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Attorney for Petitioner George Reyes AI 7421

CDC or ID Number: \_\_\_\_\_

SUPERIOR COURT OF CALIFORNIA

LOS ANGELES COUNTY

(Court)

**PETITION FOR WRIT OF HABEAS CORPUS**

No. MA 048357

*(To be supplied by the Clerk of the Court)*

GEORGE M. REYES

Petitioner

vs.

Amy Miller Warden Centinela State Prison

Respondent

**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 only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

**This petition concerns:**

- A conviction  Parole  
 A sentence  Credits  
 Jail or prison conditions  Prison discipline  
 Other (*specify*): \_\_\_\_\_

1. Your name: GEORGE M. REYES  
 2. Where are you incarcerated? CENTINELA STATE PRISON  
 3. Why are you in custody?  Criminal conviction  Civil commitment

*Answer items 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").

Second Degree Murder (Watson Murder, death while DUI)

- b. Penal or other code sections: 187 (a)

- c. Name and location of sentencing or committing court: Antelope Valley Courthouse Lancaster CA

- d. Case number: MA048357

- e. Date convicted or committed: August 19, 2011

- f. Date sentenced: August 19, 2011

- g. Length of sentence: 15 years to life

- h. When do you expect to be released? unknown

- i. Were you represented by counsel in the trial court?  Yes  No *If yes, state the attorney's name and address:*  
Joel Lofton, Office of the Public Defender, 210 W. Temple Street 19th floor LA CA 90012

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 4. For additional grounds, make copies of page 4 and number the additional grounds in order.*)

Ineffective Assistance of Counsel under Strickland v. Washington (1984) 466 U.S. 668

Trial counsel rendered ineffective assistance by not requesting the jury be instructed with NON statutory involuntary manslaughter as set forth in CALCRIM 626

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on 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.*)

SEE ATTACHED POINTS AND AUTHORITIES to supplement what is below

CALCRIM 626 provides that a defendant may be convicted of involuntary manslaughter as a lesser included offense to second-degree murder. CALCRIM 626 plus Benchnotes is attached to this petition's Points and Authorities. It states that voluntary intoxication may cause a person to be unconscious of their actions. Here Mr. Reyes gave the keys to Michelle Garcia. Mr. and Mrs. Portillo saw Michelle drive away with Mr. Reyes either asleep or passed out in the passenger seat. 15 min later Michelle was dead after ejection and Mr. Reyes was on the inside roof of the overturned car, partially belted into the driver's side seat belt with no memory of how he got there. The prosecution theory was that they exchanged positions out of sight of the two Portillos. Trial counsel admits he had no tactical reason to fail to ask for CALCRIM 626 as there was no legislative restriction on using that NON statutory lesser included offense and there facts to support giving that instruction and the jury asked the court to instruct on a lesser charge than murder.

## 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.)*

see attached Points and Authorities Mr. Reyes was entitled under the Sixth Amendment to competent counsel who would have asked the court to give CALCRIM 626. Since there were facts to support this instruction, the court would have given it. Since the jury was already pre-disposed to convict of a lesser charge, they would have convicted of Inv. Manslaughter.

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

The court had a sua sponte duty, under state and fed law to instruct the jury with CALCRIM 626  
The trial court heard evidence from the Portillos and the police and emergency personnel at the  
crash scene and from the taped interview of petitioner where he remembered nothing, not even  
driving. In addition the jury asked for lesser charges.

a. Supporting facts:

Here the court heard the facts that the Portillos were happy when they saw Michelle Garcia  
with the keys to the car. The Portillos watched Garcia drive away with petitioner's seat reclined  
and petitioner either passed out or asleep in the passenger seat. The court heard the  
prosecution argument that they must have changed places. The court heard the police and  
emergency personnel describe petitioner as ON THE ROOF of the overturned car and avoiding  
being helped by curling into a ball and scurrying away from Taylor the firefighter. The court heard  
the taped interview where petitioner remembered not even driving at all. These facts supported  
the giving of CALCRIM 626 on the basis that there was sufficient evidence that petitioner drove  
in a state of unconsciousness induced by voluntary intoxication.

b. Supporting cases, rules, or other authority:

The duty to instruct exists even where the defense does not request instruction. People v.  
Breverman (1998) 19 Cal.4th 142, 157; A trial court must instruct the jury "sua sponte on inv.  
manslaughter based on unconsciousness" whenever "there is evidence deserving of  
consideration that the defendant was unconscious due to voluntary intoxication." People v.  
Halvorsen (2007) 42 Cal.4th 379, 418. see also People v. Ochoa (1998) 19 Cal.4th 353

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 Division of Superior Court"):

Court of Appeal Second Appellate District Division Four

b. Result: Affirmed c. Date of decision: August 21, 2012

d. Case number or citation of opinion, if known: B235382

- e. Issues raised: (1) Failure of Trial Court to Instruct on Inv. Mansl. as LIO of Murder
- (2) Failure under Federal Law to give Instructions on Lesser Related Offenses
- (3) \_\_\_\_\_

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

Landra Rosenthal PMB 305 1563 Solano Ave Berkeley CA 94707 510 524 5060

9. Did you seek review in the California Supreme Court?  Yes  No If yes, give the following information:

a. Result: Petition for Review Denied b. Date of decision: 10/24/2012

c. Case number or citation of opinion, if known: S205465

- d. Issues raised: (1) Failure of Trial Court to Instruct on Inv. mansl. as LIO of murder
- (2) Fed Due Process Violated By Successful prosec. objection to lesser related instr
- (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:

NA

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.) Explain what administrative review you sought or explain why you did not seek such review:

NA

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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: \_\_\_\_\_

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

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

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:

\_\_\_\_\_  
\_\_\_\_\_

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.)

Family exhausted funds in hiring atty for prelim. Appointed counsel for trial/appeals. No funds available habeas atty. Very complex for petitioner pro se. this atty had 3 months to review & file.

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

Charles R. Khoury Jr PO Box 791 Del Mar Ca 92014 858 764 0644

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:

\_\_\_\_\_  
\_\_\_\_\_

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: 01/20/2014



(SIGNATURE OF PETITIONER)