

October 4, 2007

Thomas More
PO Box 1
San Francisco, CA 891234

Re: *People v. Thomas More*, H761535

CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

Mr More:

I received your letter. You asked about your options and how you could pursue your case.

From the start, it is important to understand how the courts are organized. Both California and the federal governments have their own set of courts. In California, trials are held in the superior court (such as the Santa Clara County Superior Court). Then, one appeals to the court of appeal (your appeal was at the Sixth District Court of Appeal). Afterwards, one requests the California Supreme Court to consider the case by filing a petition for review.

In the federal courts, matters often start in the United States District Court. One then appeals to the United States Court of Appeals (sometimes called "circuit courts"). The United States Supreme Court considers petitions to hear cases that have been brought to the federal Court of Appeals or to the state Supreme Court.

At this point, you can do the following: (1) You can petition for writ of certiorari in the United States Supreme Court. You do not have to file a petition in the U.S. Supreme Court in order to file a state or federal habeas petition. (2) You can petition for writ of habeas corpus in the state court. If there are new issues to raise or new evidence you wish to present, you should file a state habeas petition. A state habeas petition is not appropriate if you will only raise the same arguments I had presented in the appeal. (3) You can file a petition for writ of habeas corpus in federal court.

If you wish to raise new issues or new evidence, you should file a state habeas petition before filing a federal habeas petition. (4) You can do nothing and no longer challenge your conviction.

(1) Petition in the United States Supreme Court

A petition for certiorari is a request to the United States Supreme Court in Washington, D.C. to consider your case. When the Supreme Court “issues certiorari” it is notifying the lower courts it will consider the case. The advantage of filing a petition for certiorari now is that you would be taking your case “all the way up to the U.S. Supreme Court.” The disadvantage of filing a petition in the U.S. Supreme Court is that there is virtually no chance of the Supreme Court considering the case, and it might just be a waste of time and effort that can be better spent on other legal work.

A petition for certiorari must be sent first class mail and postmarked *within 90 days of the California Supreme Court decision denying review of your appeal*. It should be mailed to the Clerk, Supreme Court of the United States, Washington, D.C. 20513. You should serve (send a copy of your petition) to the California Attorney General at 455 Golden Gate Blvd, Rm. 11000, San Francisco CA 94102.

The U.S. Supreme Court will consider only issues raised previously on appeal and only issues concerning violations of the United States Constitution or federal law. The only issues you can raise are issues already presented to the California Supreme Court. The petition for writ of certiorari can be no longer than 40 pages. You should type anything you file in a court, but if you cannot type the petition, you should print it. It must be double spaced and on white paper.

Follow the instructions on the enclosed form. The case would be entitled [your name] v. California. Underneath the title of the case, you should state “On Petition for Writ of Certiorari to the California Court of Appeal, Sixth Appellate District”

Since you are indigent, you must file an affidavit with your petition requesting to be considered in forma pauperis. This allows you to file at no cost and to waive certain filing requirements.

(2) Petition for Writ of Habeas Corpus in California Courts

You can file a petition for writ of habeas corpus in state court. A habeas corpus petition is similar to an appeal. The advantage to a state habeas petition is that this is the only way you can raise issues I did not raise on appeal. It is also the only way to present new evidence.

Follow the instructions on the enclosed form. The petition should be filed at the Santa Clara County Superior Court, where your trial was held. If you lose your petition in the superior court, you cannot just appeal to the Court of Appeal. Instead, you must file a new petition for writ of habeas corpus at the Sixth District Court of Appeal in San Jose. The petition in the Court of Appeal uses the same form as the petition you file in superior court.

If you lose in the Court of Appeal, you must file a petition for review at the California Supreme Court in San Francisco within ten days after the Court of Appeal rejects the habeas corpus petition! If you miss the deadline for filing a petition for review in the Supreme Court, you may file a new state petition for habeas corpus in the Supreme Court raising the same arguments you raised in the other courts. The Supreme Court prefers petitions for review rather than petitions for writ of habeas corpus.

Except for the deadline for filing the petition for review, there are no strict deadlines for filing petitions in California courts. One who waits too long to complain can be denied relief, however.

(3) Petition for Writ of Habeas Corpus in Federal Courts

You can file a petition for writ of habeas corpus in the United States District Court. Federal courts will only consider issues concerning violations of federal law or the United States Constitution that were presented to the California Supreme Court. However, a claim that the court should have granted a motion to suppress evidence because of an illegal search or arrest cannot be raised in a federal habeas petition. The advantage of a federal habeas petition is that after losing in all of the state courts, the United States District Court is much more likely to consider your case through a habeas petition compared to the United States Supreme Court through a petition for certiorari. The disadvantage is that the United States District Court will consider only one federal habeas petition. Thus, if you wish to present new issues or new evidence, you should file a state habeas petition before you file a federal habeas petition.

A federal habeas petition must be filed within one year after the California Supreme Court denies the petition for review. For the issues I raised on direct appeal, the time a habeas petition is pending in state court does *not* count toward the one year deadline. This rule allows you to file a state habeas petition without losing time for filing a federal habeas petition. The time *before* filing a state habeas petition in the superior court, however, does count toward the one year deadline.

Follow the instructions on the enclosed form. This petition would be filed at the United States District Court for the Northern District of California in San Francisco. You will need to attach the request for in forma pauperis status. You also need to include copies of your trust account statement for the last six months, and the enclosed certificate signed by an authorized prison officer.

My recommendation is that if you wish to pursue your case, you should file a state habeas petition only if you have new issues or new evidence to raise. After litigating issues in the state habeas petition to the California Supreme Court, you can file a federal habeas petition raising your new issues with the old issues I raised in your appeal. If you do not have any new issues or new evidence, you should simply file a federal habeas petition.

Sincerely,

Jonathan Grossman
Staff Attorney

Enclosures

INSTRUCTIONS FOR FILING A PETITION FOR REVIEW IN THE CALIFORNIA SUPREME COURT

If you wish to request the California Supreme Court to consider your case, you must file a petition for review in the Supreme Court 31 to 40 days after the decision of the Court of Appeal. Be sure to provide enough time for the petition to be received by the Supreme Court through the mail. If you file the petition Overnight Mail or certified mail, the petition is considered to be “filed” the day it is postmarked.

There are three grounds on which the Supreme Court will grant review. They are: (1) where it appears necessary to secure uniformity of appellate decisions throughout the state, or to settle an important issue of law; (2) where the Court of Appeal was without jurisdiction over the case; or (3) where the Court of Appeal decided the case without a majority of the panel agreeing to the outcome. Most likely, the only ground that may apply to your case is the first one.

The petition for review need not be elaborate. You can only discuss the issues that were raised on appeal. The petition for review must contain the following:

- C First, at the beginning, a statement of the **issues presented** in a concise, nonargumentative form. This is usually a one sentence statement or question.
- C Second, the petition must also contain a discussion of **why the court should grant review**. This usually involves discussing whether an important question of law is involved.
- C Third, the **legal arguments** follow. Your argument should refer to specific legal authority (portions of the Constitution, statutes, or cases) and to specific facts contained in the record on appeal. Do not forget to cite federal cases, statutes, or the Constitution whenever they apply.
- C At the end of your argument, you should have a short **conclusion**: “Therefore, petitioner requests that this Court grant review.” You must sign at the bottom of this page.
- C The **opinion of the Court of Appeal** must be attached to the end of the petition and labeled Exhibit A.
- C At the end, you should also attach a **proof of service**. This is a signed statement under penalty of perjury that on a certain date you mailed copies of the petition for review from your address to each party listed. An example of a proof of service is at the end of the opening and reply briefs to the Court of Appeal. You must send the petition for review to the same people who received the briefs, as well as to the Court of Appeal at the following address: Court of Appeal, Sixth Appellate District, 333 West Santa Clara Street, San Jose, CA 95113.
- C A white cover must be at the front of the petition with the same information on it as in the

Court of Appeal decision, except the proper court is the Supreme Court, not the Court of Appeal.

- C** If you can, you should have a **table of contents** and a **table of authorities** in the front of the petition, similar to the tables in the briefs in the Court of Appeal.

The petition for review can be no longer than 30 pages. The limit does not include the cover, the table of contents, the table of authorities, the Court of Appeal opinion, or the proof of service.

You need to mail the original petition to the Supreme Court at 350 McAllister Street, San Francisco, CA 94102-3600, with a request that the court provide for itself any additional copies it may need because you are indigent. If you do not include the request, you are supposed to file 14 additional copies to the Supreme Court. You should keep a copy for yourself. You need to mail copies to everyone on the proof of service.