgment of Conviction!**<sup>3</sup>

The California Code of Civil Procedure (CCP), prescribes procedure following pronouncement of judgment and administrative disposition of the formal written judgment.

Judgment must be signed by Judge.

CCP § 635 "In all cases where the decision of the court has been entered in its minutes and when the judge who heard or tried the case is unavailable the formal judgment or order conforming to the minutes may [must] be signed by the presiding judge."

Judgment must be entered.

CCP §§ 664, 668, 670(b) in relevant part read "In no case is a judgment effectual for any purpose until entered"; "Clerk must keep 'judgment book'... judgments must be entered"; "judgment roll... (b) copy of the judgment".

Conviction is proven by entered judgment.

CCP § 681: NO PERSON PUNISHABLE BUT ON LEGAL CONVICTION. No person can be punished for a public offense, except upon a legal conviction in a Court having jurisdiction thereof.

As set forth in the case of Swift v. Daniels, 2nd Dist. 103 Cal. App. 3d 263, 162 Cal. Rptr. 863: "A signed judgment is deemed indispensable to the validity of a judgment and that it be signed by a judge." (46 Am Jur 2d § 90 Signature.)

The Penal Code prescribes Crimes and Punishments, Criminal Procedure, and Imprisonment laws implemented by the Legislature in accordance with the due process provisions of the California and United States Constitutions: mandatory for use by the State in Criminal Actions. The Code requires a **judgment of conviction**.

Judgment authorizes Director of CDCR to take custody.

PC § 1202a: "If the judgment is for imprisonment in the state prison the judgment [JOC] shall direct that the defendant be delivered into the custody of the Director of Corrections at the state prison or institution designated by the Director of Corrections as the place

for the reception of persons convicted of felonies, except where the judgment is for death in which case the defendant shall be taken to the California State Prison at San Quentin." (Emphasis added.) Cross References: "Execution of judgment, see Penal Code § 1213 et seq."

Judgment must be filed in Superior Court records.

PC § 1207: "When judgment upon a conviction is rendered, the clerk must enter the judgment in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, if any. A copy of the judgment of conviction shall be filed with the papers in the case." (Emphasis added.) Cross References: "Copy to be furnished officer see Penal Code § 1213."

"Judgment of conviction. The written record of a criminal judgment, consisting of the plea, the verdict or findings, the adjudication, and the sentence. Fed.R.Crim.P. 32(d)(1) [32(k)]." Black's Law Dictionary Abridged Seventh Edition, p. 680.

The Federal Rules of Criminal Procedure (F.R.Crim.P.) are compliant through the 5th Amendment.

F.R.Crim.P. 32(k) Judgment. (1) In general; states in relevant part: "In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. ...The judge must sign the judgment and the clerk must enter it." (Emphasis added.)

"Judgment of conviction is one signed by the judge."

Payne v. Madigan, (1960 CA 9 Cal) 274 F.2d 702, aff'nd (1961) 366 U.S. 761, 6 L. Ed. 2d 853, 81 S.Ct. 7, re. den. (1961) 368 U.S. 371, 7 L. Ed. 3d 72, 82 S.Ct. 2 et seq.

Certified copy of judgment delivered to CDCR Director.

PC § 1213 states in relevant part "When... a judgment, other than death, has been pronounced... a copy of the entry of judgment ... shall be forthwith furnished to the officer whose duty it is to execute the... judgment". Cross References: "Commencement of term, see Penal Code § 2900 et seq."; "Entry of judgment, see Penal Code § 1207."

PC § 1216 states in relevant part "If the judgment is for imprisonment in the state prison, the sheriff of the county shall, upon receipt of a certified abstract or minute order thereof, take and deliver the defendant to the warden of the state prison." Cross References: "Certified copy of judgment to be furnished to executing officer, see Penal Code § 1213."; "Sentence, execution, see Penal Code § 2900 et seq."; "Warden's duty to receive prisoner, see Penal

Code § 2901."

"A certified copy of judgment properly entered in criminal action is sufficient authority in hands of warden of prison for detention of defendant." In re Ring, (Cal. Apr. 1 1865), 28 Cal. 247, 1865 Cal. Lexis 120.

Judgment determines term of imprisonment.

PC § 2900: "The term of imprisonment **fixed by the judgment** in a criminal action commences to run only upon the actual delivery of the defendant into the custody of the Director of Corrections at the place designated by the Director of Corrections as a place for the reception of persons convicted of felonies." (Emphasis added.)

Receipt of prisoners; duration of imprisonment.

PC § 2901: "It is hereby made the duty of the wardens of the State prisons to receive persons sentenced to imprisonment in a State prison, and such persons shall be imprisoned until duly released according to law." Cross References: "Delivery of prisoner to warden for commitment, see Penal Code § 1216."

Immediate release is mandated and authorized for CDCR to so effect under CDCR Regulations: Title 15, § 3075.2(a)(1) "Day of release. Inmates... shall be released on their scheduled release date. Inmates shall not be retained beyond their discharge date."

**Summary**

It seems reasonable to conclude that without a JOC fixing the term of imprisonment, even Life Without Parole, the commencement and duration of the term of imprisonment is not established; and a date of discharge is impossible to schedule.

It seems reasonable to conclude that without a JOC directing that the defendant be delivered into the custody of the Director of Corrections and fixing the term of imprisonment and on file in the Superior Court and CDCR's records; the receipt, confinement and continued detention of any person in any of the state's prisons by CDCR is without jurisdiction, without lawful process, and **absent all authority**.

Therefore, it only seems reasonable a prudent man would conclude, that the confinement of any person by the State, absent lawful process or authority (JOC), is a breach of legal duty and a civil rights violation. And Madam Secretary, Kathleen Allison, **has NONE!**

## **DEMAND FOR RELEASE**

On behalf of the People of California, I, Lonnie G. Schmidt, One of the People, Captain, United States Army Reserve, Combat Veteran with Distinguished Service Record, Native Californian, Child of Almighty God, hereby **DEMAND** that Kathleen Allison, CDCR Secretary, immediately produce a list of all CDCR prisoners who have no Judgment of Conviction in CDCR's files and deliver the list to Governor Newsom with "RELEASED: DEBT PAID IN FULL"<sup>4</sup> written boldly across each page for his signature and, a copy promptly delivered to Rob Bonta, Attorney General, together with a copy of the Governor's Order to CDCR Secretary Allison to begin processing and releasing prisoners, forthwith.

### **Epilogue**

The state's prisons are filled to overflowing. The People had faith that California's criminal justice and penal system were obtaining lawful convictions and imprisonments. Misplaced faith.

Butch and Rhonda? Well, "still married" they're talking now. Butch, with four Life Sentences, had lost all hope of freedom and family. But now he's mad! "I enlisted in the Army in 1964 to support and defend my family and the Constitution. They taught me to kill and told me to do so and I did. I didn't sign up so the attorneys and judges could violate the law and get away with it!"

So what is Butch doing about it? Learning from experience the State Courts are crooked and believing they won't prosecute and jail their own, he's filed a Criminal Complaint in Federal Court against the District Attorneys and Judges in all 58 California counties.<sup>5</sup> He's asking that they all be indicted for multiple felonies and treason. Yep, he's mad.

So, what about you? What will you do to right this wrong?

### **What can we do?**

The Attorney General (AG) is the Top Cop in California and responsible for the prosecution of government officers and employees who violate their Oath and the law.

As One of the People, the AG works for you. You may want to contact the AG and demand he (Rob Bonta) investigate CDCR... and get back to you promptly. AG contact information.<sup>6</sup>

Inmates: The last two pages (No Judgment? No Confinement! and Memorandum) are designed for use by inmates in the unlawful custody of CDCR by utilizing CDCR's Appeal process. Each Appeal (CDCR 602) is

logged in to the system and requires an answer by an Officer of CDCR. Once put on notice of the illegal detention, it is a crime for CDCR to not investigate immediately and provide a remedy... release. No JOC? Set me free!

Family: You may want to send this article to your loved ones in prison from whom you've been unlawfully separated for so long so they can utilize the CDCR 602 process, Habeas Corpus or Civil Suit and sue for their freedom... and monetary damages? Hmmm, interesting!<sup>7</sup>

Add your voice to mine "No JOC? Set them free!" and demand the release of your loved one and those who are wrongly imprisoned:<sup>8</sup> for justice... a return to law and order... and making California and America great again!

Lonnie G. Schmidt  
Captain USAR

#### End Notes

<sup>1</sup> See "CDCR Secretary Ralph Diaz Admits No Authority To Confine Prisoners";

<sup>2</sup> "Held To Answer"; and

<sup>3</sup> "Under Cover of Corona" for full analysis of issues at [withoutoneplea.com](http://withoutoneplea.com)

<sup>4</sup> Only ONE Way into Heaven: Jesus. John 14:6; Romans 10:9-13 NKJV

<sup>5</sup> United States District Court, Eastern District of California, Gerald Lester v. Unknown, Case No. 2:21-cv-00702-DMC. "This is a Felony Complaint under 18 U.S.C. § 4 by a victim of the conspiracy between the prosecutors and the Superior Courts in California that has been going on since at least (1951)."

<sup>6</sup> Attorney General, Rob Bonta, State of California, Office of the Attorney General, Attn: Anthony J. Tartaglio, Deputy Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004  
415 510-4400 (Public), 415 510-3602 (Telephone), 415 703-5480 (Facsimile)  
E-Mail: [Anthony.Tartaglio@doj.ca.gov](mailto:Anthony.Tartaglio@doj.ca.gov).

<sup>7</sup> \$1,400 per day from date of arrest plus \$2,000 per day since July 4, 2020. See "Immediate Release! Governor Orders Mass Release Of Prisoners! And It Ain't Corona, Sweetheart!" at [withoutoneplea.com](http://withoutoneplea.com).

<sup>8</sup> This Treatise and Demand for Release sent by U.S.P.S. Certified Mail RRR No.: 7020 1810 0000 3292 6377 to AG at address above (Fn6).

The Memorandum (reverse), is California Department of Corrections and Rehabilitation's response to over 100 letters from CSP Solano Inmates in the Fall of 2020 demanding production of a Judgment of Conviction (JOC) or, release from prison: as promised by Governor and CDCR.<sup>1</sup> None have been produced; no, not one!

The Memorandum is proof positive that CDCR does NOT have a JOC in any Inmate's files. Why is the JOC so important? A JOC is the ONLY document authorizing CDCR to take custody, fix the term of imprisonment; and imprison any person.

Penal Code (PC) § 1207 requires the JOC to be filed in the Court's records. JOC directs that the defendant be placed in the custody of the CDCR Director for imprisonment (PC § 1202a) and fixes the term of imprisonment (PC § 2900).

Without a JOC in its files, CDCR has no authority to imprison anyone... **period.**

JOC authorizes Director of CDCR to take custody of defendant.

PC § 1202a: "If the judgment is for imprisonment in the state prison the judgment [JOC] shall direct that the defendant be delivered into the custody of the Director of Corrections at the state prison or institution designated by the Director of Corrections as the place for the reception of persons convicted of felonies."

The JOC must be filed in Court records, furnished to the Officer executing the judgment and delivered with the defendant to the Director of CDCR.

PC § 1207: "When judgment upon a conviction is rendered... A copy of the judgment of conviction shall be filed with the papers in the case." Cross References "Copy to be furnished officer, see Penal Code § 1213."

The Memorandum evidences the State has no JOC, but only a history of the proceedings ("Abstract of Judgment", etc.). The California Supreme Court in 1867 held dispositively: A commitment to the State Prison which does not contain a **certified copy of the judgment** as entered in the minutes of the Court, but which consists only of a history of the proceedings against the prisoner, is not merely defective, but is wholly unknown to the laws of this State.

"The final process in criminal actions is... a **certified copy of the judgment** as entered in the minutes of the Court...' 'when a judgment has been pronounced, a certified copy **of the entry thereof** in the minutes shall be forthwith furnished to the officer' 'it is to

execute the judgment,'" Ex parte Gibson (Cal. 1867), 31 Cal. 619, 622. (Emphasis added.) No person confined without a JOC in CDCR's files is lawfully imprisoned under the laws of California or the United States... and CDCR admits to having none!

JOC determines term of imprisonment.

PC § 2900: "The term of imprisonment **fixed by the judgment** in a criminal action commences to run only upon the actual delivery of the defendant into the custody of the Director of Corrections...". (Emphasis added.)

CDCR has authority and duty to immediately release Inmates.

Absent a JOC, which fixes the term of imprisonment, all Inmates are illegally retained beyond their discharge date (there is none), a violation of Title 15, § 3075.2: "Inmates shall not be retained beyond their discharge date."

Government Code § 8658: "Inmates of Penal or Correctional Institution... Release. In any case in which an emergency endangering the lives of inmates of a state... penal or correctional institution has occurred or is imminent, the person in charge of the institution may [shall]... release them." A reasonable person would conclude that prisons are violent and Covid-19 rich environments endangering the lives of Inmates: which have occurred and daily imminent. And, can there be greater emergency than illegal deprivation of liberty?

JOC must exist and be entered in Court records.

California Code of Civil Procedure (CCP) §§ 664, 668, 670(b): "In no case is a judgment effectual for any purpose until entered"; "Clerk must keep 'judgment book'... judgments must be entered"; "judgment roll... (b) copy of the judgment". **And none are... they don't exist!**

CCP § 681: "No person can be punished for a public offense, except upon a legal conviction in a Court having jurisdiction thereof." No JOC? No CDCR. No prison. No parole. Enjoy!

**FREE** those who are wrongly imprisoned! Isaiah 58:6 NLT

CDCR Secretary Ralph Diaz Admits No Authority To Confine Prisoners", "Under Cover of Corona", "No JOC? Then Set Us Free!" and other articles at [withoutoneplea.com](http://withoutoneplea.com) - WOP Treatise 01-21 (Rev. July 9, 2021)

# Memorandum

Date: November 12, 2020

To: CSP-Solano Inmates

Subject: **REQUEST IMMEDIATE RELEASE PURSUANT TO CDCR SECRETARY RALPH DIAZ**

California Department of Corrections and Rehabilitation (CDCR) has received your letter in regards to a release pursuant to Secretary Ralph Diaz. The letter is titled "CDCR Secretary Ralph Diaz admits No Authority to Confine Prisoners!" In the context of the letter, you submitted it states that Governor Newsom acknowledges government wrongdoing in criminal prosecutions, and he initiated a sweeping reform. The letter further states the CDCR Secretary received directions from Governor Newsome to commence processing for release. Additionally, the letter states that a written Judgment of Conviction has not been created by the sentencing judge and filed in the courts as required by law. Therefore, your detention is unlawful.

Please be advised at this time, CDCR has not been directed, advised, or made aware of by the CDCR Secretary Kathleen Allison, and Governor Newsom's Order to facilitate an immediate release for inmates in conjunction with the letter you attached titled, "CDCR Secretary Ralph Diaz admits No Authority to Confine Prisoners!" CDCR does not have the authority to activate an immediate release without a direct order from the Governor, implementation of new laws, senate bills, or a judicial decision.

Please be advised one or more of the following legal documents such as the Abstract of Judgment, Minute Order, Sentencing Transcript, and Felony Complaint submitted by the Superior Court of California, the county of commitment, reveal you were appropriately convicted and sentenced to serve your term under the jurisdiction of CDCR. There is no noted discrepancy with your legal documents or sentencing factors.

Acknowledging this, your request for immediate release pursuant to the letter titled "CDCR Secretary Ralph Diaz admits No Authority to Confine Prisoners!" is not an appropriate measure to be undertaken.

I appreciate you taking the time to express your concerns regarding these matters.

Sincerely,



M. FREGOSO  
Associate Warden

Business Services/Records  
California State Prison, Solano