S289184

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA *Jones* *v.* **THE SUPERIOR COURT OF THE COUNTY OF SAN BERNARDINO** *Respondent* **PHILLIP JONES** *Real Party in Interest*	**Case No.** Court of Appeal Case No.: E085239 San Bernardino County Superior Court Case Nos.: WHCSB2400033 & FSB16842 **Petition for Review & Request for Stay** Next Hearing: 2/20/25, Dept. S20, Hon. Gregory S. Tavill; (909) 521-3339

PETITION FOR REVIEW & REQUEST FOR STAY

Of the decision of the Fourth District Court of Appeal, Division Two
Denying the petition for writ of mandate and request for stay
directed to the Superior Court of San Bernardino County,
the Honorable Gregory S. Tavill, Judge, Presiding

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Service on the Attorney General required by Rules of Court, rule 8.29(c)

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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE *v.* *SUPERIOR COURT (JONES)*	**Case no.:** Court of Appeal case no.: E085239 San Bernardino County Superior Court Case Nos.: WHCSB2400033 & FSB16842 Petition for Review & Request for Stay

To the Honorable Patricia Guerrero, Chief Justice, and the Honorable Associate Justices of the Supreme Court of California:

The People of the State of California, Plaintiff below and Petitioner, respectfully petition this court for review following the decision of the Court of Appeal, Fourth Appellate District, Division Two, (Case no. E085239), filed on January 31, 2025. The order summarily denied our petition for writ of mandate and request for stay of the trial court proceedings. We filed the writ petition and request for stay on December 23, 2024 to seek review of the trial court's December 12, 2024 order issuing an Order to Show Cause (OSC) on a petition for writ of habeas corpus. There is currently no stay of the trial court proceedings, and the next hearing is scheduled February 20, 2025 with the People's return due March 7, 2025.

QUESTION PRESENTED

Whether courts should apply the *Duvall*[1] prima facie standard to all habeas corpus petitions, including those raising claims under the Racial Justice Act[2] (RJA).

NECESSITY FOR REVIEW

Review is necessary for two reasons: (1) to secure uniformity of decision; and (2) because the question presented is an important question of law. (Rules of Court, rule 8.500(b)(1).) As of this filing, there is no published Court of Appeal decision on whether the *Duvall* standard applies to RJA claims raised by habeas corpus petition. However, to our knowledge, the only court to have applied a non-*Duvall* prima facie standard to a habeas corpus petition is the court below. Additionally, we are aware the Attorney General has taken the position that the *Duvall* standard applies to habeas corpus petitions with RJA claims. As this issue percolates from the superior court to higher courts, review is necessary to ensure uniformity of decision statewide.

Next, choice of prima facie standard is an important legal question that will have massive implications. Within a year, every one of California's approximately 130,000 inmates and parolees will be eligible to bring an RJA claim by petition for writ of habeas corpus per Penal Code section 745(j)'s staggered scheme.[3] Whether the *Duvall*

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1 *People v. Duvall* (1995) 9 Cal.4th 464, 474.

2 Specifically, under Penal Code section 745(a).

3 As of January 29, 2025, there were 133,202 inmates in state prison or parole. (Cal. Dept. Corrections & Rehabilitation, Weekly Report of Population, Jan. 29, 2025, p. 1.)

prima facie standard applies to RJA habeas claims will have a big impact on the how often courts must issue OSCs related to these claims. And, under the RJA, the court "shall" hold an evidentiary hearing upon each issuance of an OSC, unlike traditional habeas procedure. (*See* Pen. Code, § 1473(e).) The choice of prima facie standard will have a great impact on judicial resources.

This case provides a concrete example of how the prima facie standard impacts issuance of an OSC. Here, Jones's uncorroborated, self-serving declaration is the sole piece of documentary evidence supporting the surviving allegations in the OSC. (Ex. 3, pp. 119-120 [declaration]; ex. 1, pp. 8-9 [claims in OSC].[4]) Yet, Jones never declared nor provided any evidence that the acts/omissions he complains of occurred "because of" his race, ethnicity, or national origin, as required under Penal Code section 745(a)(1). Further, the declaration contradicts the record, since the term "monsters" is simply not in the sentencing transcript. (Ex. 4, pp. 188 & 206-207 [Jones admitting this in reply to informal response].) The trial court thoroughly reviewed the entire trial record and found no deficient performance or prejudice on the part of trial counsel. (Ex. 2, pp. 30-47.) Under *Duvall*, Jones failed to establish a prima facie case since there was no evidence on the "because of" element and his declaration contradicted the record. (See *Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 23, fn. 5 (*Finley*).) But for the trial court's adoption of a non-*Duvall* prima facie standard, Jones's petition would have been denied.

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[4] Citations to exhibits refer to the People's Exhibits in Support of Petition for Writ of Mandate and Request for Stay.

Finally, to preserve the status quo and conserve the court's and parties resources, a stay of the trial court proceedings is necessary.

STATEMENT OF THE CASE

We adapt the statement of the case from our Petition for Writ of Mandate.

In 1997, Jones participated in an armed, takeover bank robbery. He and three other robbers—all armed with firearms—stole $50,000 from the bank. During the robbery, the robbers sequestered the customers in the bank vault. Although the robbers wore masks, so we do not know Jones's precise role, we know he was one of the armed robbers that took over the bank.

Jones was tried with co-defendant Rodney Cielto. After trial, the jury found both defendants guilty of four counts of robbery (related to the bank employees) and three counts of false imprisonment (related to customers in the bank). Personal firearm use allegations under Penal Code section 12022.5(a) were found true as to both defendants on all counts. The court sentenced each defendant to forty years in prison. The Court of Appeal affirmed the judgment in case number E025088. (Ex. 2, pp. 28-29 & 34-37.) Jones's judgment has remained final.

The First Petition

On January 26, 2024, Jones filed his first petition for writ of habeas corpus (captioned as a "motion"), which raised a mix of RJA and non-RJA claims. Inter alia, Jones claimed that the sentencing judge exhibited bias toward Jones and his co-defendant when the judge referred to them as "monsters" at the sentencing hearing. (Ex. 3, pp. 59-70.)

On February 22, 2024, apparently deeming Jones's "motion" a habeas corpus petition, the trial court denied all of Jones's claims except claim 5, the "monsters" claim. The court set a hearing on April 4, 2024 to address that claim. (Ex. 2, pp. 16-27.)

On March 22, 2024, the People filed a notice of lodgment with the trial court of the Reporter's Transcript, Volume 6 of 6, of Jones's trial, which contained the sentencing proceeding in full. The sentencing court never used the word "monsters" at all or referred to the defendants using similar language. (Ex. 4, pp. 188-189.)

At the hearing on April 4, the court denied the petition without prejudice. The court appointed the public defender and allowed Jones to file an "amended" habeas corpus petition over the People's objection. (Ex. 1, p. 6.)

The Amended Petition

On June 11, 2024, Jones filed his amended petition. (Ex. 3, p. 71.) As to RJA claims, the petition raised exhibition of bias claims against the original trial judge, Jones's trial counsel, and the trial prosecutor. (*See* Pen. Code, § 745(a)(1).) The petition also raised disparate charging and sentencing claims under sections 745(a)(3) and (a)(4). (Ex. 3, pp. 87-95.) A conclusory, handwritten declaration was the sole support for Jones's exhibition of bias claims, including the resurrected "monsters" claim and a claim that the trial clothes his counsel brought for him on the first day of trial were not to his liking. (Ex. 3, pp. 119-120.)

The amended petition also raised ineffective assistance of counsel claims against Jones's trial counsel that overlapped with his trial counsel-related RJA claims. (Ex. 3, pp. 87-95.)

Order Denying the Amended Petition (in part)

On July 11, 2024, the court issued an order partially denying the amended petition and requesting an informal response from the People. (Ex. 2, pp. 28-55.)

First, the court denied Jones's ineffective assistance of counsel claims as both untimely and unmerited. The court explained in detail how Jones had failed to establish any prejudice from the alleged actions/inactions his trial counsel undertook. (Ex. 2, pp. 28-47.)

Next, the court turned to Jones's RJA claims. The court denied Jones's disparate charging claim, reasoning that the petition was "silent regarding the 'similarly situated' and 'similar conduct' necessary for a claim under subdivision (a)(3)" under *Mosby v. Superior Court* (2024) 99 Cal.App.5th 106, 132. (Ex. 2, pp. 53-55.)

The court requested an informal response regarding some of Jones's RJA claims, including the resurrected "monsters" claim and the Jone's trial court's sentencing commentary; claims against trial counsel that were denied under ineffective assistance of counsel analysis; a jury selection claim; and the disparate sentencing claim under subdivision (a)(4). (Ex. 2, p. 55.)

The Order to Show Cause

The People filed the informal response on September 23, and Jones filed reply briefing on November 20, 2024. The People cited *Duvall* and *In re Figueroa* (2018) 4 Cal.5th 576 (*Figueroa*) for the prima facie standard in the informal response. (Ex. 4, pp. 190-201 & 192.)

On December 3, the court issued an order requesting oral argument on whether the *Duvall* or the Penal Code section 745(h)(2)

prima facie standard applies to RJA claims raised on habeas corpus. (Ex. 2, pp. 56-57.)

Oral argument took place on December 12, 2024. The People asserted that the *Duvall* prima facie standard applies to RJA claims raised in habeas corpus proceedings. (Ex. 5, pp. 222-238.) Over the People's objection, the court applied the Penal Code section 745(h)(2) standard to Jones's claims. (Ex. 1, pp. 8-9; Ex. 5, pp. 238-239.)

After further argument, the court denied all remaining claims except the Penal Code section 745(a)(1) claims related to Jones's original trial court and trial counsel. The court ordered an order to show cause as to those claims. (Ex. 1, pp. 8-9; Ex. 5, pp. 253-254.) However, the court denied Jones's disparate charging and sentencing claims without prejudice, raising the prospect that Jones could seek to resurrect those claims as well. (Ex. 1, pp. 8-9; Ex. 5, pp. 253-254.)

The court's application of the Penal Code section 745(h)(2) prima facie standard was integral to the court's order issuing an order to show cause. (*See* ex. 2, pp. 56-57; ex. 5, pp. 251-252.) For instance, the court's questioning during oral argument suggested the court below improperly believed application of the Penal Code section 745(h)(2) standard relieved Jones of his burden to provide any evidence demonstrating the original trial court made its sentencing commentary "because of" Jones's race, as required under Penal Code section 745(a)(1). (Ex. 5, pp. 251-252.)

After the hearing, the court denied our application to reconsider issuing the OSC. The return is now due on or before March 7, 2025, and there is a status hearing set for February 20.

DISCUSSION

I.

THE COURT SHOULD GRANT REVIEW TO ENSURE A UNIFORM PRIMA FACIE STANDARD FOR HABEAS CORPUS PETITIONS

Although the RJA's statutory language and scheme demonstrate that *Duvall* is the correct prima facie standard, review is necessary to provide guidance to lower courts.

The prima facie standard applicable on habeas corpus proceedings is well established. On habeas, a petitioner "bears a heavy burden initially to *plead* sufficient grounds for relief, and then later to *prove* them." (*Figueroa, supra,* 4 Cal.5th at p. 587 [citing *Duvall, supra,* 9 Cal.4th at p. 474]; Rules of Court, rule 4.551(c)(1).) To evaluate whether the petition states a prima facie case for relief, the court asks "whether, assuming the petition's factual allegations are true, the petitioner would be entitled to relief." (*Figueroa, supra,* at p. 587 [citing *People v. Duvall, supra,* at pp. 474-475.) Although Penal Code 1473(e) made RJA claims cognizable on habeas, it did not alter the prima facie standard applicable to these claims. Recently added Penal Code section 1473, subdivision (c) (added by Stats. 2023, ch. 381, § 1), makes clear that the *Duvall* standard applies to all habeas corpus petitions regardless of claim raised. (See *ibid.* ["This section does not change the existing procedures for habeas relief."].)

In contrast, a less stringent prima facie standard applies to RJA claims presented in trial court motions on nonfinal cases. Unlike in a habeas proceeding, the court "does not ask if the defendant proffered facts sufficient to demonstrate actual entitlement to relief. Rather, the

court asks if a defendant has proffered facts sufficient to show a 'substantial likelihood'—defined as 'more than a mere possibility, but less than a standard of more likely than not'—that the [RJA] has been violated." (*Finley, supra,* 95 Cal.App.5th at pp. 17-18, quoting Pen. Code, § 745(h)(2).) The court held that a defendant filing an RJA motion does not bear a "heavy burden" to establish a prima facie claim for relief. (*Id*. at p. 22.) Consistent with the statutory scheme, *Finley* recognized that this lower prima facie standard applies to nonfinal cases.

The plain language of the RJA's statutory scheme makes clear that this special standard is only applicable to motions in the trial court on nonfinal cases. (Pen. Code, § 745(h) ["As used in this section, the following definitions apply"]; Pen. Code, § 745(c) [referencing motions made in the trial court]; Pen. Code, § 1473(c) [noting that "this section" does not change the existing procedures for habeas relief]; *see* Pen. Code, § 1473(e) [no modification of prima facie standard for RJA-related habeas corpus petitions]; see *Finley, supra,* 95 Cal.App.5th at p. 22 [noting distinction in prima facie standard between RJA motions and habeas corpus proceedings].) This special definition only applies to the term "prima facie showing" as it appears in section 745. (Pen. Code, § 745(h).) In section 745, the only time "prima facie showing" appears is in reference to RJA motions made in the trial court on nonfinal cases. (Pen. Code, § 745(c).) By its own terms, the RJA's special prima facie standard only applies to motions on nonfinal cases.

Requiring the standard *Duvall* prima facie showing on habeas while providing for a lessened standard on nonfinal cases is

consistent with the RJA's statutory scheme of treating final cases differently than nonfinal one. First, the RJA has different procedures for different stages of the proceedings: motion in trial court for pre-judgment proceedings, petition for writ of habeas corpus for final cases in which the defendant is in custody, and petition under Penal Code section 1473.7 for post-judgement cases in which the defendant is out of custody. (*See* Pen. Code, § 745(b).) The Legislature specifically added Penal Code section 1473(e) to allow that RJA claims are cognizable on habeas. As previously discussed, the RJA did not modify the *Duvall* prima facie standard for RJA claims brought on habeas. (Pen. Code, § 1473(e) & subd. (c).) Caselaw has recognized that habeas corpus is the exclusive procedure to bring an RJA claim on a final case when the petitioner is in custody. (*People v. Hodge* (2024) 107 Cal.App.5th 985, 328 Cal.Rptr.3d 623, 631; see *Finley, supra,* 95 Cal.App.5th at p. 20.)

Additionally, the RJA's staggered retroactivity demonstrates Legislative intent to treat final cases with more deference. When originally enacted in 2020, Penal Code section 745 only applied prospectively to cases in which judgment was entered on or after January 1, 2021. (Former Pen. Code, § 745(j), added by Stats. 2020, ch. 317, § 3.5, pp. 7-10.) There was no mechanism to attack final judgments, such as Jones's, rendered prior to that date. (*Ibid.*) A subsequent amendment gave section 745 retroactive effect—but only then through habeas corpus or Penal code section 1473.7[5] motion

[5] The *Duvall* prima facie standard applies to RJA claims raised by Penal Code section 1473.7 motion. The Court of Appeal

procedure. (Pen. Code, § 745(j), amended by Stats. 2022, ch. 739, § 2, pp. 5-10; see *People v. Hodge, supra*, 328 Cal.Rptr.3d at p. 631.) As amended, Penal Code section 745(j)(1) now provides that section 745(a) applies to all cases in which judgment is not final. For judgments that are final, the statute applies retroactively on a staggered basis depending on the sentence. (Pen. Code, § 745(j)(2)-(5).) This carefully staggered scheme evinces at least *some* Legislative deference to finality. (See *Duvall, supra,* 9 Cal.4th at p. 474.) If the Legislature intended to make it as easy to attack final cases as nonfinal cases, there would be no carefully staggered system for collaterally attacking final judgments.

Lastly, the omission of any language altering the *Duvall* prima facie standard for RJA habeas corpus claims indicates Legislative intent to adopt the *Duvall* standard. In an analogous circumstance, the Court of Appeal held that the absence of language altering forfeiture doctrine for RJA claims on direct appeal was outcome determinative. (*People v. Lashon,* (2024) 98 Cal.App.5th 804, 813-814.) "The omission of such language strongly suggests the Legislature intended to leave the issues of preservation and forfeiture of claims on direct appeal to be resolved by the courts based on long-standing procedural canons."

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approved the *Duvall* prima facie standard for assessing whether an indigent movant under this section is entitled to counsel. (*People v. Fryhaat* (2019) 35 Cal.App.5th 969, 982.) There is no special prima facie standard for RJA claims brought by Penal Code section 1473.7. Although Penal Code section 1473.7(d) requires "a hearing," this requirement would be satisfied by first requiring a prima facie hearing.

(*Id.,* at p. 814.) Similarly, here, there is no language altering the *Duvall* prima facie standard for RJA claims brought on habeas.

In providing for the RJA's retroactive application, the Legislature was aware of habeas corpus procedure generally and specifically altered some aspects of it. (Assem. Com. Public Saf., com. on Assem. Bill No. 256 (2021–2022 Reg. Sess.) as amended Mar. 16, 2021, pp. 7-8.)[6] For example, specific to RJA claims on habeas, section 1473(e) lowered the successiveness procedural bar; provided for amending existing petitions; and now requires the court to hold an evidentiary hearing if it issues an OSC. (*Ibid.*; Rule 4.551(g)(2).) If the Legislature intended for a different prima facie standard to apply to RJA claims on habeas, it would have so specified.

Review is necessary to ensure a uniform prima facie standard applicable to RJA claims brought on habeas.

II.

THE COURT SHOULD GRANT REVIEW TO RESOLVE THIS IMPORTANT LEGAL ISSUE

The issue of whether the *Duvall* prima facie standard applies affects every RJA claim brought on habeas—as discussed above, this could impact thousands of habeas corpus petitions every year. (See *Board of Prison Terms v. Superior Court* (2005) 130 Cal.App.4th 1212,

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[6] The Legislature was also aware that the RJA's lack of prejudice standard violates section 13 of Article VI of the California Constitution and "may result in litigation." (Assem. Com. Public Saf., com. on Assem. Bill No. 256 (2021–2022 Reg. Sess.) as amended Mar. 16, 2021, p. 9.) Although the trial court's OSC sidestepped the prejudice issue, Jones had the burden of establishing prejudice. (*People v. Watson* (1956) 46 Cal.2d 818.)

1230 [writ review of an OSC initiated by the respondent was appropriate to issue guidance on important matters of first impression in habeas corpus procedure].) Although the court below is the only one we are aware of that has used a standard other than *Duvall* to evaluate these petitions, there could be others. Habeas corpus has only been available for RJA claims since January 1, 2024. (*See* Pen. Code, § 745(j).) As demonstrated in this case, the choice of prima facie standard has a large impact on whether a court will issue an OSC, and, in the case of the RJA, a mandatory evidentiary hearing. Accordingly, the court's decision on this matter will greatly impact finality and the court's workload statewide. (See *In re Reno* (2012) 55 Cal.4th 428, 450-451.)

Additionally, we note that the standard of review on choice of prima facie standard is de novo. A trial court's application of an incorrect rule of law is not entitled to an abuse of discretion standard of review. Rather, a trial court's resolution of such a question of law is subject to de novo review on appeal. (*Rubin v. Ross* (2021) 65 Cal.App.5th 153, 161; see *Vines v. O'Reilly Auto Enterprises, LLC* (2024) 101 Cal.App.5th 693, 706.) Statutory interpretation of the RJA is also subject to de novo review. (*People v. Lashon, supra,* 98 Cal.App.5th at p. 810.)

III.

A STAY IS NECESSARY TO PRESERVE THE STATUS QUO AND CONSERVE THE COURT'S AND PARTIES' RESOURCES

We requested a stay in the Court of Appeal, and a stay would be appropriate here for the same reasons. Simply put, a stay of the trial court proceedings is necessary to preserve the status quo while

we seek review of the question presented. (See See *Daly v. San Bernardino County Bd. Of Supervisors* (2021) 11 Cal.5th 1030, 1039.) A stay of trial court proceedings is necessary and appropriate to protect the rights of the parties and to avoid unnecessary waste of the court's and parties' resources. Without a stay, the People will be forced to prepare a return and potentially engage in discovery, which can be time consuming and resource-intensive. (*Duvall, supra,* 9 Cal.4th at pp. 476-477.)

Although the issuance of an OSC is an interlocutory order, review is appropriate when, as here, the case raises an important question of first impression and appellate review would be an inadequate remedy. (*Board of Prison Terms v. Superior Court*, *supra,* 130 Cal.App.4th at p. 1230.) Appellate review is inadequate here for two reasons: the People have no right to appeal if the petition is denied, and we would be forced to unnecessarily litigate this case to get to that point. (*See* Pen. Code, § 1506.)

The case is set for a status hearing on February 20, 2025 before Judge Tavill in Department S20 in the San Bernardino Justice Center of respondent court. The People's return is currently due on or before March 7, 2024. The telephone number for Department S20 is (909) 521-3339.

CONCLUSION

This court should grant review on the question presented to ensure uniformity of decision on this important, statewide issue. A stay of trial court proceedings is necessary to preserve the status quo and conserve the court and parties' resources.

Done this 6th day of February, 2025, at San Bernardino, California.

Respectfully Submitted,

JASON ANDERSON
District Attorney

Phil Stemler

PHILIP P. STEMLER
Deputy District Attorney

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c)(1) of the California Rules of Court, I certify that this brief uses a 13-point Book Antiqua typeface and consists of **4,387** words according to the word counting feature of Microsoft Word.

Done this 6th day of February, 2025, at San Bernardino, California.

Respectfully Submitted,

JASON ANDERSON
District Attorney

Phil Stemler

PHILIP P. STEMLER
Deputy District Attorney

Attachment 1: Court of Appeal Order Denying Petition for Writ of Mandate and Request for Stay.

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

THE PEOPLE, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; PHILLIP JONES, Real Party in Interest.	E085239 (Super.Ct.Nos. WHCSB2400033 & FSB16842) The County of San Bernardino

THE COURT

The petition for writ of mandate and request for immediate stay are DENIED.

MENETREZ
J.

Panel: Menetrez
McKinster
Miller

cc: See attached list

MAILING LIST FOR CASE: E085239
The People v. The Superior Court; Phillip Jones

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Attachment 2: Minute Order of Trial Court's 12/12/24 Issuance of the OSC.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
San Bernardino District
247 West 3rd St
San Bernardino, CA 92415
www.sb-court.org

MINUTE ORDER

Case Number: WHCSB2400033 **Date: 12/12/2024**

Case Title: In the Matter of: Phillip Jones

Department S20 - SBJC	**Date: 12/12/2024**	**Time: 8:30 AM**	**Status Hearing on Petition**

Judicial Officer: Gregory S Tavill
Judicial Assistant: Sylvia Ramirez
Court Reporter: Deana Assad
Bailiff: A Ramirez

Appearances
Deputy District Attorney Philip Stemler present for Respondent The People of The State of California
Deputy Public Defender Colleen Bazdarich present for Petitioner Phillip Jones
Petitioner present in custody

Proceedings
Matter comes on for Oral Argument on Petition for Writ Habeas Corpus.

8:47AM
Court convenes.
Arguments presented on the record by counsel for both sides.

Bench conference held, off the record.

Court reconvenes.
Court requests specific argument pending tentative ruling.
Arguments held.

Court issues tentative ruling as follows:
The Court finds a Prima Facie case and issues an order to show cause as to 745(a)(1), as to the judges comments and 745 (a)(1) as to the actions and interactions of trial counsel.
Counsel to file return and denial accordingly.

As to the peremptory challenges by the prosecutor, the Court finds no substantial likelihood that the Racial Justice Act was violated. That claim is denied.

As to 745 (a)(3) and 745 (a)(1) the Court finds that those claim fail based on similar conduct requirements. Those claims are denied without prejudice.
Court findings stated on the record.

Matter continued for status.

Hearings
Status Hearing on Petition set for 2/20/2025 at 8:30 AM in Department S20 - SBJC
Defendant ordered to appear.
Status of OSC

9:47AM
Hearing concludes.
CSR to prepare transcript.

== Minute Order Complete ==

Attachment 3: Reporter's Transcript of the Proceedings on 12/12/24.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

Phillip Jones,

Defendant.

CASE NO. WHCSB2400033

CERTIFIED TRANSCRIPT

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS

DEPARTMENT S20, HON. GREGORY S. TAVILL, JUDGE

DECEMBER 12, 2024

APPEARANCES:

For the Plaintiff: OFFICE OF THE DISTRICT ATTORNEY
By: Philip Stemler
Deputy District Attorney

For the Defendant: OFFICE OF THE PUBLIC DEFENDER
By: Colleen Bazdarich
Deputy Public Defender

Reported By: DEANA ASSAD
Official Reporter
CSR NO. 13309

SAN BERNARDINO, CALIFORNIA; THURS., DECEMBER 12, 2024
DEPARTMENT S20 HON. GREGORY S. TAVILL, JUDGE

APPEARANCES:

The Defendant, PHILLIP JONES, with his counsel, COLLEEN BAZDARICH, Deputy Public Defender of the County of San Bernardino; PHILIP STEMLER, Deputy District Attorney of the County of San Bernardino, representing the People of the State of California.

(Deana Assad, Official Reporter, CSR 13309.)

THE COURT: Let's go on the record for Phillip Jones. It's our habeas matter, 2400033. If it wasn't obvious, I've stopped referring to the criminal case number because we're proceeding by habeas, not the criminal case number. So that's why I didn't call the criminal case.

Appearances, please.

MR. STEMLER: Philip Stemler for the respondent.

MS. BAZDARICH: Colleen Bazdarich with the public defender's office for Petitioner. He is present, he's been transported from CDCR.

THE COURT: I assume you both got my order in preparation for the hearing today.

MS. BAZDARICH: Yes, Your Honor.

MR. STEMLER: Yes.

THE COURT: Mr. Stemler, if it wasn't obvious about the burden of proof, it would appear to the Court that the burden of proof under 745 is different than it is by habeas. And this is a Racial Justice Act claim, and my tentative would be to say that the burden of proof under 745 is the burden of proof that applies to this petition, not the general burden that applies to habeas petitions. Are you in agreement with that?

MR. STEMLER: No. And I do have --

THE COURT: You may be heard.

MR. STEMLER: All right. So I think the big picture on the RJA that we're proceeding from is that there's a distinction in the case law now, but also legislatively between final cases, how those are handled, and nonfinal cases.

And also I want to acknowledge the Court for allowing us to argue this issue orally, because it's not one we really briefed. So I really appreciate it.

THE COURT: It's not briefed. And there isn't case authority to tell me what I'm supposed to do. So we're trying to figure it out.

MR. STEMLER: You're right about that. And I do have some case law and some cites to go through if the Court would want.

And this is not my style, but if the Court would want supplemental briefing after we're done, I can do that. And keep it short, too.

THE COURT: We can talk about that. But go ahead.

MR. STEMLER: Okay. So the big thing is looking at -- so that's the big -- the big difference -- and the Court can see that in terms of the subdivision (j) analysis on Penal Code section 745, that's a big one. And also --

THE COURT: But how do you reconcile subdivision (k) with what you're saying? Because that talks about cases in which judgment was entered before.

MR. STEMLER: You --

THE COURT: So that refers to habeas. That's the way I interpret it.

MR. STEMLER: Your Honor, can I pull that up, please?

THE COURT: Yes, sir.

MR. STEMLER: Okay. I have another code section to look at.

So subdivision (k), that's the prejudice subdivision.

THE COURT: Right.

MR. STEMLER: So I think that actually -- I mean, I think the fact that they included a prejudice requirement for final cases, it shows that there is a

legislative intent to treat the final judgments differently than nonfinal. So I think I might have missed what the Court was asking. But I think that kind of supports what I was saying.

THE COURT: Well, what I was referring to is because subdivision (k) is part of 745 and it talks about petitions that are filed in cases in which judgment was entered, that that means 745 applies to cases in which judgment was entered, which then means the prima facie language in (h)(2) also applies to cases in which judgment was entered. That's how I got there.

MR. STEMLER: Oh, okay.

THE COURT: To be candid with counsel, I looked at the legislative history, and there's nothing.

MR. STEMLER: It's true. I agree with you on that. I agree with the Court on that.

Well, I don't -- I respectfully disagree with the Court's take on subdivision (k). And I've got two reasons for that. The first is Penal Code section 1473(c).

THE COURT: Okay.

MR. STEMLER: And looking at that, this subdivision is pretty short. It just says this section does not change the existing procedures for habeas relief. It says "this section." And that includes, of course, subdivision (e), which is the RJA version. The RJA subdivision. Which, of course,

references, you know, 745.

So I think the fact is -- and this goes -- also it's consistent with case law, which is that -- the Court -- the case I cite is People versus Lashon, which is 98 Cal.App.5th 804. And that's the case that held that the RJA did not abrogate, like, general appellate procedure and law. And in this case, they're talking about the forfeiture doctrine.

THE COURT: Right. I know the case. And I'm also generally in agreement with that statement based on the orders issued by the Supreme Court. They're not case authority, but they can be cited as persuasive. They're not published decisions, but they are orders dismissing habeas Racial Justice Act claims. There's several of them. And they apply plain basic habeas procedure to those denials. So I understand what you're saying.

Go ahead.

MR. STEMLER: So I'd look at -- So looking at subdivision (c), and then combined with the Lashon case, I mean, in Lashon, the language, you know, that they cite, they say -- the Court says, "The admission of such language strongly suggests the legislature intended to leave the issues of preservation and forfeiture of claims on direct appeal to be resolved by the courts based on longstanding procedural canons."

And so, that's how the Court has looked at

appellate procedure in the RJA. And I think the same applies for habeas procedure in the RJA. And, you know, and the reason is, first, is subdivision (c) in 1473. And there's simply, as the Court has noticed, there's no corresponding language in 1473 changing the habeas standard as there is in 745, which, you know, subdivision (c) of 745 is very clear that it's talking about -- Let me double check here.

THE COURT: So let me ask you this: Do you know whether subdivision (c) predated the enactment of 745? And was it something that came afterward? In which case, your argument would have a lot of strength. But if it predated 745, the opposite side would be that the legislature messed up by not fixing that.

MR. STEMLER: Or, you know, under the Lashon reasoning, it was intentional.

Well, Your Honor, I'm looking at Westlaw.

THE COURT: Yeah.

MR. STEMLER: And it looks like subdivision (c) was added in the latest version of that statute. So SB97. That was effective January 1st, 2024. So it looks like it was added in the latest amendment to that statute.

But, you know, even if it wasn't, the admission of the relevant language, changing it as to habeas, is indication of legislative intent to treat habeas different than motions in the trial court.

THE COURT: Okay.

MR. STEMLER: And with respect to Penal Code section 745, the prima facie showing is specific to a motion made in the trial court. And that's what that definition in (h)(2) is referring to. That prima facie showing in language in (c), that's the motion in the trial court.

The courts that have looked at this -- and, granted, this wasn't the issue -- but, you know, from a dicta perspective, have agreed that there is a distinction between how a habeas case is handled and an RJA motion. And that would be the Finley case, pages 22 and 23. And in Finley, the Court approved the habeas procedure, approved Duvall, approved all that language, but just said that "Well, this is a motion in the trial court, and there's a different standard under (h)(2)." And, you know, it was very specific about that, and didn't say -- importantly, didn't say that the (h)(2) language carries over to habeas, but really limited it only to a motion under 745.

Young was the same. Although Young didn't go into the standard of, you know, the proper standards as much. Young did recognize the distinction between trial court motion and habeas petition. That's page 148.

And then lastly, I'd point the Court to the Rules of Court, 4.551(c)(1). That left the prima

facie standard for a habeas petition intact. There's no carve-out or exception for an RJA habeas. It's status quo. However, rule 4.551(g)(2) did change the procedure for requiring an evidentiary hearing if the Court issues an OSC.

So, again, that's just more evidence that when the legislature wanted to change the procedure for habeas, they did. And they did it explicitly. And if they wanted to leave it status quo, that's what happened.

So I'm just going through my notes here to make sure I hit everything, Your Honor.

I will add that the concept of a prima facie showing, you know, in 1473, it exists in, you know, the Figueroa case, Duvall, it goes back -- it's established, well established, in habeas what that is and what it means. If the legislature wanted to change that, they could; and they simply didn't in 1473(e).

And, you know, I would say also that, you know, there's some debate in the case law about kind of -- as 745 and RJA general has been interpreted, there's been some debate about: Well, the legislative intent seems to be to give -- at least create an ability for a petitioner to bring a claim as easily as possible. And so, some courts have interpreted the statute that way. But some have not. And they've recognized that the -- kind of the maximalist intent, so to speak,

doesn't really line up with the actual legislation.

On that, Your Honor, that goes back to subdivision (j). When the statute was first enacted in 2021, it was prospective only. And then only in subsequent enactments has it been under, you know, subdivision (j), has there been any provision to apply retroactively. And it was done so in a staggered manner. So clearly the legislature was thinking that: Well we want to the provide the relief, but we want to make sure this is staggered, and it's not just unleashed, so to speak.

And you can see this debate play out in the 745(d) analysis in the Montgomery case and the Serrano case, where we have two courts coming down on different sides on that issue.

I think Montgomery is more persuasive because it's more strict to what the actual statute says and the history of it. Whereas, you know, Serrano is looking at what they view as a legislative intent and saying: Look, you know, we're not going to analyze it as close as Montgomery. We're going to try to interpret it based on what we think the intent was.

So I think that's the landscape on this, Judge. But to sum up my argument on why the regular Duvall standard applies, it's clear that the one thing that is inarguable is the RJA does treat retroactive claims like this and nonfinal claims differently. There's a separate statutory structure on it.

The reasoning of Lashon is persuasive and makes clear that when -- at least on the appellate side -- if the legislature meant to change procedure, they would've done so explicitly. And the admission of it means they meant to keep things status quo. And then you look at the actual habeas statute, and you've got 1473(c) added and effective January 1st, '24. That shows an intent to keep things status quo.

And then, you know, going through all the other detail, it's just more support for that intent, Your Honor.

If the Court has any questions about any of that, I'm happy to answer. I'd like an opportunity to respond, if necessary. And then, of course, the offer is open if the Court would like a brief on that. Because I know I'm not the most organized oral argument guy when we're going through all the statutory stuff, Your Honor.

THE COURT: You did fine.

Ms. Bazdarich?

MS. BAZDARICH: Yes, Your Honor.

As the Court knows, I have just started practicing habeas law this year. So I will give a summary of what I think Figueroa says versus what I think the prima facie standard is in a Racial Justice Act.

It's my understanding, essentially, that the habeas requirements are that the petitioner has the

same standard at the prima facie stage as at the hearing stage except that, of course, like, they have to meet the standard through their pleading, which then they prove at the actual hearing. Whereas the Racial Justice Act requires, just as the Court pointed out, a substantial likelihood at prima facie, whereas the burden becomes a preponderance of the evidence when we actually get to --

THE COURT: I mean, I interpret 745 to be a lesser standard than basic habeas procedure.

MS. BAZDARICH: Yes.

THE COURT: Because under basic habeas procedure under Duvall, the legislature has to allege a right to relief. Under 745, it doesn't. It has to establish a substantial likelihood, which is less than a preponderance, subject to proof based on the burden of proof at evidentiary hearing. But it doesn't have to establish a right to relief, and it certainly doesn't -- 745 -- or, I'm sorry -- yeah, 745 doesn't resolve the burden of proof at the hearing because under 745(k), at least for claims under (a)(1) and (a)(2), the burden shifts to the prosecution.

And so, for basic pleading purposes, does the petitioner have to allege just enough of a substantial likelihood under (a)(1) and (a)(2) without having to allege facts to disprove the prosecution's burden of proof at an evidentiary hearing under 745(k)?

Does it make sense?

MS. BAZDARICH: Yes.
THE COURT: Go ahead.
MS. BAZDARICH: I think so.
So, Your Honor, I believe that the Court should follow the prima facie standard as stated in Penal Code section 745. And there are a couple different reasons that the Court should follow that. First, it is the plain language. The plain language of the statute says what a prima facie burden is. The second is it is in line with legislative intent. And as Mr. Stemler has said some courts may be saying that the legislative intent was too broad, but it fits with the legislative intent as all the case law has supported, which is to remedy the harm to Defendant's case from racial bias and also fix the system, help the system be more just. And that is the legislative intent. And because it is a remedial statute, the Court should interpret the language of the statute in a way that is most beneficial to the defendant or the petitioner.
And, Your Honor, I did look at (k) last night when I was thinking about your question. Because that was added, obviously, after the case. After the law became retroactive. So you have -- in the actual statute, you have language that describes what a prima facie showing is. And the legislature then went and added this (j) section, which tells us that this law now becomes retroactive. If the legislature wanted to

change the -- change what a prima facie standard would be for habeas petitioners, they would've put that in the statute. Because we know that they changed the burden for habeas petitioners, and they added that to the statute.

In terms of looking at 1473(c), it's talking about procedures. It's talking about, as Mr. Stemler noted, there's nothing about what makes a claim -- there is something about forfeiture in there, but basically 1473(c) is saying the general procedures of habeas will apply. It's not saying the burden of proof in a habeas procedure will apply, because the burden of proof is already stated in the statute. It's in the plain language. And the legislature was intending to keep the prima facie standard as it was.

As the Young court went back and looked at it, trying to decide what would make -- what we would -- was it Young? I'm sorry, Your Honor. My head is spinning. But there has been case law that discussed prima facie standard for Racial Justice Act --

THE COURT: That's Finley.

MS. BAZDARICH: Finley. I'm sorry --

THE COURT: -- also. But Finley was the lead.

MS. BAZDARICH: -- and talked about that this is similar to a habeas procedure. And adopted that for cases that bear in front of the trial court.

And so, therefore, we're talking about a remedial statute in which the legislature wanted to

offer avenues to petitioners to present their evidence to the Court so that they could get relief.

And here we have plain language adopted from habeas procedure for both the trial court and for what a petitioner had to prove on habeas. If the legislature wanted to change that, they could have put language in that that would have said under (j), "Actually, we want petitioners to have a higher standard. We want them to have to meet the habeas standard." And they could have put that in there. "But instead, we want them to meet the Figueroa standard," et cetera. But instead, they left the language as is.

THE COURT: I understand.

Mr. Stemler, what do you think? Last word on this issue.

MR. STEMLER: There is a -- I didn't understand my own notes at one point during that argument, Your Honor.

But if you look at 745(c), and this is what I --

THE COURT: I'm looking at it right now.

MR. STEMLER: Sorry. 745(h)(2). It has that same language that we discussed in 1473(c), which says, "For purposes of this section." Right? So 745(h)(2) has a qualifier of -- for that definition of a prima facie showing, it's "for purposes of this section."

And "this section," you know -- "this section" is 745. You go back to 745(c), which is the only place in the whole 745 that the term "prima facie showing" appears, and that's clear that it's talking about a motion in a trial court.

So, you know, I'll talk about the legislative intent issue. It's a canon of statutory interpretation that we don't even get to try to divine the legislative intent unless the plain language of the statute, you know, is just ambiguous or vague or something of that nature.

And, you know, in this case, the legislature has spoken. And they've spoken by omission; which is what Lashon recognized.

But, you know, it's pretty clear that with respect to a motion in the trial court, as Finley recognized, we use the (h)(2) standard. And if they wanted to tweak it in 1473, the legislature could have, but did not. Instead, we have 1473(c) saying, "Hey, we're keeping things status quo." And then, you know -- but they did in 1473(e) have specific tweaks from the RJA, you know? They did have those specific tweaks. They're reflected in the Rules of Court now. But they didn't include anything with respect to a different prima facie showing. And having the regular Figueroa/Duvall standard for a prima facie showing in habeas is actually consistent with how the legislature has treated retroactive

claims on final cases in the RJA. It's a different procedure, you have to go to habeas.

Clearly the actual structure of this statute, it shows the legislative intent to actually -- and also adding on subdivision (k) for a showing of prejudice, it shows that the legislature is treating these retroactive claims as requiring more of these petitioners than it is for motions in the trial court.

I think that's a recognition that, you know, cases -- you know, number one, it's a recognition of what this statute does to the concept of finality, you know, of our judgments in our criminal system. Right? It's a recognition of that. It's a recognition of the workload that this entails. Although, you know, the workload issue is, you know, subordinated.

THE COURT: I'm familiar with the workload issue.

MR. STEMLER: Yeah. No one seems to really care about that; but it is an issue.

But, you know, it's basically -- I think the way the statute is structured, it's a recognition that, you know, kind of the maximalist demands, at least with respect to retroactive application, has to yield to these concepts of, you know, finality that we're dealing with.

So --

THE COURT: Let me rule. Okay?

MR. STEMLER: Thank you.

THE COURT: I'm familiar with Lashon. It's L-a-s-h-o-n for the court reporter.

And the issue in that case, forfeiture, is an issue that isn't addressed or discussed in any way in either 1473 or 745. So I can easily see how that Court got to the decision they got to, which in habeas procedure, is a lot like the Seaton decision. If you can do it in the trial court, you can't do it in the Court of Appeal, and you can't do it on habeas.

And so, forfeiture really recognizes the rule of Seaton. It's not really a whole lot different than that.

I agree that if the language of the statute is clear and unambiguous, the plain language controls. But the plain language you're looking at in this section does not change the existing procedures for habeas relief is ambiguous about the burden of proof. It doesn't say anything about that. And how do we know that the legislature isn't referring to the petition, informal response, reply, order to show cause, return, or denial process as the procedure. There's a good argument that that's what they're talking about; it has nothing to do with the burden of proof. And given that, in the view of this Court, it is ambiguous.

I'm also -- this is where I got to when we

started -- 1473(e) incorporates 745. It's plain. It's in there. If you go to 745, you've got the lower standard.

So in terms of a ruling, that's what I think applies. I think the 745(h)(2) standard is what's required for a prima facie showing before an order to show cause can issue.

So that takes us to the next step in our discussion today.

Counsel, please approach.

Let's go off the record for a second.

(Whereupon, a discussion was held off the record at sidebar.)

THE COURT: Let's return to Mr. Jones.

I have indicated some tentative analysis about (a)(1), (a)(2), (a)(3), and (a)(4) claims at the bench. I did ask the parties if they could try to resolve the case informally without the Court. I've been informed, at least informally, that that can't happen. So let's go forward with our hearing.

With the standard in terms of what's needed for our prima facie case, I'm going to give some tentatives.

The tentative is that the petition does allege a claim under 745(a)(1) for the comments made by the trial court, allegedly. We have, at least what appears to me, to be fact questions about what was said and what the meanings were. But that's subject

to a hearing on evidence; that's not subject to being resolved at the prima facie stage.

I think there is a prima facie claim alleged as to 745(a)(2) specifically as to counsel and the actions of counsel and the argument of implicit bias. Certainly subject to being resolved at an evidentiary hearing. But in terms of the prima facie, I think it's there in the petition.

In terms of the peremptory challenges by the People under 745(a)(2), the tentative would be to deny that. That was litigated at length and resolved by the trial court at the time of the Batson and Wheeler. And I don't have any new facts to indicate that there was any impropriety in that process.

The 745(a)(3) I denied in the initial order. And the tentative would be to reconsider that for argument purposes; give everybody a chance to be heard before we make a definitive ruling. Same thing on 745(a)(4). It was not denied before, but it kind of raises the same issues.

And, Ms. Bazdarich, I don't really understand Exhibit 5 to the petition. If you can maybe explain that as part of your discussion.

And for both sides, the 745(a)(3) claim and the 745(a)(4) claim, I'm curious to know what the contention is as to the evidence for the second half of the statute. "The prosecution more frequently sought or obtained convictions for more serious

offenses against people who shared Defendant's race." That would be under (a)(3). And for (a)(4), "Longer or more severe sentences were more frequently imposed for that offense on people that share Defendant's race." There is a clear idea of what would be good enough under Mosby, and that's statistical data that they had in Mosby that I don't have. At least I don't think I have it. So that's the discussion for those.

The similar conduct/similarly situated language matters. And that's clearly where I was focused at the time of the initial order. So that's subject for discussion also.

So, Ms. Bazdarich, you have the burden at the pleading stage. Why don't you go first.

MS. BAZDARICH: Your Honor, would you like me to address (a)(1) and (a)(2)? Or should I assume that I can respond to any argument that the People make in regards to those?

THE COURT: Certainly if you want to respond to the People and save it for that, that's fine with me.

MS. BAZDARICH: Okay.

THE COURT: If there's something I may be missing that might support (a)(1) and (a)(2), I don't want to cut you short, but I don't need it right now.

MS. BAZDARICH: Okay. I would actually like to just briefly address (a)(2). The strike of the

jurors.

And as I had briefed in my informal briefing, I just want to talk about the burden under 745(a). And as Young points out, what (a)(1), (a)(2), (a)(3), and (a)(4) are, are different kinds of evidence that can be used to prove a violation of 745(a). So I do think that I should still be able to present all this evidence at the evidentiary hearing because it is my understanding of the Court's opinion in Young that we're not actually about four different claims; that actually there's one claim, and that all the evidence combined together can prove that bias affected a petitioner's case.

So that's what I will just say about that, in terms of -- especially with the juror strikes.

We have strikes to the jurors that were -- the stated reason for those strikes are now legally considered presumptively invalid. So, again, more evidence to show that there was bias involved in the prosecution of Mr. Jones's case.

That's what I would say in terms of all that evidence.

And also in terms of (a)(3) and (a)(4), I would ask the Court to consider that even if the Court finds that at this point there's maybe not enough for a claim under those, that actually, again, all this evidence is to prove a claim under 745(a) rather than to meet some kind of burden under each of

(a)(1) through (a)(4).

In terms of the Court's ruling about (a)(3). My understanding was that the Court was using the Mosby opinion to say that I had not proved similarly situated. But it sounds like the Court is actually saying it more has to do with the statistical proof.

THE COURT: It's both.

MS. BAZDARICH: Okay.

THE COURT: Clearly when I wrote the order, I was talking about the similarly situated/similar conduct.

MS. BAZDARICH: Right.

THE COURT: In preparation for this hearing, and studying Mosby at length, and more than I have before, I think you have an issue with the second half of the sentence -- the second requirement for each of those claims.

MS. BAZDARICH: In terms of the statistics, as I have pointed out in my informal briefing, counsel -- even Mr. Jones as a petitioner, who has been appointed counsel -- we still have very limited resources for which we can make a claim. We have no subpoena power, we have no discovery power, we have no way of gaining the kind of evidence that the People hold. So I have to make a statistical claim based on evidence available to the public.

I was able to find data from the CDCR that shows that -- let me see. I'm sorry. For section 3.

I was able to go through the court's website and find that for the 644 cases identified under robbery charges from 1990 to 1999, the cases that are available on the court's website -- and as the Court may know, the superior court has not uploaded all the records from those cases to the court's website. So there are certain cases available on the court's website. It's a limited amount of cases. As far as I can tell, there are 644 of them from the years 1990 to 1999 involving robbery. And 259 of those cases involved a defendant who was black, whereas only 135 of those defendants were white. And that is in stark contrast to the fact that at the time, the county population was only 8 percent black. So there is quite a stark disparity in the data available to me from the court's website.

I also -- We also went --

THE COURT: I would say this: Are you familiar with the Armstrong case? Because I think it was cited.

MS. BAZDARICH: Yes, Your Honor.

THE COURT: Because I think that argument has the Armstrong problem with it.

MS. BAZDARICH: Okay.

THE COURT: The population data doesn't say anything about his committing crimes. So that's an issue for this case. That's the way I saw it.

Go ahead.

MS. BAZDARICH: So, Your Honor, it is my understanding that the legislature, when passing this law, was trying to change standards like the Armstrong standard, like the McCleskey standard. It was that we need to make these cases available to petitioners. We need to allow people to actually have a legitimate availability to make this kind of an argument.

And as the Court was saying, McCleskey, and in Armstrong, et cetera, it's nearly impossible to make that kind of a claim based on those standards from the information available to the public. And, again, we don't have discovery, we don't have subpoena. We have what we have, which is the court's website.

I, as a public defender, am not allowed to go into public defender files. I'm not allowed to do that. It has to do with privacy.

THE COURT: How interesting. Okay.

MS. BAZDARICH: And so, I can only base my findings on what is available to the public.

And, again, if I were a private counsel, even if I was allowed to go into -- to get my files from the public defender's office, which I'm absolutely not, I'm not even allowed to open old files, private attorneys wouldn't be able to meet that standard because they wouldn't have a database like the public defender has. So we have what's available on the court's website and what we can find from the CDCR,

et cetera.

So I made my standard based on reasonably available documentary evidence.

And then with the Court, what the Mosby case says is statistical evidence may sometimes be enough. It's probably usually not enough is what Mosby seems to say. There may be a situation where it is. They don't really say when that situation would be, but they say it's not enough here. And so, you have to also show us similarly-situated people.

In that case, Mosby had a pending -- his case was still pending. It was not -- the judgment was not final. So he had discovery availability, he had subpoena power, et cetera. He was able to gather the kind of police reports, et cetera, that we just don't have the power to do in this situation that we're in. And --

THE COURT: And the size and scope of the data set was much, much smaller.

MS. BAZDARICH: Agreed, Your Honor.

So I -- we, as counsel -- went through the court's website, we found, to the best of our ability, similarly-situated defendants. In Mosby, the Court said they were similarly situated because some of them were drive-by shootings, et cetera. Here I have presented young white men who were charged with multiple armed robbery, for the most part. Some of them had multiple robbery, some of them had armed

robbery. A lot of them had multiple armed robbery. And they were not given a 40-year sentence. In fact, they were all allowed to plead in a way that -- to sentences that were much lower than any kind of offer that was ever given to Mr. Jones.

So I believe that we've met our standard under (a)(3) based on reasonably available documentary evidence available to the public to a petitioner in the situation that we are in.

In terms of (a)(4), we have also met that standard in that we have shown statistical evidence from CDCR that tend to show that nearly half of the population serving a prison sentence out of our county for robbery are black. Then we also have presented these similarly-situated people were also being tried around the same time as Mr. Jones being tried for similar crimes. And they were similarly situated in that they were in San Bernardino county, they were close in age, it was around the same time period, and they received sentences for robbery, armed robbery, et cetera, that were lower than Mr. Jones's sentence.

The People have said that we can only show people who comitted armed bank robbery and who went to trial. And I don't think that's the standard at all. In fact, Mosby had said by no means do we have to prove identical facts.

And, again, we have no way of finding out who

comitted a bank robbery. There's no separate bank robbery statute. There is one case on page 36, FVI00398. That man was charged with a 211 with a firearm, and then there was this strange enhancement that was called serious felony robbery, bank robbery, under 1192.7(c)19. I don't know if -- that was as far as I know. I don't believe that enhancement still exists. But it could've been a bank robbery. We don't know, because we don't have access to discovery; we only have access to what's available to us on the court's website, and that is how we can make our prima facie showing.

And if the standard becomes higher, then, essentially, anyone becomes precluded from making any kind of a showing because we don't have any ability to find the kind of data that the People want us to be able to present.

THE COURT: Thank you.

MR. STEMLER: I'll start with --

THE COURT: As efficiently as you can be in your presentation. Go ahead.

MR. STEMLER: I'll start with (a)(3) and (a)(4).

Your Honor, just because Counsel couldn't figure out how to get the facts of similarly-situated individuals who comitted similar conduct before the Court, it doesn't mean that we should depart from Mosby.

If the Court's, you know, studied Mosby, the Court's -- and I know the Court has. The Court's familiar with what the standard is, that was announced on page 132, that opinion, which is that if there's statistical evidence showing a charging disparity and evidence of nonminority defendants who engage in similar conduct and are similarly situated but were charged with lesser crimes, that's sufficient.

And, you know, going back to the substantial likelihood standard the Court announced, I mean, we still need to have some evidence as to each element of these violations, Your Honor, to go forward on it. It doesn't mean that we can just proceed with an absence of evidence and just assume it. And that's the problem with the (a)(3) and the (a)(4) claim is we don't know any of the facts on any of these cases, and it's not our job as the respondent to provide them at this stage; the burden is on the petitioner. And it's not my job to coach the petitioner where to go find that information or how to do it. But it's their job to put it before the Court so the Court can analyze it and go, "Well, gee. Were there a bunch of other individuals who robbed banks, who chose to go to trial, rejected a 20-year offer, or some offer, and got lesser sentences?" And they haven't been able to do that for the Court to confidently say, for at least a prima facie level, to say a case has been

made.

So I would ask the Court to outright deny the (a)(3) and (a)(4) claims.

I agree with the Court's tentative on the denying the jury selection-related claim. But I do have a question on what the Court referred to as the (a)(2) claim. The Court called it an (a)(2) claim, but referred to it as counsel's --

THE COURT: The complaints about counsel.

MR. STEMLER: Counsel's actions.

THE COURT: Yeah. The complaints about trial counsel.

MR. STEMLER: So --

THE COURT: And there's a lot of them. But that's the allegation, is that there was implicit bias by trial counsel who didn't do what he was supposed to do. Or certainly the clothing issue is one that he did do something specific. And the argument is that there was implicit bias as a basis for him not doing better.

MR. STEMLER: So --

THE COURT: And that's the way I understand the claim.

MR. STEMLER: And that's what I thought as well. The reason I bring it up is (a)(2) is specific to the use of racially discriminatory language.

THE COURT: So it should be (a)(1). My mistake.

MR. STEMLER: I'm thinking, yeah. So we're on the same page.

And this goes also to the judge's alleged comment. Goes back to this, too. This argument really covers both.

THE COURT: Actually, in my notes, I had 745(a), and then I had the parentheses, and the parentheses were blank. So thank you for helping me with that.

MR. STEMLER: We're on the same page then. Good.

So I think, going back to the standard, substantial likelihood. That means that we're not here to fill in the blanks on the elements. And when you look at (a)(1), there's really three. You know, number one, like an individual, specified individual, in the case; two, exhibited bias or animus; and three, that the exhibition of bias or animus was because of the race or ethnicity or national origin of the particular defendant. And element three is lacking.

THE COURT: But the language, at least for the judge, 745(a)(1): Heinous, evil, societally unforgivable, monsters. It was a bank robbery where nobody got hurt. We've seen heinous, evil, and societally unforgivable crimes, but that's pretty expansive language for what actually happened in the case.

So that's why in terms of alleging a prima facie claim, without deciding whether the claim is proved, but is there a prima facie claim so that we should have an evidentiary hearing? That's where the Court is coming from.

MR. STEMLER: I think -- Well, you know, when we look at it, would the judge have said that if it was a white defendant or a Hispanic or some other race? You know. Because that's really the question that gets asked. Is it but for the defendant's race that the Court referred to the evidence that way? What do we have on that? You know. And when I look at the --

THE COURT: But that's indicative of a hearing. That's what that means.

MR. STEMLER: Well, look at the Bonds case from San Diego. The implicit bias case.

THE COURT: I know.

MR. STEMLER: But I think the distinction there between that one and this one is there's actually an action taken by the police officer pulling this person over that the Court could arguably say was just based on an implicit bias; because of the hoodie, because of what the Court viewed as, like, the irregularities with the traffic stop. But in this case, we just -- we don't have that X factor that really shows some tinkling of evidence on the "because of" element.

THE COURT: Understood.

MR. STEMLER: And I know where the Court is going with this. But, you know, we disagree.

THE COURT: All right. Anything further? Because I'm running out of time.

MS. BAZDARICH: I was going to address the statement about what would've -- how would a white person have been sentenced in this.

THE COURT: No need.

MS. BAZDARICH: Okay. Then I submit, Your Honor.

THE COURT: The Court will find a prima facie case, and issue an order to show cause as to 745(a)(1), the comments by the judge, 745(a)(1), the actions and inactions of trial counsel.

As to the peremptory challenges by the prosecutor, the Court finds there is no substantial likelihood that the Racial Justice Act was violated. That claim is denied.

Under 745(a)(3) and 745(a)(4), I think both of those claims failed based on the similarly situated/similar conduct requirements and because of the second half of each of those sections. So those are respectfully denied.

I don't want to prejudge the available discovery on those claims, because I am sensitive to the petitioner's inability to develop the data that they need to allege the claim under (a)(3) and (a)(4).

There is some ambiguity right now in the case law about what can be pursued for discovery purposes before a claim is alleged. I am well aware that that remains an issue. And so, I'm not prejudging whether or not discovery can be pursued to try to reallege those claims in the future. So those are denied in a sense, without prejudice.

MS. BAZDARICH: Can I ask the Court a question?

THE COURT: Yes.

MS. BAZDARICH: If I were to file a 745 discovery motion, should I file it in this court, or should I file it in the original trial court?

THE COURT: I think it has to be in this court because the proceeding is in this court.

MS. BAZDARICH: I would agree with that.

THE COURT: I used to think differently. But the case law appears clear to me that the discovery has to attach to the pending case, not to the closed case.

MS. BAZDARICH: Okay.

THE COURT: All right. So that's the ruling. And thank you both for a good presentation. I'm grateful for your help.

And in terms of the rules of court, that will determine the timing for the return and the denial.

And, Mr. Jones, do you want to be here for that, or do you want to go back to state prison and I can bring you back when we need you? It's up to you.

THE DEFENDANT: Can you let me know when we'd be coming back?

THE COURT: The DA has -- How many days do you have for your return? 30 days? Plus extensions, which always seems to happen in these cases. And another 30 days for your lawyer to file. So it's probably -- realistically, it's at least 90 days before you would be back here. Unless there's a motion for discovery. But if you want to be here for that, I certainly would keep you. In terms of discovery motion, I'm not sure your presence would be necessary for the Court. It's only whether you want to be here. And up to you and your counsel what you want to do if I give you a new date. Then you'll be here if you want to.

MS. BAZDARICH: Your Honor, I think he does want to stay local.

THE COURT: Okay. Next date is February the 20th. Defendant is ordered to return. Petitioner ordered to return February 20th.

MS. BAZDARICH: Thank you, Your Honor.

THE COURT: We'll check on the status between now and then. If there's motions filed between now and then, just let us know. We can do a transportation order to get him here.

MS. BAZDARICH: Thank you, Your Honor.

THE COURT: Thank you, everybody.

So it's clear, I'm going to order a transcript

of the ruling. That will be the ruling that will constitute the written record in terms of what the ruling is.

MS. BAZDARICH: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DEPARTMENT S20 HON. GREGORY S. TAVILL, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

Phillip Jones,

Defendant.

CASE NO. WHCSB2400033

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I, Deana Assad, Official Reporter for the Superior Court of the State of California, for the County of San Bernardino, do hereby certify that the foregoing pages, 2 through 36, to the best of my knowledge and belief, comprise a full, true, and correct computer-aided transcript of the proceedings taken in the matter of the above-entitled cause held on December 12, 2024.

Dated this 20th day of December, 2024.

DEANA ASSAD
CSR NO. 13309

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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San Bernardino District Attorney
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