

NOV 22 2017

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

Name: Robert A. Gibbs  
Address: P.O. Box 686  
Shasta, CA. 96087

c/o Shasta County Jail  
1655 West St. Redding CA 96001

CDC or ID Number: Shasta Jail # 510503

Superior Court of Calif. Shasta County  
1500 Court St. Redding, CA. 96001  
Hon. Dan E. Flynn

(Court)

Robert A. Gibbs  
Petitioner

vs.

Tom Basenko Sheriff of Shasta Co.  
Respondent Dep. Webb, Dep. Barnhart, Sgt.  
South, Sgt Reed, Sgt. Tanner, Sgt. Rodgers, et al.

PETITION FOR WRIT OF HABEAS CORPUS

No. 17HB 10458

(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 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

Other (specify): ASSAULT, VIOLATION OF CIVIL RIGHTS, RETALIATION, FALSE REPORT...

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").

pre-trial for 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 in Shasta Jail 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 Sept. 28<sup>th</sup>, 2017 @ 6:30 A.M.

While a pre-trial detainee, in unit 3-C of the Shasta County Jail, I was threatened with death and viciously assaulted, by Deputy Webb. At 5 a.m. Med. rounds, during a long-standing argument with Deputies over treatment of myself and other inmates at the Jail, Deputy Webb threatened me with death, saying: "I'll do you like I've done every other man I've put in the ground, I'll look you in the eye and pull the trigger." Webb is an ex-marine. At 6:30 a.m. tray pick up, Webb and deputy Barnhart entered my cell while I sat on my bunk. I continued to request that Deputies take seriously my complaints. Webb began shouting "Shut up. Shut the f up!" He then began choking me and then punched me in the face, breaking my nose. Webb, Barnhart and other deputies and sergeants began a systematic cover-up of the incident.

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.)

At the above date and time, I was viciously choked and punched by Dep. Webb as Dep. Barnhart looked on. I am well-known to Jail Deputies and administration as someone who has complained of abuse in the Jail for over two years. I have repeatedly accused deputies of excessive force, retaliation, antagonistic behavior, verbal abuse, denial of rights etc. I have repeatedly accused Jail Administrators of refusing to intervene or control deputies. On the above date and time, I had been arguing loudly throughout the night shift with Deputies Webb and Barnhart (who were denying me grievance forms) about my treatment in the Jail. A great many inmates in my unit were listening throughout the night and heard much of the on-going argument. Several inmates heard Webb's threat to shoot me (Steven Boston, Matthew Castaneda, Stephen Billups, Daniel Owens, Lee Clarke and others). As this threat of death was in response to my complaints of Jail treatment, I consider it as retaliation for exercising my 1<sup>st</sup> Amend. right to free speech and to petition my gov. for a redress of grievances. At tray pick-up, Webb and Barnhart entered my cell. Although I was still arguing with Webb, I followed all directions of Deputies and was sitting on my bunk as instructed. At no time did I threaten or act aggressively toward deputies. Despite having every opportunity to simply remove my tray and exit the cell, Webb instead began to shout in my face: "We don't have to listen to you or so you have to say, Shut up." I began to tell Webb that I had a right to complain about the way I have been treated. Webb shouted into my face "Shut up. Shut the f up" and immediately placed his hands around my throat. I made no movement whatsoever and after a few seconds Webb released his grip and punched me in the face, breaking my nose and blacking both my eyes. Barnhart was directly behind Webb and witnessed this assault and did nothing to restrain Webb. Both Deputies then cuffed me and removed me to medical. This entire exchange was heard by at least 7 inmates and seen by at least one, all of whom have given signed declarations under penalty of perjury. All witnesses saw and heard exactly the same thing and have sworn that at no time did I threaten or act aggressively towards the deputies. One eyewitness says

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.) (Cont.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Continued from page one

7. Ground 2 or Ground (if applicable):

explicitly "I saw and heard officer Webb Assault Mr. Gibbs in the nose with a closed fist and elbow him in the head... at no time did Gibbs move away from or toward officer Webb... Gibbs followed all orders before and after the assault." Another witness declares he clearly heard deputies enter my cell and immediately heard Webb shouting "Shut up, shut the F up" then a very loud smacking sound he heard on the other side of a brick wall he characterized clearly as the sound of a punch. Another witness declares "all night Webb was taunting Gibbs... Webb became visibly agitated... deputies entered the cell... I could make out punching noises" Another witness declares: "at no time did I hear Robert Gibbs get loud or threaten anyone." All 7 witnesses have

a. Supporting facts: given written declarations under penalty of perjury and these have been provided to my lawyer (Margaret Hucher). Deputies Webb and Barnhart, went on to file two different and conflicting reports that were entirely false in an attempt to cover up this assault. In their reports deputies claim I was threatening them and acted aggressively. Again, there are eight witnesses (myself included) that these claims are false. In his first report, Webb essentially attributed my injuries to me assaulting his forearm with my face, then in his second report he says it was incidental to him forcing me back on my bunk (two completely contradictory accounts neither of which is consistent with the extent of my injuries). In his first report, Webb makes no mention of any injury to himself. In the second report (written by Barnhart) at least 42 hours later (after I was seen in court, obviously assaulted and bloody, after I had been photographed by public defenders investigator and after Webb and Barnhart went home for 12 hours twice) Webb suddenly claims a baseball sized bruise and one-inch laceration and is allowed to file a new report and change much of his story by Sgt. South. Reports delete and add "facts" and "witnesses" and were obviously written by both Webb and Barnhart, while they were in communication and comparing their versions of events (the two reports are essentially the same version, rewritten from Barnhart's perspective, use the same verbiage and chronological order except for glaring additions and deletions). In Barnhart's report, he is markedly reluctant to back up Webb's version that I moved towards Webb. Despite the fact that Barnhart was inches away from Webb and I, he says things in his version like "Webb said..." "Webb observed..." "From my position I was unable to see..." "Webb said he brought his arms up to protect himself..." etc. He is obviously attempting to play stupid and back Webb while at the same time distancing himself. There is no way that he did not see what happened from mere inches away. I have since been told by attorneys that charges were referred against me to the D.A. As this incident occurred because I was complaining of my treatment at the jail, I consider it as retaliation for exercising my right under the 1<sup>st</sup> Amend. to free speech and grievance. As Webb and Barnhart subsequently cuffed me up and took me to medical to cover up the assault I consider that act as a violation of my 4<sup>th</sup> Amend. right to be free from unwarranted seizure (See *People vs. Brown*: "any officer who uses Authority or physical force to seize or transport any person unlawfully has violated 4<sup>th</sup> Amend.") I consider Webb and Barnhart's false reports as even further retaliation as well as a violation of 148 p.c. As Sergeants South, Reed, Rodgers, Tanner and others refused to allow me to make a police report in days following (Have numerous grievances) I consider their actions as further retaliation and deliberate obstruction of Justice

b. Supporting cases, rules, or other authority: 14<sup>th</sup> Amendment to U.S. Constitution (Retaliation for protected right), 1<sup>st</sup> Amendment to the U.S. Constitution (Free speech and grievance), 4<sup>th</sup> Amendment to the U.S. Constitution (unlawful seizure/arrest), California State Constitution, California Statutes prohibiting Assault and Battery, False imprisonment, obstruction of Justice, Filing false report, Federal statutes prohibiting retaliation by government officials, placing hands on an inmates neck etc., California statute prohibiting criminal threats. See also *People vs. Brown*, Title 15, Building Industry Association of the Bay area v. City of San Ramon (First District Court of Appeal, Div. 2 4 Cal. App 5<sup>th</sup> 62 Oct 13<sup>th</sup> 2016) *In Reedy D.* (20 Cal. App. 4<sup>th</sup> 1199) *In re Lewallen* (Cal. Supreme Court, -1979- 23 Cal. 3d 274) et al. *People vs. Brown*: 2016 WL 74688 (Cal. App. 1<sup>st</sup> Dist. 2016)

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:

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:

Numerous denied grievances to lieutenant, Captain, Sheriff level.

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 Petitions  
(3) Issues raised: (a) Retaliation/abuse of inmates by deputies  
(b) refusal of Supervisors to properly train/ supervise deputies  
(4) Result (attach order or explain why unavailable): Pending in Sup. Court  
(5) Date of decision: N/A

b. (1) Name of court: Shasta County Superior Court  
(2) Nature of proceeding: N/A  
(3) Issues raised: (a) N/A  
(b) N/A  
(4) Result (attach order or explain why unavailable): pending  
(5) Date of decision: N/A

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:  
pending hearing on related but not instant issue in Shasta Sup. Court  
1500 Court St.  
Redding, CA 96001

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.)  
no delay

16. Are you presently represented by counsel?  Yes  No If yes, state the attorney's name and address, if known:  
In related but not instant petition: Margaret Huscher  
46 Shasta Co. Public Defender  
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:  
\_\_\_\_\_  
\_\_\_\_\_

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

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: November 23<sup>rd</sup>, 2017

Robert A. Gibbs  
(SIGNATURE OF PETITIONER)