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13 **SUPERIOR COURT STATE OF CALIFORNIA**
14
15 **COUNTY OF LOS ANGELES**
16

17 JOSEPH HUNT,

18 Petitioner,

19 vs.

20 ROBERT BURTON,

21 Respondent,

22 On Habeas Corpus.
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) Case No.: _____

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) Fmr. Crim. No.: A090435

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) **PETITION FOR WRIT OF HABEAS**
) **CORPUS AND MEMORANDUM OF**
) **POINTS AND AUTHORITIES**

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1 **APPLICATION FOR WRIT OF HABEAS CORPUS**

2 **I.**

3 **INTRODUCTION**

4 1. Petitioner Joseph Hunt (Hunt) alleges that his conviction for robbery and
5 the special circumstance finding that he committed murder during the commission of a
6 robbery must be vacated because the trial court's failure to instruct the jury on a claim of
7 right defense for the robbery was a miscarriage of justice and requires reversal because
8 there was credible, substantial evidence that Hunt was acting on a genuine belief that the
9 victim owed him the money he took from him during the course of the incident.

10 **II.**

11 **PARTIES**

12 2. Petitioner is a prisoner of the State of California who is currently
13 incarcerated at the California Health Care Facility in Stockton.

14 3. Respondent, Robert Burton, is the warden of California Health Care
15 Facility, in Stockton, California, and is the legal custodian of petitioner.

16 **III.**

17 **PROCEDURAL HISTORY**

18 4. On April 22, 1987, Hunt was convicted by a jury of murder in the first
19 degree of Ronald George Levin in violation of section 187. (Exhibits, p. 7.) Defendant
20 also was found guilty of robbery in violation of section 211 and that Levin was murdered
21 while defendant was engaged in the commission of robbery within the meaning of section
22 190.2(a)(17). (*Ibid.*) The jury fixed the penalty as life imprisonment without the
23 possibility of parole. The court sentenced defendant to state prison for life without the
24 possibility of parole for the murder. (*Ibid.*)

25 5. On November 23, 1993, Hunt's conviction was upheld on appeal. (Exhibits,
26 pp. 3-193.) On March 17, 1994, the California Supreme affirmed the conviction. (Case
27 No. S037111.)

1 IV.

2 JURISDICTION/TIMELINESS

3 6. Petitioner's direct appeal was final in 1994. However, the claims of this
4 Petition are not procedurally barred, as Petitioner's trial counsel was ineffective in failing
5 to raise the issues that the trial court violated his right to due process by failing to sua
6 sponte give a jury instruction on the claim of right defense, and trial counsel was
7 ineffective for failing to request said jury instruction. (*In re Harris* (1993) 5 Cal.4th 813,
8 832-835 (Harris).) Likewise, time bars are inapplicable to the claims of this petition, as
9 the failure to give a jury instruction on a claim of right defense is a miscarriage of justice
10 and requires reversal. (*People v. Butler* (1967) 65 Cal.2d 569, 573 (Butler).) Further,
11 procedural bars are not applicable because petitioner is actually innocent of the crime of
12 robbery and the special circumstance of murder committed in the commission of a
13 robbery. (*In re Reno* (2012) 55 Cal.4th 428, 460 (Reno); *In re Robbins* (1998) 18 Cal.4th
14 770, 780-781 (Robbins).)

15 7. Indeed, the evidence in the record establishes Hunt had a good faith belief
16 that Levin owed him far more money than the \$1.5 million check he took from Levin,
17 and the prosecutor admitted this in his closing argument. Thus, under the facts of this
18 case a jury would be compelled to acquit Hunt on the robbery charge and find the
19 robbery/murder special circumstance not true, which would invalidate the sentence of life
20 without parole that Hunt is currently serving.

21 8. Further, the State of California having taken the position during summation
22 in 1987 that Hunt had a good faith belief that Levin owed him more than the amount on
23 the check allegedly taken by force or fear is now equitably estoppel from arguing
24 otherwise. (Evid. Code § 623 ["Whenever a party has, by his own statement or conduct,
25 intentionally and deliberately led another to believe a particular thing true and to act upon
26 such belief, he is not, in any litigation arising out of such statement or conduct, permitted
27 to contradict it."].) Moreover, the prosecutor's closing argument -- in light of the due
28 process and ineffective counsel allegations made herein, establishes constitutional error

1 without which no reasonable jury would have convicted. This is true because the
2 prosecutor argued a view of the facts, which literally would have compelled the jury to
3 acquit had they been properly instructed on the claim right defense. So indeed, there was
4 constitutional error absent which no reasonable jury would have convicted. An error of
5 such magnitude is a procedural Gateway through which otherwise untimely constitutional
6 claims can pass.

7 V.

8 STATEMENT OF FACTS

9 A. Official Version of the Crime¹

10 9. In 1983, Hunt formed the Bombay Bicycle Club (BBC) to make money
11 through in commodities, cyclotron technology and arbitrage. (Exhibits, pp. 10-11.) Hunt
12 raised capital and began trading commodities. (*Id.*, p. 12.)

13 10. In 1983, Hunt met Ronald Levin and succeeded in getting Levin to place \$5
14 million in a commodities trading account, which Hunt would affect trades on Levin's
15 behalf and split the profits.² (*Id.*, pp. 12-13.) Hunt accrued \$7 million in profits from
16 trading on behalf of Levin. (*Id.*, p. 13.) Hunt tried to get the money from Levin, but Levin
17 told Hunt he could not pay defendant his percentage immediately because he had
18 invested the money in a shopping center. (*Id.*, p. 13.) However, according to Levin, the
19 shopping center investment had increased defendant's \$3.5 million investment to \$13
20 million. (*Id.*, p. 13.) Later, Levin told defendant that a Japanese company had offered to
21 buy the shopping center bringing Hunt's profit to \$30 million. (*Id.*, 13.)

22 11. Optimism over the money which would be forthcoming from the shopping
23 center was high in October 1983. (Exhibit A, p. 14.) Hunt called a BBC meeting and
24

25 ¹ Hunt maintains his innocence of the murder and robbery of Levin and disputes many of
26 the factual finding of the jury and court of appeal. However, for the purpose of this
27 petition, Hunt will use the facts of the case as presented in the court of appeal decision
affirming his conviction, as even if these facts are true, Hunt is entitled to the relief
sought in the petition.

28 ² In fact, Mr. Levin was a "con man" who perpetrated an elaborate hoax on Hunt and the
BBC. (*Id.*, p. 13, fn. 6.)

1 announced how the profits from the sale of the shopping center would be divided. The
2 largest portion was to go to defendant. (*Ibid.*) Dean Karny and Ben Dosti would get \$1
3 million each. (*Ibid.*) BBC members, Tom May and Dave May, each would receive
4 \$700,000. (*Ibid.*) But the money never materialized. (*Ibid.*) Defendant finally learned that
5 Levin was a conniver and a manipulator and that he had been the victim of an incredible
6 hoax. (*Ibid.*)

7 12. Levin, posing as a representative of Network News, had contacted Jack
8 Friedman, a broker with Clayton Brokerage Company, in June 1983 and convinced
9 Friedman that he was making a documentary movie, entitled "The Traders," in which
10 various commodities' trading practices would be compared. (*Id.*, pp. 14-15.) Friedman's
11 role was to set up a simulated trading account in which defendant's results as an outside
12 trading advisor would be compared over a four to eight week span with the results of an
13 in-house broker, a computer, and with merely throwing darts. (*Id.*, p. 15.) Levin told
14 Friedman to make sure that defendant did not know the account was simulated,
15 explaining that the emotional trading decisions would not be the same if the trader knew
16 it was not real. (*Ibid.*) Defendant was not to be told he was trading in a simulated account
17 until the story was done. (*Ibid.*)

18 13. When defendant called the brokerage house to begin trading, he was
19 informed by Friedman that the equity in the Levin account was over \$5 million. (Exhibit
20 A, p. 15.) By the time Levin closed the simulated account on August 17, 1983, defendant
21 believed he had increased the account to \$13,997,448.46, reflecting a net profit of
22 \$8,320,649 and that the account was being closed so that the money could be used for a
23 real estate transaction. (*Ibid.*) Sometime in October or November 1983, Friedman told
24 defendant the money was not real. (*Ibid.*) Hunt gave Friedman the impression that he
25 knew all along that it was just a movie, but within five hours after Friedman discussed
26 with defendant the true nature of the account, Friedman received a phone call from Levin
27 in which Levin screamed, yelled, and threatened Friedman for violating his
28 confidentiality. (*Id.*, pp. 15-16.)

1 14. Hunt confronted Levin about the scam which Levin at first denied. (Exhibit
2 A, p. 16.) Finally, Levin admitted to Hunt that there was no shopping center and no
3 money. (*Ibid.*) However, Levin said he had used the statements from the phony trading
4 account to con about \$1.5 million out of other brokerage houses and he would give
5 defendant and the BBC \$300,000 of that sum. (*Id.*, pp. 16-17.) Although Hunt no longer
6 believed Levin was going to give him any money, it was apparent that Hunt still believed
7 Levin was wealthy and had really gotten \$1.5 million from his scam. (*Id.*, p. 17.) Hunt
8 had seen stacks of bank passbooks reflecting large deposits at Levin's house. (*Ibid.*)

9 15. By the end of April or the beginning of May 1984, Hunt told Karny he had
10 developed a plan to get the money from Levin and to kill Levin. (Exhibit A, p. 17.)
11 Hunt's plan called for defendant to go to Levin's house for dinner. Hunt's plan first
12 called for preparing the BBC in advance to believe that he and Levin were going to get
13 involved in a business venture so that the BBC would not be surprised when it received
14 money from Levin. (Exhibit A, p. 18.) Hunt drafted letters to leave in a file he planned to
15 create at Levin's apartment to make it look like he and Levin were involved in a business
16 transaction. (*Id.*, pp. 18-19.) According to Karny, Hunt believed such letters would
17 deflect suspicion from Hunt, and in the event of a trial, that such letters would create a
18 "reasonable doubt." (*Id.*, p. 19.) Hunt also drafted an options contract between Levin and
19 Microgenesis, one of the BBC companies, purporting to be the basis for the money
20 defendant would receive from Levin. (*Ibid.*) The amount of the option was left blank.
21 (*Ibid.*) Hunt would decide the amount of the option after he got to Levin's house when he
22 determined how much money Levin had to transfer. (*Ibid.*)

23 16. On the morning on June 7, 1984, Hunt told Karny he had done it, that Levin
24 was dead and showed him a check for \$1.5 million and the contract signed by Levin.
25 (Exhibit A, p. 22.) Hunt also showed them to Jeff Raymond. (*Ibid.*) Hunt told Raymond
26 that Levin was leaving for New York that very morning to see some Arab investors who
27 wanted to buy the option. (*Ibid.*) Then showed Tom May the check and contract and
28

1 when he arrived at the office, he made copies of the check which he distributed to the
2 BBC members. (*Ibid.*)

3 17. Three days later, Hunt met with Gene Browning, the inventor of a
4 cyclotron, which was the subject of the option agreement Hunt forced Levin to sign on
5 June 6. (Exhibit A, p. 22.) Browning expressed concern about the capacity of the
6 cyclotron to perform some of the processes called for in the contract. (*Ibid.*) Hunt told
7 Browning that was no particular problem because "Levin was missing and probably
8 dead." (*Ibid.*)

9 18. A few days later and in subsequent conversations, Hunt described the crime
10 in detail to Karny. (Exhibit A, p. 22.) Hunt asked Levin how much money he could be
11 sure would clear his account. (*Id.*, pp. 22-23.) Levin said about "a million seven." (*Id.*, p.
12 23.) Hunt decided to have Levin sign a check for "a million five," just to make sure the
13 check would clear. (*Ibid.*)

14 19. Hunt had opened an account at the World Trade Bank in an effort to
15 expedite the cashing of Levin's check which was drawn on a Swiss bank account.
16 (Exhibit A, p. 27, fn. 19.) The check was dishonored due to insufficient funds and a
17 missing signature. (*Ibid.*) When he returned, Hunt learned Levin's check for \$1.5 million
18 was no good and he was hysterical. (*Ibid.*)

19 20. The BBC held a meeting on June 24. (Exhibit A, p. 29.) Evan Dicker, Tom
20 May, Steve Taglianetti, Dean Karny and Brooke Roberts were present. (*Ibid.*) Hunt
21 explained to the group that none of the BBC companies was doing well financially and
22 there was no money left. (*Ibid.*)

23 **B. Trial Testimony**

24 21. Jeffrey Raymond testified that Hunt told him that Levin had invested six to
25 seven million dollars in a commodities account, and that Hunt would receive 50 percent
26 of the profits. (Exhibits, pp. 199-200, 203-204.) Raymond testified that Hunt once said he
27 made \$100,000 in a single day and did a somersault in the office. (*Id.*, pp. 204-205.) Hunt
28 also started spending more money on clothes and apartments based on the profits he was

1 making from the Levin trade account. (*Id.*, pp. 205-206.) When Hunt sustained losses in
2 other investments, he told Raymond that he would be able to cover those losses with the
3 \$3.5 million in profits he was entitled to from doubling Levin's money. (*Id.*, pp. 211-
4 212.) Hunt also told the shareholders of BBC that he doubled Levin's money. (*Id.*, p.
5 213.)

6 22. Gene Browning testified that Hunt told him that Levin owed him money.
7 (Exhibits, p. 234.)

8 23. Evan Dicker testified that Hunt told him that he was "handling accounts for
9 Ron Levin with a great deal of money in them," many millions of dollars, and that BBC
10 was to get a percentage of the profits. (Exhibits, pp. 241-242, 253.) Hunt told Dicker that
11 he had been successful in making money for Levin and either had made profits of "six
12 and a half or eleven million" or that six and a half million was BBC's share of the profits,
13 Dicker couldn't recall which it was. (*Id.*, p. 242.) Hunt told Dicker that Levin was giving
14 the BBC an interest in a shopping center in lieu of the money they had earned from the
15 profits from the investments. (*Id.*, pp. 242-243, 254.) Dicker testified that Hunt seemed
16 disappointed about not getting the cash, but also excited about owning the shopping
17 center. (*Id.*, p. 247.) Dicker's also testified that hunt never expressed doubt that there was
18 a shopping center. (*Id.*, pp. 248-249.) Hunt also told other members of BBC that he was
19 handling "millions of dollars for Ron Levin." (*Id.*, p. 252.) Hunt also stated that he was
20 expecting to get money from Levin. (*Id.*, p. 254-255.)

21 24. Dicker further testified that on June 7, 1984, Hunt showed him a check he
22 received from Levin for selling options to Cyclatron and a contract. (Exhibits, pp. 256-
23 257.) Hunt was excited about the check and wanted to expedite cashing it. (*Id.*, pp. 257-
24 258, 262.)

25 25. Tom May testified that Hunt showed him documents from Clayton
26 Brokerage House reflecting trading activity. (Exhibits, pp. 268-269, 287.) The documents
27 showed an initial investment of about \$5 million and ending balance of about \$14
28 million. (*Id.*, pp. 269, 289.) Hunt told May that he was entitled to half the profits, and that

1 he would give May \$300,000 to cover the investment May had lost. (*Id.*, pp. 269-270,
2 287.) Hunt told May that the profits from Levin would be divided among the members of
3 BBC. (*Id.*, pp. 276-277.) Later Hunt told May and everyone in the office that Levin had
4 used the money from the Clayton brokerage account to purchase a shopping center. (*Id.*,
5 pp. 277-278,.) Karny and Dosti also May the same thing. (*Id.*, pp. 297-298.) Hunt told
6 May that the shopping center was worth \$30 million and that Hunt's share would be \$10
7 million, which he would divide among the BBC members when the shopping center was
8 liquidated. (*Id.*, pp. 279-280.) Eventually Hunt came to realize that the shopping center
9 was not real, but still believed that the money he made for Levin at Clayton Brokerage
10 House was real, and "he seemed positive he was going to get the money." (*Id.*, pp. 281-
11 282, 288.) Hunt was convinced that money and the shopping center were real. (Exhibits,
12 p. 300.) When Hunt finally realized that he had been conned by Levin, he said that he
13 would get the money no matter what because he felt that the money still belonged to him
14 because he earned it. (*Id.*, pp. 301-302.)

15 26. May also testified that sometime in June 1984, Hunt came to his apartment,
16 very excited, and showed him a contract and a check for \$1.5 million, signed by Levin.
17 (*Id.*, pp. 283-285, 306-307.)

18 27. Jack Friedman testified that he worked for Clayton Brokerage Company, as
19 a commodities broker. (Exhibits, pp. 308-309.) In June 1983, Levin contacted Friedman
20 and told him that he worked for Network News and wanted set up a simulated account for
21 a story he was doing. (*Id.*, pp. 311- 313.) Hunt was the person who would call in to make
22 trades on the simulated account, but Levin told Friedman not to tell Hunt that the account
23 was not real, until the trades were over in four to eight weeks. (*Id.*, pp. 315-316.)
24 Friedman had Levin and Hunt sign papers to make it seem that the trading account was
25 real. (*Id.*, pp. 317-318.) Friedman documented simulated trades made by Levin before
26 Hunt started trading to make the simulated account seem more authentic. (*Id.*, pp. 319-
27 321.) The simulated account had an opening balance of \$5,225,187.80. (*Id.*, p. 323-324,
28 348.) When Hunt called Friedman, he would give Hunt the same advice and information

1 he would give to an actual customer to make it seem like the account was real. (*Id.*, p.
2 325-327, 340-346.) Hunt acted upon Friedman's advice. (*Id.*, p. 326.) Friedman generated
3 document to make the trades Hunt made appear genuine. (*Id.*, pp. 329-332, 337-338.) At
4 the time that the simulated account was purportedly closed to fund a real estate
5 transaction, the closing balance was \$13,997,448.96, reflecting a profit of \$8,320,649.
6 (*Id.*, pp. 332, 349-351.) When Friedman finally told Hunt that the account was fake,
7 Levin was extremely upset. (*Id.*, pp. 333-336, 347.) Friedman admitted that he was
8 completely conned by Levin. (*Id.*, p. 339-340.)

9 28. Stephen Taglianetti testified that after meeting Levin at a dinner at Levin's
10 residence, Hunt told him that Levin was investing a "substantial amount of money" for
11 Hunt to invest. (Exhibits, pp. 355-356, 362-363.) Hunt later told Taglianetti that he had
12 made a substantial profit on Levin's money, somewhere in the neighborhood of \$9
13 million. (*Id.*, pp. 356-357, 363.) There was a two to three month period of time when no
14 one in the BBC offices talked about Levin because he had not paid. (*Id.*, pp. 358, 361.)

15 29. Jerome Eisenberg testified that everyone in the BBC office was talking
16 about the fact that Levin had invested \$6 million with Hunt and Hunt had turned it into
17 \$12 million and was entitled to half the profits. (Exhibits, pp. 365, 368-369.) He also
18 heard that Levin didn't pay Hunt the money, but instead converted the money into a
19 shopping center. (*Id.*, p. 368.)

20 30. Dean Karny testified that Hunt told him that Levin had put five million
21 dollars in a brokerage account, and that Levin would give Hunt half of the profits.
22 (Exhibits, p. 379.) Hunt believed Levin when he told him this. (*Id.*, pp. 392-393.) Hunt
23 told Karny that initially the funds Levin had deposited in the Brokerage account had gone
24 down to around a million dollars, and Hunt had to ask Levin to put more money in the
25 account. (*Id.*, p. 381.) Hunt showed Karny a statement reflecting a profit of seven million
26 dollars and told him he was entitled to half of the profits. (*Id.*, pp. 381, 383.) Hunt told
27 Karny that Levin used the \$13 million in profit to invest in a shopping center, and that
28 BBC's share had increased to \$30 million. (*Id.*, pp. 384-387.) Hunt believed this also.

1 (*Id.*, p. 393.) Hunt also believed Levin when he told him that he got \$1.5 million
2 extended from other sources based on the statement from the Clayton Brokerage
3 statements. (*Ibid.*) Karny testified that even after Friedman told him that the investment
4 account was not real, and Levin admitted that it was not real, Hunt didn't believe it and
5 still believed that the money and profits were real. (*Id.*, pp. 390-391.) Hunt never stopped
6 believing the things Levin told him, and was quite gullible in this regard. (*Id.*, pp. 393-
7 394.)

8 **C. Closing Argument, Jury Instructions & Verdict**

9 31. In his closing argument, the prosecutor argued that the theft of the check for
10 \$1.5 million proved the robbery charge and special circumstance. (Exhibits, pp. 416-418.)
11 The prosecutor also argued that Hunt's motivation for the robbery was get the \$4 million
12 Levin owed him, which Hunt believed was real. (RT 12752-12753.)

13 32. The court did not give a jury instruction on a claim of right defense.
14 (Exhibits, pp. 419-454.)

15 33. The jury convicted Hunt of first degree murder, and robbery and found the
16 special circumstance true. (Exhibits, pp. 455-461.)

17 **D. Post-Conviction**

18 34. Hunt has navigate through nearly 30 years on Level-IV prison yards
19 without concession to the authority of the gangs, and without any resort to violence,
20 drugs, alcohol, or theft, actively practicing "non-cooperation with evil," refusing to move
21 drugs and weapons, participate in the riots, and has made friends across all racial lines.
22 He has served as a Chaplain's Clerk and Law Library Clerk. (Exhibits, pp. 462-464.) He
23 has been lauded for his participation in the Inside Circle Men's Group. (*Id.*, pp. 462-464.)

24 35. Correctional Officer M. Saesee attests to Mr. Hunt's character and
25 suitability for reintegration into society, stating:

26 "In my opinion, Hunt has no inclinations to re-offend. All of his activities
27 appear directed towards positive goals. He has a reputation for helping
28 others in ways consistent with institutional policies. I would place him
solidly in the top one percent as far as suitability for reintegration with
society. He has a calm and affable bearing, responds to orders without

1 hesitation, and exhibits absolutely no interest in drugs, pruno, or affiliations
2 that are associated with prison violence.” (*Id.*, p. 467.)

3 36. Correctional Lieutenant K. Kendall has known Mr. Hunt for over twenty
4 years and attests to Mr. Hunt’s character and suitability for reintegration into society,
5 stating:

6 “Inmate Hunt has demonstrated a positive attitude and a willingness to
7 assist Custody staff in any way he can. In all my interactions with Hunt
8 over the past twenty (20) years he has always remained respectful and
9 demonstrated a level of integrity not normally seen in a prison setting. Hunt
10 is very intelligent and has a very productive work history during his
11 incarceration. In his many years incarcerated, Hunt has managed to have a
12 minimal amount of disciplinary issues. To be able to live on a Level 4 yard
13 for as long as Hunt did and manage to not get into the politics or any
14 trouble should speak volumes about the character he has. Hunt has
15 managed to stay away from gang activities not to mention he has never
16 been cited for any drug or alcohol violations.”

17 “I believe that Hunt, if given the opportunity, can definitely reintegrate
18 back into society with no issues. I believe that Hunt has done everything
19 possible during his 33 years of incarceration to demonstrate his ability to be
20 successful outside of prison.” (*Id.*, p. 468.)

21 37. Correctional Officer J. Murphy also attests to Mr. Hunt’s character and
22 suitability for reintegration into society, stating:

23 “Hunt demonstrates a level of integrity and responsibility far beyond the
24 expectations of his duties and his behavior is indicative of someone who
25 strives to be a productive member of society. Hunt has been incarcerated
26 within CDCR for many years, it should be noted he does not participate in
27 any gang related activities. Hunt has good work ethics and is self-
28 motivated. I believe he has the ability to support himself and reenter back
into society as a productive member of his community. Hunt has proven as
an ideal candidate for parole under Penal Code 1170(d)(1). I also believe, if
given the opportunity, Hunt would become a productive and law-abiding
citizen.” (*Id.*, p. 469.)

38. Correctional Officer O. Flores also attests to Mr. Hunt’s character and
suitability for reintegration into society, stating:

“Inmate Hunt is assigned as the recreational housing clerk and performs his
duties with professionalism and with excellent work ethic. While working

1 and programming in the housing unit he has always maintained a positive
2 attitude, and is very respectful to staff. He has shown his ability to maintain
3 a great standard of programming at California Health Care Facility
4 (CHCF). He has earned the respect for staff and his peers while conducting
5 his duties in the building. He has shown his respect for authority and assists
6 staff on various levels. Hunt is self-motivated and I believe he has the
7 ability to support himself and reenter back into society as a productive
8 member of his community. I believe if given the opportunity, Hunt would
9 become a productive and law abiding citizen.” (*Id.*, p. 470.)

39. Correctional Officer P. Brown also attests to Mr. Hunt’s character and
suitability for reintegration into society, stating:

10 “In the 12 months that I have worked in PWC amid the pandemic, the ups
11 and downs of the unit being confined to quarters and limited dayroom and
12 yard restrictions, Hunt by far had the best attitude in the building and
13 possibly the entire prison. Hunt has spent 34 years to date incarcerated in
14 state prison there’s not one blemish in his central file. ... Hunt serves as a
15 positive and model inmate under extreme circumstances dropping from a
16 level four inmate to a level two dodging all the negativity that prison has to
17 offer. Hunt is a man worthy of a chance at freedom and should be given a
18 chance to show his county, state and country his worth as a free man
19 bettering his immediate community. (*Id.*, p. 471.)

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1 V.
2 CONTENTIONS

3 A.
4 THE CLAIMS OF THE PETITION ARE NOT
5 PROCEDURALLY BARRED.

6 B.
7 HUNT'S DUE PROCESS RIGHTS WERE VIOLATED BY
8 THE TRIAL COURT'S FAILURE TO GIVE A RIGHT OF
9 CLAIM DEFENSE JURY INSTRUCTION.

10 C.
11 HUNT'S TRIAL COUNSEL WAS INEFFECTIVE FOR
12 FAILING TO REQUEST A RIGHT OF CLAIM DEFENSE
13 JURY INSTRUCTION.

14 D.
15 HUNT IS AN EXCELLENT CANDIDATE FOR
16 RESENTENCING UNDER PENAL CODE SECTION
17 1170(d)(1).
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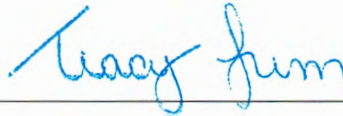
1 VI.

2 PRAYER FOR RELIEF

3 Petitioner Hunt is without remedy save for habeas corpus. Accordingly, the court
4 should:

- 5 1. Issue a writ of habeas corpus;
6 2. Issue an order to show cause;
7 3. Declare the rights of the parties;
8 4. Vacate the conviction for robbery and the special circumstance of murder
9 committed in commission of robbery;
10 5. Resentence Hunt on the remaining count of first degree murder;
11 6. Grant any and all other relief deemed appropriate.

12 Date: 4/18/22

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14 Tracy Renee Lum
15 Attorney for Petitioner Joseph Hunt
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THE CLAIMS OF THE PETITION ARE NOT PROCEDURALLY**
3 **BARRED.**

4 **A. The Claims Of This Petition Are Not Time Barred.**

5 There is a three-level analysis for assessing whether claims in a petition for a writ
6 of habeas corpus have been timely filed. (*Reno*, 55 Cal.4th at p. 460 (*Reno*)). First, a
7 claim must be presented without substantial delay. (*Ibid.*) Second, if a petitioner raises a
8 claim after a substantial delay, a court will nevertheless consider it on its merits if the
9 petitioner can demonstrate good cause for the delay. (*Ibid.*) Third, a claim presented after
10 a substantial delay without good cause will still be considered on the merits if it falls
11 under one of four narrow exceptions: “(i) that error of constitutional magnitude led to a
12 trial that was so fundamentally unfair that absent the error no reasonable judge or jury
13 would have convicted the petitioner; (ii) that the petitioner is actually innocent of the
14 crime or crimes of which he or she was convicted; (iii) that the death penalty was
15 imposed by a sentencing authority that had such a grossly misleading profile of the
16 petitioner before it that, absent the trial error or omission, no reasonable judge or jury
17 would have imposed a sentence of death; or (iv) that the petitioner was convicted or
18 sentenced under an invalid statute.” (*Ibid.*, quoting *Robbins*, 18 Cal.4th at pp., 780–781.)

19 In California, there are no set determinate time limits for seeking relief on habeas
20 corpus. (*Reno*, 55 Cal.4th at p. 460.) Instead, California courts apply a general
21 “reasonableness” standard to judge whether a habeas petition is timely filed. (*Ibid.*)
22 Accordingly, a habeas corpus petition should be filed as promptly as the circumstances
23 allow, as measured from the time the petitioner or counsel knew, or reasonably should
24 have known, of the information offered in support of the claim and the legal basis for the
25 claim. (*Reno*, 55 Cal.4th at p. 460; *Robbins*, 18 Cal.4th at p. 780 [“Substantial delay is
26 measured from the time the petitioner or his or her counsel knew, or reasonably should
27 have known, of the information offered in support of the claim and the legal basis for the
28 claim.”].)

1 A claim presented after a substantial delay without good cause will still be
2 considered on the merits if it falls under one of four narrow exceptions: “(i) that error of
3 constitutional magnitude led to a trial that was so fundamentally unfair that absent the
4 error no reasonable judge or jury would have convicted the petitioner; (ii) that the
5 petitioner is actually innocent of the crime or crimes of which he or she was convicted;
6 (iii) that the death penalty was imposed by a sentencing authority that had such a grossly
7 misleading profile of the petitioner before it that, absent the trial error or omission, no
8 reasonable judge or jury would have imposed a sentence of death; or (iv) that the
9 petitioner was convicted or sentenced under an invalid statute.” (*Reno*, 55 Cal.4th at p.
10 460; *Robbins*, 18 Cal.4th at pp. 780-781.)

11 The first exception applies here because the failure to instruct the jury on an
12 element of a crime is always a violation of the United States and California Constitutions
13 – even where the facts establishing the element are conceded, undisputed, or
14 incontrovertible. (*People v. Flood* (1998) 18 Cal.4th 470, 479, 482; *United States v.*
15 *Gaudin* (1995) 515 U.S. 506, 511-515.) The denial of that right is a miscarriage of justice
16 and requires reversal. (*People v. Butler* (1967) 65 Cal.2d 569, 573 (Butler).)

17 The second exception also applies here because Hunt is claiming, and the evidence
18 establishes, that he is actually innocent of the crime of robbery and the robbery special
19 circumstance for which he is currently sentenced to life with the possibility of parole, as
20 he had a good faith belief that he had claim to the property taken (i.e. the check for \$1.5
21 million). (*Reno*, 55 Cal.4th at p. 460; *Robbins*, 18 Cal.4th at pp. 780-781.) Indeed, the
22 prosecutor, through his closing argument, asserted a view of the facts which establishes
23 that Hunt is actually innocent of robbery, had the jury properly been instructed on the
24 relevant claim-of-right defense to robbery. Further, the State of California having taken
25 the position during summation in 1987 that Hunt had a good faith belief that Levin owed
26 him more than the amount on the check allegedly taken by force or fear is now equitably
27 estoppel from arguing otherwise. (Evid. Code § 623 [“Whenever a party has, by his own
28 statement or conduct, intentionally and deliberately led another to believe a particular

1 thing true and to act upon such belief, he is not, in any litigation arising out of such
2 statement or conduct, permitted to contradict it.”].) Moreover, the prosecutor’s closing
3 argument -- in light of the due process and ineffective counsel allegations made herein,
4 establishes constitutional error without which no reasonable jury would have convicted.
5 This is true because the prosecutor argued a view of the facts, which literally would have
6 compelled the jury to acquit had they been properly instructed on the claim right defense.
7 So indeed, there was constitutional error absent which no reasonable jury would have
8 convicted. An error of such magnitude is a procedural Gateway through which otherwise
9 untimely constitutional claims can pass.

10 II.

11 HUNT’S DUE PROCESS RIGHTS WERE VIOLATED BY 12 THE TRIAL COURT’S FAILURE TO GIVE A RIGHT OF 13 CLAIM DEFENSE JURY INSTRUCTION.

14 A. Controlling Legal Standards

15 Although an intent to steal may ordinarily be inferred when one person takes the
16 property of another, particularly if he takes it by force, proof of the existence of a state
17 of mind incompatible with an intent to steal precludes a finding of either theft or
18 robbery. (*Butler*, 65 Cal.2d at p. 573.)³ It has long been the rule in this state that a bona
19 fide belief, even though mistakenly held, that one has a right or claim to the property
20 negates felonious intent. (*Ibid.*, citation omitted.) A belief that the property taken
21 belongs to the taker, or that he had a right to retake goods sold is sufficient to preclude
22 felonious intent. (*Ibid.*, citation omitted.) Felonious intent exists only if the actor intends
23 to take the property of another without believing in good faith that he has a right or
24 claim to it. (*Ibid.*, citation omitted.)

25 A trial court is required to instruct on a claim-of-right defense when there is
26 substantial evidence to support an inference that appellant acted with a subjective belief

27 ³ Although overruled in *People v. Tufunga* (1999) 21 Cal.4th 935, *Butler* is controlling in
28 the instant case as the conduct preceded *Tufunga*’s finality. (*People v. Sakarias* (2000) 22
Cal.4th 596, 622.)

1 he or she had a lawful claim on the property. (*People v. Barnett* (1998) 17 Cal.4th 1044,
2 1145 (Barnett); *People v. Flannel* (1979) 25 Cal.3d 668, 685 [“[the] court should
3 instruct the jury on every theory of the case, but only to the extent each is supported by
4 substantial evidence.”].) Whether or not the evidence provides the necessary support for
5 drawing that particular inference is a question of law. (*Barnett*, 17 Cal.4th at p. 1145.)
6 Doubts as to the sufficiency of the evidence should be resolved in the accused's favor.
7 (*Ibid.*).

8 In *Butler*, the defendant was employed by the victim to do catering work, but the
9 victim did not pay him. (*Butler*, 65 Cal.2d at p. 571.) Butler went to the victim’s house
10 to obtain payment for his work. (*Ibid.*) The victim refused to pay Butler the money he
11 owed, and Butler pulled a gun he had brought with him. (*Id.*, pp. 571-572.) The victim
12 reached for Butler’s gun and the gun went off, killing the victim. (*Id.*, p. 572.) Butler
13 testified that he did not intend to rob the victim, but only to recover the money he was
14 owed. (*Ibid.*) The *Butler* Court held that the trial court’s refusal to instruct the jury of a
15 claim of right defense to robbery “was a miscarriage of justice within the meaning of
16 Article 13 of the California Constitution and requires reversal.” (*Id.*, p. 574.)

17 **B. Hunt Was Entitled To A Claim Of Right Defense.**

18 Like the case of *Butler*, there was credible, substantial evidence supporting a
19 claim of right defense. Hunt told everyone that Levin owed him \$3.5 to 4 million dollars
20 from trades Hunt had made on behalf of Levin. (Exhibits, pp. 199-200, 203-204
21 (Raymond), 234 (Browning), 241-242, 253 (Dicker), 268-269, 287 (May), 355-357,
22 362-363 (Taglianetti), 365, 368-369 (Eisenberg), 379 (Karny).) Hunt changed his
23 spending habits, spending more money on clothes and apartments based on the profits he
24 believed he was making from the Levin trade account. (*Id.*, pp. 205-206.) Even when
25 Levin admitted that the funds in the trading account weren’t real, Hunt still believed they
26 were real and that Levin was just trying to get out of paying him what he owed. (*Id.*, pp.
27 281-282, 288, 300, 390-391, 393.) If fact, there is credible, substantial evidence that
28

1 Hunt never stopped believing the things Levin told him about the money he was owed,
2 and was quite gullible in this regard. (*Id.*, pp. 393-394.)

3 In his closing argument, the prosecutor argued exactly this:

4 “ ... [Hunt] has made eight million dollars profit. Okay, Levin, you want to
5 liquidate? Give me my 4 million and I am out of here. Of course, there was
6 no 4 million. You heard all of the testimony about the stalling and the
7 putting off. Levin said to Hunt, “Well, I don't have the money right now”
8 and he put him off. And then he said, “But, don’t worry. It is in a shopping
9 center. Instead of 4 million it is going to be 30 million. Now Hunt is happy
10 again. And of course eventually, there was no shopping center. **And even**
11 **after Friedman had told Hunt that there was no real money, Hunt**
12 **didn't believe it because he didn't want to believe it.** Do you remember
13 that the account finished trading in the middle of August and it was
14 sometime in September or October or November, I think before
15 Thanksgiving in any event, that Friedman had told Hunt it was all phony. It
16 was all for a TV show. **But of course, Levin was able to call up Hunt and**
17 **convince him that that was not true.** According to Karny he said that,
18 well, even if it was not true, that he had scammed up some money from
19 some other brokerage place. But it was way, way, after Friedman told Hunt
20 that the money was not real that he had these discussions about divying up
21 the portions of the shopping center.” (RT 12752-12753, emphasis added.)

22 Based on the above there is no doubt that there was credible, substantial evidence
23 that Hunt had a bona fide belief, even though mistakenly held, that he was owed \$3.5
24 million dollars by Levin for trading profits, however, the court did not give a jury
25 instruction on a claim of right defense. Therefore trial court’s failure to instruct the jury
26 of a claim of right defense to robbery “was a miscarriage of justice within the meaning
27 of Article 13 of the California Constitution and requires reversal.” (*Butler*, 65 Cal.2d at
28 p. 572-574.)

23 Further, the State of California having taken the position during summation in
24 1987 that Hunt had a good faith belief that Levin owed him more than the amount on the
25 check allegedly taken by force or fear is now equitably estoppel from arguing otherwise.
26 (Evid. Code § 623 [“Whenever a party has, by his own statement or conduct,
27 intentionally and deliberately led another to believe a particular thing true and to act
28 upon such belief, he is not, in any litigation arising out of such statement or conduct,

1 permitted to contradict it.”].) Moreover, the prosecutor’s closing argument establishes
2 constitutional error without which no reasonable jury would have convicted. This is true
3 because the prosecutor argued a view of the facts, which literally would have compelled
4 the jury to acquit had they been properly instructed on the claim right defense. So
5 indeed, there was constitutional error absent which no reasonable jury would have
6 convicted.

7 III.

8 HUNT’S TRIAL COUNSEL WAS INEFFECTIVE DUE TO 9 FAILING TO REQUEST A JURY INSTRUCTION ON 10 THE CLAIM OF RIGHT DEFENSE TO THE ROBBERY 11 CHARGE AND SPECIAL CIRCUMSTANCE 12 ALLEGATION.

12 A. Controlling Legal Standards

13 “A criminal defendant is guaranteed the right to the assistance of counsel by both
14 the state and federal Constitutions. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15.)
15 “Construed in light of its purpose, the right entitles the defendant not to some bare
16 assistance but rather to *effective* assistance.” (*In re Harris* (1993) 5 Cal.4th 813, 832,
17 quoting *People v. Ledesma* (1987) 43 Cal.3d 171, 215 (*Ledesma*), italics in original.)

18 In order to demonstrate ineffective assistance of counsel, a defendant must first
19 show counsel’s performance was “deficient” because his “representation fell below an
20 objective standard of reasonableness ... under prevailing professional norms.” (*Harris*, 5
21 Cal.4th at p. 832, quoting *Strickland v. Washington* (1984) 466 U.S. 668, 687–688
22 (*Strickland*); *People v. Pope* (1979) 23 Cal.3d 412, 423–425.) Second, he must also show
23 prejudice flowing from counsel’s performance or lack thereof. (*Harris*, 5 Cal.4th at p.
24 833; *Strickland*, 466 U.S. at pp. 691–692.) Prejudice is shown when there is a
25 “reasonable probability that, but for counsel’s unprofessional errors, the result of the
26 proceeding would have been different. (*Harris*, 5 Cal.4th at p. 833.) “A reasonable
27 probability is a probability sufficient to undermine confidence in the outcome.” (*Ibid.*)
28 The question is “whether counsel’s deficient performance renders the result of the trial

1 unreliable or the proceeding fundamentally unfair.” (*Harris*, 5 Cal.4th at p. 833, quoting
2 *Lockhart v. Fretwell* (1993) 506 U.S. 364, 372.)

3 In other words, in order to prevail, on an ineffective assistance of counsel claim
4 for failure to request a jury instruction, a defendant must demonstrate a reasonable
5 probability that, but for the failure to request this instruction, the outcome of this trial
6 would have been different. (*People v. Windfield* (2021) 59 Cal.App.5th 496, 520
7 (Windfield), citing *Strickland*, 466 U.S. at pp. 691–694, 697–698.) That probability must
8 be sufficient to undermine confidence in the verdicts. (*Ibid.*, citing *Ledesma*, 43 Cal.3d at
9 pp. 216–218.)

10 **B. There Is A Reasonable Probability That The Outcome of The Trial Would**
11 **Have Been Different, But For Trial Counsel’s Failure To Request A Claim**
12 **Of Right Jury Instruction.**

13 As established in above, Hunt was entitled to a jury instruction on a claim of right
14 defense, as there was credible, substantial evidence that Hunt had a bona fide belief, even
15 though mistakenly held, that he was owed \$3.5 million dollars by Levin for trading
16 profits. It was well established at the time of the trial, that failure to instruct the jury of a
17 claim of right defense to robbery “was a miscarriage of justice within the meaning of
18 Article 13 of the California Constitution and requires reversal.” (*Butler*, 65 Cal.2d at p.
19 572-574.) Considering the evidence in the record and the prosecutor’s closing argument
20 that Hunt had a genuine belief that Levin owed him \$3.5 million, there is a reasonable
21 probability that, but for the failure to request a claim of right jury instruction, the
22 outcome of this trial would have been different. (*Windfield*, 59 Cal.App.5th at p. 520;
23 citing *Strickland*, 466 U.S. at pp. 691–694, 697–698.) If the claim of right jury instruction
24 had been given, there is a high probability that Hunt was have been acquitted of robbery,
25 and the murder/robbery special circumstance would not have been found true, resulting in
26 a sentence of 25 years to life in prison, rather than life without parole.

27 Given the prosecutor's closing argument establishes constitutional error without
28 which no reasonable jury would have convicted, no reasonably competent attorney would

1 have failed to request that the jury be instructed on a claim of right defense because the
2 prosecutor argued a view of the facts, which literally would have compelled the jury to
3 acquit had they been properly instructed on the claim right defense. So indeed, there was
4 constitutional error absent which no reasonable jury would have convicted.

5 **IV.**

6 **HUNT IS AN EXCELLENT CANDIDATE FOR**
7 **RESENTENCING UNDER PENAL CODE SECTION**
8 **1170(d)(1).**

9 In 2018, Assembly Bill 2942 (AB 2942) amended Penal Code section 1170,
10 subdivision (d)(1), permitting the District Attorney of the county where a person was
11 convicted to recommend a resentencing if it is in the interest of justice. Upon
12 resentencing, the court may consider postconviction factors, including, but not limited to,
13 the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence
14 that reflects whether age, time served, and diminished physical condition, if any, have
15 reduced the inmate's risk for future violence, and evidence that reflects that
16 circumstances have changed since the inmate's original sentencing so that the inmate's
17 continued incarceration is no longer in the interest of justice.

18 George Gascon, the duly elected District Attorney of Los Angeles County (DA),
19 has established a policy to "reevaluate and consider for resentencing people who have
20 already served 15 years in prison" and who are currently 60 years of age or older.
21 (Exhibits, pp. 473, 477.)

22 Hunt meets these criteria. He is 62 years old, has been incarcerated for nearly 35
23 years, and as outlined above, should not be sentenced to life without the possibility of
24 parole. Therefore, it is in the interest of justice to resentence Hunt to 25 to life with the
25 possibility of parole.

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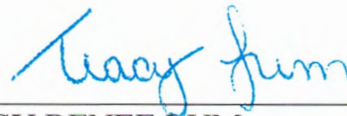
1 **CONCLUSION**

2 Based on the above there is no doubt that the court should have instructed the jury
3 on a claim of right defense as there was credible, substantial evidence that Hunt had a
4 bona fide belief that he was owed far more money by Levin for trading profits, and the
5 prosecutor's closing argument establishes the basis for such an instruction. Had the jury
6 been properly instructed there is no reasonable possibility that the jury would have
7 convicted Hunt of robbery or found the robbery special circumstance true. Therefore, it
8 is undeniable that the trial court's failure to instruct the jury of a claim of right defense
9 to robbery was a miscarriage of justice requiring reversal.

10 As such no reasonably competent attorney would have failed to request that the
11 jury be instructed on a claim of right defense because the prosecutor argued a view of
12 the facts, which literally would have compelled the jury to acquit had they been properly
13 instructed on the claim right defense.

14 Dated: April 18, 2022.

15 Respectfully submitted.

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18 TRACY RENEE LUM
19 Counsel for Petitioner Joseph Hunt
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VERIFICATION

I, Tracy Renee Lum, declare:

1) I am the attorney representing petitioner Joseph Hunt;

2) I have prepared the petition on his behalf, and verify that the contents thereof are true and correct;

3) This petition is brought in good faith as to the merits and that Mr. Hunt is entitled to the relief prayed for in this petition.

EXECUTED this 18 day of April 2022, under penalty of perjury by the laws of the State of California.




TRACY RENEE LUM
Counsel for Petitioner Joseph Hunt

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I am a US citizen and over the age of 18. On the below date I have placed into the United States Postal Delivery System a copy of the PETITION FOR WRIT OF HABEAS CORPUS; EXHIBITS, proper postage affixed thereto, and addressed to the respondent's attorney as listed below:

Los Angeles District Attorney
211 West Temple Street
Los Angeles, CA 90012


SCOTT ESTY, declarant