

Name: _____
Address: _____

CDC or ID Number: _____

IN THE SUPREME COURT OF CALIFORNIA

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

IMMEDIATE ACTION REQUESTED

EVIDENTIARY HEARING REQUESTED

Petitioner
vs.

Respondent

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the superior court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the superior court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal in paper form and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal electronically and you are an attorney, follow the requirements of the local rules of court for electronically filed documents. If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- A conviction
- Parole
- A sentence
- Credits
- Jail or prison conditions
- Prison discipline

Fundamental Constitutional Error: Trial Court lacked Jurisdiction; and, Error

so fundamental as to go to the "Heart" of the criminal process: Charges Undisclosed;

Other (specify): Detention Illegal-Person; Judgment VOID.

- 1. Your name: _____
- 2. Where are you incarcerated? _____
- 3. Why are you in custody? Criminal conviction Civil commitment

Answer items a through l to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court: _____

d. Case number: _____

e. Date convicted or committed: _____

f. Date sentenced: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court? Yes No *if yes, state the attorney's name and address:*

4. What was the LAST plea you entered? (Check one):

- Not guilty
- Guilty
- Nolo contendere
- Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

- Jury
- Judge without a jury
- Submitted on transcript
- Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

Fundamental Constitutional Error: Trial Court lacked jurisdiction; and, Error so
Fundamental as to go to the "Heart" of the criminal process: Charges Undisclosed;
Detention Illegal- Person; Judgment VOID.

See Page 3.1 of 6

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who did exactly what to violate your rights at what time (when) or place (where).* (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

See Attached Page 3.1 to 3.2

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

See Pages 3.2 to 3.14

"A judgment rendered by a court lacking in subject matter jurisdiction is void and
may be challenged at any time". In Re Harris (1993) 5 Cal.4th 813, 836.

8. Did you appeal from the conviction, sentence, or commitment? Yes No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"): _____

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? Yes No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? Yes No If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal: Claim is Fundamental Constitutional Error which preceeded trial rendering judgment void; Trial court lacked jurisdiction; and, the accusatory pleading being an unauthorized form and mode of charging, was prima facie insufficient and incapable of conferring jurisdiction on the court, or capable of disclosing the charges or of supporting probable cause. (Continued ¶ 11 infra.)

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

First discovered fatal jurisdictional defect subsequent to filing of appeal; after reading an article titled "Without One Plea" dated December 17, 2018, a copy of which is attached hereto and incorporated herein as "Attachment 2". And which I believe to be a true and correct statement of the law and applicable to my case. The question of jurisdiction may be raised for the first time on appeal since the parties cannot by their consent confer jurisdiction. *Emry v. Pacific Employers Ins. Co.* (Cal. April 30, 1937) 8 Cal.2d 663. A judgment rendered by a court lacking in subject matter jurisdiction is void and may be challenged at any time. (In *Re Harris* (1993) 5 Cal.4th 813, 836). Further, discovery of jurisdictional defect is new evidence which may be raised per Senate Bill 1134 on Habeas Corpus.

b. Did you seek the highest level of administrative review available? Yes No

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes If yes, continue with number 13. No If no, skip to number 15.

13 a. (1) Name of court: _____
(2) Nature of proceeding (for example, "habeas corpus petition"): _____
(3) Issues raised: (a) _____
(b) _____
(4) Result (attach order or explain why unavailable): _____
(5) Date of decision: _____

b. (1) Name of court: _____
(2) Nature of proceeding: _____
(3) Issues raised: (a) _____
(b) _____
(4) Result (attach order or explain why unavailable): _____
(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

See ¶ 10 supra for a basic explanation of why claim was not made on appeal.
Jurisdiction can be raised at any time, recent discovery by petitioner.

16. Are you presently represented by counsel? Yes No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

Ground 1 is a jurisdictional issue of Constitutional magnitude and statewide significance. And this court has the opportunity and duty to correct state prosecutorial error, maintain justice and integrity of the judicial process.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



(SIGNATURE OF PETITIONER)

6. GROUNDS FOR RELIEF.

GROUND 1: TRIAL COURT LACKED JURISDICTION, CHARGES UNDISCLOSED, DETENTION ILLEGAL: PERSON.

Petitioner is detained, held for trial, convicted and imprisoned by order of a court lacking jurisdiction for want of a charge in the form and mode required by law. Petitioner is denied the right to be informed of the charges against him. Petitioner's conviction resulted from a detention that was not supported by the requisite probable cause. This violated Petitioner's right to be secure in his person against unreasonable seizure and to not be deprived of his liberty without due process of law, as guaranteed by the 4th, 5th, and 14th Amendments to the United States Constitution and Article I, §§ 7, 13, 14, and 15 of the California Constitution. Specifically, the state was permitted to proceed pursuant to a form and mode of pleading not authorized by law and incapable of conferring jurisdiction, informing of charges and supporting probable cause. See Albrecht v. United States, 273 U.S. 1 (1927); Cole v. Arkansas, 333 U.S. 196 (1946); Terry v. Ohio, 392 U.S. 1 (1968).

a. SUPPORTING FACTS.

1. The accusatory pleading, a complaint charging a felony, attached hereto and incorporated herein as "Attachment 1", is not a form or mode of pleading authorized by law which may be filed by the people in the superior court in a felony case.

2. The Complaint (Attachment 1) is not subscribed and sworn to as required by law.

3. There is no arraignment procedure and no plea available to a felony complaint filed in the superior court by the people as a first pleading in a felony case.

b. SUPPORTING CASES, RULES, OR OTHER AUTHORITY.

In support of his argument, Petitioner proffers three basic legal positions (1) the state can prosecute felonies only by indictment and informations, not complaints, (2) all complaints, in order to be sufficient, are required to be subscribed and sworn to before some officer entitled to administer oaths, and (3) absence of pretrial procedure for a person named in a felony complaint deprives the court of jurisdiction.

First: The state lacked authority to charge and prosecute Petitioner by mode of felony complaint.

The Attorney General is the chief law officer of the State. It is the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General has direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law. (Article V, § 13 of the California Constitution.) In 2005, Attorney General Bill Lockyear, with the concurrence of his staff, publicly declared that "the government may not even be involved in the preparation, investigation, and filing of a felony complaint." People v. Viray, (2005) 134 Cal.App.4th 1186, 1201.

California law requires that all felonies be prosecuted by either one of two (2) modes: indictment or information. "Felonies shall be prosecuted by indictment or, after examination and commitment by a magistrate, by information." (Article I, § 14 of the California Constitution.)

"All felonies shall be prosecuted by indictment or information, except as provided in Section 859a." California Penal Code § 737; see also §§ 682, 739, 917 and 949.¹

"Prosecutions for felonies in this state, so far as the mode of prosecution is concerned, are governed by the constitution of the state, which in section 8 of article I provides for prosecution either by information or by indictment. The Penal Code, in conformity with the constitution, outlines the procedure of prosecution by indictment, as well as by information." People v. Wallach, 79 Cal.App 605, 608 (1926).

"The California Constitution specifies that felonies [shall] be prosecuted 'either by indictment or, after examination and commitment by a magistrate, by information.' (Cal. Const. art. I, § 14.) Penal Code section 949 reads in pertinent part, 'The first pleading on the part of the people in the superior court in a felony case is the indictment, information, or the complaint in any case certified to the superior court under [Penal Code] Section 859a.' The People of the State of California are the plaintiff in every criminal proceeding (Penal Code, § 684), and the public prosecutor has the sole responsibility to represent the People of the state of California in the prosecution of criminal offenses. (Dix v. Superior Court, [supra] 53 Cal3d 442, 451 [272 Cal.App. 834, 807 P.2d 1063].) Accordingly, the first pleading by the prosecution, in felony cases may be either an indictment or an information.' (4 Witkin & Epstein, Cal. Criminal Law (3d Ed. 2000) Pre-trial Proceedings, § 169, p. 374, emphasis in original.)" Guillory v. Superior Court, (2003) 31 Cal.4th 168, 173-4.

A complaint charging a felony is not a mode of prosecution authorized by law and is insufficient to initiate a prosecution when brought by the public prosecutor. (§ 949.) The court in which such pleading is filed is lacking subject matter jurisdiction and the judgment of conviction is void per se.

The Complaint (Attachment 1) is filed in the superior court and formally accuses the defendant of committing a felony on a stated date under stated circumstances; identifies Petitioner

¹ References are to the Penal Code unless otherwise stated.

as "defendant" and the "complainant" as a state officer and the District Attorney as attorney for plaintiff "The People of the State of California." The Complaint constituted a formal "charging" at the moment the public prosecutor filed it in the state court. It became an unauthorized first pleading on the part of the people in a felony case and thus, violated Petitioner's right to due process of law.

Although the United States Supreme Court has not directly ruled on the issue, it has strongly suggested that "charging" occurs when a complaint is filed. For example, in Kirby v. Illinois the Court ruled that a person becomes "charged" when judicial proceedings have been initiated against him by the government.² It is at that point, said the Court, that "the government has committed itself to prosecute" and the person "finds himself faced with the prosecutorial forces of organized society." The Court elaborated on this theme in Moran v. Burbine when it said that a person becomes "charged" with a crime "when the government's role shifts from investigation to accusation."³

Based largely on these cases, California courts have generally ruled, with little need for discussion, that the filing of a criminal complaint triggers the provisions of the Sixth Amendment.⁴ These are sound rulings. After all, when a prosecutor's office files a criminal complaint against a person, it is nothing less than a formal announcement that it has "committed itself to prosecute" that person.

2 Kirby v. Illinois (1972) 406 U.S. 682, 689. ALSO SEE Moore v. Illinois (1977) 434 U.S. 220, 228 [prosecution "commenced" "when the victim's complaint was filed in court"]; People v. Clair, (1992) 2 Cal.4th 629, 657-8.

More recently, the appellate court held in People v. Viray, (2005) 134 Cal.App.4th 1186, 1198 "the prosecution of defenant commenced when the prosecutor filed the complaint." The issue in Viray was whether a suspect becomes "charged" in state court at the moment a prosecutor files a criminal complaint against him, or whether it occurs later at, for example the arraignment on the charge.

The respondent (Attorney General) argued that "the filing of a felony complaint does not commence a criminal prosecution because such a pleading is not necessarily a product of the public prosecutor, but may be generated by anyone." ... 'respondent asserts that a complaint, unlike an information, may be filed without prosecutorial participation. According to respondent, "the government may not even [be] involved in the preparation, investigation, and filing of [a] felony complaint."

Id at 1201.

The court took issue only with respondent's assertion of lack of necessity for prosecutorial participation in private filings of criminal complaints. The court cited authority "directly contradicting the key premise that a private person may file a legally effective criminal complaint without the involvement of the public prosecutor." (People v. Municipal Court (Pelligrino), (1972) 27 Cal.App.3d 193, 206.

3 (1986) 475 U.S. 412, 430.

4 See People v. Superior Court (Sosa), (1983) 145 Cal.App.3d 581, 593 ["A prosecution has reached a critical stage after a complaint has been filed."]; People v. Wader, (1993) 5 Cal.4th 610, 653-4.

In *Pelligrino*, the court squarely held that California law does not empower private citizens to file criminal complaints and thereby trigger a criminal prosecution without the concurrence, approval or authorization of the public prosecutor.

"The court did not entirely foreclose the possibility that the filing of a criminal complaint by a private person might operate to commence a valid prosecution, but held that in order to do so the filing 'must be approved, authorized or concurred in by the district attorney before [it is] effective in instituting criminal proceedings against an individual.' ... 'We thus reject the essential premise that the filing of a criminal complaint can be a purely private act subject only to judicial control.'" *Viray* at 1204.

Therefore, while the courts have decided that a criminal complaint may be filed by a private person with the cooperation of the prosecutor, a felony complaint, according to the law as espoused by the Attorney General, may not invoke government involvement at all.

In *Viray*, Respondent (Attorney General) sought to justify the state's long standing practice of filing criminal complaints solely for the purpose of securing a warrant of arrest. Respondent cited federal authorities for the proposition that "the filing of a criminal complaint and the issuance of an arrest warrant do not constitute the initiation of an adverse judicial proceeding." The court pointed out that the citations by respondent, when referencing "complaints", all assumed a procedural system under which the function of a complaint was merely to secure a defendant's arrest, stating "In this jurisdiction, in contrast, a complaint does not merely operate to secure a warrant of arrest ... it commits the prosecutor to pursue a criminal conviction- a commitment from which only a court can grant relief." *Id.* at 1205.

Notwithstanding the Attorney General's misunderstanding of the broader scope of a complaint's function in initiating a prosecution (rather than merely supporting application for an arrest warrant) the fact remains that in the instant case, the District Attorney's filing of the Complaint (Attachment 1) constituted an unlawful prosecution for want of a formal and sufficient accusation, and Petitioner is punished thereby.

"No individual or body of men has a discretionary or arbitrary power to commit any person to prison; no man can be restrained of his liberty, be prevented from removing himself from place to place as he chooses, be compelled to go to a place contrary to his inclination, or be in any way imprisoned or confined, unless by virtue of the express laws of the land." Hurtado v. People of California 110 U.S. 516, 537 (1884).

"A court can acquire no jurisdiction to try a person for a criminal offense unless he has been charged with commission of the particular offense and charged in the particular form and mode required by law. ... A person may not be punished for a crime without a formal and sufficient accusation even though he voluntarily submits to the jurisdiction of the court. Such is the undisputed law in all jurisdictions;" (Emphasis added) Albrecht v. United States 273 U.S. 1, 1 and 8 (1927).

The Attorney General's correct understanding that the law does not prescribe a form or mode for charging a person of an offense by complaint charging a felony (in which the government may be involved in the preparation, investigation and filing) was not effectively communicated to the District Attorney in the instant case. And the unauthorized filing of the Complaint (Attachment 1) and subsequent prosecution, conviction and imprisonment of Petitioner pursuant thereto, violated Petitioner's right to enjoy life and liberty and due process of law.

Second: The Complaint is prima facie insufficient for want of evidence that it is subscribed and sworn as required by law.

In the event this court finds the Complaint (Attachment 1) is an authorized pleading, it must find it is insufficient per se.

The California Penal Code prescribes the rules, procedure and sufficiency of the pleadings in the conduct of a criminal action. "All forms of pleading in criminal actions and the rules by which the sufficiency of pleadings is to be determined are those prescribed by this Code." (§ 948.)

A complaint is an accusatory pleading which must meet the requirements of § 959 in order to be sufficient. "Indeed, a complaint is defined by statute (§ 691, subd. (c)) as an 'accusatory pleading'-a phrase synonymous, for all practical purposes, with 'formal charge'.-Fn 4. The words 'accusatory pleading' include an indictment, an information, an accusation, and a complaint." People v. Viray, (2005) 134 Cal.App.4th 1186, 1201.

Section 959 states, "The accusatory pleading is sufficient if it can be understood therefrom: [¶]. [¶] 3. If a complaint, that it is made and subscribed by some natural person and sworn to before some officer entitled to administer oaths." (§ 959, subd. (3).) The Complaint (Attachment 1) evidences prima facie that it is not subscribed and sworn to before some officer entitled to administer oaths. See sample Complaint, Superior Court of California, County of Alameda May 2003, enclosed with Attachment 1, as example of "subscribed and sworn to" declaration by an officer entitled to administer oaths (Deputy District Attorney). (Redacted as to party names and case number to protect the privacy of the innocent.)

It appears to Petitioner that the district attorney in the instant case, proceeded to obtain authority for filing a felony complaint under the auspices of § 806, presumably in order to effect or perfect arrest of Petitioner. Penal Code § 806 provides in pertinent part that "a felony must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate." However, § 806 is restricted to use only by the public for charging an offense.

"The term 'complaint' is a technical one descriptive of proceedings before magistrates. It is and has been defined to be the preliminary charge of accusation against an offender, made by a private person or an informer to a justice of the peace or other officer, charging that the accused has violated the law." Rupley v. Johnson, (1953) 120 Cal.App.2d 548, 552. (Emphasis added.)

In any event, the complaint is required, in order to be sufficient, to be subscribed and sworn to before some officer entitled to administer oaths (§ 959), which may be a deputy district attorney. The court in People v. Balthazar, (1961) 197 Cal.App.2d 227, 228, held that "The oath may properly be administered by a deputy district attorney (15 Ops. Atty. Gen. 304)." Finally, the court in People v. Salazar, (1968) 266 Cal.App.2d 113, at page 114, stated that "[i]t is not necessary that a complaint be sworn to before a magistrate; verification before a person authorized to administer an oath is sufficient."

A "quick peek" at the Complaint (Attachment 1) reveals that it can not be understood therefrom to have been made and subscribed and sworn to before anyone, much less an "officer entitled to administer an oath", and is therefore insufficient to confer jurisdiction upon the court. (§ 959.)

Third: The Penal Code does not prescribe rules for arraignment or authority for a plea to a felony complaint.

In the unlikely event that this court finds the Complaint (Attachment 1) sufficient, it must find it lacks jurisdiction for want of pretrial procedure for such a complaint.

Arraignment procedure for a person charged with a felony by written complaint (§ 806) is cross referenced to § 988 in the Penal Code. See 2018 Penal Code Desktop Edition, § 806, page 573, Thompson Reuters; Chapter 3 Complaints Before Magistrates. Section 988 states in pertinent part "The arraignment ... consists in reading the accusatory pleading to the defendant ... and asking the defendant whether the defendant pleads guilty or not guilty to the accusatory pleading." Enacted in 1872, § 988 used the words "indictment" and "information" to define the charging accusation and the Legislature substituted the term "accusatory pleading" in 1951. See Stats.1951, c. 1674, p. 3840, § 68. Therefore, § 988 does not contemplate a "complaint charging a felony" but is limited to arraignment pursuant to an indictment or information. For confirmation, see Penal Code, Title Four, Division I Pretrial at Chapter 1 "Pretrial proceedings" Rules for Criminal Cases in the Superior Court, Rule 4.100 "At the arraignment on the information or indictment,".

There is no arraignment procedure for a complaint charging a felony. Period. The superior court lacks jurisdiction of such a complaint. This, in part, may be due to the fact that there is no plea available to a defendant named therein.

Inasmuch as California law does not authorize prosecution of a felony by complaint, a fact reiterated by the Attorney General in Viray, supra, it should come as no surprise that the Penal Code prescribes no plea for a defendant named in such a bogus accusatory pleading. Authorized pleading for a defendant is found at § 1002. "A defendant has only one pleading available; either a demurrer or plea." Pleas are found at § 1016. "There are six kinds of pleas to an indictment or information, or to a complaint charging a misdemeanor or infraction.: Guilty, Not Guilty, Nolo Contendere, etc." (§ 1016.)

There is no plea available for a defendant named in a felony complaint. Period. For want of a plea, the superior court lacks jurisdiction of such a complaint.

In the instant case, the magistrate, at the time of Petitioner's initial appearance with counsel - having before him an unauthorized pleading, which was prima facie insufficient and for which no arraignment procedure or plea existed in law - should have sua sponte dismissed the case. However, he did not ... and to the prejudice of Petitioner, proceeded to act without jurisdiction by detaining, examining and ordering the holding of Petitioner for trial. As a result of the magistrate and state's actions, Petitioner is convicted and imprisoned as a direct result of the state's violation of Petitioner's Constitutional right to due process of law. And, for want of jurisdiction, the judgment of conviction is null and void. "a judgment is void ... if the trial court lacked subject matter jurisdiction." People v. Alanis, (2008) 158 Cal.App.4th 1467, 1473.

c. SUMMARY.

Authority for the state to prosecute, convict and imprison Petitioner by mode of felony complaint either exists or it does not. California law (California Constitution Article I, § 14; California Penal Code §§ 682, 737, 948, 949, 988 and 1016) strongly suggests that it does not. In support of the law, the Office of the Attorney General⁵ unequivocally declares that government cannot even be involved with the filing of a felony complaint⁶. And, although every District Attorney's "performance is subject to supervision of the Attorney General"⁷, there appears to have been a serious oversight in Petitioner's case; prosecution being accomplished by felony complaint.

The District Attorney knew or should have known he acted ultra vires his authority when he filed the felony Complaint (Attachment 1) and prosecuted Petitioner pursuant thereto; notwithstanding his practice of so doing in past years of other defendants without objection. Long standing practice notwithstanding, prosecution by means of felony complaint is not authorized, and, when accomplished as in Petitioner's case, violates the Constitution. "It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire National existence and even predates it," Walz v. Tax Commission of New York City 397 U.S. 664, 678 (1970).

5 Bill Lockyear, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gerald A. Engler, Senior Assistant Attorney General, Gregg E. Zwicke, Deputy Attorney General and Mark S. Howell, Deputy Attorney General. People v. Viray, (2005) 134 Cal.App.4t 1186.

6 Viray, Id. at 1201.

7 People v. Municipal Court for Ventura Judicial District, (1972) 27 Cal.App.3d 193, 208.

Petitioner has shown that, for the foregoing reasons, the Complaint (Attachment 1) is not an authorized pleading and is otherwise insufficient, as a matter of law, to confer subject matter jurisdiction upon the court. Therefore Petitioner's right to be secure in his Person against unreasonable seizure, not to be deprived of his liberty and to enjoy the process due to him to be charged in the particular form and mode required by law (indictment or information), as guaranteed by both the state and federal constitutions, is violated. Alone, the Fourth Amendment's prohibition of "unreasonable seizures" as it applies to the seizure of the person, preserves for citizens the traditional protections against unlawful arrest afforded by the common law. California v. Hodari D. 499 U.S. 621 (1991). The Due Process Clauses of both the state and federal constitutions guarantee that Petitioner's liberty will not be taken pursuant to an order of a court lacking subject matter jurisdiction. However, that is precisely what has occurred in the instant case, and Petitioner is irreparably harmed thereby. Petitioner is prejudiced by the seizure and imprisonment of his Person in the absence of due process of law. Fortunately, the law provides a remedy.

Every person unlawfully imprisoned ... under any pretense, may prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment. (§ 1473(a).) "And Habeas Corpus will lie whenever one is held under a sentence which violates his fundamental constitutional rights." In re Smiley, (1967) 66 Cal.2d 606, 614.

d. CONCLUSION.

For want of jurisdiction in the trial court, Petitioner's conviction is unlawful as it was obtained as a direct result of the state's violation of Petitioner's right to due process of law, and the writ applied for herein must issue. In the event an order to show cause issues from this court, the return will show that Petitioner is in custody by virtue of process from a Judge of a Court of this State and may be discharged in any one or all of the following cases:

- When the jurisdiction of such Court or officer has been exceeded;
- When the process is defective in some matter of substance required by law, rendering the process void;
- Where the process is not authorized by any order, judgment, or decree of any Court, nor by any provision of law; and
- Where a party has been committed on a criminal charge without reasonable or probable cause. (§ 1487.)

The trial court lacking jurisdiction ab initio, all of the above cases apply to Petitioner's circumstances and no legal cause can be shown for Petitioner's continued imprisonment. This Court has the authority and duty to order the discharge of Petitioner from the custody under which Petitioner is held. (§ 1485.)

e. PRAYER FOR RELIEF.⁸

For reason of the foregoing Constitutional violations and Petitioner's continuing unlawful imprisonment, the writ applied for herein must issue, to result in the discharge of Petitioner forthwith. In the alternative, Respondent should be ordered to show cause why Petitioner ought not be discharged.

⁸ "Blessed are those who keep justice, and he who does righteousness at all times." Psalm 108:3 (Holy Bible, New King James Version.)

ATTACHMENT "1"

COMPLAINT

and

Sample Complaint (Alameda County) illustrating proper "subscribed and sworn to before an officer entitled to administer an oath" requirement for sufficiency as required by Penal Code § 959.

ATTACHMENT "1"

Dept. No. 112

123 J/L BPD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA,
WILEY W. MANUEL COURTHOUSE

PEOPLE OF THE STATE OF CALIFORNIA
FILED
ALAMEDA COU.

NO. [REDACTED]
COMPLAINT

v. [REDACTED]
MAY 23 2003

PFN: [REDACTED] CEN: [REDACTED]

CLERK OF THE COURT
By: [Signature]

Defendant(s).

The Undersigned, being sworn says, on information and belief, that [REDACTED] did, in the County of Alameda, State of California, on or about May 21, 2003, commit a Felony, to wit: SECOND DEGREE ROBBERY, a violation of section 211 of the PENAL CODE of California, in that said defendant(s) did unlawfully, and by means of force and fear take personal property from the person, possession, and immediate presence of [REDACTED]

"NOTICE: The above offense is a serious felony within the meaning of Penal Code Section 1192.7(c)."

"NOTICE: Conviction of this offense will require you to provide specimens and samples pursuant to Penal Code section 296. Willful refusal to provide the specimens and samples is a crime."

FIRST PRIOR CONVICTION AS TO DEFENDANT

The undersigned further alleges that before the commission of the offense specified above, said defendant [REDACTED] on or about March 23, 1989, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: SECOND DEGREE ROBBERY, a violation of section 211 of the PENAL CODE of California, and received a prison term therefor.

3 STRIKES (TWO PRIORS)

It is further alleged as to count one that the above prior conviction is within the purview of Penal Code sections 1170.12(c)(2)(A) and 667(e)(2)(A).

CAL PRIOR-SERIOUS FELONY

It is further alleged as to count one that the above prior conviction is within the purview of Penal Code section 667(a)(1).

SECOND PRIOR CONVICTION AS TO DEFENDANT

The undersigned further alleges that before the commission of the offense specified above, said defendant [REDACTED] on or about July 13, 1987, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: POSSESSION OF A CONTROLLED SUBSTANCE, a violation of section 11350(a) of the HEALTH AND SAFETY CODE of California, and received a sentence of probation therefor.

ACCEPTED FOR VALUE & HOMER
EXEMPT FROM LEVY
Release of the proceeds
of the order(s) to
the extent of the
UCC Code section
192, UCC-10-104 and
/s/

SIXTH PRIOR CONVICTION AS TO DEFENDANT [REDACTED]

The undersigned further alleges that before the commission of the offense specified above, said defendant [REDACTED] on or about June 4, 1982, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: BURGLARY, a violation of section 459 of the PENAL CODE of California, and received a prison term therefor.

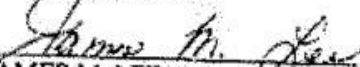
PRIOR-ANY FELONY

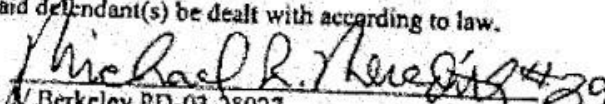
It is further alleged as to count one that the above prior conviction is within the purview of Penal Code section 667.5(b) and that a separate term of imprisonment was served therefor as described in Penal Code section 667.5 for said offense, and that the defendant did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term.

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,
Friday, May 23, 2003


JAMES M. LEE
Senior Deputy District Attorney
State Bar #51998 jml
Alameda County, California


Michael R. Newberry
Berkley PD-03-28027