

Name Jerry Rutherford
Address C19059 3N9
San Quentin State Prison
San Quentin, Calif. 94974
CDC or ID Number C-19059

FILED

MAY 26 2004

JOHN P. MONTGOMERY,
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. GARDNER, Deputy

A. Hardin

Superior Court of California
County of Marin
(Court)

Jerry Rutherford
Petitioner
vs.
Margarita Perez B.P.T. Chairman
Jill Brown Warden San Quentin
Respondent(s)

PETITION FOR WRIT OF HABEAS CORPUS

No. Sc 135399A
(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.
- If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- 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 Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

This petition concerns:

- A conviction
- Parole
- A sentence
- Credits
- Jail or prison conditions
- Prison discipline

Other (specify): Failure to hold timely lifer parole hearing

1. Your name: Jerry Rutherford
2. Where are you incarcerated? San Quentin State Prison
3. Why are you in custody? Criminal Conviction Civil Commitment

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").

Kidnap / robbery

b. Penal or other code sections: P.C. 209 (b)

c. Name and location of sentencing or committing court: Fresno County Superior Court

d. Case number: _____

e. Date convicted or committed: 5/80

f. Date sentenced: 6/80

g. Length of sentence: 7 years plus life

h. When do you expect to be released? overdue

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

Katherine Hart, The Barrister Building
800 N street, Fresno, Calif. 93721

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.)

I am overdue for calendaring of my subsequent parole hearing. The 2-25-03 panel denied me for 1 year. I have not been scheduled and am not on the June, 2004 calendar. The failure to timely schedule me violates P.C. 3041.5(b)(2). The court should order a hearing immediately.

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.)

In my 2-25-03 hearing the panel denied me for 1 year. (Exh. "A"). Although there is a June, 2004 BPT calendar for San Quentin, I am not on it. My counselor (Mr. Kemp) has told me that I have not been scheduled. P.C. 3041.5(b)(2) states that my subsequent hearing shall be scheduled "not later than" my 1 year denial. I am thus being held in prison absent any form for parole -- a total denial of due process of law.

The Court should order an immediate parole hearing

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.)

P.C. 3041.5(b)(2). *In re Rutherford Marin No. SC118989A* (Order of 4-25-01, Exh. "C")

7. Ground 2 or Ground _____ (if applicable):

N/A

a. Supporting facts:

N/A

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? Yes. No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

Calif. Court of Appeal

b. Result: Denied

c. Date of decision: unk.

d. Case number or citation of opinion, if known: unk.

e. Issues raised: (1) N/A here

(2) _____

(3) _____

f. Were you represented by counsel on appeal? Yes. No. If yes, state the attorney's name and address, if known:

unk.

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:

N/A

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

I interviewed with my counselor.

I sent in a request for interview to The C+P.R.

My wife wrote to the Board of Prison Terms (Exh. "B")

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: Fresno County Superior Court

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas corpus petition

(3) Issues raised: (a) unlawful sentence

(b) _____

(4) Result (Attach order or explain why unavailable): Denied (lost paperwork)

(5) Date of decision: unk.

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:
N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)
N/A

16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes. No. If yes, explain:

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

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: May 23, 2004

Jerry Rutherford
(SIGNATURE OF PETITIONER)

(Exh 1)

LIFE PRISONER DECISION FACE SHEET

PERIOD OF CONFINEMENT

(RECORDS OFFICER USE ONLY)

	YR	MO	DAY
Adjusted Period of Confinement			
Date Life Terms Begins	+		
At Large Time	+		
PAROLE DATE	=		

MISCELLANEOUS

1 YR DENIAL
 PT PANEL ORDERS NEW
 SYCHE RPT (BPT FORM
 1000 A)

Panel Recommendations and Requests:

Become Remain Disciplinary Free.
 Work Towards Reducing His/Her Custody Level.
 Upgrade Vocationally Educationally.
 Participate In Self-Help (and) Therapy.
 Transfer To Cat. X Cat. T.

PENAL CODE SECTION 3042 NOTICES SENT (Date) 01-10-03

COMMITMENT OFFENSE

209 (Code Section)	KIDNAP FOR ROBBERY (Title)
251968-4 (Case Number)	1 (Count Number)

Date Received by CDC 07-22-80	DATE LIFE TERM BEGINS 04-10-84	Controlling MEPD 04-10-91
Type of Hearing <input type="checkbox"/> INITIAL <input checked="" type="checkbox"/> SUBSEQUENT (Hearing No.) 8		If Subsequent Hearing, Date of Last Hearing 02-28-02

Department Representative

Counsel for Prisoner JOHN STRINGER	Address
District Attorney Representative DON PENNER	County FRESNO

PAROLE HEARING CALENDAR

This form and the panel's statement at the conclusion of the hearing constitute a proposed decision and order of the Board of Prison Terms. The decision becomes effective when issued following the decision review process.

By:

Presiding (Name) <i>Jes Munoz</i>	Date 2/25/03
Concurring (Name) <i>Thomas Webb</i>	Date
Concurring (Name)	Date

NAME	CDC NUMBER	INSTITUTION	CALENDAR	HEARING DATE
RUTHERFORD, JERRY BPT 1001 (Rev. 1/91)	C-19059	SAN QUENTIN	SUBSEQUENT	02-25-03

(EXHIBIT)

FILED

APR 25 2001

JOHN P. MONTGOMERY,
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: *Simmons, Deputy*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

In the Matter of the Application of:
JERRY RUTHERFORD (#C-19059),

Petitioner,

for a Writ of *Habeas Corpus*

Case No.: SC118989A

ORDER RE PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner herein is confined at San Quentin State Prison, having been sentenced to a term of seven years to life.

In this, his most recent petition for a writ of *habeas corpus*,¹ Petitioner contends that he is overdue for his next parole hearing. On March 3, 1999, the Board of Prison Terms (hereinafter, "the Board") denied him parole for two years. Under the language of Penal Code §3041.5(b)(2), Petitioner was entitled to have his next hearing no later than March 3, 2001. Apparently that hearing has not taken place, nor has it been scheduled. Therefore, this court concludes that the Board is slightly in violation of the requirements of Penal Code §3041.5(b)(2).

The Board is ordered to convene Petitioner's next biennial parole hearing within 120 days from the date of this order.

The petition also claims that Petitioner should immediately be released from custody because he should have been found suitable for parole at his last hearing in

¹ Petitioner's previous petition in this county (SC112685A) was denied.

1 March, 1999. This claim was denied by order filed February 28, 2000, in Marin County
2 Superior Court Action Number SC112685A, and that order is final.

3
4 Dated: April 25, 2001

Verna A. Adams
Verna A. Adams
Judge of the Superior Court

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7 cc: Petitioner
8 Warden
9 Attorney General
10 Marin County District Attorney

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