

Name Robert A. Gibbs

Address P.O. Box 686

Shasta, CA. 96087

c/o Shasta County Jail # 510503
1655 West St. Redding, CA. 96001

CDC or ID Number Shasta Jail # 510503

FILED

DEC 12 2017

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

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

<u>Robert A. Gibbs</u>
Petitioner
vs.
<u>Shasta County Superior Court.</u>
Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. 17 H136798
(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 need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

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): Prohibitive Bail, Denial of Bail hearing...

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 subdivisions 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").

Criminal 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: Arrest date: 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 Corelli
1610 West St 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.)

Shasta County Superior Court has set an excessive, prohibitive and unconstitutional Bail amount in my cases without proper notice, meaningful bail/o.r. hearing or the balancing between constitutional liberty interest and state interests. Bail amount and aggravation of Bail Schedule is prohibitive and unconstitutional, is an amount well beyond the means of this defendant and has led to an exploitation of this defendant's custodial handicap and a severe hardship in the investigation and preparation of his cases. Bail was raised twice by two different Judges, an act that amounts to double jeopardy and effective denial of Bail.

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.)

On 9/12/2015 following an arrest for criminal threats, my bail amount was aggravated by Judge Gregory S. Gaul from the bail schedule \$25,000⁰² to \$250,000⁰². Upon arraignment, the amount on all my cases was raised another \$150,000⁰² by home court Judge Dan E. Flynn. At that time, I was pending three other cases, but had never been formally arrested on two cases and had posted a \$50,000⁰² bond in the third (Bail Bond Connection). Because I was never arrested in the first two cases, no bond was demanded in those cases. Apparently the \$150,000⁰² added by Judge Flynn was a retroactive setting of bail in the first two cases and a revocation and re-set of the \$50,000⁰² bond I had already posted. There is also another \$3,000⁰² that I cannot even determine the origin of. At this point, my bail has been (for 27 months) at \$405,000⁰². I have never received any written or verbal explanation for my bail, and other than the home court judge setting bail at my arraignment, I have not been given any meaningful bail/o.r. hearing in 27 months. I have asked several of my attorneys for a hearing in that time but they have said the judge would "never allow it". The denial of meaningful access to bail has meant that the court has been able to exploit my custodial handicap. As attorneys have refused and/or failed to properly investigate, interview and depose witnesses in preparation for trial and as I have been incarcerated pre-trial the entire time, I have essentially been under immense pressure to be coerced into an unfair plea agreement. At this point, I have been incarcerated for 27 mos. and have had nine lawyers, none of whom have spoken to relevant and critical witnesses or collected any physical or documentary evidence. Because I have been denied investigation for so long, I do not believe that any investigation now would be accurate or effective. I am in a "Justice delayed is Justice Denied" situation. Despite the fact that the last case of criminal threats was one course of conduct (if guilty) and would carry a presumptive 2 year sentence and my other criminal threat case (if guilty) would carry a 16 month sentence (for a total of 40 months total) and I have at this time a

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 page 4 of 6

7. Ground 2 or Ground (if applicable): total of 54 months served (27 actual MC-275 and 27 behavior credit) and despite the fact that before the last case of crim. threat I was free on bond of \$50,000⁰⁰ on one of my other cases and had no bail imposed in the rest, I am still being held on \$405,000⁰⁰ bail 27 months later. As I have no failures to appear, have a child and a home and have been self-employed in the County for 7 years as I have no other family or anyone who would take me in and as I have already served roughly the amount I am likely to serve (and would therefore be unlikely to flee jurisdiction) I believe the bond amount is no longer an appropriate or constitutional bond. The justification for the aggravation of my bail was based upon my last (422 p.c.) case, and I have now served more time than I can serve in that case and am still pre-trial, then I should be eligible for a reinstatement of my \$50,000⁰⁰ bond and an O.R. in the other case where no bond was imposed prior to the aggravation. As I have not seen my daughter in 27 months and people have been burgling my home, as I need to access mental health services and prepare a meaningful defense, I have a clear and demonstrable liberty interest.

Prohibitive and excessive bail is prohibited by the 8th and 14th Amendments to the U.S. Constitution (authority cited) as well as California Constitution Article I §12. Courts should consider a number of factors in setting bail including ties to the community, prior failures to appear, family in the community, the amount of time a defendant can be sentenced to, employment, likelihood of flight, etc. (penal code 1270.1(c)) Pre-trial detention is unwarranted where no direct evidence that defendant will flee from prosecution (U.S. vs. Himler 797 F.2d 156 - 3rd Circuit 1986); requires more than evidence of the commission of a serious crime and potentially long sentence to support the finding of a risk of flight (U.S. vs. Friedman 837 F.2d 48 - 2nd Circuit 1988). While it is recognized that courts must make predictive decisions when setting bail regarding a defendant's dangerousness in the future, it cannot be denied that such attempts are susceptible to grave errors (Vanatta vs. Scott 27 Cal. 3d 424, 440, 166 Cal. Rptr. 149, 613 P.2d 210 (1980)) "the threat of an unwarranted restraint on an individual's liberty is at its greatest where the decision is being made is predictive in nature - to deprive an individual of his freedom on the basis of speculation about his future conduct is contrary to the presumption of innocence that lies at the foundation of our judicial system, the California Supreme Court has declared in numerous cases the unreliability and erroneous nature of the predictions that persons will engage in future violent conduct" (e.g. People vs. Burnick 14 Cal. 3d 306, 326-327 121 Cal. Rptr. 488, 535 P.2d 352 (1975), Conservatorship of Roulet 23 Cal. 3d 219, 234-235, 152 Cal. Rptr. 425, 540 P.2d 1 (1979), See also People vs. Murtishaw 3rd Circuit 1981 et al.) Pre-trial release "permits the unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction (Hudson vs. Parker 156 U.S. 277, 15 S.Ct. 450, 39 L.Ed. 424 (1895), Stack vs. Boyle 342 U.S. 1 72 S.Ct. 1 96 L.Ed. 3 (1951))" Public Safety Considerations in setting bail cannot be a basis for requiring a suspect to post bail sufficiently high to keep him in custody (In re Christie 92 Cal. App. 4th 1105, 1109, 112 Cal. Rptr. 2d 493 (2nd Dist. 2001)) When bail is available, it must be fixed only in the amount necessary to guarantee the defendant's appearance at trial (Stack vs. Boyle 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951)) Any higher bail amount is excessive under the 8th Amendment (Stack vs. Boyle).

Relief Sought: Re-instatement of posted (50,000⁰⁰) bond and O.R. release on other cases.

b. Supporting cases, rules, or other authority: 8th Amend. and 14th Amend. to U.S. Constitution (authority cited) Calif. Constitution Article I §12, Penal Code 1270.1(c), U.S. vs. Himler, U.S. vs. Friedman, Vanatta vs. Scott, People vs. Burnick, Conservatorship of Roulet, In re Christie, Stack vs. Boyle, People vs. Murtishaw, Hudson vs. Parker, et al.

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 Dept. of Superior Court"):

b. Result N/A c. Date of decision: N/A

d. Case number or citation of opinion, if known: N/A

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:

N/A

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

a. Result N/A b. Date of decision: _____

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

d. Issues raised: (1) N/A

(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:

N/A

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 CalApp.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

N/A

b. Did you seek the highest level of administrative review available? Yes. No. N/A
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: N/A
(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.)
N/A

16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:
Margaret Huscher - 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:
Habeas in Sup Court and District Court

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: December 10th, 2017.

Robert A. Gibbs
(SIGNATURE OF PETITIONER)