

Name: Robert A. Gibbs
 Address: 1/0 Shasta County Jail
1655 West St.
Redding, CA.
96001

CDC or ID Number: Shasta Key #510503

United States District Court
of California (Eastern District)
501 "I" St. Suite 4-200
Sacramento, CA 95814
 (Court)

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|----------------------------|
| <u>Robert A. Gibbs</u> |
| Petitioner |
| vs. |
| <u>State of California</u> |
| Respondent |

PETITION FOR WRIT OF HABEAS CORPUS

No. 2:18-cv-00225

(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): Unconstitutionality of Criminal threat Statute

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"). -

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: Incarcerated 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? Unknown

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

Currently represented by Ted Somers (1714 West St Suite C Redding CA 96001)
However, have been forced to replace several previous attorneys for
ineffective assistance.

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.) The Criminal threat statute in California is unconstitutional because the Courts are not hewing to the intent of the legislature in creating it. Despite the fact that the Legislature sought to criminalize the intentional use of threats of death or great bodily injury to instill fear in innocent citizens, the Courts are abusing the statute by regularly using the statute to punish emotional outbursts hyperbole, sarcasm, civil disputes etc. Courts are seldom equipped or knowledgeable enough to sort out legitimate violations of criminal threat from other protected speech.

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.) I am being punished for an emotional outburst and Sarcastic hyperbole that was provoked by one person during a private telephone conversation wherein I made Sarcastic threatening comments about five other people with absolutely no intention for those people to be made aware of my comments. I was arrested and charged with five counts of Criminal threats and I have been incarcerated in the Shasta Jail for two and a half years pre-trial. Investigating officers did not investigate for evidence of intent or intent for my comments to be relayed to the five "victims". My first lawyer admitted to me that he had so little experience with the statute that he did not know if 422 p.c. was intent-specific crime or not (even I know it was). My Judge has maintained several times that the D.A. does not need to prove intent, or that I intended my comments to be relayed to victims (legal research has proved to me that they do). Most of my lawyers have advised me that the D.A. can insist I stand trial, even though the D.A. has not offered any evidence of intent other than my comments themselves removed entirely from the context of the entire conversation, nor any evidence whatsoever that I intended the alleged "victims" to hear my comments. The D.A. was not made to prove these elements at my preliminary hearing either. I have also been denied any meaningful investigation of my side of the story for two and one half years (thus the replaced lawyers) and I do not believe any investigation at this time would be reliable because of the erosion of witnesses' memory. In my experience, the Courts (everyone in the Courts from arresting officers to Judges) are interpreting the Criminal threats statute to include any and every kind of threatening speech and often even simply offensive speech because that is easier than

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

(Continued)
(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.) 1st Amendment to the United States Constitution (free speech - Authority cited) 14th Amendment to the United States Constitution (Due process - Authority cited) People vs. Felix, 9th Cal. App. 4th 905 (2001), In re Ryan D., 100 Cal. App. 4th 854 (2002), People vs. Teal, Supra, 9th Cal. App. 4th at p. 281, 71 Cal. Rptr. 2d 644, U.S. vs. Hayes (6th Cir. 2000) 227 F.3d 578, 586. Mendez vs. Superior Court, Supra, 3 Cal. 4th at p. 451, In re Ricky T. (2001) 87 Cal. App. 4th 1132, 1141 105 Cal. Rptr. 2d 165, U.S. vs. Alkhabaz (6th Cir. 1997) 104 F.3d 1492, 1496.

(Cont.) Grounds or Ground (if applicable): Sorting out Criminal threats from protected speech. I do not MC-275
believe that the courts could ever create any kind of reliable standard, so much as "muck through" and "Monday morning quarterback" every instance of false accusation, he-said, she-said, emotional outbursts, hyperbole and Sarcastic Comments. To be clear, I do not find either the statute, nor the legislative intent in creating the statute to be unconstitutional. What I find to be unconstitutional is that human expression is inherently prone to mis-interpretation, especially when being interpreted third-hand, after the fact, sometimes months or years later by anyone and everyone other than the human responsible for the expression.

a. Supporting facts: I believe the statute becomes unconstitutional in the hands of the courts who will invariably believe that it is up to them to interpret another persons speech, often with only the words themselves as "evidence" of the intent or meaning of the person who said them. The law says presumption of intent is unconstitutional, but isn't that exactly what we are asking the court to do, in many cases, where the only "evidence" of a criminal threat are words that one person has uttered that we ask other people (who possess their own idiosyncratic speech modes) to interpret. How do we, as a society, differentiate between words specifically intended as threats and words merely interpreted by others as threats? Obviously we cannot. Even a judge or jury can only, in many cases, ascribe their own interpretation, whether or not that interpretation is correct. What I find unconstitutional is the deplorably short-sighted belief that juries can truly make a determination of a criminal threat fairly in many cases. How many juries truly understand the verbiage of 422 p.c.? How many understand the legislative intent? How many juries will hold to our ideal and standard of proof (beyond a reasonable doubt) when confronted with completely circumstantial "evidence" of a 422 p.c. violation? How many prosecutors will bring wholly circumstantial cases before juries as if their interpretation is any less error-prone than anyone else's? Anyone who would observe the way criminal threats are being prosecuted in the courts would have to question whether or not a seemingly good idea has not proven to be a total failure in practice. Is a Sarcastic, provoked, emotional outburst to one person a criminal threat to five others, simply because that person relayed the comments out of an abundance of caution? My court seems to think so. The law appears to take exception to that view, but try telling that to my judge. And this is my point: I can go to prison because people have completely misinterpreted my words, my sentiment, the context and my over-all intent in saying them. The right to free speech should never be denied simply because it is categorised by others as "criminal". 422 p.c., as it is prosecuted in many cases in the courts is a direct affront to free speech; it is also a 14th Amend. violation because it is too easy to convict an innocent which is contrary to our ideal of Due process. I also take exception to the fact that in some cases

b. Supporting cases, rules, or other authority: (such as mine), a persons words can be mis-interpreted, they can then be arrested, their bond can be aggravated to a prohibitive amount, and they can then more than toll the penalty for criminal threats before their case can even come to trial. The penalty for crim. threats is 16 mos., 2yrs or 3yrs. I have so far served two and a half years in county and any trial is unlikely to occur for another 12 months or more. I also take exception to my bond being aggravated to ten times the bond schedule based on the "threats" themselves. What makes one criminal threat worthy of a bond in line with the bond schedule and another one worthy of being aggravated? Again, its all a matter of interpretation and all open-ended determinations violate our standard of Due process.

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:

I have not, simply because I know that the constitutional issues and the authority to find the statute unconstitutional are beyond the powers and legal expertise of my local court.

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.)

16. Are you presently represented by counsel? Yes No If yes, state the attorney's name and address, if known:
Ted Somers
1714 West St. Suite C
Redding, CA 96001

17. Do you have any petition, appeal, or other matter pending in any court? Yes No If yes, explain:
not for this issue

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:
this issue is beyond the powers and abilities of my local court to decide.

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: January 30th 2018

Robert A. Gibbs
 (SIGNATURE OF PETITIONER)