

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re MARK CHRISTOPHER CREW,) No. S107856
)
 Petitioner,) [Related Appeal No. S034110]
) [Santa Clara Superior Court,
 On Habeas Corpus) No. 101400]
)
)

REPLY TO INFORMAL RESPONSE
TO PETITION FOR WRIT OF HABEAS CORPUS

SUPREME COURT
FILED

MAY 1 - 2003

Frederick K. Ohlrich Clerk

DEPUTY

LYNNE S. COFFIN, SBN 121389
State Public Defender

ANDREW S. LOVE, SBN 119990
Assistant State Public Defender

221 Main Street, Tenth Floor
San Francisco, CA 94105
Telephone: (415) 904-5600

Attorneys for Petitioner
MARK CHRISTOPHER CREW

DEATH PENALTY

TABLE OF CONTENTS

ARGUMENT 1

I. PETITIONER HAS MET THE PLEADING
REQUIREMENTS FOR A HABEAS CORPUS
PETITION AND HAS STATED A PRIMA
FACIE CASE FOR RELIEF 1

II. THE INFORMAL PROCEDURES OF RULE 60
ARE INSUFFICIENT TO RESOLVE
PETITIONER’S CLAIMS 2

CONCLUSION 4

TABLE OF AUTHORITIES

<i>Hewitt v. Helms</i> 439 U.S. 460 (1983)	3
<i>Hicks v. Oklahoma</i> 447 U.S. 343 (1980)	3
<i>Parker v. Dugger</i> 498 U.S. 308 (1991)	3
<i>People v. Barton</i> 21 Cal.3d 513 (1972)	3
<i>People v. Duvall</i> 8 Cal.4th 464 (1995)	2
<i>People v. Gonzalez</i> 51 Cal.3d 1179 (1990)	3
<i>People v. Romero</i> 8 Cal.4th 728 (1994)	1, 2, 3

CONSTITUTIONS

Cal. Const., art. I, § 11	3
---------------------------------	---

TABLE OF AUTHORITIES

COURT RULE

Cal. Rules of Court, rule	60	2
---------------------------	----	-------	---

STATUTES

Pen. Code, §§	1473	3
	1474	1, 2
	1484	3

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re MARK CHRISTOPHER CREW,)	No. S107856
)	
Petitioner,)	CAPITAL CASE
)	
On Habeas Corpus)	

MARK CHRISTOPHER CREW filed a Petition for a Writ of Habeas Corpus (hereafter "Petition") in this Court on June 26, 2002. The following day, the Court requested an informal response from respondent, which respondent filed on December 27, 2002. Petitioner, upon application of counsel, was granted up to and including May 2, 2002, in which to file his reply to the informal response. This reply is timely filed.

ARGUMENT

I. PETITIONER HAS MET THE PLEADING REQUIREMENTS FOR A HABEAS CORPUS PETITION AND HAS STATED A PRIMA FACIE CASE FOR RELIEF

If a habeas corpus petition satisfies the basic pleading requirements of Penal Code section 1474, states a prima facie case for relief, and alleges claims which are not procedurally barred, this Court is obligated to issue an order to show cause. *People v. Romero*, 8 Cal.4th 728, 737-738 (1994).

Respondent does not dispute that petitioner has met the pleading requirements for a habeas corpus petition. The Petition: (1) alleges unlawful restraint and names the person by whom the petitioner is so

restrained (Pen. Code § 1474); (2) states fully and with particularity the facts on which relief is sought; and (3) is supported by all reasonably available declarations and other documentary evidence. *See People v. Duvall*, 9 Cal.4th 464, 474 (1995).

Nor does respondent assert that any of petitioner's claims are subject to any state procedural bar. Indeed, there are no applicable procedural barriers to merits review by this Court.

Respondent's sole contention is that petitioner has failed to state a prima facie case with regard to his claims. Respondent is incorrect. To determine whether a prima facie case has been made, this Court simply evaluates the petition "by asking whether, assuming the petition's factual allegations are true, the petitioner would be entitled to relief." *See People v. Duvall*, 9 Cal.4th at 475. Clearly, the Petition contains facts, pled with sufficient particularity, which, if proved at a hearing or not disputed by respondent, entitle petitioner to relief.

II. THE INFORMAL PROCEDURES OF RULE 60 ARE INSUFFICIENT TO RESOLVE PETITIONER'S CLAIMS

The informal briefing process of Rule 60 of the California Rules of Court is designed "to assist the court in determining the petition's sufficiency." *People v. Romero*, 8 Cal.4th at 737. It serves merely as a screening function to weed out claims that are procedurally barred or whose factual falsity can be easily shown without the necessity of issuing an order to show cause. As this Court has noted, the informal response "[i]s not a pleading, does not frame or join the issues, and does not establish a 'cause' in which a court may grant relief." *Id.* at 741.

This procedure fails to provide petitioner an adequate opportunity to

fully develop the factual bases of his claims and prove the violations of his state and federal constitutional rights in conformity with the right to habeas corpus guaranteed him by state statutory law, Pen. Code §1473, and recognized by the California Constitution to be absolute. *See* Cal. Const., art. I, §11. While respondent's informal response challenges the factual bases for petitioner's claims, any dispute of fact critical to the outcome of the Petition can be resolved only after the issuance of an order to show cause which will give petitioner the right to file additional pleadings, to utilize the Court's compulsory process and subpoena power, to obtain discovery, and to prove his claims at an evidentiary hearing. *People v. Romero*, 8 Cal.4th at 742-43; *see also* Pen. Code § 1484; *People v. Gonzalez*, 51 Cal.3d 1179, 1258 (1990).

Because petitioner has stated a prima facie case for his claims, he is entitled to the issuance of an order to show cause. A denial of the Petition without an order to show cause would arbitrarily deny petitioner of his state-law right to California's habeas corpus procedure, and full and fair factual development of his claims, in violation of the state constitution and the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution. *People v. Barton*, 21 Cal.3d 513, 519, n. 3 (1972); *Hicks v. Oklahoma*, 447 U.S. 343, 345-347 (1980); *Hewitt v. Helms*, 459 U.S. 460, 471-472 (1983); *Parker v. Dugger*, 498 U.S. 308 (1991).

\\

\\

\\

CONCLUSION

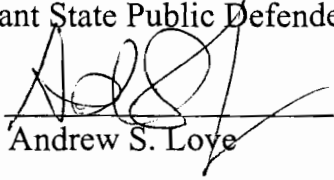
Petitioner requests that the relief specified in the Petition be granted.

Dated: May 1, 2003

Respectfully submitted,
LYNNE S. COFFIN
State Public Defender

ANDREW S. LOVE
Assistant State Public Defender

BY:



Andrew S. Love

ATTORNEYS FOR PETITIONER
MARK CHRISTOPHER CREW

DECLARATION OF SERVICE

Re: In re Mark Christopher Crew, S107856

I, Glenice Fuller, am a citizen of the United States. My business address is: 221 Main Street, San Francisco, CA 94105. I am employed in the City and County of San Francisco where this mailing occurs; I am over the age of 18 years and not a party to the within cause. I served the within document:

**REPLY TO INFORMAL RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

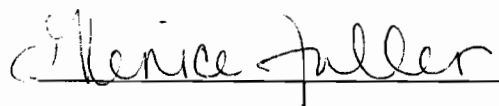
on the following named person(s) by placing a true copy thereof enclosed in an envelope addressed as follows:

Peggy S. Ruffra
Supervising Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-3664

Mark Christopher Crew
P.O. Box E-48050
San Quentin State Prison
San Quentin, CA 94974

and causing said envelope to be sealed and deposited in the United States mail, with postage thereon fully prepaid, at San Francisco.

I declare under penalty of perjury that service was effected on May 1, 2003 at San Francisco, California and that this declaration was executed on May 1, 2003 at San Francisco, California.


GLENICE FULLER