

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

#(HC) 2:16-cv-01629-JAM-DB ^{MC-275}

CDC or ID Number Shasta County Jail #510503

United States District Court of California
501 "I" st. Sacramento, CA. 95814
(Court)

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

PETITION FOR WRIT OF HABEAS CORPUS

No. _____
(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): illegal Prosecution

1. Your name: Robert A. Gibbs
2. Where are you incarcerated? Shasta County Jail 1655 West St. Redding, CA. 96001
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

e. Date convicted or committed: Arrested 9/11/2015

f. Date sentenced: N/A

g. Length of sentence: N/A

h. When do you expect to be released? Unknown

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

ineffective "assistance" of "attorney" Shon Northam (address unknown)

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 four. For additional grounds, make copies of page four and number the additional grounds in order.)

Trial Court is allowing a completely illegal Arrest and prosecution of this Defendant. Trial Court has allowed the Shasta Co. Sheriffs dept. to manufacture elements of alleged Criminal threats, to illegally presume intent, to act in furtherance of alleged Criminal threats, to illegally wiretap/invade my privacy, to politicise me and my arrest

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon 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 9/11/2015, while speaking to Deputy Attorney General John Feser in a private phone call, I expressed concern over my continued abuse at the hands of Shasta County Sheriffs. I expressed to Mr. Feser that I was experiencing a great amount of fear and was in fear of a confrontation with police. Mr. Feser was representing two Fish and wildlife officers in a federal Civil Suit against those two officers as well as two Shasta County Sheriffs Deputies who were accused by me of False arrest, False report, False Search of my home, inflicting psychological Damage, Assault perjury, Corruption etc. (Case # 2:13-CV-2631-KJM-CMK). For over two years these officers claimed "Qualified Immunity" from prosecution of my Damages lawsuit. I have since learned that, in fact, qualified immunity does not apply in cases where officers have broken laws as was the case in my lawsuit. Mr. Feser had told me on several occasions that he believed there was in fact liability to the State in my case and a week prior to 9/11/2015 he told me that again and said he was recommending to his Superiors at CAL. D.O.J. that they settle their case with me. On 9/11/2015 Mr. Feser called me again and this time he told me that his Superiors at D.O.J. were forcing him to move the Court to dismiss my lawsuit based on "qualified Immunity". Due to the immense pressure placed upon myself and my family by the False arrest and subsequent on-going litigation, my family had separated (I have a 2 1/2 yr. old Daughter). On 9/11/2015 I was imminantly suicidal and suffering.

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.)

Mr. Feser called me again and this time he told me that his Superiors at D.O.J. were forcing him to move the Court to dismiss my lawsuit based on "qualified Immunity". Due to the immense pressure placed upon myself and my family by the False arrest and subsequent on-going litigation, my family had separated (I have a 2 1/2 yr. old Daughter). On 9/11/2015 I was imminantly suicidal and suffering.

(Cont.)

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from severe depression, anxiety and guilt for failing to keep my family together. I began to argue with Mr. Feser in an attempt to make him see the incredible stress that had been placed upon me. I felt completely disempowered and felt that police could get away with anything, that there was no recourse against

a. Supporting facts:

Their misconduct. I was in a state of sustained fear of the police. I admitted to Mr. Feser that I was having feelings of a need to seek revenge against the police and local community for the damage caused to me and my family. I believed Mr. Feser to be essentially a friend, even though he was the opposing lawyer in my suit. I did not like feeling like revenge was my only option to obtain justice and I suddenly felt an irrepressible urge to unburden myself of these feelings. Suddenly, as if a switch were thrown inside me I began telling Mr. Feser that I was so afraid of further abuse to me by police that I was afraid I might overreact and attack them or members of the public or seek revenge and become violent. I became extremely agitated and began making expansive and thoroughly hypothetical statements of scenarios whereby I attacked the community or the policemen named in my lawsuit. While I knew I would never hurt anyone, the fear and emotional content I was feeling was completely out of my control. The idea that I might become violent, though highly unlikely, seemed incredibly real and imminent to me. I felt as though the police were trying to provoke a violent reaction. These feelings were highly relevant to my suit because I had suffered severe psychological damage when fish and wildlife officers stormed my

b. Supporting cases, rules, or other authority: home without properly identifying themselves as law enforcement and forced me to the ground at gun-point (I thought I was being murdered). Following the March 8th, 2013 raid of my home I suffered intense, violent nightmares where people chased me and tried to kill me; I became an insomniac and lost my appetite, my mood changed and I became constantly angry. I have since been diagnosed by several doctors as suffering from P.T.S.D. from my encounter with fish and wildlife.

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7. Ground 2 or Ground _____

(if applicable):

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At this point in the conversation with Feser, he activated a tape recorder unbeknownst to me. Up until that point in the conversation my comments were clearly hypothetical but at this point Feser challenges me by saying things like "Robert, you would never do anything (violent)" and such and as a result of being challenged in my emotional state I began to argue. I said: "I don't know that." "I could go do something right now" etc. I felt that Feser was not taking my feelings seriously. My previously hypothetical statements became more imminent and less hypothetical in my attempt to get him to take my feelings seriously. I began saying things that sounded very much like real and credible threats to attack policemen and the community but were just bluster and my reaction to having my very real feelings challenged. There was at this point a marked tinge of sarcasm to my statements. To me my comments were not believable or the least bit credible but were in fact simply emotional content. I felt like Feser was goading me to make threatening statements and in my anger and frustration I sarcastically obliged him. Suddenly, Feser went from seeming to not taking me seriously at all to becoming actually frightened. After I hung up on him, he contacted two of the officers and another lawyer in my suit who contacted the Shasta Sheriff's Dept. The Sheriff's Dept. put me under surveillance and arrested me an hour later for criminal threats. I told them my "threats" were not real and were being taken out of context. They none-the-less charged me with five counts of criminal threats. I am objecting to Feser recording me without notice as both a Miranda warning violation as well as invasion of

privacy under Calif. Penal Code § 637.2, 632 subd(A) as my conversation with Feser constituted a confidential communication as defined in Cal. Supreme Court case Flanagan v. Flanagan (27 CAL 4th 766 117 Cal. Rptr 2d. 574). While it could be argued that Feser had an obligation under the emergency procedures laws to notify the authorities if he believed a credible threat had been made, I would argue that such an obligation would be to notify only the authorities having jurisdiction and not individual officers of any perceived threat which would have the effect

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Ground 2 or Ground _____

(if applicable):

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of fulfilling certain elements of alleged criminal threats that otherwise would have not been fulfilled. In essence, I would contend that acting with an abundance of caution in response to a perceived threat would actually negate any case for criminal threats if done in the absence of any protocol which would allow for protection of officers without actually

- a. Supporting facts: acting in furtherance to deliberately manufacture any missing elements of the alleged "crime". for instance, passing on perceived threats to individual officers to instill fear deliberately to fulfill all statutory elements when officers could have simply been protected by being put on alert. This was clearly the course of action taken by officers in my case from the very beginning of their "investigation". at least one of the officers was not even contacted until after I was in custody but was undoubtedly still "in fear for his safety". I would also object that officers had no idea what my intent was, were simply alarmed by Feser and none-the-less went out of their way to supply certain elements heretofore missing from the alleged "crime". presumption of intent is unconstitutional (See Francis V. Franklin, Patterson V. New York, In re Winship, Sandstrom V. Montana, Mullaney V. Wilbur etc. etc.) I would contend that these prohibitions on the presumption of intent should apply both to the police and to prosecutors. As the recording of my conversation with Feser did not occur until many minutes into it, any contextual basis for my comments was irretrievably lost which should by all rights forestall any argument of intent or even use of the recording as "evidence" as its prejudicial value outweighs its probative value. As the courts have barred (thus far) my ability to question Feser for eleven months, any chance I would have had to obtain reliable exculpatory evidence from him is surely passed, further violating my right to discovery and prejudicing my case. Other legal arguments I have made or would make here include that there is no evidence that I intended statements be taken as a threat. Instead of hypothetical and sarcastic scenarios in the context of my conversation with Feser regarding my psychological state (see People vs. Felix

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7. Ground 2 or Ground _____

(if applicable):

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That on 9/11/2015 I was suffering from a major depressive episode which had a significant impact on my thought processes (See: People v. McCowan) that although there is some circumstantial evidence that I formed the requisite intent required for criminal threats I am able to show substantial proof that I did not form the requisite intent (See: People v. Sajas, a. Supporting facts: People v. Scott, People v. Cortez, People v. Nunn, People v. Heath, Fain v. Commonwealth, people v. Wells, people v. Gorshen) (See also: People v. Freeman, In re Winship, Mayer v. City of Chicago, Stovall v. Denno) That on 9/11/2015 and since there is insufficient evidence that I ever intended for any individual officers to hear or become aware of my comments (See: In re Ryan D. 2002) that my comments when understood in the light of the surrounding circumstances was not as unequivocal, unconditional, immediate or specific to convey a gravity of purpose and immediate prospect of execution. (See: In re George T. 2004) That the officers investigating the alleged threats manufactured a crime that otherwise would not likely have happened (See: People v. Smith 2008) That even if I am possibly guilty of some crime, that Dep. Attorney General Feser did by challenging me in my hyper-emotional state and goading me and mentioning additional officers did in fact entrap me into "committing a greater offense subject to greater punishment" (See: U.S. v. Stauter 1994) That officers were overzealous in their attempts to prosecute and punish by creating or manufacturing elements of the alleged crime (See: People v. Barraza, 1979, people v. McIntire (1979), People v. Makovsky (1935), Bradley v. Duncan (9th Cir 2002)) That conduct of sheriffs did in fact interfere with my rights to due process of law by presuming intent and supplying certain ingredients (See: Boulas v. Superior Court (1986), People v. McIntire (1979)) That failing to hold my preliminary hearing in 10 or 60 days as required by CAL. Penal Code 859, 860, 861 is a violation of my 14th Amendment right to due process (Note: The Judge in my case would say "delays were reasonable/lawful," but in fact, the Judge has allowed for numerous, ridiculous delays like several months where my "attorney" did nothing, a second 13.78 pc. Competency evaluation against my objection, several avoidable delays (were at 11 mos. without pre-liminary and counting.)

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7. Ground 2 or Ground

(if applicable):

That the Court's and my attorneys refusal for ^{MC-275} 11 mos. to

question declarant Witness Dep. Attorney General John fester is willful Suppression of evidence by the government and constitutes a denial of Due process (see:

people v. Hertz, people v. Noisey, people v. Erwin, 6th amendment right

under the Constitution to see and Confront Witnesses, the right to Compel Witnesses

a. Supporting facts: Under the 6th Amend.) That Defense "Attorneys" Shon Northams refusal for Ten months to properly prepare for my preliminary hearing is a violation of my 6th Amendment right to effective assistance of counsel (see also: Polk County v. Dodson

"Defense attorney not a prosecutorial attorney and therefore must Fight", People v. Frierson "Failure to call potentially favorable witness is ineffective assistance.")

That "Attorney" Shon Northam did refuse to respect or even investigate this defendants chosen lines of defense (Diminished actuality as opposed to Diminished Capacity

defense, entrapment defense, actual Innocence, perjury and false reporting of officers etc.) That said refusal has amounted to "No Defense at all" and

is a violation of my 6th Amendment right to effective assistance of counsel

as well as my 14th Amendment right to Due process to wit: a Speedy and fair preliminary, a fair O.R. and Bail hearing, right to discovery before the

preliminary, right to Compel witnesses, see and Confront witnesses etc etc etc.)

relief sought: With all due respect, our system of Justice is morbidly dysfunctional. I trust my Judge as far as I can throw him, despite the assurances of Neutrality

he gives me he is essentially a second prosecutor attached to my case. As a non-lawyer I have done far more to represent myself than my court appointed "Attorney"

My prosecutor is more than willing to cheat to win. I know I am mostly innocent

b. Supporting cases, rules, or other authority: of all charges (but try telling them that) I have written a very detailed letter to Judge Kimberly Mueller of the District Court begging her to issue any kind of Injunction. likewise, while I do in fact deserve a complete

dismissal of all charges after one year in Jail pre-trial due to government mis-

conduct; I know the system is loathe to do the right thing, so I can only hope

for whatever meager relief the Court will offer. Hopefully, this Court will at

the very least encourage the Shasta County Superior Court to at least stop

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7. Ground 2 or Ground (if applicable):

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The madness, Dismiss a charge or two at least to dislodge a completely motionless case. (this will have the effect of making the prosecutor be more reasonable and offer a fair plea agreement.) I have been so overcharged that any meaningful negotiation has been impossible.

a. Supporting facts:

Their offer to me so far - 3-6 yrs prison term with at least one strike. My offer to them - 3 yrs suspended sentence, probation and no more than one criminal threat strike. As you can see, our offers are not that far apart. I have very little criminal history, they have been violating my rights the entire time, my offer is more than fair. I am asking this court to (A): Throw out the case (For all kinds of reasons) or (B): offer whatever relief it can or (C): encourage Shasta to accept my offer.

Thank you!

b. Supporting cases, rules, or other authority:

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.) _____

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: _____

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: July 26th, 2016.

Robert A. Gibbs

(SIGNATURE OF PETITIONER)