

Name: Robert A. Gibbs

Address: P.O. Box 686

Shasta, CA. 96087

% Shasta County Jail, 1655 West St. Redding CA. 96001

CDC or ID Number: Shasta Jail # 510503

FILED

DEC 07 2017

CLERK OF THE SUPERIOR COURT
BY: M. RICH, DEPUTY CLERK

Superior Court of California, Shasta Co.
1500 Court St. Redding, CA. 96001
(Court)

Robert A. Gibbs

Petitioner

vs.
Tom Bosenko, Sheriff of Shasta County, CA.
Capt. Dave Kent, Sgt. Rodgers, Sgt. Tanner,

Respondent Deputy Page, Deputy Jurkywitz, Deputy Kirby et al.

PETITION FOR WRIT OF HABEAS CORPUS

No. 17HB6749
(To be supplied by the Clerk of the Court)

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 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 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

Other (specify): Assault, excessive force, Cruel and unusual punishment, retaliation..

1. Your name: Robert A. Gibbs
2. Where are you incarcerated? Shasta County Jail
3. Why are you in custody? Criminal conviction Civil commitment pre-trial

Answer items a through i 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").

Crim. threats

b. Penal or other code sections: 422 p.c.

c. Name and location of sentencing or committing court: Shasta County Superior Court
1500 Court St. Redding, CA. 96001

d. Case number: 15F5736 et. al.

e. Date convicted or committed: Held pre-trial since 9/11/2015

f. Date sentenced: N/A

g. Length of sentence: N/A

h. When do you expect to be released? Unk.

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

John E. Carelli
1610 West St. Suite 5
Redding, CA. 96001

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.) On November 24th, 2017 @ 6:30 p.m. while a pre-trial detainee in unit 3-C at the Shasta County Jail, I was

viciously assaulted and the victim of excessive force by deputies Page Kirby and Jurkywitz. After complaining about deputies treatment of inmates and being told to lock down in my cell, I went to my cell and after pushing my cell door into the wall I went peacefully into my cell as directed. I was followed aggressively into the cell by trainee Jurkywitz who because of his purely aggressive training and actions became locked in the cell with me when the door closed. Jurkywitz then told me to sit on my bunk which I did. Deputies page and Kirby had by that time opened the door and were entering. Jurkywitz told me to lay down on the bunk and roll over onto my stomach which I did. Deputies then handcuffed me and began assaulting me and using excessive force. Deputies

a. Supporting facts: went on to assault me two more times and then retaliate against me for reporting it.

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.) On the above date and time, I was the victim of assault and excessive force in the jail because I complained

about the treatment of inmates at the jail. I was first assaulted in my cell by deputies Jurkywitz, Page and Kirby who smashed my face into the cement bunk and twisted my arms viciously while I was in handcuffs. I was then taken to medical and instructed to kneel on a small narrow bench. When I attempted to comply with this order, I was thrown to the floor face first and assaulted again. Deputy Page was shouting "stop resisting, stop resisting", but I was not resisting deputies in any way and Page knew this. Page was simply shouting for the benefit of any nurses who may have been in hearing range to justify deputies assaulting me again. Deputies began putting their full weight on my back, neck and head and simultaneously twisting my arms in the handcuffs.

Deputy Page was smashing my face into the cement and using his Sap to press into my neck. Page kept acting like I was somehow resisting but I was pressed completely to the floor including my face. I was handcuffed and face down with three large deputies on top of me. I was not resisting deputies in any way and there was no way I could have. One deputy was twisting my left arm so violently he sprained my wrist and hand. Another deputy was twisting my right arm so violently the cuffs cut into my arm. That same deputy was putting his weight on his knee which was placed right next to my spine over my ribs. This assault continued until I began screaming "you're hurting me. stop hurting me. somebody please make them stop." I was then picked up by deputies and taken to a booking cell where I was thrown violently to the floor again. When it was over I had a large swollen area under my right eye, a large bruise on my left thigh, a large swollen area on my neck and I had sharp pains in my back and ringing in my right ear. I have been complaining for two years in the jail of poor training of deputies and the lack of supervision by supervisors leading to many other incidents of excessive force I have witnessed against other inmates (Taylor, Robbins, Barba, Moore and others). Deputies are trained to be aggressive but not when to be aggressive or how much force to use or how to avoid using force. Deputies are not trained to avoid putting pressure on sensitive areas like necks, spines and heads, are not trained to avoid face-planting inmates into cement floors and bulkheads, are not trained to not use weapons like Saps on prone inmates or use fists and knees.

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.) Note: After preparing this document last night, I was given this A.M. a copy of Deputies incident report regarding this incident. Consistent with every other I.R. I have in my possession or have seen while in the jail, Deputies not only have no compunction about lying in their reports but also are quite versed in collusion with one another and with supervisors and are adept in using I.R.'s to cover the tracks of their criminal and violent behavior. In their report, Deputies do a very good job painting me as violent and resistive. They know they are lying and no less than eleven deputies are listed as "witnesses" to different parts of the incident. All I can say is that I am at a disadvantage to deputies as there are no neutral witnesses in my cell or off camera where most incidents take place. Somebody is obviously lying,

but as long as deputies can keep things off camera and will lie for each other I can never prove it. This is precisely why I am asking for an independent investigation. I believe any honest investigator by interviewing witnesses and documents could discern a clear pattern of abuse and false report. Like most dishonest cops, they underestimate how many clues they leave in their own documentation.

R.G.

7. Ground 2 or Ground _____ (if applicable): Deputies at the Shasta Jail are being trained

that inmates are more dangerous than they actually are. The purpose of this training is to protect deputies by making them take the offensive in incidents with inmates, but this training has the effect of making deputies predict violence when it is often not there, and then over-react and assault inmates. This type of training is essentially military training and is not appropriate for use on civilians. This type of training was originally designed to train soldiers for the combat environment where it is appropriate because there are combatants in the field. However, when applied in a non-combat environment like a Jail, the training tends to lead to an "us or them" mentality in deputies

a. Supporting facts: Which makes non-violent, non-combatant inmates into "enemies" and encourages paranoia and reactionism which is by its nature excessive force. The Shasta deputies are a very close knit bunch and "patrol" the Jail in small packs. When one perceives a threat, they all react without any further threat assessment. Deputies are not trained to handle situations non-violently or how to de-escalate conflict. In fact, Deputies are encouraged by Supervisors to not view inmates as human beings at all but simply as violent threats. Even small acts of non-compliance or emotional outburst becomes an excuse for Deputies to use force. Many Deputies furthermore are solitary aggressive, sadistic, sociopathic and violent and seem to enjoy having free reign to use violence on inmates. Because they are not reprimanded, properly trained or even regularly supervised, Deputies begin to assume that this violence is normal. After I was assaulted in medical, Sgt. Rodgers and Sgt. Tanner walked by, and I told them Deputies were using excessive force. Tanner completely ignored me and Rodgers made a rude comment. "Supervisors" go out of their way to avoid actually supervising Deputies (they spend their entire shifts in their office or booking and very rarely enter the housing areas) I believe they do this to avoid liability for deputies actions but they are actually creating more liability for themselves by their deliberate indifference and failure to supervise. After I reported this incident of excessive force to medical personnel I was retaliated against by several deputies who filed a false disciplinary report against me. This practice is very common at the Shasta Jail false, exaggerated, deliberately mis-reported "incident" or "disciplinary" reports that are completely retaliatory in nature. Deputies rarely bother to even disguise these reports as legitimate but make it clear that it is retaliation for something. I know for a fact that "Supervisors" do not discourage these retaliations in any way and often participate. There is an incredibly discernable pattern of enmity, contempt and hatred toward inmates in the Jail by Jail Staff. It is an incredibly dehumanizing environment. The treatment of inmates in this manner causes inmates to harbor disrespect for Deputies which only enforces Deputies views that they are right to hate. It becomes a feed-back loop of contempt, mutual enmity and aggression. I blame administrators and the Court for being completely oblivious and indifferent to Jail conditions. The current staff of Deputies and Supervisors (with a very few exceptions like Cox, McDaniel, Gibilisco, Gresham, Forehand, Von Rader and a few others) are completely inappropriate psychologically for corrections work. They are simply too angry, dishonest, aggressive, petty and oppositional. The very environment of this Jail is cruel and unusual punishment, a violation of Due process, a culture of Abuse and neglect, an on-going demonstration of excessive force, retaliation, denial of basic rights. I hereby petition the Superior Court for relief, to wit: a complete investigation into my allegations with full participation by inmates and their attorneys and direct action by the Court to fundamentally transform the Shasta Jail into a humane and functional environment for prisoners and detainees.

4th Amend. to U.S. Const. (reasonableness)

b. Supporting cases, rules, or other authority: 14th Amendment to the U.S. Constitution (Due process), 8th Amendment to U.S. Const. (Cruel and unusual punishment) 14th Amend. to U.S. Const. (retaliation for exercise of protected right) 1st Amend. to the U.S. Const.

(right to petition for a redress of grievance) California Statutes prohibiting Assault, excessive force, false reports, neglect and abuse of elderly,

dependant Care and mentally ill inmates, deliberate indifference by responsible Authority. Americans with Disabilities Act. Hayes v. County of

San Diego 736 F. 3d 1223 (9th Cir. 2013) "in considering reasonableness, Court must consider mental/emotional state of defendant." See also: Institutional Div. of Texas Dept. of Criminal Justice Vs. Powell 318 S.W. 3d 889 (Texas 2010) "Inmates have a first amendment right to be free from retaliation for complaining about a prison officials misconduct see also: Babcock v. White 102 F. 3d 267 (7th Circuit 1996) : official may be liable for retaliation for filing grievance

See also: Kingsley vs. Hendrickson, 135 S.Ct. 2466 (2015): "A pre-trial detainee must show only that the force, purposely or knowingly used against him was objectively unreasonable in order to demonstrate that it was excessive in violation of the 14th Amendment's Due process Clause." "In determining whether the intentional use

a. Supporting facts: of force is unconstitutional the Court should consider factors as the need for the application of force, the relationship between the need and the amount of force used, the extent of injury inflicted, whether the force was maliciously applied etc." In this case, petitioner contends that force was wholly un-necessary as all deputies had to do was exit the cell, that deputies contention that petitioner (Gibbs) was "fighting" deputies was not sustained by any listed injuries to deputies or even any specific acts listed in Deputies report. Deputies entire contention is catalogued simply that (Gibbs) was "fighting" them. In a three page report, that ostensibly documents a single use of force incident, that single word is Deputies only justification for using force. Furthermore, several inmates clearly saw that after being removed from the cell handcuffed and obviously not resisting deputies, Deputies continued to twist both arms callously in the handcuffs causing severe spraining and lacerations to the wrists. Furthermore, Deputies were without a doubt acting with malice when they again forced me to the ground in medical. They know damn well that at that point I was not resisting them at all and actually attempted to kneel on a small metal bench as they directed (despite the fact that it was not a lawful request as I was handcuffed in pain and under the physical control of three separate deputies and the metal bench in question is only 6-8 inches wide and therefore not wide enough to kneel upon without great difficulty). Despite my attempting to follow this directive, Deputy Page immediately began pulling me to the ground again and in a very sarcastic, completely insincere, voice started saying "stop resisting, stop resisting" as he was already throwing me to the ground, then as I'm laying flat on my face Page started grinding his Sap into my neck for no reason at all. They later claim that I was spitting on them but this was not true and I even turned my head away from Page so he would stop using the Sap on my neck but he then started smashing my face into the floor. Deputies know very well how to use excessive force to assault inmates and what things to say in order to "justify" it. This was exactly such a case. Further evidence that these acts were deliberate and malicious include the fact that Jurkywitz is a trainee and naturally wants to prove himself physically to other officers (i.e. his readiness in combat inmates) the fact that page and I have a long history of contentious interaction, the extent of my injuries and most importantly the deputies own report which goes to great lengths to justify their use of force (as if they know they have something to hide) while at the same time manages to be profuse and vague at the same time. is overall not exceptionally believable etc. Deputies use of numerous lies in their report, to me, is proof of their malicious intent. While I might not be able to prove they are lying, obviously I know what transpired and was said and when I see obvious falsehoods and fabrications in their report, that tells me that they know damn well what they did was wrong or why else embellish?

b. Supporting cases, rules, or other authority:

"The truth is a precious thing, mostly because it is very often attended by the bodyguard of lies" — Winston Churchill

"in times of universal deceit, telling the truth is a revolutionary act" — George Orwell

"nothing works better in a court of law, than a god-damn lie" — Robert Alan Gibbs

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: NIA c. Date of decision: _____

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

e. Issues raised: (1) _____

(2) NIA

(3) _____

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

NIA

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) NIA

(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:

NIA

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:

Many, many grievances, All of which were denied, ignored, belittled, destroyed, intercepted, obscured, cherry-picked, inappropriately answered and used as an excuse for further retaliation.

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: Shasta County Superior Court

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas Corpus

(3) Issues raised: (a) Denial of medical/mental health care, Assault, excessive force,
(b) retaliation, failure to supervise, denial of basic rights etc. etc

(4) Result (attach order or explain why unavailable): pending.

(5) Date of decision: pending

b. (1) Name of court: _____

(2) Nature of proceeding: Pending

(3) Issues raised: (a) _____

(b) _____

(4) Result (attach order or explain why unavailable): pending

(5) Date of decision: pending

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:

N/A

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.)

N/A

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

Margaret Huscher
1815 Yuba St. Redding, CA. 96001

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

Habeas Corpus: Shasta Co. Sup. Court
1500 Court St Redding, CA. 96001

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

the truth has a certain ring to it.
- Hemingway

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: 11/28/2017

Robert A. Gibbs
(SIGNATURE OF PETITIONER)