

OATH BREAKERS

Public Servants Willful Misconduct in Office

Government Accountability

101

A servant will not be corrected by mere words;
For though he understands, he will not respond.

Proverbs 29:19

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To whom it should concern

Re: **Kamala and friends' malfeasance in office.**

One voice silences the enemy – Truth. In California, there has not been a single valid felony prosecution, conviction or imprisonment of any person since Kamala Harris took office as District Attorney for San Francisco in 2004. And Kamala Harris, Vice President of the United States, Gavin Newsom, Governor of California and Ralph Diaz, former Secretary, California Department of Corrections and Rehabilitation (CDCR) having actual notice... have failed to correct this travesty of justice. Willful false imprisonment under color of law is criminal conduct.

OATH BREAKERS – December 2021 article/legal treatise documenting Legal Notice of illegal felony prosecutions and imprisonments to government officials for remedy.

Kamala Harris, U.S. Senator – February 2019 letter Re: **On Your Watch!** California's felony convictions via complaint: **none** are valid, no not one!; Malfeasance in office. NOTICE FELONY; DEMAND FOR RELIEF;

Gavin Newsom, Governor of California – April 2020 letter Re: **Newsom, we have a problem...** CALIFORNIA'S PRISONERS' CONFINEMENT VIOLATES THE CONSTITUTION AND LAWS OF CALIFORNIA AND THE UNITED STATES... **and we the People demand release!**; and

Ralph Diaz, CDCR Secretary – August 2020 letter Re: You're the man! Papers, please.

Without One Plea – December 2018/February 2023 article/legal treatise exposing illegal felony prosecutions via "felony complaint" by District Attorneys in every county in California.

Jesus Nut – March 2023 article/legal treatise confirming a CDCR Whistleblower's exposure of the illegal imprisonment "of all persons in the state prison system". **Check it out.**¹

The Party in power has the duty to abate and correct governmental violation of the Constitution. We the People have the duty to enforce compliance.

It's time to put on the whole armor and take a stand (Ephesians 6:10-13). Representing and presenting the Truth in California, God will bless our efforts to make America great again.

Lonnie G. Schmidt, One of the People

June 6, 2023

¹ Letters sent via U.S.P.S. Certified mail to Senator Kamala Harris (Cc to Governor Gavin Newsom and President Donald Trump); Governor Gavin Newsom; CDCR Secretary Ralph Diaz and **Oath Breakers, Without One Plea** and **Jesus Nut**, are available online at withoutoneplea.com (click on "State").

Oath Breakers

OATH BREAKERS

Unfaithful Stewards Betraying the Trust of the People

by

Lonnie G. Schmidt
RFB - Proverbs 21:31
December 7, 2021

This is the way of an Oath Breaker:
They eat and wipe their mouth, and say,
"I have done no wickedness." Proverbs 30:20 NKJV

In California, Officers of the State, District Attorneys, Defense Attorneys, Judges and Penal Custody Officials take an oath to support and defend both the State and Federal Constitutions.

Since at least 1951, the shared common denominator of those individuals involved in the criminal justice system, naively or not so naively, is... all are Oath Breakers ...exercising power to prosecute and imprison without enjoying the authority to do so in the mode and manner employed.

State Officers and CDCR Officials

This treatise is written as an addendum to the June 15, 2021 exposé "No JOC? Then Set Us Free! It's the Right Thing to Do... Right?" (withoutoneplea.com) which revealed the long-standing unlawful practice of the California Department of Corrections and Rehabilitation's (CDCR) Directors receiving persons from the jails of the 58 California Counties and confining them in the state's prisons: without any authority from the Courts.

The required authority? The final process in a criminal action, a "Judgment of Conviction" (JOC): A written, legal sentencing document signed by a judge and entered and filed in the Court's records. There are virtually none in the Superior Courts' records. Thus, none can be found in CDCR's files. Why? Such document has not been created by the Courts for over 70 years! If this be so, by what authority does CDCR claim to detain prisoners? An "Abstract of Judgment" (AOJ).

Ummm, come again?... an abstract of WHAT judgment?

Questions Anyone?

Does the California Constitution, Legislature, Penal Code or any Judicial Decision provide authority for detention of prisoners in the state prison pursuant to:

a JOC? Yes ... to an AOJ? No.

Is the Judicial Council required by law to prescribe an AOJ for use by the State as a commitment document for execution of a JOC? Yes. Has the Judicial Council so prescribed? No.

Does CDCR possess any legal authority to detain prisoners? No.

Is kidnaping and false imprisonment morally indefensible, Constitutionally untenable, a violation of the involved Officers' Oath of Office and a violation of the civil rights of persons detained? Yes!

There being no JOC of record and no AOJ authorized by law, is it not true that all persons detained by CDCR pursuant to an AOJ are wrongly imprisoned... and as a matter of law, must be immediately and unconditionally released? Yes!

Does God agree? "Free those who are wrongly imprisoned." Isaiah 58:6 NLT.

Many people today deny the existence of God. But the reason is suppression of the truth, not a lack of evidence.

Oath Breakers deny the requirement of lawful felony prosecutions and a JOC for imprisonment in the state's prisons. But the reason is suppression of the truth, not a lack of evidence.

Growing up in the 50's, when tempted to "bend" the truth in order to justify my actions and avoid discipline, I would remember my Dad's admonition: "A liar and a thief go together."

California's Attorney General (AG), Rob Bonta, has proven this reminder true. Confronted in Court with the fact of California's prisoners' illegal confinement in the absence of a valid prosecution and JOC, and demand that explanation be made... He lied when stating "CDCR may rely on an abstract of judgment to detain Schmidt [prisoners] ... a 'judgment of conviction' is a red herring."

He is a thief. Stealing the trust of the People to prosecute felonies according to law... and the Civil Rights, Due Process of Law, and the liberty of those prisoners confined by CDCR pursuant to an AOJ.

Is anyone above the law? Ought not those persons responsible cease and desist their unlawful conduct and be held accountable for their actions? The State and the People being victims, is not Retributive Justice still in vogue?

Oath Breakers, Meet The People.

Solomon (Circa 988-930 B.C.), declared the wisest man who ever has lived or will live (1 Kings 3:12 NKJV), was right when he said "A servant will not be corrected by mere words; for though he understands, he will not respond." Proverbs 29:19 NKJV.

In America the government is the servant of the "sovereign" People. The People are Sovereign. The Truth will out.

Suing For Freedom

The criminal courts' failure to address the merits of claims of illegal prosecution and false imprisonment, has forced the filing of a civil lawsuit by Lonnie G. Schmidt, Plaintiff (hereinafter "Plaintiff") naming State of California, California Department of Corrections and Rehabilitation, CSP Solano, Governor Gavin Newsom, CDCR Secretary Kathleen Allison and CSP Solano Warden Gigi Matteson as Defendants (hereinafter "Defendants")¹.

Defendants, servants of the People by Oath, have not responded to Plaintiff, One of the People, with any Constitutional, Legislative or Judicial authority in support of Defendants' contention that: (1) a felony prosecution brought by the state via complaint is legal, (2) that a JOC is not the final process in a criminal action, (3) that a filed JOC is not required for purpose of appeal, delivery and detention of a prisoner, and (4) that an AOJ can exist and provide authority to execute a judgment and detain any prisoner in the state prison, absent the judgment.

It may not be disputed that Defendants have publicly admitted that there have not been any valid felony prosecutions since 1951; that a JOC is necessary for imprisonment in the State's prisons and, that CDCR possesses none.

"Not A Single Valid Felony Conviction In California During Kamala Harris' Prosecutorial Career! Thousands Unlawfully Confined! Governor Orders Investigation And Prison Doors To Be Opened!" October 15, 2020 and "CDCR Memorandum November 12, 2020 M. Fregoso, Associate Warden" attached hereto and incorporated herein.

However, Defendants' Counsel, the Attorney General², also providing no Legislative or Judicial authority -- or logical explanation -- falsely declares that the AOJ held by CDCR is the only authority necessary to detain prisoners.

The civil lawsuit challenges the State and raises fraud causes of action, e.g., fraudulent deceit: The State's claim that an AOJ, absent the JOC, is sufficient authority to imprison Plaintiff and all other convicted persons.

"Defendants CDCR, Allison and Matteson practiced fraudulent deceit upon plaintiff by asserting as a fact, that which is not true, i.e., that an Abstract of Judgment, in the absence of an underlying Judgment of Conviction, is sufficient authority to receive and confine plaintiff in the State's prisons; when defendants have no reasonable ground for believing it to be true. CSP Associate Warden M. Fregoso's Letter To Inmates attached hereto and incorporated herein as Exhibit Five."

Defendants' Counsel filed a Demurrer to the Complaint. Plaintiff replied with a Motion to Strike Demurrer. Defendants countered with an Opposition and Memorandum of Points and Authorities, July 19, 2021. Defendants' Opposition, Section III, page 3, presents the state's position -- which is quoted and debunked in Plaintiff's August 4, 2021 Reply to Opposition, infra -- as follows:

"Schmidt argues that he must be released because the Department of Corrections and Rehabilitation does not have "judgment of conviction" to authorize his confinement. (Mem. P. & A. re: Motion to Strike at 6-7.) This argument is wrong because it confuses the judgment--an oral pronouncement from a judge--with the abstract of judgment--a document that memorializes the judgment. CDCR may rely on an abstract of judgment to detain Schmidt.

Rendition of judgment is an oral pronouncement made by a judge. (People v. Zachary (2007) 147 Cal.App.4th 380, 387.) The defendant is committed to State prison based on an abstract of judgment, however, which is a document that memorializes an oral judgment. (In re Black (1967) 66 Cal.2d 881, 890 ["Under section 1213 of the Penal Code] the certified abstract of the judgment constitutes the commitment"). Schmidt does not dispute that the Department of Corrections and Rehabilitation possesses an abstract of judgment for him. Accordingly, Schmidt's argument about whether CDCR possesses a 'judgment of conviction' is a red herring." (Emphasis added.)

PLAINTIFF'S REPLY TO OPPOSITION

"Defendants' assertions that an abstract of judgment memorializes the judge's oral pronouncement; and, that CDCR, absent possession of a certified copy of a written judgment of conviction (JOC), may rely on an abstract of judgment (AOJ) to detain Schmidt, are wrong."

Pernicious Peddler of Taradiddle: Death Knell for CDCR³

The Attorney General has inexplicably taken the position that "CDCR may rely on an abstract of judgment to detain Schmidt ... a 'judgment of conviction' is a red herring."

It does violence to logic to suggest that the Legislature did not intend "abstract of the judgment" as used in Penal Code § 1213 to be preceded by the judgment of conviction mandated by § 1207*, since a written judgment is the essential ingredient for the existence of an abstract thereof.

Responding to such an insupportable and absurd statement of reliance by the Attorney General on behalf of the State, as sole authority for the unlawful imprisonment of Plaintiff and hundreds of thousands of persons over a period of at least 70 years, mandates following Solomon's advice "Answer a fool according to his folly, lest he be wise in his own eyes" (Proverbs 26:5 NKJV); and this travesty of justice continues.

Not to be outdone by Solomon, the American Bar Association prohibits Defendants' Counsel from controverting an issue with such a frivolous argument. "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous." ABA Model Rules of Professional Conduct, Rule 3.1.

What are the odds of the State's argument prevailing on the merits of such reliance ... and this slavery continuing?

The Messiah Foretold

One of the most amazing examples of fulfilled Bible prophecy is the extensive number of specific mentions of the prophesied Messiah. The Old Testament contains more than 300 references to His coming. What are the odds of 300 prophecies all being fulfilled? In his book "Science Speaks", the late mathematician Peter Stoner (1888-1980) examined the probability of one person fulfilling just 48 of those prophecies. The chance of that happening would be one in 10^{157} . To put that in perspective, that would be like trying to find **one** specific electron out of **all** the electrons in **all** the known universe on the first attempt-- and that's considering just 48 of the 300 prophecies.⁴

* Undesignated statutory references are to the Penal Code.

Incredible!...yet those are better odds than the State faces when asking that Plaintiff, Court and People accept as fact that an **abstract of the judgment** (§ 1213) can exist in the absence of the judgment of conviction (§ 1207) it purports to summarize!

Fraudulent Abstract of Judgment

The Judicial Council has never prescribed an "Abstract of Judgment" for use with § 1213. The bogus AOJ possessed by CDCR is not one prescribed by the Judicial Council as required by law (§ 1213.5).

The "abstract" ascribed to Plaintiff and all California prisoners as the AOJ possessed and relied upon by CDCR, prima facie evidences it is not prescribed by the Judicial Council and is therefore unauthorized: a fraudulent document.

Defendants cite In re Black (1967) 66 Cal.2d 881, 890 for the proposition that "The defendant [Schmidt] is committed to State prison based on an abstract of judgment, however, which is a document that memorializes an oral judgment. ['Under section 1213 [of the Penal Code] the certified abstract of the judgment constitutes the commitment']. " (Emphasis added.) Opp. Mem. P. & A. ¶ III. 3:2-5.

Defendants' citation to this authority in Black is from a 1955 case "wherein the form of abstract is entitled 'Commitment to State Prison.'" However, subsequent to 1955, § 1213.5 was amended. The required text in 1967, is found in Fn 6 of Black:

"The form of the abstract of judgment prescribed by section 1213.5 must be substantially such as will include, inter alia, the following: 'Pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above named Defendant into the custody of the Director of Corrections at the....at your earliest convenience'."

This text does not appear in the Abstract of Judgment in CDCR records of any prisoner.

No abstract of judgment is prescribed by the Judicial Council under § 1213.5 for § 1213. Defendants' odds are not improving!

Neither Black, § 1213, nor any other statute in the Penal Code contemplate nor mention Defendants' proposition that an "abstract of judgment... is a document which memorializes an oral judgment" and Defendants offer no authority for such a proposition. Once again, the AG is lying.

Contrary to Defendants' assertion, an oral judgment pronounced in a criminal case is "memorialized" by the judge signing and the Clerk filing the written judgment in the court's records.

Subsequent to the Clerk's entry of the judgment in the minutes, "a copy of the judgment of conviction shall be filed with the papers in the case." (§ 1207.)

In the realm of reality, only after a written copy of the judgment of conviction is signed by a judge, entered and filed with the papers in the case, can an "abstract" thereof become a possibility.

Abstract defined: "abstract - A concise statement of a text, esp. of a legal document; a summary." (Emphasis added.) Black's Law Dictionary Pocket Edition (1996) p. 3. **Statement of a text, NOT of an oral pronouncement.**

So do § 1213 and § 1213.5 describe and authorize an "abstract of judgment" in any circumstance? **NO!**

"§ 1213. Probationary order or judgment other than death; copy or abstract furnished to executing officer

(a) When a probationary order or a judgment, other than death, has been pronounced, a copy of the entry of that portion of the probationary order ordering the defendant confined in a city or county jail as a condition of probation, or a copy of the entry of the judgment, or, if the judgment is for imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170, either a copy of the minute order or an abstract of the judgment [§ 1207] as provided in Section 1213.5, certified by the clerk of the court, and a Criminal Investigation and Identification (CII) number shall be forthwith furnished to the officer whose duty it is to

execute the probationary order or judgment, and no other warrant or authority is necessary to justify or require its execution. (Emphasis added.)

(b) If a copy of the minute order is used as the commitment document, the first page or pages shall be identical in form and content to that prescribed by the Judicial Council for an abstract of judgment, and other matters as appropriate may be added thereafter." (Emphasis added.)

"§ 1213.5. Abstract of judgment.

The abstract of judgment provided for in Section 1213 shall be prescribed by the Judicial Council." (Emphasis added.)

The legal term "abstract of judgment" makes its first and only appearances in the Penal Code in subdivision (b) of § 1213 and in § 1213.5 and then only for purpose of formatting a minute order. Abstract of judgment defined: "abstract of judgment - A copy or summary of a judgment that, when filed with the appropriate public office, creates a lien on the judgment debtor's nonexempt property." (Emphasis added), id. Black's Law Dictionary p. 4.

The Judicial Council has not prescribed an "abstract of judgment" for § 1213. See California Judicial Council Forms, Westlaw, and, Lexis-Nexis Automated Judicial Council Forms.

The only "abstract of judgment" ever prescribed by the Judicial Council, according to the Council's published listing of forms, is for § 1214: "ABSTRACT OF JUDGMENT--RESTITUTION" CR-111/JV-791 [Rev. July 1, 2015] pursuant to Penal Code §§ 1202.4(i),(m), 1214; Welfare and Institutions Code, § 730.6(i),(r); Code of Civil Procedure § 674. CR-111/JV-791 attached hereto and incorporated herein.

This document (CR-111/JV-791), is designed and intended for use, not by the state under § 1213, but by the beneficiary of a signed order (money judgment) for restitution (judgment creditor) under § 1214. Does CR-111/JV-791 appear to be similar to the "Abstract of Judgment" found in CDCR's inmate files... an instrument upon which allegedly, CDCR may rely to detain prisoners? No? CDCR's AOJ is a fraudulent document.

Defendants for years have misinterpreted and now misrepresent that § 1213(a) reference to "abstract of the judgment" is to be read as "abstract of judgment" and the only document required for execution of the sentence; by disregarding § 1213(a) mandate for delivery of a copy of the judgment of conviction to the executing officer.

The abstract of judgment is not the judgment of conviction. By its very nature, definition, and terms, it cannot add to or modify the judgment which it purports to digest or summarize. People v. Hartsell, (Cal.App. 4th Dist. August 23, (1973)), 34 Cal.App. 3d 8, 14 109 Cal. Rptr. 627.

Penal Code Section 1213 Analysis

Penal Code § 1213 controls the execution of the judgment of conviction filed in the case (§ 1207).

First and foremost § 1213 in relevant part mandates: "When...a judgment... has been pronounced... a copy of the entry of the judgment,... shall be forthwith furnished to the officer whose duty it is to execute the...judgment, and no other warrant or authority is necessary to justify or require its execution." Cross References: "Entry of judgment, see Penal Code 1207."

In addition to a certified copy of the judgment being delivered to the officer, § 1213 requires that an abstract of the judgment or minute order is also furnished only "...if the judgment is for imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170..." and if so, then "...either a copy of the minute order or an abstract of the judgment... shall be furnished to the officer..." (§ 1213). (Emphasis added.)

Without a JOC in his possession -- it is impossible for the executing officer to determine whether or not the "judgment is for imprisonment in the state prison or imprisonment pursuant to Subdivision (h) of Section 1170" and thus require the additional documents (abstract/minute order) -- the officer is without authority to take custody of, and deliver the defendant to, CDCR.

In any event, a certified copy of the JOC is required to be furnished to the officer executing the judgment. Section 1213 Legislated requirements cite Ex parte Gibson, United States Supreme Court, *infra*, as controlling authority.

While we're discussing the state's assertion that an "abstract of judgment" may function as a stand-alone judgment authorizing commitment to the state prison, we learn that Black finds authority for § 1213 in § 1213.5, which in turn, the section's Cross References, direct our attention for meaning and application of said § 1213.5 term "abstract of judgment" to the California Code of Civil Procedure § 697.310 et seq. "Lien of judgment imposing fine".

Thus, clarifying that the abstract of judgment is intended by the Legislature to be used only as a format for the first page or pages of the "minute order" and then only if the minute order is used as the commitment document (§ 1213(b)) and the judgment orders restitution (§§ 1202.4(i),(m), 1214).

Judgment Must Precede Execution Thereof

The Penal Code, Title 8 "OF JUDGMENT AND EXECUTION" commences with Chapter 1 **THE JUDGMENT**; beginning with § 1191 and encompasses Plaintiff's argument which is based on §§ 1202a and 1207.

Defendants totally ignore Chapter 1 as if it didn't exist. Wrong move. Chapter 1 is a necessary condition precedent to Chapter 2. Defendants focus and rely only upon Chapter 2 **THE EXECUTION**, which begins with § 1213 and wherein Defendants base their falacious argument.

Defendants take one Code section (1213) the execution phase of Title 8, totally out of context. This practice has resulted in the Executive Branch creating its own doctrine of law for imprisonment. However, in doing so, the state has built a house of straw (CDCR) in a smoldering fire-pit.

The Penal Code numbers its chapters and statutes in chronological order, e.g., "Chapter 1", "Chapter 2"; "§ 1207", "§ 1213".

Therefore, much to the chagrin of defendants, such sequence requires that a judgment of Chapter "1" precede an abstract thereof in Chapter "2". An abstract of judgment is not contemplated in Chapter 1 and is first mentioned in Chapter 2.

The textual gap between § 1193 (oral pronouncement of judgment) and § 1213 (execution) is bridged by § 1207 (entry and filing of the JOC). It is the written and entered judgment of conviction which gives rise and life to an abstract thereof.

There is no evidence of an entry of judgment (JOC) as required by Chapter 1, § 1207, ever being created and filed in court with the papers in any non-capital case since at least 1951.

Penal Code Section 1207 Analysis

Section 1207 contains the first reference to the generic term "judgment" as a "judgment of conviction"; a term of art coined by the Legislature to identify a specific type of legal instrument and is defined in Black's Law Dictionary Abridged Seventh Edition: "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)(1)]." (Emphasis added.) The Federal Rules of Criminal Procedure (F.R.Crim.P.) are state law compliant through the 5th Amendment.

Enactment of Rule 32(b) [now Rule 32(k)] had for its purpose prescribing of uniform practice for guidance of trial courts in pronouncing judgment so that by following its provisions confusion would not result. Sanders v. Johnston, 165 F.2d 736, 1948; 1948 U.S. App. LEXIS 1951 (9th Cir.) cert. denied, 334 U.S. 829, 68 S. Ct. 1328, 92 L. Ed. 1757, 1948 U.S. LEXIS 2166 (1948), reh'g denied, 335 U.S. 838, 69 S. Ct. 7, 93 L. Ed. 390, LEXIS 1914 (1948).

Federal Rule 32(k)(1) requires the judgment to be signed by a judge and entered by the clerk: "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.) F.R.Cr.P. 32(k) Judgment.

Judgment of conviction is one signed by judge. Payne v. Madigan, 274 F.2d 702, 1960 U.S. App. LEXIS 5591 (9th Cir. 1960), aff'd, 366 U.S. 761, 81 S.Ct. 1670,, 6 L. Ed. 2d 853, 1961 U.S. LEXIS 1024 (1961) reh'g denied, 368 U.S. 871, 82 S.Ct. 22, 7 L. Ed. 2d 72, 1961 U.S. LEXIS 794 (1961).

Oral Pronouncement and Written Rendition of Judgment Required By Law

Clerk's minutes, signed by judge, is unimpeachable record of sentence imposed which appellate court must regard as true; if oral sentence does not conform to written sentence signed by judge, trial court alone has power to make this record conform to truth, if it does not already do so. (Emphasis added.) Meridith v. Gough, 168 F.2d 193, 1948 U.S. App. LEXIS 2030 (5th Cir.), cert. denied, 335 U.S. 873, 69 S. Ct. 161, 93 L. Ed. 417, 1948 U.S. LEXIS 1563 (1948).

In determining whether oral pronouncement of judgment is inconsistent with written judgment entered, appellate court looks to record as whole to determine court's intention in imposing sentence." (Emphasis added.) United States v. Duncan, 310 F.2d 367, 1962 U.S. App. LEXIS 3439 (7th Cir. 1962), cert. Denied, 373 U.S. 938, 83 S.Ct. 542, 10 L. Ed. 2d 693, 1963 U.S. LEXIS 1480 (1963).

It would seem that Rule 32 has, at minimum, enhanced prestige of written judgment, even though general rule still requires that any conflict between oral pronouncement and formal judgment and commitment must be resolved in favor of former, but where orally pronounced sentence is ambiguous, judgment and commitment may and should be used to clarify actual intention of sentencing judge. (Emphasis added.) Baca v. United States, 383 F.2d 154, 1967 U.S. App. LEXIS 4956 (10th Cir. 1967), cert. denied, 390 U.S. 929, 88 S. Ct. 868, 19 L. Ed. 2d 994, 1968 LEXIS 2624 (1968).

"The law is well settled that if there were any conflict between the oral pronouncement of judgment and the written judgment itself, the terms of the oral pronouncement would control. ... The actual intention of the sentencing judge is to be ascertained **both by what he said from the bench and by the terms of the order he signed**, or from his total acts. Authority for this holding is Baca United States, 10 Cir., 383 F.2d 154. As this court construes the oral pronouncement... and his written judgment of conviction," (Emphasis added.) Scott v. United States, 434 F.2d 11, 1970 U.S. App. LEXIS 6672 (5th Cir. 1970).

Where conflict is presented between oral and written sentence and commitment, former governs. (Emphasis added.) United States v. Mason, 440 F.2d 1293, 1971 U.S. App. LEXIS 10853 (10th Cir.), cert. denied, 404 U.S. 883, 92 S. Ct. 219, 30 L. Ed. 2d 165, 1971 U.S. LEXIS 813 (1971).

As set forth in Swift v. Daniels, (1980) 2nd Appellate Dist. Division Five 103 Cal. App. 3d 263, [162 Cal. Rptr. 863] 1980 Cal. App. LEXIS 1574: "A signed judgment is deemed indispensable to the validity of a judgment and that it be signed by a judge." (Emphasis added.) (46 Am Jur 2d § 90, Signature.)

See also, California Code of Civil Procedure (CCP) § 635 requires a judgment to be signed by a judge.

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

Certified Copy Of Judgment Delivered To Officer

The Cross References of § 1207 require that a copy (certified) of the JOC be made part of the court's record and furnished to the executing officer. "Copy to be furnished officer, see Penal Code § 1213."

The executing officer should now have a certified copy of the JOC in his possession and may take and deliver the defendant to the warden of the state prison. Penal Code § 1216:

"If the judgment is for imprisonment in the state prison, the sheriff of the county shall, upon receipt of a certified abstract [copy]⁵ or minute order thereof, take and deliver the defendant to the warden of the state prison. The sheriff also shall deliver to the warden the certified abstract [copy] of the judgment or minute order, a Criminal Investigation and Identification (CII) number, a Confidential Medical/Mental Health Information Transfer Form indicating that the defendant is medically capable of being transported, and take from the warden a receipt for the defendant." (§ 1216.) Section 1216 Cross References: "Certified copy of entry of judgment to be furnished officer: Penal Code § 1213."

"When judgment of imprisonment is regularly entered, it becomes the clerk's duty, unless otherwise directed by the court, to make forthwith a certified copy of judgment, certified by him and the judge and delivered to proper officer." (Emphasis added.)

People v. Sourisseau, (1944) 62 Cal.App.2d 917, 929 145 P.2d 916, 1944 Cal.App. LEXIS 893.

"Upon pronouncement of judgment of conviction of manslaughter a certified copy thereof without further order of the court is required to be issued to the sheriff for execution of judgment, and it thereupon becomes its duty to deliver defendant to warden of state prison, when so delivered term of imprisonment, **pursuant to judgment**, commences to run and thereafter it continues to be duty of warden to hold defendant until his release by Order of State Board of Prison Directors under Indeterminate Sentence Law or otherwise legally discharged from his custody." (Emphasis added.) In re Application of Bost, (Cal. Oct. 24, 1931), 214 Cal. 150, P.2d 534, 1931 Cal. LEXIS 408.

Under the Legislative "Requirements" section of § 1213, California Supreme Court headnotes in 1867 declared dispositively in Ex parte Gibson: "A commitment to the state prison on conviction and sentence for felony should consist of **certified copy of judgment** as entered in minutes of court; commitment 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 law of this state" and held:

"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** shall be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require the execution thereof ... the writ does not contain a **certified copy of the judgment**, nor does it appear that such copy was furnished to the officer whose duty it was to execute the judgment. The prisoner is therefore entitled to his discharge, and it is so ordered." (Emphasis added.) Ex parte Gibson (Cal. 1867), 31 Cal. 619, 622-623.

In Plaintiff's and hundreds of thousands of cases, the Courts' records had no JOC⁶ to deliver to the officer whose duty it was to execute the judgment... the officer had no JOC to deliver with Plaintiff or any other prisoner to the warden... the warden had no JOC to authorize receipt and detention of the prisoner. But wait! The warden does have an AOJ!

What is the Right thing to do?

Naive Oath Breaker... quit thinking about your position and how long you will be there, and think about those you govern and serve.

Our true heart is revealed when we put concern for others ahead of ourselves. (Phillipians 2:3,4 NKJV.)

Not so naive Oath Breaker... confess, repent and help fix the problem... or run Forrest run!

What will the People do?

Prisoner(s) must be discharged and Oath Breakers prosecuted.

"A wise king sifts out the wicked, and brings the threshing wheel over them." Proverbs 20:26 NKJV. To punish wickedness is entirely appropriate and the duty of the People. When the wicked are sifted out and punished with the severity that their crimes demand, all of society benefits. Some may consider kidnaping and imprisonment of citizens absent all authority, treason; mandating the death penalty (18 U.S.C. §§ 241, 242).

California can weather the exposed sunami of corruption in the criminal justice system... and be a great leader state again. How?

Turn to the One who has all the answers and wants only the best for us "if My people who are called by My name will humble themselves, and pray and seek My face, and turn from their wicked ways, then I will hear from heaven, and will forgive their sin and heal their land." 2 Chronicles 7:14 NKJV.

Why Is The JOC So Important?

A Judgment of Conviction is the final process in a criminal action. A JOC is the ONLY document authorizing appeal of the conviction, the Sheriff to execute sentence and transfer custody of the defendant from County to State jurisdiction, for CDCR to take custody and imprison any person, and for the Board of Parole Hearings to review and determine a prisoner's suitability for release on parole.

Penal Code § 1207 requires the JOC to be filed in the Court and delivered by the Clerk to the officer executing judgment.

Section 1207: "When judgment upon a conviction is rendered... 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."

Penal Code § 1202a requires the JOC in order to place the defendant into the custody of the CDCR Director for purpose of imprisonment. Without a JOC, CDCR has no authority to imprison any defendant... period.

Section 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...". (Emphasis added.)

Penal Code § 2081.5 requires CDCR to keep complete records of all prisoners received from the court and make them available to the Board of Prison Terms.

Section 2081.5: "Case records shall include all information received by the Director of Corrections from the courts,".

Penal Code § 2900 requires the term of imprisonment be determined from the judgment.

Section 2900(a): "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.)

Penal Code § 3400 makes plain that the "judgment" referred to in §§ 1202a, 1213, 1216, 2900 is the "judgment of conviction" required to be filed with the papers in the case under § 1207.

Section 3400: "Such officer shall at the same time deliver to said institution a certified abstract of the judgment of conviction". (Emphasis added.) A most difficult task in absence of a JOC... no, an impossibility.

S U M M A R Y

Penal Code § 1207 has always required that a judgment of conviction be reduced to writing and that it be signed by a judge, entered by the clerk, furnished to the executing officer and delivered with the defendant to, and filed by, the warden. Penal Code § 1213 has always required a JOC to support and authorize an AOJ and/or a minute order.

Section 1213: in relevant part "if the judgment [JOC] is for imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170, either a copy of the minute order or an abstract of the judgment [JOC] as prescribed in Section 1213.5. ...". (Emphasis added.)

Common sense and § 1213 (the law), dictate that an abstract of judgment require a supporting judgment. No AOJ has ever been authorized by the Penal Code or prescribed by the Judicial Council (§ 1213.5) for use with § 1213.

Any AOJ held by CDCR is a fraudulent document. A fraudulent document may not be relied upon by CDCR as lawful authority to receive and/or detain any person, fix or determine the term of imprisonment or, furnished to the Board of Parole Hearings for a valid review: nor insulate the State and involved Officers from liability for kidnaping and false imprisonment.

Defendants do not allege they possess a JOC for Plaintiff or for any other prisoner. The November 12, 2020 CDCR Memorandum is proof positive that CDCR does NOT have a JOC in CDCR's files concerning Plaintiff nor any other prisoner.

C O N C L U S I O N

Fraud in the Extreme. Defendants have legal and statutory duty to finalize process in a criminal action by filing a judgment of conviction with the papers in the case, which Defendants have failed to do. A written judgment of conviction signed by a judge, entered by the clerk and a certified copy thereof delivered to the officer executing the judgment, is a statutory condition precedent for creation of an abstract of the judgment, to execute a state prison sentence and to fix the term of imprisonment.

Defendants failed to create and file a judgment of conviction, yet point to a fraudulent abstract of judgment (CDCR's November 12, 2020 Memorandum) as sufficient authority to afford jurisdiction for CDCR to receive and detain Plaintiff and other persons in the State's prisons...and the AG agrees. The AG commits fraud. Fraud vitiates the most solemn of judgments.

It's not what the Attorney General believes the truth to be, it's what the truth is that sets the prisoner free.

The truth is, the AG's abstract of judgment argument is the red herring.

The Attorney General lied to Plaintiff, the Court, and the People when he declared unequivocally "CDCR may rely on an abstract of judgment to detain Schmidt." The AG is an Oath Breaker. The Oath Breaker regards his reckless and wanton misconduct without remorse, as if he were finishing a plate of food.

Inasmuch as there is no judgment of conviction rendered by a competent court of criminal jurisdiction of which a certified copy can be readily obtained, any Abstract of Judgment by which Plaintiff and other prisoners are detained by CDCR is fraudulent.

Therefore, Plaintiff and all other California prisoners are not lawfully imprisoned under the laws of California or the United States and must be discharged. See Gibson, supra.

Oath Breakers Hall Of Shame

The following Government Officers, Officials and Employees have been given actual and/or constructive notice of the illegal prosecution and confinement of California's prisoners... and have either made promises to release them or have the duty to see to it they are released... and, to the best of Plaintiff's knowledge, have not kept their promise nor made any effort to effect release... case in point, Plaintiff remains incarcerated.

Kamala Harris, Vice President of the United States
Gavin Newsom, Governor of California
Ralph Diaz, former Secretary of CDCR
Kathleen Allison, Secretary of CDCR
Rhonda Skipper-Dotta, Chief Deputy, Board of Parole Hearings
Gigi Matteson, Warden CSP Solano
Xavier Beccera, former Attorney General of California
Rob Bonta, Attorney General of California
Sharon Garske, Supervising Deputy Attorney General
Anthony Tartaglio, Deputy Attorney General of California
Anne Marie Schubert, District Attorney Sacramento County
Jeff Rosen, District Attorney Santa Clara County
Krishna Abrams, District Attorney Solano County
Michael Keitz, David Linn, Sally Moreno;
District Attorneys Madera County
Tori Verber-Salazar, District Attorney San Joaquin County

Civilian volunteers under Oath: The 2019-2020 Grand Juries in all 58 California counties.

Confirmation and verification of actual notice made by U.S.P.S. Certified Mail and constructive notice by publication of Legal Notice in San Francisco Chronicle, Sacramento Bee newspapers and six major county's Legal Journals (Legal Notice, attached hereto and incorporated herein) and Treatises Exposing California's criminal justice fraud: **withoutoneplea.com**.

None of the Officials named above have denied, rebutted or otherwise responded to the facts and/or issues set forth herein.

If the facts are not correct... it is their sworn duty to defend the State's integrity by responding with the truth. And the facts being undisputed and true, it is their sworn duty to correct the injustice.

E P I L O G U E

Some Gave All

Thanksgiving Day 1967, Republic of Vietnam; 118th Assault Helicopter Company, "Thunderbirds".

As Flight Leader "Thunderbird One" of a 10 ship UH-1 "Huey" formation, at twilight we were flying back to the "Birdcage" at Bien Hoa. Tired, after a full day of combat insertion and extraction of troops into "hot" landing zones, the FM radio was tuned to "easy listening" Saigon. Crew Chief and Door Gunner sprawled among spent brass on the floor of the aircraft and Co-pilot resting, I was thinking of home... and the turkey dinner awaiting our arrival at the base.

Abruptly, the emergency radio frequency crackled to life with "May day, may day, may day" the pilot giving his call sign and location, and calmly saying "I've just lost my main rotor system. Goodbye, good luck and God bless you all." Then silence. And again I remember... freedom is not free.

Remembering Pearl Harbor, 80 years ago today.

December 1967. My wife met me for R&R in Hawaii and we boarded a small boat for a tour of the site of the sunken USS Arizona. There, many sailors rest entombed, among the 2,403 American lives given for God and Country on December 7, 1941.

Circling the sacred vessel, the boat paused, and, leaning over the railing, we silently looked upon the silhouette of the battleship below. A drop of the ship's oil slowly rose and created a rainbow of color as it dispersed on the surface of the harbor, an event recurring every few minutes. It was as if ship and crew were reminding all... freedom is not free.

We who returned gave some... and we all kept our Oath. When thanked for our service, on behalf of all who served we say: "You were worth it."

Lonnie G. Schmidt, Captain USAR

E N D N O T E S

- 1 LONNIE GLENN SCHMIDT vs. STATE OF CALIFORNIA, et. al., Superior Court of California, County of Solano, Case No. FCS056153.
- 2 Rob Bonta, Attorney General of California, Sharon A. Garske, Supervising Deputy Attorney General, Anthony J. Tartaglio, Deputy Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004
Phone: (415) 510-3602, Fax: (415) 703-5480, Anthony.Tartaglio@doj.ca.gov
Attorneys for Defendants Gavin Newsom, G. Matteson, K. Allison, State of California, and CDCR.
- 3 Wicked; highly destructive promoter of pretentious nonsense.
- 4 But One Person did... all 300+ prophecies... Jesus of Nazareth, Circa 4 B.C. - A.D. 29. Luke 18:31 NKJV.
Is this not the kind of God you want to serve... One who keeps all His promises? Especially when He says "I will never leave you nor forsake you ... Call upon Me in the day of trouble; I will deliver you, and you shall glorify Me ... I am the way, the truth and the life. No one comes to the Father except through Me ... if you confess with your mouth the Lord Jesus and believe in your heart that God has raised Him from the dead, you will be saved ... For whoever calls on the name of the Lord shall be saved." Life is short. Eternity is real.
Hebrews 13:5; Psalm 50:15; John 14:6; Romans 10:9-13 NKJV.
- 5 Section 1216 enacted 1872; and first amended in 1951. 1951 Amendment: Substituted "abstract" for "copy" wherever it appears.
- 6 "if it is not in the record it did not happen." (James v. Desta (2018) 5 Cal.5th 594, 609, fn11 quoting Save Our Water v. County of Merced (2003) 110 Cal.App.4th 362, 364.)

W I T H O U T O N E P L E A . C O M .

Legal Professionals Continuing Education Series
"Blind for a Season"

CAMEL SWALLOWERS 101

"Blind guides, who strain out a gnat and swallow a camel!"
Matthew 23:24 NKJV

Treatises Exposing California Criminal Justice Fraud

I

Illegal Felony Prosecutions Via Complaint

The Truth, The Whole Truth... And Nothing But
February 21, 2018

Without One Plea
December 17, 2018

Handling the Truth
July 4, 2019

Newsom, We Have A Problem
May 1, 2020

Governor's Silence Speaks Volumes
May 9, 2020

Held To Answer
June 19, 2020

II
Judicial Failure to Create A JOC

You're the Man, Papers Please!
August 17, 2020

Immediate Release!
California's Governor Orders Mass Release of Prisoners!
And It Ain't CORONA, Sweetheart!
August 28, 2020

CDCR Secretary Ralph Diaz Admits
No Authority To Confine Prisoners!
September 1, 2020

Under Cover of CORONA
September 1, 2020

Kamala's Kriminal Konduct
Not A Single Valid Felony Conviction In California During Kamala
Harris' Prosecutorial Career! Thousands Unlawfully Confined!
Governor Orders Investigation And Prison Doors To Be Opened!
October 15, 2020

No JOC? Then Set Us Free!
It's the **Right** thing to do... **Right**?
June 15, 2021

III
Confined By CDCR Without Authority

OATH BREAKERS
December 7, 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