IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S240153

In re ANTHONY COOK
on Habeas Corpus.

Court of Appeal of California
Fourth District, Division Three
G050907

Superior Court of California
San Bernardino County
WHCSS1400290
Hon. Katrina West

Answer to Petition for Review

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By Appointment of the Court of Appeal
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ANSWER TO PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Comes now ANTHONY COOK, habeas petitioner in the court below, in Answer to the Petition for Review filed February 21, 2017, by respondent People of the State of California. The State seeks review of the decision of the Court of Appeal, Fourth Appellate District, Division Two, filed and certified for publication on April 16, 2009. That decision granted relief on Cook's petition for writ of habeas corpus. The petition for review should be denied for the reasons stated below.

QUESTION PRESENTED

Whether the remedy of a limited trial court proceeding to preserve evidence for use at a future youth offender parole hearing, as ordered on direct appeal in *People v. Franklin* (2016) 63 Cal.4th 261, is available to a habeas corpus petitioner whose conviction is already final.

ARGUMENT

I. THE COURT SHOULD DENY THE STATE'S PETITION FOR REVIEW.

The State asserts that "[r]eview is necessary in this case to provide statewide guidance on the question whether the remedy ordered on direct appeal in *Franklin* ... is available to habeas

petitioners whose convictions are already final." (Petition 8.) Review is not necessary to provide such guidance, however, for the published Court of Appeal opinion at issue here adequately serves that purpose. Notably, there is no conflicting or opposing decision on this question that might otherwise require this Court's guidance to the lower courts. Typically, this Court grants review of a decision by a Court of Appeal only "[w]hen necessary to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, rule 8.500, subd. (b)(1).) The State shows no such necessity here. To the contrary, the State submits only that "it is not clear the result it reached was the correct one." (Petition 8.) But it is clear enough not to trouble this Court with review of it.

The State seeks to show "it is not clear that the Court of Appeal reached the right result" by emphasizing that "[o]n direct appeal, a reviewing court has broad powers to 'remand the cause to the trial court for such further proceedings as may be just under the circumstances'" (Petition 8, quoting Pen. Code, § 1260), and asserting that "[a] court's habeas power ... is much more constrained." (Petition 8.) The State's purported distinction here between relief on direct appeal and relief on habeas fails, for Penal Code section 1484 vests a habeas court with equally broad power to fashion an effective remedy. That section authorizes the court in a habeas proceeding "to dispose of such party as the justice of the case may require ...." "The Penal Code thus contemplates that a court, faced with a meritorious petition for a writ of habeas corpus, should consider factors of justice and equity when crafting an appropriate remedy." (*In re Harris* (1993) 5 Cal.4th 813, 850; see also *In re Crow* (1971) 4 Cal.3d 613,

619–20 ["Inherent in the power to issue the writ of habeas corpus is the power to fashion a remedy for the deprivation of any fundamental right which is cognizable in habeas corpus."].) The Court of Appeal was expressly mindful of its habeas power when it determined that "[t]he appropriate remedy ... is to remand the matter to the trial court with directions to conduct a hearing at which Petitioner will have the opportunity to make such a record [as contemplated by *Franklin*]." (Typ. opn. 8, citing *Crow* and *Harris*.)

The cases that the State cites to make its argument serve only to undermine it. For example, the State illustrates the power of a court on direct appeal to fashion appropriate relief on remand with the following quote from *People v. Rodriguez* (1998) 17 Cal.4th 253, 258: "A reviewing court has the power, when the trial court has made a mistake in sentencing, to remand with directions that do not inevitably require all of the procedural steps involved in arraignment for judgment and sentencing." (Petition 8, brackets in quote deleted.) But no one would suggest that a habeas court does not have similar power and flexibility in ordering relief from sentencing error. Indeed, the *Rodriguez* court noted that its "disposition ... is consistent with *In re Cortez* (1971) 6 Cal.3d 78, in which we held that a defendant who had been sentenced under a statute that unconstitutionally restricted sentencing discretion was entitled to a new hearing before the sentencing court at which he would be present and represented by counsel." (*Id.* at p. 260, fn. 5.)

Likewise, the State's quotation of *People v. Villa* (2009) 45 Cal.4th 1063, 1068–1069, that "the writ of habeas corpus does not afford an all-inclusive remedy available at all times as a matter

of right" (Petition 13) does not serve to show that a habeas corpus court has a lesser remedial power than a court on direct appeal. Rather, a direct appeal also does not afford "an all-inclusive remedy available at all times as a matter of right." Indeed, what *Villa* elsewhere said about the writ of habeas corpus is what has special relevance here, to wit:

> The writ of habeas corpus enjoys an extremely important place in the history of this state and this nation. Often termed the "Great Writ," it "has been justifiably lauded as "'the safe-guard and the palladium of our liberties'"" [citation] and was considered by the founders of this country as the "highest safeguard of liberty" [citation]. As befits its elevated position in the universe of American law, the availability the writ of habeas corpus to inquire into an allegedly improper detention is granted express protection in both the United States and California Constitutions. (U.S. Const., art. I, § 9, cl. 2; Cal. Const., art. I, § 11.) In this state, availability of the writ of habeas corpus is implemented by Penal Code section 1473, subdivision (a), which provides: "Every person unlawfully *imprisoned or restrained* of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."

(*People v. Villa, supra*, 45 Cal. at p. 1068, italics added in *Villa*.)

As the United States Supreme Court has stated about the federal counterpart of our writ:

> [C]ommon-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances. See 3 Blackstone [Commentaries] *131 (describing habeas as "the great and efficacious writ, in all manner of

> illegal confinement"); see also *Schlup v. Delo*, 513 U.S. 298, 319, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995) (Habeas "is, at its core, an equitable remedy"); *Jones v. Cunningham*, 371 U.S. 236, 243, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963) (Habeas is not "a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose").

(*Boumediene v. Bush* (2008) 128 S.Ct. 2229, 2267.) In sum, "[t]he very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." (*Harris v. Nelson* (1969) 394 U.S. 286, 290–291.)

In this regard, the power of a habeas court to redress wrongful restraint is at its greatest when it is confronted with the potential of wrongful imprisonment, for relief from the grave and irreparable injury of wrongful imprisonment is the animating force of the writ of habeas corpus:

> [The] Great Writ['s] ... function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.

(*Fay v. Noia* (1963) 372 U.S. 391, 401–402 [83 S.Ct. 822]; see also *Hamdi v. Rumsfield* (2004) 542 U.S. 507, 529 *(plurality opinion)* ["most elemental" of liberties protected by the Due Process Clause is "the interest in being free from physical detention by

one's own government"]; *Foucha v. Louisiana* (1992) 504 U.S. 71, 80 ["Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause"].)

Given these considerations, the writ unquestionably lies to ensure fair and informed decisionmaking in the matter of parole. (See, e.g., *In re Prewitt* (1972) 8 Cal.3d 470 [mandating procedural protections against rescission of parole]; *In re Lawrence* (2008) 44 Cal.4th 1181, 1206 [some evidence must support denial of parole]; *In re J.G.* (2009) 159 Cal.App.4th 1056, 1067 [prisoner entitled to personal appearance at parole hearing].) It is precisely the right to a fair and informed decision on parole for a youthful offender that *Franklin* vindicates through its finding of entitlement to make a record in the trial court of the attributes of youth that favor a grant of parole. (See *People v. Franklin*, *supra*, 63 Cal.4th at p. 284 ["The goal of any such proceeding is to provide an opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to 'give great weight to' youth-related factors (Pen. Code, § 4801) in determining whether the offender is 'fit to rejoin society' despite having committed a serious crime "while he was a child in the eyes of the law' [citation]."].)

The State does not take issue with the Court of Appeal's central point that "*Franklin* ... holds that a defendant has the right at the time of sentencing to present evidence and make a record of information that may be relevant at his or her eventual youth offender parole hearing." (Typ. opn. 8.) Indeed, the State admits as much: "[T]his Court stated in *Franklin* that a juvenile

should have the opportunity to make a record within the evidentiary confines of a sentencing hearing" of matters relevant to a youth offender parole hearing. (Typ. 14.) The State's professed bewilderment concerning the source of that right causes it to conclude that "[t]here is therefore no clear legal basis for ordering a *Franklin* hearing on collateral review" (typ. opn. 15), but that conclusion does not logically follow from its bewilderment. Whether on direct or collateral review, the legal basis for the relief at issue here is the same: A defendant's entitlement to present at sentencing mitigating factors about his offense that may meaningly inform a parole board's later determinations. Thus, "the familiar maxim of the law that where there is a right there is a remedy, *ubi jus ibi remedium*, is applicable to the case." (*Blumberg v. Birch* (1893) 99 Cal. 416, 418.) Nowhere is that venerable maxim truer than on habeas corpus when that right impacts one's liberty. The Court of Appeal's observation that "Respondent takes an overly narrow view of the scope of the writ of habeas corpus" (typ. opn. 7) thus adequately sums up the shortcoming in the State's argument here.

Finally, the State offers various speculative scenarios, centered around the potentially longer interval between sentencing and relief that may be involved on habeas compared to appeal, in decrying the fact that "[t]he Court of Appeal's decision ... opens the door to *Franklin* remands in all habeas cases." (Petition 15.) But any need to determine how far the door may swing is better left for determination by later cases, where the issue will be framed by specific facts, than by an advisory opinion of this Court based on conjecture and speculation that

may never ripen into fact. What is certain, rather than speculative, is precisely what the Court of Appeal found in concluding its decision thusly:

> [W]hen the court in *Franklin* remanded the matter for a determination whether the defendant had had the opportunity to make a record of youth-related factors, it did so with the knowledge and understanding that such determination and any evidentiary hearing would be conducted more than four years after the date of original sentencing.
>
> As explained in *Franklin*, *supra*, 63 Cal.4th at page 269, the criteria for parole suitability in Penal Code sections 3051 and 4801 "contemplate that the Board's decisionmaking at the defendant's eventual parole hearing will be informed by youth-related factors, such as his cognitive ability, character, and social and family background at the time of the offense." It would be most effective to make a record of those youth-related factors as near in time as possible to the date of original sentencing. Nine years after original sentencing is far from ideal, but it is better than the 15th, 20th, or 25th year of incarceration, which are the possible times for the youth offender parole hearing. [Citations.]

(Typ. opn. 9.)

In sum, the same right at issue on both direct appeal and habeas mandates the same remedy for both. This Court's concern that a record of evidence of youth that may reduce the juvenile's culpability be made in the trial court for later consideration by a parole board mandated its remand order in *Franklin* on direct

appeal. That same concern makes appropriate similar relief here that requires trial court development of the mitigating evidence of Cook's youth.

CONCLUSION

For these reasons, the Court should deny the State's petition for review.

Law Office of Michael Satris

Respectfully submitted,

Dated: March 8, 2017

By: _____

Michael Satris

Attorney for Petitioner

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **2,184** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.504(d) or by Order of this Court.

Dated: March 8, 2017

Law Office of Michael Satris

By: _____

Michael Satris

Attorney for Petitioner

Case Name: *In re Cook*
No.: S250143

PROOF OF SERVICE BY MAIL
(Cal. Rules of Court, rules 1.21, 8.50.)

I, Duncan Hopkins, declare that: I am over the age of 18 years and not a party to the case; I am employed in the County of Marin, California, where the mailing occurs; and my business address is Post Office Box 337, Bolinas, California 94924.

On March 9, 2017, I caused to be served the within **ANSWER TO PETITION FOR REVIEW** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in a United States Post Office box addressed to the parties at their mailing addresses as follows:

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(Cal. Rules of Court, rule 8.70.)

Additionally, I, Duncan Hopkins, declare that on March 9, 2017 I electronically served a true pdf copy of the within **ANSWER TO PETITION FOR REVIEW** using the TrueFiling service to:

Court of Appeal, Third Appellate District, Division 3

Attorney General, State of California (Petitioner)

Appellate Defenders, Inc.

District Attorney, San Bernardino County

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Bolinas, California, March 9, 2017.

Duncan Hopkins