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***Writ
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General Case Overview

I.

GENERAL CASE OVERVIEW

The naked facts in this case point to a contract dispute between forty-nine (49) customers of RON RUSSELL PROPERTIES LLC. and owner/operator, then sixty-nine (69) year defendant Ronald Russell. The dispute, essentially about refunding an upfront fee paid to Mr. Russell for services, could have been and should have been resolved in small claims court. Prior to the allegations and subsequent conviction of forty-nine (49) counts of grand theft by fraud (P.C. §487(b)), Defendant Russell was a semi-retired, modestly successful California real estate broker with roughly four (4) decades of experience, a devoted family man and respected member of the community with no criminal history.

Each of the state's alleged victims were at some time California home owners adversely affected by the 2008-2009 California housing market melt-down. Some of these home owners had previously financed their home using non-traditional mortgages with variable interest rates. When their mortgage interest rates rose, they found themselves strapped with monthly mortgage payments which exceeded what they could afford. At the same time their variable interest rate was rising, home values plummeted leaving them "upside down" in their mortgage. (i.e. They owed more on their mortgage than their home's present value.)

Other "alleged victims" financed their home with non-conventional "interest only" mortgages require a "balloon payment" (payment of the entire principle amount) as the final

1 mortgage payment. They too discovered they owed a "balloon
2 payment" far exceeding the present value of their home. They
3 faced default, foreclosure and eviction; or were already trapped
4 by the "default foreclose eviction cycle." Both groups of home
5 owners had lost any equity they may have once had in their home.
6 If these home owners had already defaulted or their property was
7 already foreclose; their credit rating also took a big hit
8 adversely affecting their credit worthiness. These facts taken
9 together made it near impossible for them to refinance existing
10 mortgages, secure further loans or purchase other homes.

11 Mr. Russell learned about a real estate operation in the San
12 Francisco Bay area assisting persons mired in these
13 circumstances to "walk away" from their financially distressed
14 residential property, rent a suitable home while they improved
15 their credit score and eventually purchase the home they were
16 renting. The operator obtained lists of foreclosed/vacant
17 residential properties from HUD's Neighborhood Revitalization
18 Program in conjunction with a local nonprofit, purchased
19 suitable properties using private investor funds, rented the
20 property to the prospective new owner and eventually; when the
21 renter's credit score improved, sold the property to the
22 prospective new owner. Mr. Russell concluded this approach
23 would work well in the Sacramento area and incorporated the
24 operation's ideas into what he called a Rent to Own project.

25 He provided significant input to the application filed by
26 nonprofit **Haven of Hope** (See "Exhibit A.") to HUD's Neighborhood
27 Revitalization program to receive the lists of foreclosed,
28

1 vacant properties. (See "Exhibit B.") He contacted and
2 received encouragement and political support from then
3 California Senator Lungren, (See "Exhibit C.", drafted a
4 business plan which included locating the "Rent to Own" program
5 in his existing Sacramento area real estate office, (See
6 "Exhibit D."); began his search for private investors, (See
7 "Exhibit E."), created a customer contract, (See "Exhibit F.")
8 reviewed by his attorney Harold John Gentner, (See "Exhibit G.")
9 and began advertising for customers.

10 The contract Mr. Russell signed with each customer (See
11 "Exhibit F.") was essentially a **contract for services** providing
12 that; for consideration of an upfront refundable fee of \$2,900.
13 he would provide the knowledge/expertise/services, in other
14 words help/enable the customer to limit the financial loss and
15 burden arising from their financially distressed residential
16 property. (To the extent possible by law.) He would locate a
17 suitable property (from the HUD or MSL lists) and purchase it
18 using private investor funds. The customer would agree to "rent
19 to own" the house until the customer improved their credit score
20 sufficiently to qualify for a conventional mortgage. There was
21 no "sunset clause" in the contract such that Mr. Russell had a
22 duty to perform the services he offered by a specific date.

23 Mr. Russell's purpose behind the \$2,900. upfront refundable
24 fee (refundable if the customer changed their mind) was to
25 ensure each customer had an earnest intent to participate in the
26 program and not lose interest or drop out at a critical stage of
27 this home acquisition process. Any experienced real estate with
28 (Ronald Russell, Habeas Corpus Petition, General Case Overview, page 5.)

1 Mr. Russell's experience can recall a number of times in their
2 career when at the very last moment, either the buyer or the
3 seller backed out of a really good deal the broker had worked
4 long and hard to arrange. But Mr. Russell also included a
5 provision in the contract permitting the \$2,900 to be used
6 either as a rental deposit on the home the customer would rent;
7 or, part of the down payment toward the purchase price when the
8 customer was ready to purchase the property, or as a credit
9 toward moving expenses. In the meantime, Mr. Russell intended
10 to utilize these up-front fees to cover operational expenses of
11 the Rent to Own project.

12 The contract further contained a provision for resolving
13 disputes through mediation and Small Claims Court. None of the
14 disgruntled customers (the state's "alleged victims") attempted
15 exercise the provision to to resolve their refund dispute with
16 Mr. Russell. Had they done so, they would have been directed to
17 the Department of Real Estate (DRE) and received their refund
18 years before the state took Mr. Russell to trial.

19 The four or five customers seeking a refund using the Small
20 Claims Court procedure all received a full refund which was no
21 greater or less than the refund received by the "alleged
22 victims" who the state's complaining witnesses. Both groups
23 received their refunds from the DRE Recovery Fund. The refunds
24 obtained through this fund did not come out of public monies.
25 The fund's account balance is maintained through contributions
26 made by every licensed real estate broker based on a percentage
27 of every commission the broker was paid. (See "Exhibit J.")
28

(Ronald Russell, Habeas Corpus Petition, General Case Overview, page 6.)

1 The prosecution's basic underlying premise was the \$2,900.
2 upfront fee was a rent deposit and Mr. Russell was required to
3 place these upfront fees in a trust account, escrow account or
4 other special account. This premise was fundamentally flawed
5 for at least three (3) reasons: The terms of the contract
6 provided the upfront fee was not in itself either a rental
7 deposit or a down payment on the home the customer would
8 eventually rent and purchase, but could be applied to such at
9 the appropriate time. There was no lease or rental agreement in
10 effect that stated the monthly rent, security deposit and
11 duration of the lease on the rental. Nor had the customer
12 entered into a contract to buy a specific property at a specific
13 price. Even if a court of law was to determine the \$2,900
14 upfront fee paid by each customer was a rental security deposit;
15 under California law:

16 "There are no restrictions on what the
17 landlord can do with the deposit during the
18 term of the rental agreement, except for
19 what is required by local ordinance or by
20 the rental agreement or lease. In other
21 words; there is no state-wide requirement
22 that the security deposit be placed in an
23 interest bearing account. However, several
24 local rent control ordinances do require
25 that the security deposit be kept in an
26 interest bearing account for the benefit of
27 the tenant."² NOTE: There are no such
28 ordinances in Sacramento.

23 The prosecution's second underlying premise was: Mr. Russell
24 was operating a "Ponzi scheme" and intended to "pocket" the
25 \$2,900. fee from each customer for his own personal use.

26 ² SOURCE: California Association of Realtors website
27 (www.car.org) and CIV. §§ 1950.5(b), 1950.7(c).

28 (Ronald Russell, Habeas Corpus Petition, General Case Overview, page 7.)

1 Further, the defendant never intended to purchase distressed
2 properties for these customers using private investor funds; nor
3 rent these homes to these customers; nor eventually sell each
4 home to the customers when they qualified for a conventional
5 mortgage. Essentially, the prosecutions second premise: Mr.
6 Russell intended to defraud these customers. This premise is
7 ludicrous and categorically flawed on it's face. The "Ponzi
8 scheme" and "intent to defraud" will be examined further in the
9 Grounds for Habeas Corpus petition. For our purposes of general
10 overview here, the first obvious flaw is Real Estate Brokers are
11 paid a commission by the property seller based on a percentage
12 of the property's selling price. The average commission (5% -
13 6%) on a single family dwelling would exceed five (5) times the
14 \$2,900 upfront fee customers paid to Mr. Russell. Hence, Mr.
15 Russell had a greater incentive to buy/sell homes to customers
16 than cheat them out of their \$2,900. upfront fee. There are
17 several other seriously flawed assumptions in the prosecution's
18 case related to the notion of a "Ponzi scheme" and "intent to
19 defraud" neither supported by the evidence or state law.

20 Mr. Russell however, underestimated the pervasive nature of
21 "Murphy's Law" also known as "What can go wrong will go wrong."
22 For example, like a large number of professions in the real
23 estate industry, he believed the California residential housing
24 market had bottomed out by 2010. (i.e. The value of existing
25 homes would not continue to decline.) That was not the case
26 however because at the time, no one really knew how many
27 mortgages were on the brink of default and foreclosure. The
28 rising number of mortgage defaults drove up the number of
(Ronald Russell, Habeas Corpus Petition, General Case Overview, page 8.)

1 foreclosures and eviction with the unintended effect of further
2 driving down the value of homes in the entire state. This
3 phenomena created a second tidal wave of declining home values
4 making prospective buys skittish and lenders extremely wary ...
5 Lenders don't make loans from their own money - it is the money
6 of investors whose attraction to opportunities in the California
7 residential real estate market continued to wane because the
8 "opportunities" looked more and more like losing propositions.
9 But Russell desperately needed real estate investors if his Rent
10 to Own project was to succeed.

11 Russell reasoned, in this scenario, banks and other lenders
12 holding mortgages will be less quick to pursue eviction as their
13 general policy because each additional eviction created more
14 vacant property further driving down the value of surrounding
15 homes. Essentially, they were cutting their own throats with
16 each eviction. This insight, a product of his decades of market
17 experience, he concluded he could put to use to the benefit of
18 his customers. As it turned out, Mr. Russell reasoning was
19 sound, allowing 45 - 50 customers who were either facing or
20 already in the "default foreclosure eviction cycle" to remain in
21 their present home several months without paying any further
22 mortgage payments. The amount saved (\$10,000. or more) well
23 exceeded the upfront fee they paid to Mr. Russell. Mr. Russell
24 showed customers how to get "Cash for Keys" (\$3,000 to \$6,000 in
25 most cases). Mr. Russell's knowledge and expertise permitted
26 customers to walk away with as much as \$16,000. or more AND THE
27 REFUND of the \$2,900 upfront fee they paid to Mr. Russell. Just

28 (Ronald Russell, Habeas Corpus Petition, General Case Overview, page 9.)

1 how disgruntled could a customer be in such an enviable
2 position?

3 Mr. Russell underestimated the period of time required by
4 HUD's application approval process, never dreaming it would drag
5 on for months and months. Meanwhile, he continued to get
6 favorable feedback and moral support from Senator Lungren and
7 the HUD representative. He honestly believed it was just a
8 matter of time before the HUD application would be approved.
9 But the news wasn't all bad: Considering the real estate market
10 conditions, investor confidence in the market, non-availability
11 of investor of funds couple with a general apathy about real
12 estate investment; Mr. Russell had found a private investor who
13 pledged five (5) million dollars contingent upon Mr. Russell's
14 receipt of HUD's list of foreclosed properties. Mr. Russell's
15 decades of experience said "SIT TIGHT AND WAIT!"

16 The corollary to **Murphy's Law** is "Just when you think things
17 can't get any wore, THINGS GET WORSE." "Worse" for Mr. Russell
18 in this case was he never seriously considered any possibility a
19 disgruntled customer harboring personal issues toward him would
20 begin a wild, vindictive, all-out campaign against him to
21 tarnish his name and drive him out of business by waging war
22 against Russell on the internet. Customer **Jeff Johnson**, also a
23 **California licensed Real Estate Broker** was one such individual.
24 **Johnson** demanded a refund of his upfront \$2,900 fee. He
25 obtained a Small Claims Court judgment against Russell for
26 \$2,900, and as a real estate broker he would obtain his refund
27 for \$2,900 satisfying the judgment by simply filling out an
28 application with the Department of Real Estate (DRE) Recovery

(Ronald Russell, Habeas Corpus Petition, General Case Overview, page 10.)

1 Account. Instead, Mr. Johnson took Mr. Russell into a
2 Creditors' Hearing, required Russell to produce records of all
3 his assets and financial holding allegedly to discover the
4 existence of any property or accounts Johnson could attach to
5 satisfy his \$2,900. judgment. This would seem like quite a
6 bother considering the facts: As a real estate broker himself,
7 he knew all he needed to do was submit a copy of the judgment
8 and an application to DRE Recovery Account and he would receive
9 his \$2,900 refund. He also knew the DRE would suspend Mr.
10 Russell's brokers license until such time as Russell reimbursed
11 the DRE Recovery Account in the amount of Johnson's claim.
12 After the Creditors' Hearing as they rode down together in the
13 elevator Jeff Johnson put it to Mr. Russell like this: " don't
14 care about the \$2,900. I'm going to bury you!"

15 Additionally, Mr. Johnson went to every federal, state and
16 local agency he could think of, including the Sacramento County
17 District Attorney's office with his claims about Mr. Russell.
18 (These claims were outrageously false or made without context.)
19 He further obtained a list of all of Mr. Russell's Rent to Own
20 customers complete with their e-mail addresses and began
21 repeatedly contacting each one. He told all of them Mr. Russell
22 was attempting to bilk them and they would never get their money
23 back. Based on Johnson's word, these other customers began
24 demanding refunds (creating a situation similar to "a run on the
25 bank") and repeatedly contacting the District Attorney's Office
26 at Johnson's behest. As a broker himself however, Johnson had a
27 fiduciary responsibility to inform the same people he sent to
28 the District Attorney about the DRE Recovery Fund as a means to

(Ronald Russell, Habeas Corpus Petition, General Case Overview, page 11.)

1 obtain their \$2,900. refund. He failed to fulfill this responsibility.

2 Friends and supporters of Mr. Russell urged him to file a civil lawsuit
3 for libel and slander against Johnson. Mr. Russell however, not looking for
4 revenge assured his friends and supporters that things would work themselves
5 out without resorting to a civil action against Mr. Johnson. Further discus-
6 sion of Mr. Johnson's role in bringing prosecution against Petitioner is found
7 in "Grounds for Habeas Corpus Petition.

8 Much to Mr. Russell's pleasure; vindication was soon his, or so he belie-
9 ved at the time. The Department of Real Estate launched a full-scale investi-
10 gation into Mr. Russell's activities and his Rent to Own project. They cared
11 off all of his business records for close scrutiny. Investigator Brenda Smith
12 extensively interviewed Mr. Russell and all of his customers. Had the DRE in-
13 vestigation determined Mr. Russell had violated any laws or regulations regar-
14 ding rental deposits, escrow accounts or "funds held in trust", DRE would have
15 immediately issued either a **LETTER TO CEASE AND DESIST** or **SUSPENDED/REVOKED**
16 Mr. Russell's brokers license. No action of any kind was taken by the Depart-
17 ment of Real Estate against Mr. Russell.

18 At a pre-trial hearing in the criminal case DRE Investigator Brenda
19 Smith, appearing as a state's witness was asked: "What regulations did Mr.
20 Russell violate?" Her testimony was "He didn't violate any laws or regula-
21 tions." She further testified the DRE Recovery Fund was available to Mr.
22 Russell's customers and some customers had already received their refunds.
23 Earlier the District Attorney had maintained "the Fund" was not available for
24 use by Mr. Russell's customers. After the conflicting testimony from Ms.
25 Smith, the prosecution moved the court to disallow any mention of the Recovery
26 Fund's existence and reimbursement application in front of the jury.

27 Then, after conviction was taken, in the absence of the jury, the prose-
28 cution gave the Judge all of the alleged victims' applications to DRE for
(Ronald Russell, Habeas Corpus Petition, General Case Overview, page 12.)

1 transferred to the custody of the California Department of
2 Corrections & Rehabilitation.

3 Thoroughly frustrated at the snail's pace the direct appeal
4 was proceeding, Petitioner allowed himself to be talked into
5 submitting a Habeas Petition to the trial court before his
6 direct appeal was decided. Petitioner was totally unaware he
7 could not rightfully begin the post conviction relief habeas
8 corpus process until after his criminal conviction was affirmed
9 as final based on the California Court of Appeal decision on
10 direct appeal. In result of this ignorance was his premature
11 submission of a poorly written petition, drafted without the
12 benefit of any access to trial transcripts and discovery
13 materials. The premature petition was denied by the Superior
14 Court and it was essentially futile to attempt to salvage the
15 denied petition for presentation to the California Court of
16 Appeal which still hadn't finalized his direct appeal!

17 Having received 19 volumes of trial transcripts in August
18 2016 from appellate counsel and the 17,000+ pages of discovery
19 materials from defense counsel in October, 2016, Petitioner
20 submitted the instant habeas petition Grounds 1-8 to the
21 Sacramento County Superior Court (Case No. 16HC00392) October
22 29, 2016. Despite Petitioner's explanation to the Superior
23 Court that his initial Habeas Petition was untimely and why,
24 (probably not even legally viable) as it was erroneously filed
25 before direct appeal was finalized and drafted without any
26 access to the trial court transcripts or related discovery
27 material, the Superior Court ruled this instant petition was a

28 (Ronald Russell, Habeas Corpus Petition, General Case Overview, page 13b.)

1 successive petition and would then only consider Petitioner's
2 Ground Eight, "Ineffective Assistance of Appellate Counsel"
3 because that Ground could not have been brought before the
4 direct appeal was finalized. The Superior Court further ruled
5 appellate counsel, appointed at public expense was not
6 ineffective because appellate counsel was not required to raise
7 all possible grounds on direct appeal, and only required to
8 raise issues where there was a likelihood of prevailing on
9 direct appeal. Thusly, the Sacramento Superior Court denied the
10 instant petition on January 26, 2017.

11 Subsequently, Petitioner filed the instant petition in the
12 California Court of Appeal (Case No. C084587) on May 5, 2017.
13 The Third Appellate District of the California Court of Appeal
14 issued an undated one page blanket denial of the Petition
15 without comment in June, 2017. Petitioner then submitted the
16 instant Habeas to the California Supreme Court (Case No.
17 S243220) on July 17, 2017. The California Supreme Court issued
18 a one (1) page blanket denial without comment on October 11,
19 2017.

20 Petitioner contends the State of California had ample fair
21 opportunity to consider all of the issues raised in Grounds 1-8
22 of the instant petition and thus, Petitioner's submission of the
23 instant petition to the United States District Court based
24 solely on federal constitutional grounds is proper and timely.
25 He further contends it would have been lawful, proper,
26 reasonable and just had the Sacramento County Superior Court
27 under the circumstances set aside the early initial Habeas
28 Petition as "premature" and/or untimely vacating the initial

1 ruling and then considering the instant petition in its entirety
2 instead of limiting the Court's consideration to Ground 8.

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Ground 1

Factual innocents

1 **GROUND 1. FACTUAL (ACTUAL INNOCENCE)**

2 Petitioner is factually and actually innocent of P C. §487,
3 subd. (a) grand theft under either or both theories of by fraud
4 or embezzlement. The multiple counts of grand theft arose out
5 of Petitioner's failed business-venture he developed as program
6 he termed Rent To Own. Petitioner, a California licensed real
7 estate broker with no less than 30 years in the real estate
8 market heretofore HAD NEVER been the subject of a complaints
9 about business practices. He introduced his program at the
10 point in time (2008) when the vast majority of professionals in
11 the California residential real estate market believed the
12 market crisis was over.

13
14 Petitioner, like this vast majority was dead wrong. No one
15 in the industry had even close to an accurate notion about the
16 pervasiveness of the after effects resulting from the market
17 collapse. These after-effects included but were not limited to
18 a glut of foreclosed homes whose values continued to decline as
19 more properties were added to the fast growing list, the sheer
20 volume of homes entering default and foreclosure process
21 motivating property owners to attempt to sell their "under
22 water" properties as "short sale" (priced to sell for less than
23 what the property owner owed on the property) to avoid the
24 negative credit consequences of foreclosure. Most important,
25 the dire lack of private investment capital because the
26 prolonged market collapse steadily re-ignited investors' fears
27 about the real estate market.

28 Each of the parties alleged by the prosecution to be
(Ronald Russell, Habeas Corpus Petition, Ground One, page 15.)

1 "victims" signed a contract with Petitioner's business and PAID
2 A FEE to the Petitioner - a fee for specific services (described
3 more fully below.) There was no sunset clause or completion
4 date requirement for providing said services in the contract.
5 The contract stated the fee was refundable if the customer
6 changed their mind at any time prior to moving into a home he or
7 she would be renting from the Petitioner. All of the customers
8 demanded a refund in a short period of time creating "a run on
9 the bank." Petitioner was unable to immediately provide a
10 refunds to all the customers upon demand but had a contingency
11 plan in place: If necessary, the customer(s) would obtain their
12 refund through the Brokers' Recovery Fund. (Brief details about
13 this fund follow.) Petitioner has never denied he owed refunds
14 to the customers nor has he denied he was unable to make refunds
15 to all customers upon demand. A fact of life is businesses fail
16 and many times they fail through no fault of the business owner.
17 No entrepreneur is likely to formulate a business plan that
18 seriously contemplates the likelihood all customers will demand
19 a refund at the same time as a basic premise to the plan.
20 Petitioner certainly didn't foresee that scenario as being a
21 likelihood.

22 Petitioner contends the matter of unpaid refunds was in no
23 way a criminal matter and was exclusively a civil contract
24 matter regarding specific non-performance under a contract
25 between himself and the dissatisfied customers. Petitioner
26 acknowledges the customers were particularly vulnerable because
27 of the tentative nature of their housing situations and further
28 recognizes they were victims of the residential real estate

1 market melt down before entering into a contract with him. He
2 contends their prior mortgage / financing choices when they
3 bought homes while the real estate market was booming largely
4 contributed to their subsequent victimization when the market
5 collapsed. Petitioner was not involved in encouraging or
6 influencing those choices. Nevertheless, these parties were
7 presented to the jury as victims, not victims of a faceless
8 victimizing housing market crisis but rather victims of the
9 Petitioner who had defrauded them. The members of the jury was
10 sympathetic to their plight for which somebody had to be to
11 blamed. Yet there was no face to blame for the customers'
12 victimization except for Petitioner who was after all a real
13 estate broker who stood accused an unscrupulous real estate
14 broker at that! He victimized them so he must be guilty of
15 something.

16 If granted an evidentiary hearing, Petitioner will
17 demonstrate he entered into a contract with each alleged victim
18 and from each received consideration in advance of providing
19 specific services and expertise. Petitioner will present
20 evidence that each customer fully understood Petitioner would
21 not begin to provide his services and expertise before receiving
22 said consideration.

23 Petitioner will demonstrate as a matter of law, how he
24 utilized said consideration received in the operation of his
25 business, and how he ultimately planned to apply that
26 consideration toward any future costs customers would incur
27 renting and buying a home from Petitioner should never have been
28 at issue in the criminal proceeding, yet became the central
(Ronald Russell, Habeas Corpus Petition, Ground One, page 17.)

1 issue of the proceeding. Petitioner will present evidence
2 neither the court nor jury ever considered that he did not
3 KNOWINGLY violate any laws in the conduct of this business
4 enterprise, his conduct did not reflect any of the "badges of
5 fraud" associated with fraudulent real estate transactions, did
6 not reflect the elements of embezzlement and Petitioner's
7 business venture did not meet the accepted legal definition of a
8 "ponzi scheme."

9 Finally, Petitioner will offer argument the evidence in
10 these matters point to the inescapable conclusion there was no
11 theft, fraud or embezzlement and the central issue of refunds
12 owed could have, should have and would have been prosecuted as
13 civil matters were it not for an element of malicious
14 prosecution and an overly zealous prosecutor. Petitioner did
15 not knowingly commit any crime and is indeed actually and
16 factually innocent in this matter.

17
18 **APPLICABLE CASE LAW:**

19 Schlup v. Delo, 513 U.S. 298 (1995) Actual innocence is some-
20 times referred to as a "Gateway Claim". The U.S. Supreme
21 Court held the Petitioner's procedural default could not be
22 used to deny him the right to have his habeas claim heard on
23 the merits because the petitioner was actually innocent of
24 committing the charged crime. Denying him the right to have
25 his habeas claim heard on the merits denied him his Fifth
26 Amendment right to due process.

27 Brinko v. Rio Properties, 2013 U.S. District Court Lexis 5986
28 (The Ponzi Presumption) A Ponzi scheme is a "financial fraud
(Ronald Russell, Habeas Corpus Petition, Ground One, page 18.)

1 that induces investment by promising extremely high risk-free
2 returns usually in a short time period from an allegedly
3 legitimate business venture." (emphasis added.)

4 Donell v. Kowell, 533 F.3d. 762,767 (9th. Cir. 2008) "The fraud
5 consists of funnelling proceeds received from new investors
6 to previous investors in the guise of profits fro the alleged
7 business venture thereby cultivating an illusion that a
8 legitimate profit making business opportunity exists and
9 inducing further investment." (emphasis added.)

10 In re. Blakin, 525 F.3d. 805,809 (9th. Cir. 2008) "The mere
11 existence of a Ponzi scheme is sufficient to establish actual
12 intent.

13 In re. AFI Holding, Inc., 525 F.3d. 700,704 (9th. Cir. 2008)
14 "Courts presume actual intent in relation to a ponzi scheme
15 because the debtor knows at the time of the transfer that the
16 scheme ultimately must collapse."

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Ground 2

Petitioners Right To a Speedy Trial

1 **GROUND 2.**

THE PROCEEDINGS VIOLATED

2 **PETITIONER'S RIGHT TO SPEEDY TRIAL.**

3 Petitioner alleges the prosecution, the court and even his
4 own appointed defense counsel were complicit in violating Peti-
5 tioner's federal constitutional Fifth Amendment right to a
6 speedy trial. Defense counsel was fully aware Petitioner had
7 not, did not and adamantly refused to waive his right to a
8 speedy trial. (RT 194:2-10) Petitioner was booked into the
9 Sacramento County Jail on 9-20-2012 and denied reasonable bail
10 and remained in custody. He appeared at several pre-trial
11 hearings where agreeing on a trial date was a substantive matter
12 at issue and the issue of reasonable bail or release Petitioner
13 on his own recognizance were argued and motions repeatedly
14 denied. Each time the matter of a trial was revisited, the date
15 was pushed further back. The prosecution contended they were
16 still investigating and gathering evidence. Defense counsel
17 contended they had insufficient time to review the materials
18 tendered by the prosecution.

19 At one point in these pre-trial hearings Petitioner was
20 gran- ted an opportunity to address the court directly in an
21 effort to enforce his right to a speedy trial, reminding the
22 Court Peti- tioner had not and would not waive his right to a
23 speedy trial. (RT 197:2-10) The court tacitly responded 'that's
24 alright, the Court did it for you!' (RT 199:20-25)

25 Petitioner contends violating his right to a speedy trial
26 provided the prosecution the opportunity to overwhelm the
27 defense with materials of dubious relevance and with great
28 likelihood in many cases were simply duplication of documents

(Ronald Russell, Habeas Corpus Petition, Ground Two, page 20.)

1 previously tendered. Petitioner further contends his appointed
2 counsel was incapable of reviewing all the materials provided
3 by the prosecution to determine their relevance and relative
4 importance because of the sheer volume and counsel's lack of
5 general background in real estate matters, private investor
6 funds and the content, purposes and restrictions of Private
7 Placement Memorandums which are securities instruments. (RT
8 1508:1-10)

9 If granted an evidentiary hearing Petitioner will demonstrate
10 the practical effect of violating Petitioner's right to a
11 speedy trial fundamentally prejudiced against receiving a fair
12 trial. The prosecution assembled over 6,000 pages of evidence
13 and tendered thousands of pages of "newly discovered" evidence
14 to counsel shortly prior to each pre-trial conference. (RT
15 194:23-28) Defense requested additional time to review the
16 materials counsel had just received. The court would push back
17 the trial date. With each continuance came hundreds of pages
18 of new evidence. At the subsequent pre-trial conference the
19 cycle would be repeated until the matter finally went to trial
20 on 1-27-2014, being a total of 493 days after Petitioner was
21 taken into custody. As a related issue, the prosecution was
22 clearly aware Petitioner would be unable to post reasonable
23 bail: Petitioner had stated under oath he had no financial
24 resources. To keep him in custody, the prosecution had added
25 the additional requirement that Petitioner prove the source of
26 any funds used to post bail and continued time and again to
27 oppose every reason for and any form of release while
28 Petitioner awaited trial setting up the scenario where the

1 prosecution's investigation, theoretically at least could
2 continue for the rest of Petitioner's lifetime but the Peti-
3 tioner would remain in the county jail.

4 Thus, at an evidentiary hearing, Petitioner will demonstrate
5 denying him his fundamental right to a speedy trial severely
6 prejudiced Petitioner's ability to defend against the charges.
7 Had the Petitioner been readily available to review with his
8 public defender the thousands of pages of evidence heaped on
9 counsel before each continuance; the results of the proceeding
10 would likely have been different. Each continuance continued to
11 deny Petitioner his right to a speedy trial. Petitioner will
12 argue his conviction resulted from an error of Constitutional
13 dimension which was not and cannot be shown to be harmless
14 beyond a reasonable doubt.

15 **APPLICABLE CASE LAW:**

16 Klopper v. North Carolina, 386 U.S. 213 (1967) The State
17 unreasonably delayed in bringing the Petitioner to trial.
18 The "fundamental right serves to ... limit the possibility
19 that a long delay will impair the ability of the accused to
20 present a defense. Violating Petitioner's right to a speedy
21 trial is said to violate petitioner's Fifth Amendment right
22 to due process and petitioner's Sixth Amendment rights thru
23 due process of the Fourteenth Amendment.

24
25 Chapman v. California, 386 U.S. 18 (1967) The U.S. Supreme
26 Court held petitioner's conviction resulted from an error of
27 Constitutional dimension which was not shown to be harmless
28 beyond a reasonable doubt violating petitioner's Fifth Amendment

r (Ronald Russell, Habeas Corpus Petition, Ground Two, page 22.)

right to due process.

Russell v Borders

***Writ
Of
Habeas Corpus***

Ground 3

***Reasonable Doubt of Each and
Every Element of The
Charged Crime***

***and Elements of The Offense
Omitted***

GROUND 3. REASONABLE DOUBT OF EACH &
EVERY ELEMENT OF THE CHARGED CRIME,
A N D
ELEMENTS OF THE OFFENSE OMITTED.

Petitioner contends the prosecution failed to establish evidence that he was was guilty beyond a reasonable doubt of each and every element of the offense of GRAND THEFT, and whether the theft was by EITHER FRAUD OR EMBEZZLEMENT.

California P.C. §484 subd.(a) defines the elements of theft to include "feloniously" stealing, taking, carrying away the personal property of another, or "fraudulently" appropriates the property of another ENTRUSTED TO HIM, or KNOWINGLY AND DESIGN-EDLY by false or fraudulent representation to defraud any other person of money ... is guilty of theft. The definition identifies a required evil or nefarious intent behind the taking. The definition also establishes a defendant must knowingly and designedly make false representations or false pretenses in an effort to defraud a party. There was no evidence of Petitioner's felonious, nefarious, evil intent introduced at trial, yet there was plenty of evidence of Petitioner's intent to HELP these individuals extricate themselves from the circumstances causing the loss of their homes. Furthermore, there was an abundance of evidence demonstrating Petitioner's good intentions to help these persons was entirely consistent with his life-long ambition of helping others. (R.T. 3177:27-28) (R.T. 3219-20:19-04) Evidence of Petitioner's involvement with Haven of Hope prior to establishment of his Rent to Own program aptly demonstrated his intent and actions to help others. (R.T. 1964:20-27) (R.T. 1965:4-22) (R.T. 1970-71:25-15)

(Ronald Russell, Habeas Corpus Petition, Ground Three, page 24.)

1 The 72 year old Petitioner had absolutely no criminal record
2 and decades of real estate sales experience without any com-
3 plaints (R.T. 1511:16-25); facts from which reasonable persons
4 could easily infer it was pretty late in life for him to adopt
5 felonious intent to engage in a fraudulent real estate scam.
6 The prosecution offered no motive or circumstance to explain any
7 such drastic change in Petitioner. Petitioner wasn't deep in
8 debt, Petitioner didn't bet on the ponies, Petitioner wasn't be-
9 ing blackmailed about a terrible secret and Petitioner wasn't
10 struggling to make alimony or child support payments.

11 The prosecution attempted to prove criminal intent from cir-
12 cumstantial evidence inference (R.T. 3323:25-27) drawn from
13 Petitioner's PRIOR CONDUCT. The prosecution repeatedly said
14 Petitioner's pattern was take their money and run. This is how
15 he is. He promises to pay but never does. To support such a
16 false notion, the prosecution presented these examples:

- 17 i. In 2006, while hospitalized, Petitioner was approached by
18 officers of not-for-profit Haven of Hope to act as the
19 group's broker to purchase properties to house the organ-
20 ization's clientele. (R.T. 2009-10:18-11) After Haven of
21 Hope closed on the sale of two quadplex units, Haven of
22 Hope lost its CARE state funding which would have paid
23 the mortgage payments on the properties and all other re-
24 lated program costs. (R.T. 2009-10:18-11) Petitioner
25 made a large commission on the sale, (R.T. 2058-59:16-
26 16), the properties were lost in foreclosure (R.T.
27 2045:6) and Ms. Margrett Cannon, the Vice President of
28 Haven of Hope; one of the mortgage co-signers wound up
(Ronald Russell, Habeas Corpus Petition, Ground Three, page 25.)

1 filing bankruptcy. (R.T. 2045:14) Petitioner donated his
2 commission to Haven of Hope. (R.T. 2042:6-23) The pro-
3 secution's point was, while the Petitioner enriched him-
4 self, he left Margrett Cannon in financial ruin and Haven
5 of Hope with nothing. (R.T. 2047:3-9), (R.T. 2045:3-14)
6 The Prosecution says "Mr. Russell in whatever situation
7 always does what he perceives is best for Ron Russell re-
8 gardless of the cost to others. He may have some super-
9 ficially plausible explanation, but when you dig deeper,
10 Mr. Russell is making money for himself at the cost of
11 others." (R.T. 3340-41:24-2) Apparently the prosecution
12 believed either Petitioner could have and should have
13 sold the property back to the original owners or could
14 have and should have looked into his crystal ball to
15 foresee the loss of state funding to Haven of Hope caus-
16 ing mortgage foreclosure on the properties the nonprofit
17 purchased, the forcing of the vice president and co-sign-
18 er into bankruptcy; and then with that fore-knowledge of
19 these future circumstances in mind, Petitioner should
20 have blocked the sale of the property to Haven of Hope.
21 The rhetorical question is: What was the Petitioner's
22 nefarious intent evidenced and what should the Petitioner
23 have done differently in these prior 2006-2007 circum-
24 stances and just where is the nefarious intent?

25
26 ii. Petitioner's sales agent Earl Neff was an independent
27 contractor. (R.T. 2364-10:3-10) Prosecution's evidence
28 of felonious intent was: while Petitioner was raking in
(Ronald Russell, Habeas Corpus Petition, Ground Three, page 26.)

1 all the money for himself, the sales agent sleeping in
2 the office or his truck because he was destitute; getting
3 nothing in return for his efforts. (R.T. 2364-31:2-16)
4 The prosecutions point? "Mr. Russell is the one running
5 the program. All the money goes to him. Mr. Neff gets,
6 what, \$1,000 a month?" (R.T. 3463:15-17) "[B]ecause he
7 made so little money from Mr. Russell, Mr. Neff slept in
8 his car or at his girlfriend's or sometimes at the off-
9 ice." (R.T. 3379:11-13) Conveniently, the prosecution
10 failed to mention Mr. Neff's employment terms as a sales
11 agent were customary in the real estate industry. (R.T.
12 2364-[29-30]:24-15) The customary terms of employment
13 for real estate agents is their compensa- tion is based
14 entirely on a percentage of the sales commissions on the
15 agent's property sales after the sales close. Sales may
16 not all close, even at the very last minute for numerous
17 reasons. (R.T. 2364-[60-62]:16-1)

18
19 iii. Petitioner leased office space for his real estate busi-
20 ness where he met with his Rent to Own clients. (R.T.
21 2601:16-21) After Petitioner learned officially in a
22 written letter HUD did not approve the application to a
23 special program providing lists of substantially discoun-
24 ted foreclosed homes; which in turn, caused the private
25 investor Best Realty (Hermie Bacus) who committed 5 mil-
26 lion dollars (R.T. 3191:4-23) to withdraw his commitment;
27 Petitioner shut down Rent to Own business operations,
28 (R.T. 3191:15-23), closed the office, gave Notice to the
(Ronald Russell, Habeas Corpus Petition, Ground Three, page 27.)

1 landlord, Timothy Cahill, and vacated the premises. Pe-
2 titioner was paying refunds to dissatisfied customers but
3 stopped paying office rent when he stopped collecting
4 fees from new Rent to Own customers. The prosecution's
5 point: Petitioner had TAKEN IN ALL THAT MONEY and left
6 his landlord Timothy Cahill without paying for the unex-
7 pired term of the lease. The prosecution said 'that's
8 how the Defendant is; he promises to pay and never does.
9 "I submit to you ... [t]hat is his viewpoint with regard
10 to promises to pay. He doesn't have to." (R.T.
11 3342:15-17) The inherent irony was of course, the major
12 tenets of the prosecution's case were: a.) Peti- tioner
13 was never entitled to use the fees he collected from
14 customers for business operating expenses because he had-
15 n't informed them and didn't have their permission to do
16 so; (R.T. 3249:25-26), b.) The promised refunds Peti-
17 tioner paid to dissatisfied customers were paid with fees
18 he took in from new customers; (R.T. 3250:7-10), and c.)
19 Petitioner did not have the funds to pay the promised
20 refunds to the remain- ing dissatisfied customers (R.T.
21 3206 :11-27). The pregnant question is what would the
22 prosecution have to say if Petitioner had paid the
23 landlord the rent due on the remainder of the lease, but
24 to the exclusion of paying the promised refunds to
25 dissatisfied customers?

26
27 iv. Petitioner engaged in a series of business transactions
28 with a business associate-friend Patrick McLafferty.
(Ronald Russell, Habeas Corpus Petition, Ground Three, page 28.)

1 (R.T. 3155:24-27) One transaction involved Petitioner
2 receiving consideration in the form of an old car with
3 expired tags that didn't run. (R.T. 3167:6-10)
4 Petitioner went ahead and paid the expenses of repairing
5 the car and the fees in arrears for licensing the
6 vehicle, then gave the vehicle as a gift to his grandson
7 who was going off to college and needed a vehicle. (R.T.
8 3216-17:16-3) Subsequently, the business associate's
9 deal arranged by the Petitioner fell apart through no
10 fault of the Petitioner. (R.T. 3152:14-27) The
11 prosecution's point: Petitioner took the business
12 associate-friend's car promised to pay him. He should
13 have returned it to him or paid the business
14 associate-friend for the car after the deal fell through,
15 but didn't. (R.T. 3158:5-8) Again the prosecution said:
16 That's how the defendant is. He promises to pay but
17 because he has done something with it, he decides he
18 doesn't have to. (R.T. 3342:1-17) But the prosecution
19 failed to present evidence of any of the subsequent,
20 ongoing successful business transactions and business
21 relationship between Petitioner and his business
22 associate-friend, nor any evidence the business
23 associate-friend believed he was entitled to either
24 return of the vehicle (which under the circumstances was
25 then impossible) or compensation for the vehicle, nor any
26 evidence the business associate-friend demanded return of
27 the vehicle or compensation for the vehicle from the
28 Petitioner. In fact, the business associate-friend

1 DID NOT either expect return of the vehicle or
2 compensation for the vehicle, or compensation for the
3 vehicle, nor did the business associate-friend ever make
4 demand for return of the vehicle or compensation for the
5 vehicle from the Petitioner. (R.T. 3158:1-8)

6 If granted an evidentiary hearing Petitioner will present
7 irrefutable evidence and testimony there was absolutely no
8 nefarious intent on his part in the examples above that were
9 cited by the prosecution. Petitioner will argue the logical and
10 legal impossibility of inferring Petitioner's criminal intent in
11 the instant matter from past situations where there was no evil
12 or mal-intent.

13 The prosecution failed to prove beyond a reasonable doubt
14 Petitioner KNEW what he was doing was wrong. Knowledge element
15 required the Petitioner to a.) know what he was about to do, or
16 was doing was wrong, and b.) then **decidedly** go forward to do it
17 and c.) by false or fraudulent representation and do it anyway.
18 The evidence showed Petitioner DID NOT know the law required him
19 to place the fees collected from customers in a trust account,
20 and he relied on bonafide legal advice to the contrary. In
21 fact, the entire trust account issue is a question of law as to
22 whether or not Petitioner would be principal in the future
23 transaction. Petitioner made no express or implied
24 representations to anyone about how the fees would be utilized
25 UP UNTIL THE TIME that the fee would either be applied toward a
26 rental deposit or the cus- tomer asked for a refund. Petitioner
27 had no knowledge of any such requirement and as a matter of law,
28 it appears there is no such requirement. With respect to the

(Ronald Russell, Habeas Corpus Petition, Ground Three, page 30.)

1 issues of private investors and receiving HUD application
2 approval his knowledge and belief was both were imminent based
3 on positive information provided to him by third parties.
4 Similarly, the representations Petitioner made about private
5 investor funds and HUD's program of providing lists of discount
6 priced homes were neither fraudulent or made recklessly because
7 when Petitioner made them they appeared to be imminent. And did
8 Petitioner go head anyway? Of course he did based on the
9 confidence he had in the best information he had in hand at the
10 time. No evidence was presented by the prosecution showing the
11 Petitioner continued to promote, accept fees etc. for his Rent
12 To Own program after he officially learned from HUD the
13 application was denied, further resulting in the loss of his 5
14 million dollar investor.

15 If granted an evidentiary hearing, Petitioner will present
16 irrefutable evidence as to what he knew, why he knew it, and
17 when he knew it about the HUD application, investor funds and
18 the last date he accepted fees from new customers. Petitioner
19 will also argue the logic behind his business as he executed it.
20 Petitioner will further argue executing the business plan in a
21 different order: (i.e. Find investors, Obtain HUD's approval to
22 receive the lists, Get customers) or (i.e. Obtain HUD's
23 approval, Line up investors then Recruit customers) was not
24 feasible. Finally, Petitioner will argue the order by which he
25 executed his business plan did not infer his nefarious intent
26 nor made his Rent To Own business venture a scam.

27
28 (Ronald Russell, Habeas Corpus Petition, Ground Three, page 31.)

1 And with particular attention to the charge of embezzlement,
2 the definition establishes fraudulently appropriates the
3 property of another ENTRUSTED TO HIM as elements. In the
4 instant case Petitioner did not fraudulently appropriate the
5 "alleged victims" property. Testimony from each individual
6 established they paid a fee to the Petitioner. This fee was not
7 entrusted to the Petitioner beyond the point that the
8 individuals had a reasonable expectation the Petitioner would
9 accurately record the amount of the fee to their credit which
10 Petitioner did. Petitioner made no express representations he
11 would invest the fees or simply "hold on to" the fees or that he
12 would not utilize the fees in the operation of his Rent To Own
13 program. Petitioner promised the individuals when the time
14 came, PETITIONER WOULD apply the fee received toward the future
15 rental deposit or down payment OR refund the fee if the
16 individual changed their mind. Individuals rightfully trusted
17 in the promise made by Petitioner, which as it turned out was
18 not a promise Petitioner was able to immediately fulfill.
19 California law recognizes that not every promise made is a
20 promise fulfilled and the crux of the matter is whether the one
21 who made the promise had no intention of fulfilling the promise
22 when the promise was made.

23 If granted an evidentiary hearing, Petitioner will
24 conclusively demonstrate he had every intent in the world to
25 fulfill his promise to the Rent To Own customers when he made
26 them a promise when the time came, PETITIONER WOULD apply the
27 fee he received toward the future rental deposit or down payment
28 or refund the fee if the individual changed their mind.

1 Petitioner will further demonstrate he had every intention in
2 the world to fulfill his promise to the Rent To Own customers
3 who wanted a refund even after it was clear his business venture
4 could not and would not succeed and as the business owner, he
5 was unable and could not personally and immediately make each
6 individual financially whole. He will present the evidence the
7 jury never heard or saw: Rent to Own customers were to be made
8 whole through the Broker's Recovery Fund and as a condition of
9 drawing upon this fund to pay refunds due Rent to Own customers,
10 Petitioner's Real Estate Brokers License would be suspended
11 until such time Petitioner reimbursed the fund the total amount
12 the fund disbursed to these customers as the promised refunds.
13 Petitioner will demonstrate this was precisely the manner and
14 means by which each of the testifying "alleged victims" was made
15 financially whole. Petitioner will demonstrate how, when and
16 why the jury was not presented any evidence about the existence
17 and purpose of the Broker's Recovery Fund. And Petitioner will
18 convincingly argue in light of the fund's existence and purpose,
19 Petitioner's plan directing customers to the fund and the fact
20 the customers did obtain their refunds from the fund, there is
21 NO EVIDENCE Petitioner had nefarious intent, knowledge of wrong
22 doing and designedly to illegally take funds or embezzle funds
23 from anyone.

24 **APPLICABLE CASE LAW:**

25 Arthur Anderson LLP v. U.S., 544 U.S. 696 (2005) The knowledge
26 requirement - consciousness of wrongdoing was omitted violated
27 petitioner's Fifth Amendment right to due process.

1 In re Winship, 397 U.S. 358 (1970) The U.S. Supreme Court
2 held the petitioner's conviction was based on less than proof
3 beyond a reasonable doubt of each and every element of the
4 charged crime violating petitioner's Fifth Amendment right
5 to due process.

6 Russell v. U.S., 369 U.S. 749 (1962) (Variance) Petitioner
7 was convicted on the basis of facts different than those facts
8 on which the charges were based violating petitioner's Fifth
9 Amend- ment right to due process.

10 Osborne v. Ohio, 495 U.S. 103 (1990) The court held petitioner's
11 conviction resulted from a jury instruction which omitted an
12 sential element of the charged offense violating
13 petitioner's Fifth Amendment right to a fair trial and violating
14 petitioner's Sixth Amendment right to jury trial.

15 U.S. v. Gaudin, 515 U.S. 506 (1995) The U.S. Supreme Court
16 held the jury verdict was rendered in the absence of proper
17 instructions on every element of the offense in violation
18 of petitioner's Fifth Amendment right to due process.

1 reimbursement of their \$2,900 from the fund.

2 Mr. Russell was arrested on September 20, 2012 and the ac-
3 tual trial began in April 2014. Defendant Russell repeatedly
4 moved for the Court to set bond in the case. Each time the
5 prosecution strenuously objected. Defendant Russell repeatedly
6 attempted to assert his constitutional right to a speedy trial
7 to no avail. Each time the matter of setting a trial date came
8 up, his appointed defense counsel, a public defender, would
9 explain to the court at each pre-trial hearing; the prosecution
10 had just handed him another stack of discovery materials, he had
11 twenty-two or more cases and was nowhere near ready to go to
12 trial. Meanwhile, however, defense counsel was not and did not
13 actively investigate the facts of the case. Further extensive
14 detailed discussion of these matters continues in Ground Five in
15 the instant Habeas Corpus petition.

16 POST CONVICTION PROCEEDINGS

17 Petitioner's direct appeal was decided 12-10-15 but Peti-
18 tioner was not notified of the decision nor did he receive the
19 trial transcripts from Appellate Counsel until August 2016.
20 Direct Appeal languished in the Court for 27 months because of
21 appellate counsel's personal problems. Rather than present any
22 one of the grounds in the instant petition which could likely
23 have led to either a reversal or new trial, counsel only focused
24 on the one issue she knew she would prevail. That single issue
25 was that the Trial Court had mis-calculated Petitioner's pre-
26 sentencing jail credits. This problem, explored further in
27 Ground 8 of the instant petition is the credit mis-calculation
28 was corrected almost immediately after Petitioner was
(Ronald Russell, Habeas Corpus Petition, General Case Overview, page 13a.)