

**02478-MCE-CMK, CASE NAME (HC) Russell v. Borders,
MAGISTRATE, JUDGE CRAIG M. KELLISON.**

HABEAS CORPUS TABLE OF CONTENTS

General Case Overview

Ground 1

Factual Innocents

Ground 2

Petitioners Right to a Speedy Trial

Gouund 3

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

and Elements of The Offense Omitted

Ground 4

Evidence Insufficient , False Evidence

and

“

Expert Witness Funds Denied

Ground 5

Ineffective Assistance of Trial Counsel

Counsels Conflict of Interest

Failure to Investigate

Utter Failure to Defend “ Cronic Standard”

Ground 6

Prosecutorial Misconduct

Ground 7

Cumulative Error

Ground 8

Ineffective Assistance of Appellate Counsel

Russell v Borders

*Writ
Of
Habeas Corpus*

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

(Ronald Russell, Habeas Corpus Petition, General Case Overview, page 3.)

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 to exercise the provision 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
interest bearing account. However, several
local rent control ordinances do require
that the security deposit be kept in an
interest bearing account for the benefit of
the tenant."² **NOTE:** There are no such
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
(www.car.org) and CIV. §§ 1950.5(b), 1950.7(c).

27
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 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 worse, 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

16 Additionally, Mr. Johnson went to every federal, state and
17 local agency he could think of, including the Sacramento County
18 District Attorney's office with his claims about Mr. Russell.
19 (These claims were outrageously false or made without context.)
20 He further obtained a list of all of Mr. Russell's Rent to Own
21 customers complete with their e-mail addresses and began
22 repeatedly contacting each one. He told all of them Mr. Russell
23 was attempting to bilk them and they would never get their money
24 back. Based on Johnson's word, these other customers began
25 demanding refunds (creating a situation similar to "a run on the
26 bank") and repeatedly contacting the District Attorney's Office
27 at Johnson's behest. As a broker himself however, Johnson had a
28 fiduciary responsibility to inform the same people he sent to
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. Russeil'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 regard-
14 ing 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
Sacramento County Superior Court (Case No. 16HC00392) October
21 29, 2016. Despite Petitioner's explanation to the Superior
Court that his initial Habeas Petition was untimely and why,
24 (probably not even legally viable) as it was erroneously filed
before direct appeal was finalized and drafted without any
access to the trial court transcripts or related discovery
material, the Superior Court ruled this instant petition was a

28 (Donald 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. CO84587) 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

(Donald Russell, Habeas Corpus Petition, General Case Overview, page 14n.)

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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(Donald Russell, Helms Corpus Petition, General Case Overview, page 14b.)

Russell v Borders

*Writ
Of
Habeas Corpus*

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
acknowledges the customers were particularly vulnerable because
of the tentative nature of their housing situations and further
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.)

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

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

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

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

Russell v Borders

*Writ
Of
Habeas Corpus*

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 granted an opportunity to address the court directly in an
21 effort to enforce his right to a speedy trial, reminding the
22 Court Peti- titioner 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 Klopfer 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.)

1 right to due process.
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(Ronald Russell, Habeas Corpus Petition, Ground Two, page 23.)

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*

1 GROUND 3. REASONABLE DOUBT OF EACH &
2 EVERY ELEMENT OF THE CHARGED CRIME,

3 A N D
4

5 ELEMENTS OF THE OFFENSE OMITTED.

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

10 California P.C. §484 subd.(a) defines the elements of theft
11 to include "feloniously" stealing, taking, carrying away the
12 personal property of another, or "fraudulently" appropriates the
13 property of another ENTRUSTED TO HIM, or KNOWINGLY AND DESIGN-
14 EDLY by false or fraudulent representation to defraud any other
15 person of money ... is guilty of theft. The definition identi-
16 fies a required evil or nefarious intent behind the taking. The
17 definition also establishes a defendant must knowingly and de-
18 signedly make false representations or false pretenses in an
19 effort to defraud a party. There was no evidence of Petition-
20 er's felonious, nefarious, evil intent introduced at trial, yet
21 there was plenty of evidence of Petitioner's intent to HELP
22 these individuals extricate themselves from the circumstances
23 causing the loss of their homes. Furthermore, there was an
24 abundance of evidence demonstrating Petitioner's good intentions
25 to help these persons was entirely consistent with his life-long
26 ambition of helping others. (R.T. 3177:27-28) (R.T. 3219-20:
27 19-04) Evidence of Petitioner's involvement with Haven of Hope
28 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:

i. In 2006, while hospitalized, Petitioner was approached by officers of not-for-profit Haven of Hope to act as the group's broker to purchase properties to house the organization's clientele. (R.T. 2009-10:18-11) After Haven of Hope closed on the sale of two quadplex units, Haven of Hope lost its CARE state funding which would have paid the mortgage payments on the properties and all other related program costs. (R.T. 2009-10:18-11) Petitioner made a large commission on the sale, (R.T. 2058-59:16-16), the properties were lost in foreclosure (R.T. 2045:6) and Ms. Margrett Cannon, the Vice President of 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 compensation 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 discon-
24 tinued 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. Petitioner was paying refunds to dissatisfied customers but
2 stopped paying office rent when he stopped collecting
3 fees from new Rent to Own customers. The prosecution's
4 point: Petitioner had TAKEN IN ALL THAT MONEY and left
5 his landlord Timothy Cahill without paying for the unex-
6 pired term of the lease. The prosecution said 'that's
7 how the Defendant is; he promises to pay and never does.
8 "I submit to you ... [t]hat is his viewpoint with regard
9 to promises to pay. He doesn't have to." (R.T.
10 3342:15-17) The inherent irony was of course, the major
11 tenets of the prosecution's case were: a.) Petitioner
12 was never entitled to use the fees he collected from
13 customers for business operating expenses because he hadn't
14 informed them and didn't have their permission to do
15 so; (R.T. 3249:25-26), b.) The promised refunds Petitioner
16 paid to dissatisfied customers were paid with fees
17 he took in from new customers; (R.T. 3250:7-10), and c.)
18 Petitioner did not have the funds to pay the promised
19 refunds to the remain- ing dissatisfied customers (R.T.
20 3206 :11-27). The pregnant question is what would the
21 prosecution have to say if Petitioner had paid the
22 landlord the rent due on the remainder of the lease, but
23 to the exclusion of paying the promised refunds to
24 dissatisfied customers?

25
26 iv. Petitioner engaged in a series of business transactions
27 with a business associate-friend Patrick McLafferty.
28

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

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

(Ronald Russell, Habeas Corpus Petition, Ground Three, page 29.)

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.

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(Ronald Russell, Habeas Corpus Petition, Ground Three, page 34.)

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
(Donald Russell, Habeas Corpus Petition, General Case Overview, page 13a.)

Russell v Borders

*Writ
Of
Habeas Corpus*

Ground 4

*Evidence Insufficient,
False Evidence
and
Expert Witness Funds Denied*

1 GROUND 4. EVIDENCE INSUFFICIENT,

2 FALSE EVIDENCE,

3 &

4 * EXPERT WITNESS FUNDS DENIED

5 Petitioner contends his conviction on 52 counts of grand
6 theft P.C. §487 subd.(a.) was obtained a.) with insufficient
7 evidence, b.) by introducing false evidence, and c.) because the
8 indigent Petitioner' appointed counsel failed to present expert
9 testimony to the jury at trial presumably for lack of expert
10 witness funds. Petitioner is cognizant these claims of insuf-
11 ficient evidence in view of a 25 day long trial and 78
12 prosecution witnesses at first sight seems unlikely, incredible
13 and ludicrous.. "Petitioner has to be kidding" some might
14 scoff, but assuredly, Petitioner is not kidding!

15 A .

16 E V I D E N C E I N S U F F I C I E N T .

17
18 The prosecution presented testimony of 53 individual com-
19 plaining witnesses who established a customer relationship with
20 Petitioner, a California licensed Real Estate Broker via his
21 innovative Rent to Own program. Each paid Petitioner a fee for
22 services ranging from \$2,600 to \$2,900. The contract between
23 Petitioner and each of these individuals promised the fee they
24 paid Petitioner would be refundable to them if they 'changed
25 their mind' and requested a refund. Each of these individuals
26 did 'change their mind' and sought a refund of the fee they paid
27 to Petitioner. Their 'change of mind' came about because
28 Petitioner could not provide all of the services Petitioner had
(Ronald Russell, Habeas Corpus Petition, Ground Four, page 35.)

1 promised them in a timely manner. Petitioner accepted these
2 fees fully intending at the time and subsequently to provide all
3 the benefits and services he promised to provide for the
4 consideration received. Petitioner utilized these fees to cover
5 the "program's business operating expenses" over a 28 month
6 period of time. Petitioner became unable to refund the fee to
7 these complaining witnesses who represented roughly 60% of the
8 Rent To Own customers.

9 Evidence presented also included full financial disclosure
10 of Petitioner's use of the fees collected from customers to
11 cover business operating expenses. These financial disclosures
12 did not reveal use of the funds for illegal or immoral purposes,
13 missing funds or significant financial irregularities despite
14 the co-mingling of Petitioner's personal funds with business
15 funds. Prosecution presented evidence each of these complaining
16 witnesses was a victim of the 2008-2009 real estate market
17 collapse and in danger of losing their home. The complaining
18 witnesses were in these dire straits because of the decisions
19 and mistakes they each made when purchasing their home during
20 the California residential real estate boom and believed they
21 had made another bad financial mistake when paying the fee to
22 Petitioner and now afraid they would never see their money again.

23 This was the sum and substance of the direct evidence
24 provided by the complaining witnesses presented by the
25 prosecution 54 times.

26 Each of the complaining witnesses was made financially
27 whole, receiving a full refund of the fee they paid to

28 (Ronald Russell, Habeas Corpus Petition, Ground Four, page 36.)

1 Petitioner. Evidence of their recovery was withheld from the
2 jury.

3 The gist of this overwhelming volume of evidence was as
4 follows: We, (the complaining witnesses) paid the defendant and
5 he didn't deliver on either his promise to provide specific
6 services or a refund when we changed our mind ... Petitioner had
7 and offered no general dispute. The dispute arises at the point
8 the prosecution proceeded to spin this overwhelming volume of
9 evidence to infer, imply, and ascribe motive, criminal intent,
10 and knowledge of wrongdoing to the Petitioner but in the absence
11 OF ANY DIRECT EVIDENCE as to Petitioner's motive, criminal
12 intent, knowledge of wrongdoing. There was no direct evidence
13 Petitioner had knowingly and intentionally violated any law
14 whatsoever EITHER IN THE INSTANT CASE or in his entire lifetime.
15 (R.T. pages 321-340), (R.T. pages 359-382), (R.T. pages
16 393-432), (R.T. pages 454-482), (R.T. pages 499-521), (R.T.
17 pages 539-584), (R.T. pages 585-612), (R.T. pages 616-627),
18 (R.T. pages 648-717), (R.T. pages 720-758), (R.T. pages
19 758-797), (R.T. pages 797-825), (R.T. pages 892-907), (R.T.
20 pages 938-973), (R.T. pages 973-1018), (R.T. pages 1026-1045),
21 (R.T. pages 1085-1142), (R.T. pages 1142-1173), (R.T. pages
22 1174-1215), (R.T. pages 1220-1283), (R.T. pages 1284-1316),
23 (R.T. pages 1319-1334), (R.T. pages 1334-1362), (R.T. pages
24 1362-1391), (R.T. pages 1420-1444), (R.T. pages 1446-1479),
25 (R.T. pages 1482-1509), (R.T. pages 1520-1528), (R.T. pages
26 1563-1609), (R.T. pages 1611-1622), (R.T. pages 1657-1661),
27 (R.T. pages 1661-1691), (R.T. pages 1709-1716), (R.T. pages
28 (Ronald Russell, Habeas Corpus Petition, Ground Four, page 37.)

1 1719-1741), (R.T. pages 1767-1808), (R.T. pages 1811-1857),
2 (R.T. pages 1859-1882), (R.T. pages 1889-1914), (R.T. pages
3 1925-1948), (R.T. pages 2112-2164), (R.T. pages 2165-2211),
4 (R.T. pages 2254-2299), (R.T. pages 2300-2333), (R.T. pages
5 2334-2363), (R.T. pages 2364-069 - 2364-099), (R.T. pages
6 2364-100 - 2364-124), (R.T. pages 2364-125 - 2364-149), (R.T.
7 pages 2370-2440), (R.T. pages 2440-2466), (R.T. pages
8 2468-2501), (R.T. pages 2502-2533), (R.T. pages 2534-2556),
9 (R.T. pages 2558-2599), (R.T. pages 2615-2618), (R.T. pages
10 2618-2671), (R.T. pages 2672-2714), (R.T. pages 2716-2759),
11 (R.T. pages 2759-2783), (R.T. pages 2784-2854), (R.T. pages
12 3297-3310)

13 The prosecution offered two (2) theories of crime pursuant
14 to theft by deception (P.C. §487 subd.(a.) being that of FRAUD
15 or EMBEZZLEMENT. If granted an evidentiary hearing Petitioner
16 will show the evidence against him was insufficient in that it
17 failed to include any of the "badges of fraud" as the legal term
18 is generally understood and applied; nor any direct evidence of
19 embezzled funds.

20 Petitioner will present direct evidence the jury never heard
21 which went directly to the issues of motive, intent and
22 knowledge of wrongdoing. This evidence includes, but is not
23 limited to the existence of the Broker's Recovery Fund,
24 Petitioner's knowledge of the Fund's existence, purpose,
25 operation and Petitioner's plan to utilize the Broker's Recovery
26 Fund to restore the complaining witnesses to wholeness.
27 Petitioner will prove he offered the complaining witnesses

28 (Ronald Russell, Habeas Corpus Petition, Ground Four, page 38.)

1 information that allowed them to receive the promised refunds
2 from the Broker's Recovery Fund (R.T. 3456:12-13) and
3 furthermore, prove, upon the conclusion of the trial, each of
4 the complaining witnesses received a full refund of the fee each
5 paid to the Petitioner from the Broker's Recovery Fund.
6 Petitioner will successfully argue had the jury received
7 evidence and testimony regarding the relevant aspects of the
8 Broker's Recovery Fund relating to the underlying factual
9 dispute, they would have come to a different conclusion as to
10 their verdict.

Petitioner, a California licensed Real Estate Broker knew the Broker's Recovery Fund existed and the fund's purpose before accepting fees from all Rent To Own customers. Although he considered it unlikely the Rent To Own program would fail or most of the customers would request a refund, the Broker's Recovery Fund, to which he had continued to contribute during his career as a real estate broker was his "insurance" for paying out refunds if the business failed. This knowledge and intent directly contradicts any and all inference as to Petitioner's criminal intent and knowledge of wrong doing.

B.

FALSE EVIDENCE

23 Prosecution presented evidence which they purported was
24 evidence that Petitioner's Rent to Own program was a Ponzi
25 scheme. The Prosecution presented Mr. Edward Hudson as an
26 expert witness to testify Petitioner was operating a Ponzi
27 scheme. The Prosecution repeatedly referred to Petitioner's

(Ronald Russell, Habeas Corpus Petition, Ground Four, page 39.)

1 business as the Petitioner's "Rent To Own Ponzi scheme" when
2 addressing the jury. In total, he referenced Petitioner's
3 business activities as a ponzi scheme some eighteen (18) or more
4 times.

5 A "Ponzi scheme" however, is a precise term referring to
6 precise characteristics well established case law. The local
7 twelve (12) year old entrepreneur operating a lemonade stand in
8 the front yard and advertises "Free Refills"; who spends the
9 customer's money to buy more sugar and lemons "to keep the
10 business going" (along with a single piece of bubble gum); but
11 can't provide refills to all the customers because the grocery
12 ran out of lemons, the young entrepreneur can't provide refunds
13 to dissatisfied customers who wouldn't wait any longer for a
14 free refill IS NOT OPERATING A PONZI SCHEME.

15 Ponzi Schemes require INVESTORS who are PROMISED ATTRACTIVE
16 RETURNS on their investment far and above what is customary and
17 usual in the specific times and circumstances. The "Ponzi
18 scheme operator" knows from the beginning he or she cannot pay
19 these exceptional returns on the investors' money; does not
20 invest the money with the investor's best interests at heart;
21 AND, when the early investors demand to be paid either or both
22 the return on their investment and their principal the operator
23 pays them from the funds the operator has taken in from new
24 investors. Like the fictional lemonade stand operator,
25 Petitioner wasn't operating a Ponzi scheme because (a.) There
26 were no investors, (b.) There were no funds tendered as
27 "investments", (c.) there was no exceptionally high rate of
28 (**Ronald Russell, Habeas Corpus Petition, Ground Four, page 40.**)

1 return promised to investors on their investment, (d.) the early
2 investors were not paid the promised return and or principle
3 with investment funds received from new investors.

4 Like the fictional lemonade stand operator, Petitioner was
5 not operating a Ponzi scheme because a.) There were no
6 investors. b.) Customer didn't tender funds as "investments"
7 c.) The Petitioner did not offer an exceptionally high rate of
8 return on investor's principles. d.) Early investors were not
9 paid the promised exceptional return or their principle with
10 investment funds received from new investors.

11 Petitioner is not arguing a mere matter of semantics here.
12 "False evidence" can be a conjured fact as a falsity in itself,
13 physical evidence moved, removed or "planted" at a crime scene
14 by an entity motivated to create or draw falsified conclusions;
15 or evidence as fact true or untrue in itself, but not evidence
16 of what it is presumed or purports to demonstrate or prove. In
17 the instant case, intent to defraud is presumed in the operation
18 of a Ponzi scheme. Over and over again the prosecution referred
19 to Petitioner's Rent to Own business as a ponzi scheme² and a
20 scam³ recalling such "psuedo facts" (erroneous inferences) like

21 ————— N O T E S —————

22 * Prosecution references to Petitioner's Rent to Own business as a Ponzi
23 scheme: (R.T. 3340:15-19), (R.T. 3334:9-11) (R.T. 3344:10-11), (R.T.
24 3346:23-25), (R.T. 3348:20-22), (R.T. 3359:1-2), (R.T. 3386:14-15),
25 (R.T. 3390:26-28), (R.T. 3391:7-12), (R.T. 3393:5-10), (R.T. 3395:2-4)
(R.T. 3396:9-11), (R.T. 3396:26-28), (R.T. 3417:7-8), (R.T. 3432:7-10)

26 * Prosecution references to Petitioner's Rent to Own business as a scam:
27 (R.T. 252:19-20), (R.T. 259:9-12), (R.T. 263:27-28), (R.T. 269:10-13)
(R.T. 275:2-5), (R.T. 275:21-23), (R.T. 3328:10-11), (R.T. 3340:15-16)
28 (R.T. 3343:10-11), (R.T. 3366:4-5), (R.T. 3367:24-25) (R.T. 3386:17-18)
(Ronald Russell, Habeas Corpus Petition, Ground Four, page 41.)

1 'Petitioner never had any intention of buying anyone a house'
2 and absolute fact such as Petitioner paid refunds to some
3 customers from the money he collected from new-comers to the
4 Rent to Own scam. The prosecution's entire theory of
5 embezzlement rested on a showing the Rent to Own program "was a
6 ponzi scheme." And the prosecution said "here are 'the facts'
7 why we know it was a ponzi scheme." By definition under the
8 law, the Rent to Own program was not a ponzi scheme and the
9 evidence presented was intended to deceive the jury and persuade
10 a false conclusion the instant case was all about a ponzi
11 scheme.

12 Petitioner points to the following as other examples of
13 "false evidence:"

- 14 a.) Evidence Rent To Own was a scam or sham. (R.T.
15 252:19-20) (R.T. 255:14-19) (R.T. 263:27-28)
- 16 b.) Petitioner "had no other income".(R.T. 275:5)
- 17 c.) Petitioner and Earl Neff had opposite interests and
18 intentions.
- 19 d.) The non-existence of HUD Program - no application.
- 20 e.) Conclusions of Petitioner's wrong doing by Real Estate
21 Board pursuant to Real Estate Law.
- 22 f.) Rent to Own contract was illegal or flawed.
- 23 g.) Witness statements regarding Petitioner's lavish
24 lifestyle and spending.

25 ====== N O T E S C O N T I N U E D ======

26 * Prosecution references to Petitioner's Rent to Own business as a scam:
27 (R.T. 3391:1-3), (R.T. 3396:15-17), (R.T. 3441:4-6) (R.T. 3450:14-16)
28 (Ronald Russell, Habeas Corpus Petition, Ground Four, page 42.)

If granted an evidentiary hearing Petitioner will argue the false evidence presented to and argued before the jury had the exclusive purpose to demonize the Petitioner in such a way that Petitioner's intent COULD ONLY BE nefarious or criminal intent with respect to starting and operating his innovative Rent To Own program. Further, he will demonstrate the prosecution's slight of hand juggling between actual repetitive witness testimony and frequent repetitive false summarization of all of complaining witness testimony was designed and intended to antagonize the jury against the Petitioner; going so far as to character assassination making a mockery of Petitioner's Christian faith. (R.T. 3337:15-21), (R.T. 3438:24-04) (R.T. 3465:4-8), (R.T. 3465:21-28) Petitioner will argue; Had it not been for the introduction of false evidence as to Petitioner operating "a Ponzi scheme" or "scam" and false evidence of his nefarious or criminal intent, in all likelihood, the jury in this matter would have reached an opposite conclusion as to Petitioner's guilt and would have acquitted.

C .

EXPERT WITNESS FUNDS DENIED

The indigent Petitioner was represented by appointed Sacramento County Public Defender Mr. Mark Slaughter at trial. Mr. Slaughter admitted to Petitioner while preparing during preliminary matters that he lacked experience and background in real estate matters as a whole. Early on, this became of major concern to Petitioner who was frustrated in the task of assisting in the preparation of his defense because for the most (Ronald Russell, Habeas Corpus Petition, Ground Four, page 43.)

1 part, Mr. Slaughter didn't comprehend basic concepts, terms and
2 customary practices in the real estate industry nor how these
3 matters were central to crafting a defense in the instant case.
4 Mr. Slaughter assured and reassured Petitioner several times
5 while preparing for trial that he (Slaughter) would hire a real
6 estate expert. Mr. Slaughter did not however utilize any
7 special expertise of professionals in the real estate industry
8 while preparing for trial nor hire any experts of any kind to
9 offer expert testimony at trial. (Reader should note at this
10 juncture the trial date in this matter was postponed numerous
11 times in the instant case and so it is unlikely the lack of
12 expert testimony can be attributed to scheduling conflicts and
13 equally unlikely attributable to a lack of qualified experts
14 availability in the Sacramento area.)

15 Petitioner must presume he was deprived the benefit of
16 expert witness testimony and the assistance such experts could
17 provide the defense in preparing for trial because funds for
18 expert witnesses were not approved. Petitioner further presumes
19 the defense was denied the funds for expert witnesses because in
20 all likelihood a request for such funds was never presented by
21 defense counsel.

22 Petitioner also contends in aside: Had he been released from
23 custody pending trial, not only would he have fully assisted his
24 counsel preparing a defense, he would have identified appropriate
25 expert witnesses relative to specific defense problems and
26 himself investigated and initiated whatever process and
27 procedures were involved to secure funds for expert witnesses.

28 (Ronald Russell, Habeas Corpus Petition, Ground Four, page 44.)

1 Petitioner was totally unaware the Prosecution intended to
2 call a series of expert witnesses at trial until these
3 prosecution witnesses actually testified. Hence, Petitioner was
4 at a severe disadvantage to provide his appointed counsel with
5 even impeachment material to counter the prosecution's expert
6 witness testimony, much less call his own expert witnesses.

7 As the trial proceeded, it became increasingly evident to
8 Petitioner that his counsel could have and should have called
9 expert witnesses for the defense as to the following topical
10 areas:

1. Residential real estate market in California,
2002-2005, 2006-2012 (facts re: bubble / facts re:
market collapse)
2. Real estate sales profession and marketing (market
cycles, market trends, market segments, property
values)
3. California contract law (nature of contracts,
consideration given, specific non-performance,
refunds, recourse)
4. Real Estate Financing, Private investment /
(mortgages types of mortgages, sources of funds,
PPM's, legalities, restrictions)
5. Small Business Forensic accounting / taxes
(Defendant's accounting records, allowable business
expenses, special accounts)
6. HUD programs (Variety, purpose & availability,
application procedures)

27 (Ronald Russell, Habeas Corpus Petition, Ground Four, page 45.)
28

If granted an evidentiary hearing Petitioner will demonstrate the Prosecution's case against him relied heavily on the Prosecution's use of expert witness testimony which received undue weight by the jury because the defense offered no impeachment testimony nor any expert testimony which would reveal either an alternative viewpoint or contrary view point. Petitioner will argue the point the lack of expert witness testimony for the defense seriously diminished Petitioner's credibility, particularly whereafter the Prosecution pointed out to the jury the defense failed to present any expert witnesses who stated the prosecution's experts were wrong, and proceeded to infer the reason for this being the prosecution's expert's weren't wrong! Petitioner will demonstrate the prosecution spent in excess of \$13,000 in just the forensic analysis of Petitioner's bank accounts.

Petitioner will argue at an evidentiary the prosecution's case against him largely rested on the expert opinion of "cherry picked" experts and had expert witness funds been available to the defense; or, if such were available and actually utilized by the defense such that the jury heard expert witness testimony presented by the defense, the jury's verdict in this case would likely been completely different and Petitioner would have stood acquitted on all charges.

APPLICABLE CASE LAW:

Jackson v. Virginia, 443 U.S. 307 (1979) (Insufficient Evidence) The petitioner's conviction was obtained as the result of evidence that is insufficient to persuade a properly instructed (Ronald Russell, Habeas Corpus Petition, Ground Four, page 46.)

1 ted, reasonable jury of his guilt beyond a reasonable doubt
2 violating petitioner's Fifth Amendment right to due process.

3 Miller v. Pate, 386 U.S. 1 (1967) Petitioner's conviction
4 was based on evidence to be false violating petitioner's Fifth
5 Amendment right to a fair trial.

6 Ake v. Oklahoma, 470 U.S. 68 (1985) (Expert Witness Funds)
7 The high court held where the Petitioner was indigent was denied
8 funds to be used to rebut experts consulted and called by the
9 prosecution petitioner's Fifth Amendment right to due process
10 and Sixth Amendment right to counsel were violated. "The
11 Fourteenth Amendment due process guarantee of fundamental
12 'fairness' requires that the basic tools of an adequate defense
13 ... be provided to those defendants who cannot afford to pay
14 for them."

15 Holmes v. South Carolina, 126 S.Ct. 1727 (2006) The defendant's
16 right to defend was impaired because state rules of evidence
17 were applied in a way which denied Petitioner the right to
18 present a complete defense violating petitioner's Fifth
19 Amendment right to a fair trial.

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(Ronald Russell, Habeas Corpus Petition, Ground Four, page 47.)

Russell v Borders

*Writ
Of
Habeas Corpus*

Ground 5

Ineffective Assistance of Trial Counsel

*Counsel's Conflict of Interest
Failure to Investigate*

*Utter Failure to Defend
“Cronic Standard”*

1 GROUND 5.

2 INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
3 COUNSEL'S CONFLICT OF INTEREST
4 FAILURE TO INVESTIGATE

5 &
6 UTTER FAILURE TO DEFEND - "CRONIC" STANDARD"

7 A .

8 INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

9 Petitioner contends his appointed Sacramento County Public
10 Defender, Mr. Mark Slaughter provided ineffective assistance to
11 him to defend against the charges brought against Petitioner.
12 The IAC claim definitely is not a pathetic sour grapes
13 rationalization the Petitioner raises for the first time "after
14 the fact" Petitioner was convicted of 50 counts of grand theft
15 by false pretense pursuant to P.C. §487 subd.(a.). Petitioner
16 struggled with counsel's lackadaisical approach and general
17 ineptness through his entire pretrial detention in the
18 Sacramento County Jail which form the bulk of his IAC claims.
19 Petitioner brought these issues and concerns directly to Mr.
20 Slaughter in conversations and in writing. Petitioner's brother
21 Richard Russell repeated these issues of concern to Mr.
22 Slaughter in telephone conversations and in writing. Petitioner
23 addressed his concerns regarding counsel's fundamental lack of
24 knowledge about inherently relevant real estate matters and
25 generally poor performance to the court when Petitioner
26 attempted to assert his right to a speedy trial. (R.T. 182:28 -
27 185:9) and a Marsden hearing. (R.T. pages 2-13), (C.T. pages
28 41-50) Literally weeks before trial, the Court inquired of
Petitioner whether he wanted Mr. Slaughter to defend him at

(Ronald Russell, Habeas Corpus Petition, Ground Five, page 48.)

1 trial. Alluding to the issues, Petitioner answered it had taken
2 Mr. Slaughter 19 months to prepare for trial while he remained
3 in custody and the 73 year old Petitioner was unwilling to spend
4 another 19 months in custody while a different attorney prepared
5 to defend him at trial. (R.T. pages 197-199) Mr. Slaughter
6 spent so little time with Petitioner in custody, he never really
7 advised Petitioner about the essential elements of the crimes he
8 was charged with, how the prosecution would likely make it's
9 case ^{against} the Petitioner nor the available defenses Mr. Slaughter
10 intended to present to the jury. All that Mr. Slaughter would
11 say was: (a.) This is really a civil matter. and (b.) They will
12 never prove intent.

13 Petitioner contends while a.) and b.) sounded hopeful to him
14 at the time, if a.) and b.) were foundational as a defense to
15 the 52 counts he was facing, Mr. Slaughter did a poor job (if
16 any) in preparing such a defense and an even poorer job
17 communicating such a defense to the jury.

18 Mr. Slaughter waived making an opening statement at trial
19 (R.T. 277:8-11) leaving among other things a gaping hole in the
20 jury's perception about the basic decency and credibility of the
21 Petitioner as a human being. A simple opening statement similar
22 to what follows would have provided clarity to the jury
23 regarding whether there was evidence of any crime and
24 Petitioner's defense to the charges.

25 **THE SIMPLE APPROPRIATE OPENING STATEMENT NEVER MADE:**

26 Ladies and gentlemen, the evidence you are about to hear in what looks
27 to be a really long trial will point to just one conclusion. There is no
28 evidence of any crime here, this was a civil case about a contract between
Mr. Russell and 54 of his customers. Each paid Mr. Russell between \$2,600
and \$2,900 dollars for specific services he promised to deliver in a -

(Ronald Russell, Habeas Corpus Petition, Ground Five, page 49.)

contract. The contract also provided if a customer "changed their mind", the fee paid to Mr. Russell was refundable to them. Mr. Russell outlined how customers could go about obtaining their refund. Mr. Russell utilized the fees he collected to cover business operating expenses. Nothing unusual or illegal about that is there? Business owner receives payment from customers with which he pays the costs of operating the business

The problem occurred when the majority of Mr. Russell's Rent to Own customers 'changed their mind' and wanted the promised refund - creating what we might call a "run on the bank." Most businessmen don't anticipate a scenario where all their customers will 'change their mind' and demand a refund ... If they did, they would never seriously consider going into business in the first place, would they? Mr. Russell was a licensed California Real Estate Broker and he had a contingency plan in event of such an unlikely and devastating scenario: He would ensure each customer would get a full refund of the fee through the Broker's Recovery Fund. You are going to hear more about the Broker's Recovery Fund and how it operates during the course of the trial.

The prosecution will present more than fifty complaining witnesses. They are all going to complain about the same problem: Each one paid Mr. Russell a fee in order to receive specific services that Mr. Russell promised them. They became dissatisfied with the passage of time, 'changed their mind' and wanted the promised refund. When they didn't receive an immediate refund they panicked at the thought they might not get a refund at all. That, ladies and gentlemen is pretty much the reason why we are here.

Mr. Russell is counting on each of you ladies and gentlemen to be attentive listeners. Attentive listeners are critical thinkers that is they think critically about what they are hearing. Why did the complaining witness 'change their mind' and want a refund? Did the complaining witness testify they requested a refund in writing from Mr. Russell? Did the complaining witness utilize the information and means Mr. Russell provided them to obtain their refund?

Now I'm thinking after you the jury have heard this same story with only slight or minor variation from twenty-five of the complaining witnesses you'll be bored and impatient. You are likely to tell yourself "Yeah, I get it, I get it!". The thought of hearing the same story another twenty-five or thirty times is going to be frustrating. But please, resist this natural sense of boredom, impatience and frustration. Resist the temptation of taking out your frustration on my client ... And above all else, resist the temptation of telling yourself "All these complaints mean Mr. Russell had to DO SOMETHING WRONG!" Critical thinking: Ask yourself; Are all these witnesses complaining that Mr. Russell didn't fulfill the contract they had with him? Didn't make good on the promises he made to them? Did Mr. Russell intend to steal this witness' money with false promises? Critical thinking .. Did Mr. Russell make promises to this witness he had no intention of keeping - including the refund promised if the customer 'changed their mind?' Did Mr. Russell make these promises knowing he had no intention of ever fulfilling them or was he for some reason or reasons simply unable to fulfill these promises because of unforeseen circumstances causing his business to fail? Did Mr. Russell have a sincere desire to help this person or was he just after their money?

Now I'm also thinking you will no doubt have a great deal of compassion for these complaining witnesses who are real victims of the real estate market melt-down in 2008-2010. I'm going to ask you to resist the temptation of laying all the blame for their misfortune on Mr. Russell. True, these people lost their homes. True, it's somebody's fault. - Well, Mr. Russell was a real estate broker and he is here - lets blame him. Not true. That's also plain and simply not fair. Mr. Russell played no part in these witness' original home purchase when the real estate market was booming. The market drastically changed. Mr. Russell understood their plight and it will be reasonably clear his desire and intention was to help these people who were indisputably victims of the housing market

1 collapse to mitigate their financial losses and return them to being home owners.
2 - Not to further victimize them.

3 In addition to all this testimony from the prosecution's complaining
4 witnesses, you are going to hear about Mr. Russell's good character and generosity
5 . Witnesses are going to tell you about Mr. Russell donating tens of thousands of
6 dollars from real estate commissions he earned to their local charity. You are
7 going to hear he has been in the real estate business more than thirty years
8 without anyone lodging a single complaint about him. You are going to hear he has
9 no criminal record of any kind. Again, critical thinking: The questions that are
10 bound to enter your mind are: Why would a 73 year old grandfather with an
11 impeccable reputation suddenly decide to go **Bernie Madoff** in our community? It
12 doesn't make sense. Does it?

13 After we've heard all the testimony in this matter, both Mr. Archibald and
14 myself will attempt to summarize what we've heard in this room and then you will
15 all retire to the jury room to decide the case based on what you heard and
16 critical thinking about what you heard. Thank you

17 **MR. SLAUGHTER PRESENTED NO OFFERING STATEMENT.**

18 The instant case was unlike a murder trial or typical theft case
19 where it is clearly established outright a crime had been committed
20 and the question for the jury to consider would be whether the
21 defendant participated in the commission of the crime. In the
22 instant case Mr. Slaughter failed to hold the prosecution to the
23 basic standard to prove any crime was actually committed! He
24 allowed the prosecution to lead the jury to presume fifty-two (52)
25 crimes had been committed against fifty-four (54) victims and the
26 jury's only job was limited to deciding whether Petitioner committed
27 them. If granted an evidentiary hearing, Petitioner will argue,
28 among other things, he received ineffective assistance of counsel
from Mr. Slaughter who failed to construct and present any defense
to the charges Petitioner faced. Petitioner will also argue his
conviction on fifty-two (52) counts was a result of his counsel's
gross failure to effectively present any cognizable defense to the
jury and had he done so the jury would have likely acquitted
Petitioner on all counts.

Petitioner offers the following as clear reasons why his counsel
was ineffective.

(Ronald Russell, Habeas Corpus Petition, Ground Five, page 51.)

1 **B. COUNSEL'S CONFLICT OF INTEREST**

2 Petitioner contends his counsel was ineffective because of a
3 conflict of interest. Counsel's conflict of interest was his
4 self interest in preserving his employment requiring his
5 attention to twenty-one (21) felony cases assigned to him as a
6 public defender pitted against putting in the time, work and
7 attention required to effectively defend the Petitioner.
8 Counsel himself admitted this conflict in open court. (R.T.
9 186:26-02) The prosecution provided thousands and thousands of
10 pages of documents (R.T. 186:27-28) and shortly prior to each
11 pre-trial conference would tender another stack of documents to
12 the Petitioner's counsel. (R.T. 194:23-28)

13 Counsel was so overwhelmed by the documentation he was
14 unable to state with certainty whether or not, or to what degree
15 subsequent stacks of documents largely duplicated earlier
16 submissions of documents. If granted an evidentiary hearing,
17 Petitioner will introduce evidence his appointed counsel's
18 workload of twenty-one felony cases, whether within or exceeding
19 national caseload guidelines created a conflict of interest for
20 his attorney. Petitioner will demonstrate this conflict of
21 interest was incompatible with quality legal representation
22 particularly at the preliminary and pre-trial preparation stages
23 of legal representation.

24 **C. FAILURE TO INVESTIGATE**

25 Petitioner contends his appointed counsel failed to
26 investigate essential matters critical to his defense. These
27 matters included:

28 (Ronald Russell, Habeas Corpus Petition, Ground Five, page 52.)

1. The existence, purpose, availability and financial cap.
of the Bureau of Real Estate Consumer Recovery Fund.
2. The existence, purpose, operation, eligibility re-
quirements and application process of the Department
of Urban Development's (HUD) Neighborhood Revitaliza-
tion program.
3. The efforts of attorney Harold Gentner to recruit any
and/or specific investors for the Rent to Own Program.
4. The Bureau of Real Estate's conclusions following
their investigation of the Petitioner and his Rent to
Own program.
5. Existence or non-existence of state law requiring fees
collected by Petitioner from Rent to Own customers in
trust accounts, escrow accounts or other special
segregated accounts.
6. Existence or non-existence of state law prohibiting or
restricting Petitioner's use of the fees he collected
from Rent to Own customers in the operation of his
business.
7. The business relationship between Mr. Hermie Bacus
(Best Realty) and Petitioner.
8. The business relationship between Faiz Riza Awadan,
Craig's list and Petitioner.
9. The business relationship between Haven of Hope and
Petitioner relative to the purchasing of the
fourplexes.
10. The existence, purposes, operation, eligibility
requirements, application process and program funding
of the CARES program prior to and subsequent Haven of
Hope's purchase of the fourplexes.
11. The background of complaining witness of Mr. Jeffery
Johnsen to include forensic examination of his
computer relative to his motivation for shutting down
the Rent to Own program and prosecuting Petitioner.
12. Petitioner's contacts with Senator Lungren regarding
assistance and support for application to HUD's Neigh-
borhood Revitalization Program.

Petitioner contends investigation of each of the above was critical to crafting Petitioner's defense either providing direct evidence as to Petitioner's lack of culpability, material demonstrating no crimes had occurred, material reflecting the decency and good character of the Petitioner or material

1 impeaching the testimony of prosecution's expert witnesses.
2 Petitioner contends the failure of his counsel to investigate
3 the matters above ultimately resulted in his conviction on all
4 52 counts because his legal counsel was unprepared to call
5 expert witnesses for the defense, elicit helpful testimony from
6 both prosecution and defense witnesses and could not effectively
7 cross examine prosecution witnesses and impeach their testimony.
8 Neither was his appointed counsel prepared to object to the
9 prosecution's voluminous evidence on the grounds the evidence
10 was either irrelevant or duplicative.

11 One illustration demonstrating how critical counsel's
12 failure to investigate was to Petitioner's defense is item #1
13 above. The People submitted Motion in Limine #3 to exclude
14 evidence of the Bureau of Real Estate Consumer Recovery Account.
15 (R.T. 208:5-7) Counsel was heard on the motion with Mr.
16 Slaughter asking "it remain open or available for me to discuss
17 by way of a defense." (R.T. 208:12-13) Both the Court and
18 prosecutor inquired of defense counsel as to the relevance of
19 the fund and Mr. Slaughter was unable to make any point or state
20 any fact why such evidence was of particular relevance to the
21 defense. (R.T. 208:23-16)

22 Subsequently the Court ruled Motion Number Three to exclude
23 evidence of the Bureau of Real Estate Consumer Recovery Account
24 was granted. "The evidence is not relevant. That some persons
25 may have applied or considered applying for relief from a fund
26 for persons defrauded by real estate agents is not germane to
27 any issues in this trial." (R T 226:20-28) Petitioner contends
28 had his counsel investigated the fund's existence and purposes.

(Ronald Russell, Habeas Corpus Petition, Ground Five, page 54.)

had clearly formulated his defense to fraud and/or embezzlement (i.e. no criminal intent, no knowledge of wrong doing), Petitioner's knowledge of the Broker's Recovery Fund for recourse in the worst case scenario, express purpose of the contract's "mediation clause", facts regarding how the fund operates made evidence of the fund totally germane to Petitioner 's defense. Furthermore, one cannot reasonable argue defense counsel's inability to prevail on this motion was all in all "a strategic defense move" because the reason counsel couldn't demonstrate relevance was defense counsel hadn't properly investigated the matter.

If Petitioner is granted an evidentiary hearing in this matter, he will demonstrate the degree and extent to which trial counsel failed to investigate in the above and other matters was indeed ineffective assistance of trial counsel. Petitioner will argue had his appointed counsel properly investigated the above matters, in all probability, the jury would have reached a different verdict on all 52 counts and acquitted him.

D.

UTTER FAILURE TO DEFEND

THE "CRONIC STANDARD"

Petitioner contends his appointed counsel's trial strategy or lack thereof belies his utter failure to properly defend at trial. Mr. Slaughter failed to present a defense to the charges. Although Mr. Slaughter promised Petitioner he would call a real estate expert at trial, he call no experts. When Petitioner inquired about expert witness testimony at trial, his counsel replied: "You're all the expert testimony we need." It is unclear whether Mr. Slaughter wasn't mentally attending

(Ronald Russell, Habeas Corpus Petition, Ground Five, page 55.)

1 Petitioner's trial (as in paying attention) or asleep during the
2 26 day trial.. The prosecution's case in chief was "Mr. Russell
3 (Petitioner) is a really bad guy and this is what bad guys like
4 him do: They lure in desperate victims so they can steal their
5 money." (R.T. 3370:26-03) Petitioner's credibility at trial was
6 under constant attack. And his defense counsel is going to put
7 Petitioner in front of the jury as their (only) expert witness?
8 That wasn't strategy, that was lunacy.

9 If the court grants an evidentiary hearing in this matter,
10 Petitioner will demonstrate: Had his legal counsel laid a proper
11 foundation based on expert testimony as to lawful, ethical and
12 proper real estate transactions methodologies AND THEN called
13 Petitioner to testify in his own defense that in the course of
14 operating his innovative Rent to Own program he adhered to each
15 of the lawful, ethical and proper real estate transaction
16 methodology described by defense expert witnesses, Petitioner's
17 testimony would have established an abundance of reasonable
18 doubt as to Petitioner's culpability for each and every element
19 of the offense charged. Petitioner will argue; were it not for
20 this utter failure of counsel to meet the low bar of the "Cronic
21 Standard" in all likelihood, the jury would have acquitted him
22 on all counts.

23

24 A P P L I C A B L E C A S E L A W :

25 Mickens v. Taylor, 535 U.S. 162 (2002) The high court held
26 petitioner's counsel had a conflict of interest which materially
27 compromised the defense violating petitioner's Fifth Amendment
right to due process and petitioner's Sixth Amendment right
(Ronald Russell, Habeas Corpus Petition, Ground Five, page 56.)

1 to counsel. To succeed on a IAC conflict of interest claim
2 the Petitioner must demonstrate (1.) counsel labored under
3 an actual conflict of interest that adversely affected counsel's
4 performance; (2.) Absent counsel's deficiencies arising from
5 the conflict it is reasonably probable the result of the
6 proceedings would have been different. Note that **Mickens** is
7 a key post-Stricklen decision.

8 Strickland v. Washington, 466 U.S. 668 (1984) The U.S. Supreme
9 Court found the Petitioner's trial counsel was ineffective
10 in violation of petitioner's Sixth Amendment right to counsel.

11 Wiggins v. Smith, 539 U.S. 510 (2003) Petitioner's counsel
12 was ineffective in failing to conduct a reasonable pre-trial
13 investigation in violation of petitioner's Sixth Amendment
14 right to counsel.

15 U.S. v. Cronic, 466 U.S. 648 (1989) Petitioner's counsel so
16 utterly failed to defend against the charges that the trial
17 was the functional equivalent of a guilty plea, rendering
18 counsel's representation presumptive inadequate violating
19 petitioner's Sixth Amendment right to counsel and Fifth
20 Amendment right to due process.

21 Washington v. Texas, 388 U.S. 14 (1967) The high court held
22 the petitioner was denied a fair trial when the court improperly
23 restricted the right to present evidence of significant
24 probative value violating petitioner's Fifth Amendment right
25 to a fair trial.

Russell v Borders

*Writ
Of
Habeas Corpus*

Ground 6

Prosecutorial Misconduct

1 **GROUND 5 . PROSECUTORIAL MISCONDUCT**

2 Petitioner contends prosecutorial misconduct was a primary
3 factor in his wrongful conviction on fifty-two counts of theft
4 by either fraud or embezzlement. Prosecutorial misconduct is
5 evident in nearly every phase of this proceeding from
6 investigative phase through the sentencing phase. Petitioner
7 argues there is sufficient evidence to suggest his conviction
8 resulted from discriminatory charges, selective prosecution, and
9 vindictive prosecution.

10 The elderly Petitioner, an experienced licensed real estate
11 broker represented the stereotype of the white collar criminal
12 who "made tons of money" at the expense and misery of "ordinary
13 people" leading up to and during the collapse of the California
14 residential real estate market. The prosecutor was newly named
15 to head a task force on white collar crime.

16 Petitioner and his innovative Rent To Own program had been
17 thoroughly investigated by the Bureau of Real Estate which con-
18 cluded no wrongdoing on the Petitioner's part. The investi-
19 gation was undertaken in response to several complaints about
20 the Rent to Own program by dissatisfied customers. Complaining
21 witness Jeffery Johnson, also a Real Estate Broker was
22 instrumental in calling upon the other customers to submit
23 complaints. When the Bureau of Real Estate found no evidence of
24 wrongdoing and took no action against Petitioner, complaining
25 witness Mr. Johnson became the ringleader, spearheading his
26 personal campaign to flood the Sacramento County District
27 Attorney's office with complaints from nearly every one of the
28 Rent To Own customers.

(Ronald Russell, Habeas Corpus Petition, Ground Six, page 58.)

The core issue underlying the complaints was the customers had paid a fee to Petitioner pursuant to a contract for specific services which would enable them to temporarily rent and eventually purchase a home they selected from the Petitioner. The customers were dissatisfied because not all the services promised had been rendered. The contract also provided the fee was refundable if they "changed their mind." Petitioner took no issue with either the fact he had not rendered all the services the contract promised nor that dissatisfied customers were promised and entitled to a refund. The problem at hand was Petitioner financially overwhelmed by all the refund requests and could only make refunds as funds were available.

Like the majority of small business owners, Petitioner expected his business would succeed, categorized the fees he collected from customers as business income and utilized the business income to pay his business operating costs. He paid refunds to customers who "changed their mind" from the same account until funds ran out. Petitioner never reasonably expected all the customers would request refunds or that his business would fail do to a set of business conditions beyond his control, BUT IT DID. And Petitioner had a contingency plan for customer refunds from the Broker's Recovery Fund (now known as the Consumer Recovery Account) if the remote possibility became a painful reality.

Based on the fact Petitioner paid these refunds out of the same account where fees from all customer were deposited as business income and from which business operating expenses were paid , the prosecution concluded Petitioner was operating a (Ronald Russell, Habeas Corpus Petition, Ground Six, page 59.)

1 ponzi scheme or scam. The prosecution's theory further held the
2 fees were no his property thus Petitioner had no legal right to
3 use the fees he collected from customers for business operating
4 expenses. Petitioner contends this is selective prosecution in
5 the sense he operated his business according to widely accepted
6 business practices, these were selectively deemed in his case to
7 be a ponzi scheme, and he stood accused of stealing money from
8 customers by false pretenses. This astonishing prosecution
9 theory continued to grow more astounding and vague with the
10 passage of time.

11 The prosecutor viewed a quick conviction in this case with
12 54 alleged victims would be political capital for his own career
13 advancement and anticipated the 72 year old Petitioner to jump
14 at his offer to resolve the case with a short prison sentence.
15 Instead, Petitioner maintained his innocence and attempted to
16 assert his right to a speedy trial. In response, the prosecutor
17 further expanded his investigation producing more than 7,000
18 pages of "evidence" to deliberately overwhelm Petitioner's
19 Public Defender and continued vigorously to oppose Petitioner's
20 release from custody pending trial. Petitioner contends the
21 prosecutor's conduct in both pretrial and trial matters
22 evidences a high level of vindictiveness, the vindictiveness was
23 a result of Petitioner's exercise of his right to maintain his
24 innocence and his right to a speedy public trial. At an
25 evidentiary hearing, Petitioner will argue discriminatory
26 enforcement of the law, unconstitutionally selective prosecution
27 and vindictive prosecution resulted in Petitioner's conviction.
28

(Ronald Russell, Habeas Corpus Petition, Ground Six, page 60.)

**A. PROSECUTORIAL MISREPRESENTATION
OF MATERIAL FACT**

1. Rent To Own was a Ponzi scheme and scam operated by the Petitioner. (R.T. 3386:9-21), (R.T. page 3393-3396) (Note: Also see Ground 4, Notes: @ Footnote ') As a matter of legal definition the Rent To Own program was not a Ponzi scheme. A ponzi scheme involves investors who were promised an attractive exceptionally high return on their investment by the operator. The operator does not properly invest the funds and the return on the investment funds, if any is substantially less than promised to investors at the outset. To provide the ongoing appearance of extremely large returns, the operator pays early investors the promised return out of the funds collected from new investors. The scheme ultimately collapses when the operator is unable to pay the high returns and/or repay the principal to each investor. This a misrepresentation of material fact because no Rent To Own customers were investors nor were they promised a high rate of return on their money. Dissatisfied customers were promised a refund if they "changed their mind." The prosecution could have misstated this as material fact by calling the Rent To Own program "a lemon" because it leaves a sour taste in the mouth or an "Edsel" because customers decided "it wasn't all it was cracked up to be" but there is a huge prejudicial difference between "ponzi scheme" and "a lemon" or "an Edsel" in that the former has significant

1 negative emotional overtones, dastardly corrupt criminal
2 connotations and attaches specific criminal liability (i.e. the
3 operator's nefarious intent is presumed in a ponzi scheme.) The
4 prosecution's express purpose of repetitive references to "ponzi
5 scheme" and "Bernie Madoff" was to emotionally and
6 quasi-intellectually vilify Petitioner to the jury.

7 2. The funds Petitioner took from customers remained
8 their property and Petitioner promised to hold it "in
9 trust" for them. (R.T. 3449:17-20) This a misrepre-
10 sentation of material fact because "took from" is charac-
11 teristic of stealing and theft. It is further
12 misrepresentation because the prosecution tried
13 repeatedly to characterize the fee "as really" a rental
14 security deposit, "as really" the down payment on a house
15 or "as really" earnest money in an escrow account. All
16 these "as reallys" were essential to the prosecution's
17 case for embezzlement against Petitioner. And as matters
18 of material fact all of these "as reallys" were
19 essentially false misleading conclusions made by the
20 prosecutor. Customers paid a fee to Petitioner in
21 advance of a promise for specific services rendered by
22 the Petitioner. Complaining witnesses admitted they
23 understood Mr. Russell wouldn't do anything for them
24 until they paid him the \$2,900 fee. The contract
25 provision stating this fee would be refunded if the
26 customer "changed their mind" or contract provision at an
27 indefinite date in the future Petitioner would apply the
28 fee to a rental deposit did not alter the nature of the
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 62.)

transaction such that the fee remained the property of the customer to be held in trust by Petitioner. The contract made it clear Mr. Russell would be both the landlord and eventually the seller. A landlord is largely free to structure rental deposits as he deems necessary in a rental agreement. Petitioner and customers hadn't yet established a rental agreement spelling out the terms of a lease or deposit. Conceivably, with a damage deposit might cause property damage in excess of the damage deposit. The deposit as first and last month's rent creates another set of scenarios. Landlords can use rental deposits as he sees fit during the term of a lease. As the seller Mr. Russell was promising he would consider the fee as part of the down payment which was a bookkeeping matter. Mr. Russell was not saying in the contract 'Even if you cause \$10,000 of damage to my property which I have to pay out-of-pocket, I'm going to put the \$2,900 toward your down payment. These are matters to be carefully negotiated in the future between the contracting parties.

3. Petitioner had a duty under the law to hold the \$2,900 fee customers paid him in segregated accounts. (R.T. 3458:12-20), (R.T. 3386:9-15) This a misrepresentation of material fact because there is no such requirement and no such duty under California law. As in #2 above, this misrepresentation was essential to the prosecution's case for embezzlement against Petitioner. The prosecution deliberately confused the jury with information Petitioner was a Real Estate Broker and information when real estate brokers are either the buyer's or seller's (Ronald Russell, Habeas Corpus Petition, Ground Six, page 63.)

1 **broker** the broker has a duty to segregate funds received in a
2 separate account. The misrepresentation of material fact is
3 Petitioner was never these customers' broker. Initially,
4 PETITIONER WAS THE BUYER and landlord. At an unspecified future
5 date PETITIONER WOULD BE THE SELLER. In the former case Mr.
6 Russell could serve as his own broker. In the latter case, the
7 customer might well choose a different broker to handle the
8 property transaction between owner-seller Mr. Russell and
9 themselves as buyer.

10 4. Petitioner's use of these fees to pay business
11 operating expenses was illegal and prohibited by law.
12 (R.T. 3335:13-20) This a misrepresentation of material
13 fact because there is no such restriction or prohibition
14 under California law. The prosecution's evidence showed
15 Petitioner treated the fees as business income disbursed
16 for acceptable and legitimate business purposes including
17 advertising, office operations and rent. This
18 misrepresentation was material to the prosecution's case
19 of theft by deception and fraud attempting to mislead the
20 jury part of the Petitioner's deception was he didn't
21 explain to each customer he intended to use these fees
22 for business operating expenses. The prosecutor's intent
23 was to link Petitioner's use of fees for operating
24 expenses to a ponzi scheme where funds invested are held
25 in segregated investor accounts but diverted by and
26 converted to purposes of the operator. The prosecutor
27 continued to condemn Mr. Russell using this false
28 comparison reiterating to the jury 'Once Mr Russell got
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 64.)

1 their money he considered it his money.' Under the law
2 and pursuant to the contract these fees were his money.

3. The contract signed by Petitioner was illegal and an
4 "instrument of fraud." (R.T. 3339:10-3340:6), (R.T.
5 3465:9-13) The "contract as illegal" is a
6 misrepresentation of material fact because the contract
7 was reviewed by Petitioner's attorney who saw nothing
8 illegal about it. The prosecution's own expert witness
9 Mr. Kovar testified "In my opinion, it's a grab bag of
10 attractive ideas. I've never seen -- up until now I have
11 never seen this particular contract nor have I ever read
12 a contract this disjointed." (R.T. 2876:6-9) The nature
13 of any contract would of course offer attractive ideas
14 and options in return for some consideration. The
15 witness was entitled to his opinion this as unusual -
16 like nothing he had seen before and disjointed. As a
17 matter of contract law however, in contract disputes,
18 contracts operate against the party who drafts and offers
19 it and to the benefit of the other party meaning in this
20 disagreements about attractive ideas or confusion caused
21 by disjointed construction would operate to the
22 customer's benefit. The contract as an "instrument of
23 fraud is a misrepresentation of material fact because the
24 contract was an agreement executed between parties
25 neither of whom contested their signatures as forgeries.
26 Instruments of fraud include checks drawn on nonexistent
27 accounts, falsified documents i.e. titles, deeds,
28 securities, stock certificates, counterfeit currency or
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 65.)

1 other counterfeited items or merchandise. The prosecutor
2 applied this term to convey to the jury the contract
3 represented only false promises and the pretense by which
4 Petitioner stole the customer's money - false pretense
5 being a necessary element of fraud. To accept this false
6 premise by the prosecution, one would also accept the
7 ridiculous proposition Petitioner willingly memorialized
8 his false pretenses in writing when he executed the
9 contract.

10 6. Petitioner made attractive false promises to customers
11 he never intended to keep in order to get their money.
12 (R.T. 3390:13-16) This a misrepresentation of material
13 fact because the misstatement is directly controverted by
14 the totality of evidence. Petitioner went to great
15 length and expense to create the PPM as a vehicle for
16 private investor funds, hired an attorney to recruit
17 prospective investors and personally participated in the
18 HUD application process for the Neighborhood
19 Revitalization Program if he had no intention of
20 fulfilling his "attractive promises." The contrary
21 statement is more reasonably true: Petitioner went to
22 great lengths doing everything in his power to fulfill
23 his attractive promises made to Rent To Own customers.
24 This false misleading statement to the jury by the
25 prosecution was made in an attempt to establish
26 Petitioner's nefarious intent. This is more of the same
27 circular logic: Mr. Russell made attractive false
28 promises with nefarious intent and we can infer Mr.

(Ronald Russell, Habeas Corpus Petition, Ground Six, page 66.)

Russell's nefarious intent from all his false promises.
What if, however, we (correctly) conclude Petitioner was
fully intent on keeping all of his attractive FUTURE
promises when he made them, but the future brought
unforeseen circumstances preventing him from fulfilling
his promises. A promise is not a false promise simply
because it goes un-fulfilled.

7. Mr. Neff and Mr. Russell were at cross purposes in the
operation of the Rent To Own program. (R.T. 3462:13 to
3463:14) This a misrepresentation of material fact
because it is predicated on the false assumption Mr.
Russell had no intention or financial incentive to
purchase homes for Rent To Own customers and Mr. Neff's
financial success depended entirely on closing the sale
of homes to Rent To Own customers. The \$2,900 fee
Petitioner collected from each customer pales in
comparison to his expected income from buying homes
(broker's fee paid by seller at least \$15k), rental
income from the home he owned (at least \$1,800 x 24
months = \$43.2k) and profit from selling the house to the
Rent To Own customer (20% more than what he paid for the
property i.e. \$200,000 x 20% = \$40k) It is absurd to
assume Petitioner had no intent and interest in \$98k
income he would derive from buying, renting and selling a
home to each and every Rent to Own customer. Similarly,
Earl Neff had an interest in "growing the business",
increasing future customer traffic, some of whom would be
referrals from satisfied customers who like Jim Mora were
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 67.)

1 able to purchase a home with conventional financing.
2 Testimony was "Mr. Neff was Petitioner's right hand man"
3 and as such, like Petitioner, he had a "long term view"
4 about the business. The prosecutor attempted to use this
5 separation as circumstantial evidence of Petitioner's
6 nefarious intent.

7 8. Petitioner took advantage of Ms. Cannon and Haven of
8 Hope in 2006 to pocket a \$57k commission. (R.T.
9 3341:3-27), (R.T. 3461:1-28) This a misrepresentation of
10 material fact because the misstatement is totally
11 controverted by the testimony of Ms. Cannon and Ms.
12 Raymond, both of whom were Haven of Hope executive
13 officers. The prosecutor attempted to use gross
14 misrepresentation of material fact as circumstantial
15 evidence as to Petitioner's self serving intent. This
16 was part and parcel of Mr. Archibald's tactic to demonize
17 and vilify Petitioner in front of the jury at every
18 opportunity irregardless of circumstances and witness
19 testimony.

20 9. Petitioner bought a car from Mr. Mora but refused to
21 pay him for it. (R.T. 3341:28 - 3342:27) This a
22 misrepresentation of material fact because the testimony
23 of witness Jim Mora is contained in Volume XI. pages
24 3118-3134 of the Reporters Transcript and contains no
25 references of any kind to vehicles or vehicle sales.

26 10. Petitioner's Christian faith was part of Petitioner's
27 deception of Rent To Home customers. (R.T. 3337:15 -
28 3338:2), (R.T. 3465:21-28) This a misrepresentation of
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 68.)

1 material fact because the testimony of witnesses Ms.
2 Cannon, Ms. Raymond and the Petitioner himself revealed
3 the nature of Petitioner's religious convictions and
4 faith substantially years before the innovative Rent To
5 Own program was even conceptualized. This was another of
6 the prosecutor's really "cheap shots" in front of the
7 jury intended to demonize and vilify Petitioner not only
8 as a con man but also hypocrite.

9 11. Petitioner only looked out for himself and what was
10 best for Mr. Russell. (R.T. 3340:24 - 3341:27) This a
11 misrepresentation of material fact because the testimony
12 of numerous prosecution witnesses controverted the
13 statement as false. Prosecution witnesses, for example
14 testified Petitioner donated his sales commission to
15 completely furnish living facilities for homeless people,
16 gave his nephew in a college a used car and saved them a
17 great deal of money. Furthermore, it is inconceivable
18 that a man who "only looked out for himself and what was
19 best for himself" could be engaged in the real estate
20 business for thirty (30) years without ever being subject
21 of a complaint. Again, this is material fact misstated
22 by the prosecutor to paint the Petitioner as a
23 self-centered, self-indulgent, self-serving con man whose
24 style is to take advantage of everyone he's ever
25 encountered in his life. Probably nothing could be
26 farther from the truth - at least according to the
27 prosecution's own witnesses.

28 (Ronald Russell, Habeas Corpus Petition, Ground Six, page 69.)

1 12. Petitioner made an enormous profit from the Rent To
2 Own program. (R.T. 3391:24 - 3392:6), (R.T. 3451:1-4)
3 This a misrepresentation of material fact because the
4 prosecution spent at least \$13,000 for expert witness
5 testimony from a forensic accountant who determined the
6 Rent To Own program went broke and therefore was unable
7 to provide the promised refunds to all the customers.
8 Profit and income are not the same. Profit is the
9 amount remaining after subtracting costs from income.
10 Furthermore, the forensic account found no evidence
11 Petitioner's business expenses (costs) were questionable
12 or unusual nor did the forensic accountant determine
13 that Petitioner had hidden away income in an off-shore
14 account or invested it in a non-business item like a
15 private jet or services for a prostitute. This is
16 material because it was essential to the prosecution's
17 case that Petitioner had enriched himself by victimizing
18 the Rent To Own customers. The jury heard a great deal
19 of testimony about the financial losses of complaining
20 witnesses. This misstatement of material fact to the
21 jury was intended to inflame the jury against
22 Petitioner. The prosecutor also knew as a matter of
23 fact Petitioner was indigent, could not post bond and
24 was represented by the Public Defender. Hence, the
25 prosecutor, given these circumstances had to know there
26 was no measurable profit made by Petitioner in the Rent
27 To Own program.

28 (Ronald Russell, Habeas Corpus Petition, Ground Six, page 70.)

If an evidentiary hearing is granted in this matter, Petitioner will argue the prosecutor's misrepresentations of material fact cited above and others severely prejudiced Petitioner resulting in his conviction. Petitioner will further argue the severity of prejudice resulting from misrepresentation of material fact warrants reversal of Petitioner's conviction on all counts.

B. PROSECUTION MISLED THE DEFENSE

1. Use of Testimony by Wonda Raymond and Margreta Cannon

(R.T. 215:13-7) January 23, 2014 the court convened to consider motions in limine. Defense counsel submitted Motion #10 to exclude other crimes evidence. The prosecution made representations to the Defense as follows: "At one point I was looking at an earlier transaction Mr. Russell had with Haven of Hope. As I advised the Court in chambers and Mr. Slaughter, I am not currently intending to use that in the People's case in chief. I'm presuming if Mr. Russell took the stand and somehow got into that, that might open it, but I'm not planning to use that in my case in chief." At trial, the prosecution called witnesses Wonda Raymond and Margretta Cannon, both of whom were Haven of Hope executive officers. The testimony of both witnesses chiefly focused on the 2006 Haven of Hope real estate transaction. The prosecution used the earlier transaction in his case in chief as circumstantial evidence of Petitioner's intent in the instant case. (R.T. pages 1962-1990), (R.T. pages 2014-2027), (R.T. pages 2028-2052), (R.T. pages (Ronald Russell, Habeas Corpus Petition, Ground Six, page 71.)

1 2057-2062), (R.T. pages 2014-2028)

2 2. Prosecution's Theory of the Crime (R.T. pages 3417-3419)

3 The prosecution led the defense to believe the instant
4 case was theft by deception. Not until opening argument
5 was the defense aware the prosecution was offering two
6 theories of the crime being either fraud or embezzlement
7 and asking the jury to decide which theory applied to
8 individual counts. The jury had not heard evidence that
9 supported each and every element of each and every count.
10 This "two theory menu" allowed the jury to essentially
11 side step the elements of intent and knowledge of wrong
12 doing when considering the binary choice of either fraud
13 or embezzlement. To defend as to each count the defense
14 would have to make a showing that each specific count
15 lacked the essential elements of fraud AND lacked the
16 essential elements of embezzlement.

17
18 C. PROSECUTION'S USE OF PERJURED TESTIMONY

19 1. Earl Neff regarding receiving no compensation or payment

20 from Petitioner's Rent To Own program. (R.T. pages
21 2364-007 thru 2867) The prosecution called their witness
22 Earl Neff who initially testified to receiving "a little
23 bit of gas money once in a while and slept in the Rent To
24 Own office because he described his financial situation
25 as "Very meager". Several days later the prosecution
26 recalls the witness to testify. The prosecution asks Mr.
27 Neff to thumb through a stack of checks made payable to
28 Mr. Neff and now the witness testifies he received a
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 72.)

1 series of checks "for living expenses" from the
2 Petitioner, his employer totally more than \$8,000. The
3 witness, testifying under a grant of immunity was warned
4 by the court before beginning to testify that he could
5 not commit perjury.

6 2. Complaining witnesses generally in reference to Petition-
7 er's alleged statements about trust accounts, escrow
8 accounts and a special safe place for fees Petitioner
9 collected. Petitioner contends most, if not all of the
10 complaining witnesses were "coached" either by Mr.
11 Jeffery Johnson or the Prosecution's Investigator on how
12 to answer questions regarding Petitioner's statements
13 about trust accounts, escrow accounts and special safe
14 place for the fees Petitioner collected from them.
15 Petitioner never discussed the topic of "safe keeping of
16 fees" with any customer and the disparity between
17 individual complaining witnesses' recollection of such
18 discussions suggests the ideas of trust accounts, escrow
19 accounts and special accounts was planted in their
20 thinking. Petitioner contends the Prosecutor was fully
21 aware these representations were false but they were
22 exactly the necessary words he needed to make his case
23 against the Petitioner.

24 D. BRADY VIOLATIONS

25 1. Bureau of Real Estate Investigation Petitioner, and his
26 Rent To Own program were subjects of a six (6) month
27 investigation by the Department of Real Estate later
28 known as the Bureau of Real Estate prior to the filing of
(Ronald Russell, Habeas Corpus Petition, Ground Six, page 73.)

any charges in the instant criminal proceeding. The Department or Bureau found no evidence of wrong doing and took no action against Petitioner or the operation of the Rent To Own program. Copies of documents related to this investigation and the Investigation Report were exculpatory material and never provided to the defense.

2. Broker's Recovery Fund or Consumer Recovery Fund This fund became known as the Consumer Recovery Account. The prosecution continued to deny the existence, purpose and potential relief available through out the proceedings. Petitioner insisted his customers would receive their refund from this private pool of funds paid by all brokers out of their commissions. The prosecution had all the information about the fund in it's possession but failed to tender it to the defense. Instead, after obtaining Petitioner's conviction on all 52 counts, provided the fund's application form to each of the complaining witnesses who obtained a full refund of their fee as promised by the Petitioner in their contract.

3. Witness statements to Investigators The prosecution failed to turn over copies of the full statements obtained by the prosecution's investigator from each complaining witness. Several of these complaining witnesses also testified they had not received or reviewed their written statement(s).

C O N C L U S I O N

If an evidentiary hearing is granted in this proceeding, Petitioner will provide written documentation as to all of the (Ronald Russell, Habeas Corpus Petition, Ground Six, page 74.)

1 above claims in Ground 6. He will argue that his conviction was
2 the result of prosecutorial misconduct in all of the forms cited
3 above; the prosecutor's conduct violated Petitioner's right to a
4 fair trial; and, in all likelihood, absent the prosecutorial
5 conduct, the result in this proceeding would be significantly
6 different. Finally Petitioner will argue, in view of the
7 prejudicial harmful effect of the prosecutor's conduct the only
8 reasonable and proper relief is reversal of the verdict on all
9 counts.

10 **APPLICABLE CASE LAW:**

11 U.S. v. Armstrong, 517 U.S. 456 (1996) The High Court found
12 the petitioner was convicted as the result of an
13 unconstitutionally selective prosecution violating petitioner's
14 Fifth Amendment right to due process.

15 Vick Wo v. Hopkins, 118 U.S. 356 (1886) The charges which
16 resulted in petitioner's conviction were the product of
17 discriminatory enforcement of the law violating petitioner's
18 Fifth Amendment right to due process.

19 Blackledge v. Perry, 417 U.S. 21 (1974) The charges which re-
20 sulted in Petitioner's conviction are the result of prosecutor-
21 ial vindictiveness based on Petitioner's exercise of a legal
22 right violating petitioner's Fifth Amendment right to due
23 process.

24 U.S. v. Goodwin, 527 U.S. 386 (1982) The charges which resulted
25 in Petitioner's conviction are the result of prosecutorial vin-
26 dictiveness based on Petitioner's exercise of a legal right
27 violating petitioner's Fifth Amendment right to due process.

28 (Ronald Russell, Habeas Corpus Petition, Ground Six, page 75.)

1 Gray v. Netherland, 516 U.S. 152 (1996) The court held a prose-
2 cutor deliberately misled the defense about the evidence the
3 State intended to introduce regard the theory of defendant's
4 guilt violating petitioner's Fifth Amendment right to a fair
5 trial.

6 Napue v. Illinois, 360 U.S. 264 (1959) The prosecutor knowingly
7 used perjured testimony to obtain a conviction. The prosecution
8 knew or should have known the testimony was false and prejudice
9 resulted violating petitioner's Fifth Amendment right to a fair
10 trial.

11 Darden v. Wainwright, 477 U.S. 168 (1986) The court held the
12 petitioner's conviction was obtained as a result of prosecu-
13 torial misconduct violating petitioner's Fifth Amendment rights
14 to a fair trial and due process.

15 Doyle v. Ohio, 426 U.S. 610 (1976) The Supreme Court held the
16 trial court permitted defendant's credibility as a witness in
17 his own behalf to be impaired by fundamentally unfair means vio-
18 lating petitioner's Fifth Amendment right to a fair trial and to
19 testify in his own defense.

20 U.S. v. Young 470 U.S. 1 (1985) Petitioner's conviction follow-
21 ed from the prosecutor's vouching for the credibility of a
22 witness violating petitioner's Fifth Amendment right to due
23 process.

24 Berger v. U.S., 295 U.S. 78 (1935) The prosecutor's misstate-
25 ment of material fact were used to obtain Petitioner's convic-
26 tion violating petitioner's Fifth Amendment rights to a fair
27 trial and due process.

28 (Ronald Russell, Habeas Corpus Petition, Ground Six, page 76.)

1 Brady v. Maryland, 373 U.S. 83 (1963) The state failed to dis-
2 close evidence favorable to the accused violating petitioner's
3 Fifth Amendment right to due process.

4 Kyles v. Whitley, 514 U.S. 419 (1995) (Brady Violation by Inves-
5 tigative Agencies) The State failed to disclose Brady evidence
6 that was in the possession of investigative agencies to which
7 the State had access violating petitioner's Fifth Amendment
8 right to due process.

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(Ronald Russell, Habeas Corpus Petition, Ground Six, page 77.)

Russell v Borders

*Writ
Of
Habeas Corpus*

Ground 7

Cumulative Error

1 GROUND 7. CUMULATIVE ERROR

2 Petitioner raises seven grounds in the instant habeas
3 petition and argues each ground in and of itself warrants an
4 evidentiary hearing because of the magnitude and complexity of
5 the issues raised and the degree the separate issues permeated
6 the entire proceeding. Petitioner contends each of the grounds
7 competently presented and argued at an evidentiary hearing is
8 sufficient to warrant reversal of his conviction on all counts.

9 Petitioner further contends an astute legal mind will have
10 no difficulty in drawing the conclusion as to the
11 inter-relatedness of the grounds and issues raised in the
12 instant petition such that; the magnitude and impact of earlier
13 ground(s) on the outcome of the trial is amplified over and over
14 again successively in subsequent grounds. In other words,
15 Petitioner contends there is an obvious clear relationship
16 between denial of his right to speedy trial, reasonable doubt to
17 each and every element in each and every count, insufficient and
18 false evidence, ineffective assistance of trial counsel, counsel
19 's conflict of interest and counsel's failure to investigate;
20 prosecutorial misconduct, Brady violations and yes, even the
21 ineffectual assistance of appellate counsel.

22 If granted an evidentiary hearing in this matter ^{Petitioner} intends to
23 closely examine the inter-relatedness of these issues and will
24 argue each ground and its attendant issues compounded the
25 contaminating effect on the proceeding and prejudicial effects
26 of all grounds presented in the instant petition. Petitioner
27 will argue the cumulative effect of the contamination and
28 prejudice to Petition resulted in a gross miscarriage of justice

1 which can only be cured by reversal of his conviction on all
2 counts.

3 Petitioner will briefly outline the inter-relatedness as
4 follows.

5 **A. RIGHT TO A SPEEDY TRIAL**

6 The right to a speedy trial provides protection to a
7 defendant that the prosecution doesn't have the advantage of
8 time on his side to investigate, investigate and re-investigate
9 matters while the defendant languishes in a jail cell. The
10 "advantage of time" manifests itself in such a way, with the
11 passage of time, witness recollections of events, situations,
12 circumstances and hard facts become less clear, fuzzy and
13 distorted. "Eye witness testimony" is often said to be the
14 least dependable, because with the passage of time witnesses
15 grow more susceptible to suggestion and deception, and
16 unscrupulous fellow witnesses, investigators and prosecutors can
17 more easily manipulate witnesses recollections with deception
18 and suggestive techniques.

19 In the instant case, prosecution witnesses testified in 2014
20 as to matters occurring between 2006 and 2010. For the most
21 part, their eye witness testimony pointed to a basic set of
22 facts surrounding a business transaction with Petitioner. The "
23 advantage of time" crept in where the prosecution introduces
24 subsequent circumstantial evidence and obtains their testimony
25 about what they were believing, experiencing, feeling and
26 thinking five or more years ago. Prosecution uses this
27 testimony in attempts to establish Petitioner's nefarious
28 (Ronald Russell, Habeas Corpus Petition, Ground Seven, page 79.)

1 intent, false pretense and knowledge of wrong doing. Defendant
2 is prejudiced by this passage of time in any attempt to
3 establish and re-establish his good intent, even benign intent,
4 lack of false pretense and he had no knowledge of wrong doing
5 before the jury. Similarly, Petitioner was prejudiced when the
6 prosecution directed the jury to consider the aggregate
7 testimony of prosecution witnesses to be proof beyond a
8 reasonable doubt as to all of the elements of the crime for each
9 count charged. Some witnesses forgot they had a contractual
10 promise, hadn't requested a refund or Petitioner kept in touch
11 with them and responded to their e-mails.

12 The 'advantage of time' prejudiced Petitioner's counsel
13 allowing the prosecution to submit more than 6,000 pages of
14 documentation overwhelming counsel's ability to sift through
15 documents and separate the relevant from the irrelevant or
16 contend with any duplication. The passage of time interfered
17 with defense counsel's ability to properly investigate matters
18 because Petitioner's potential supporting documents became lost
19 and memories faded. A reasonable argument is made if it were
20 not for such a long delay in bringing the matter to trial,
21 Petitioner's counsel would have provided effective assistance to
22 Petitioner preparing for pretrial and trial matters and
23 representing Petitioner at trial. On the other hand, Petitioner
24 's own counsel, against Petitioner's express request moved for
25 several later trial dates making him complicit in violating
26 Petitioner's right to a speedy trial.

27 In a similar way, the effect of denying Petition a speedy
28 trial giving the 'advantage of time' to the prosecution is
(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 80.)

1 compounded in Petitioner's claims as to prosecutorial misconduct
2 and Brady claims.. The more time the prosecution had, the more
3 opportunity the prosecution had to overwhelm Petitioner's
4 counsel with irrelevant and duplicative documentation which
5 clearly was a major prosecution strategy. Time advantage
6 provided the prosecution greater opportunity to coax and coach
7 prosecution testimony to the point witnesses are testifying to
8 matters in their conversations with Petitioner when the witness
9 where such matters were never discussed with Petitioner or the
10 witness had no such conversation with Petitioner. Furthermore,
11 the prosecution presented some witnesses who made the point in
12 front of the jury: No, sir. I didn't say any such thing to your
13 investigator. That isn't what happened. What happened was ...
14 The prosecution made numerous mis-statements of material fact at
15 trial and got away with it because of the passage of time.

16 Similar arguments about apparent Brady violations can be
17 made. Had Petitioner been granted his right to a speedy trial
18 there would have been less opportunity to "discover" evidence,
19 withhold it from the defense, spring damaging evidence on the
20 defense at trial and in a similar way these Brady concerns would
21 have been exposed much earlier.

22 Finally, the ineffective assistance of appellate counsel
23 thwarts any judicial review as to the denial of Petitioner's
24 right to a speedy trial because she totally ignores it as an
25 issue on direct appeal.

26 **B. REASONABLE DOUBT AS TO EACH & EVERY**
27 **ELEMENT OF THE OFFENSES CHARGED.**

28 Petitioner maintains there is an abundance of reasonable
doubt as to every element of the crime charged both in the
(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 81.)

1 totality of the crime charged, and the individual counts
2 charged. Petitioner contends the task entrusted to his defense
3 counsel was to illuminate for the jury this abundance of
4 reasonable doubt as to Petitioner's criminal intent, the
5 existence of any false pretense, Petitioner's conduct and
6 business violated any law and Petitioner knew or reasonably
7 should have known he was engaging in wrong doing. To accomplish
8 the task, his attorney needed to produce evidence and/or
9 repeatedly highlight existing evidence for the jury sustaining
10 reasonable doubt as to his criminal intent, lack of false
11 pretense and knowledge of wrong doing. This would require
12 counsel's timely investigation, gathering sufficient evidence of
13 Petitioner's good intentions, Petitioner's best information as
14 the basis of all representations he made to complaining
15 witnesses, historical information about the real estate market
16 and acceptable real estate business practices.

17 Hence we can draw a nexus between reasonable doubt,
18 insufficient evidence and ineffective assistance of counsel.
19 Simply put: counsel's lack of investigation, lack of preparation
20 and lack of knowledge were responsible for Mr. Slaughter's
21 failure to show the jury the whys and wherefores of reasonable
22 doubt. At the very heart of the matter was the question why
23 would a 73 year old defendant with an impeccable reputation,
24 thirty years in the real estate business without a single
25 complaint and absolutely no criminal history intentionally
26 become Bernie Madoff, lie to everyone he meets in order to take
27 their money, illegally spend their money, and pretend he didn't
28 know he had done something wrong?

(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 82.)

1 Similarly we can observe a nexus between reasonable doubt as
2 to each element of the offense and the prosecution's
3 over-the-top effort to first demonize and vilify the Petitioner
4 and insist to the jury Petitioner is a bad person and therefore
5 you the jury can't possibly harbor any reasonable doubt about
6 Petitioner's criminal intent, false promises, self-serving
7 motivation "Mr. Russell only does what is good for Mr. Russell"
8 and ridiculous claims he didn't know it was wrong! Look at all
9 the victims!

We also observe the nexus between reasonable doubt as to every element of the crime charged when we examine Brady concerns. Petitioner contends the comprehensive investigation by the Bureau of Real Estate and their Investigation Findings and Report available to the prosecution but never provided to the defense (Brady violation) addressed the matters of reasonable doubt and insufficient evidence because it found no wrong doing on the part of Petitioner. Had the Bureau of Real Estate determined a violation of law or other wrong doing they would have ordered Petitioner to Cease and Desist immediately and ultimately suspend or revoke Petitioner's Broker's License. In a similar way, Petitioner contends the Brady concern about providing the defense complete statements of Wonda Raymond and Margretta Cannon can be tied to the issue of reasonable doubt about Petitioner's intent and the alleged false pretenses.

Finally, the ineffective assistance of appellate counsel thwarts any judicial review as to the issue of reasonable doubt to each and every element of the offense as to all of the counts because appellate counsel exclusively focused her attention on (Ronald Russell, Habeas Corpus Petition, Ground Seven, page 83.)

1 Petitioner's award of pre-sentence credits on direct appeal.

2 C. ELEMENT OF THE OFFENSE OMITTED

3 - KNOWLEDGE OF WRONG DOING

4 Petitioner contends the element of wrong doing was omitted
5 as necessary to each count of the crime charged. This stems
6 from two reasons: 1.) The prosecution offered two (2) theories
7 of the crimes being theft by fraud and theft by embezzlement.
8 There are separate elements for each, the criminal intent is
9 formed at different times and consequently any knowledge of
10 wrong doing would be different. 2.) The prosecution provided the
11 jury a smorgasbord of element to choose from when determining
12 Petitioner's guilt on any particular count and the jury did not
13 need to agree whether Petitioner was guilty on a particular
14 count under either theory. As a practical matter, this
15 essentially required the jury to deliberate on each individual
16 count based on the totality of the prosecution's evidence.
17 Petitioner believed the fee paid to him by each complaining
18 witness became his property upon receipt of the fee and he spent
19 the funds to operate the business. The representations he made
20 to customers were not false or reckless, but based on his best
21 information at the time the representations were made.

22 Hence he had no knowledge of wrong doing by either
23 embezzlement or fraud. The missing element of the crime issue
24 is directly tied to the problem of insufficient evidence in that
25 there is no direct evidence of any plan by Petitioner to
26 systematically steal the money of complaining witnesses under
27 false pretenses nor any legal basis for the theory Petitioner
28 held the complaining witnesses' money in trust, stole the money

(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 84.)

1 and converted it to his own purposes. Somehow, the jury was
2 supposed to infer from the outcome Petitioner's business failed
3 because he intended it to fail and it failed because he stole
4 the victim's money. The upside-down logic aside, the direct
5 evidence demonstrated Petitioner's business failed when he could
6 not obtain the commitment of private investor(s) and the
7 application to the HUD Neighborhood Revitalization Program was
8 denied.

9 The evidence was insufficient to establish Petitioner
10 intended by design to steal the money of complaining witnesses
11 by either fraud and false pretenses or by embezzlement and he
12 did so knowingly his business plan constituted either and/or
13 both fraud and embezzlement. Petitioner contends the
14 prosecution's misconduct that included demonizing Petitioner,
15 misleading the defense and mis-stating evidence account for the
16 omission of necessary elements of the offense went unnoticed by
17 the jury. The prosecution's strategy amounted to
18 unsubstantiated claims Petitioner's business was a scam and a
19 "ponzi scheme" which is proof the Petitioner is a bad person.
From that point forward, anything and everything the Petitioner
20 said or did was evidence of his nefarious intent from which
21 knowledge of wrong doing could be readily assumed as proven.
Petitioner told everyone a "pack of lies". Petitioner violated
22 customer's trust when he spent "their money" to operate his
23 business. Petitioner was wrongfully failed to provide refunds.
Petitioner wrongfully paid refunds out of the fees he collected
24 from other customers. Petitioner doesn't pay his debts and
25 obligations and Petitioner obtained a huge profit for himself by
26
27
28

(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 85.)

1 all his wrong doing. The prosecution attacked Petitioner's
2 religious faith as a means of impuning Petitioner's charity and
3 good will to the point Petitioner is so dishonest he has answer
4 for everything and you can't believe a word he says. That
5 repetitive character assassination created the context where
6 omitting essential elements, particularly criminal intent and
7 knowledge of wrong doing were particularly aggregious.

8 Petitioner makes the same connection to the Brady concerns
9 adding the materials withheld from the defense go directly to
10 the omission of essential elements because they evidence THERE
11 WAS NO NEFARIOUS INTENT and PETITIONER HAD NO KNOWLEDGE OF WRONG
12 DOING BECAUSE THERE WAS NO FINDING OF WRONG DOING BY THE BUREAU
13 OF REAL ESTATE.

14 And finally, once again, the ineffective assistance of
15 appellate counsel thwarts any judicial review as to the issues
16 omitting essential elements of the offense as to all of the
17 counts because appellate counsel exclusively focused her
18 attention on award of pre-sentence credits on direct appeal.

19 **B. INSUFFICIENT EVIDENCE ,**
20 **FALSE EVIDENCE &**
21 **EXPERT WITNESSES**

22 Petitioner incorporates here by reference Section C. above
23 to demonstrate and argues the inter-relatedness of insufficient
24 evidence, false evidence and denial of expert witness funds and
25 increased cumulative effect prejudicing Petitioner's right to a
26 fair trial. Most, if not all of the evidence produced by the
27 prosecution against was largely irrelevant, false and redundant.
28 The evidence that was presented utilized the spaghetti strategy:

(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 86.)

1 See how much spaghetti you can throw against the wall and hope
2 something sticks. The second prosecution strategy involve the
3 principle: If you repeat a falsehood loud enough and often
4 enough, persons will likely come to consider the falsehood
5 generally true. The two major oft-repeated falsehoods were:
6 Petitioner's Rent To Own business was really a ponzi scheme - a
7 scam; and Petitioner is a corrupt dishonest person only
8 concerned about himself. Reject both hypothesis, take them away
9 as untested assumptions or truisms, and there is absolutely no
10 evidence in the case ANY CRIME was committed by anyone.

11 The Prosecution creates two cyclical patterns of logic where
12 the irrelevant evidence and false evidence further supported the
13 conclusion Petitioner's Rent To Own business is a ponzi scheme
14 and scam because of the final outcome: - Petitioner didn't keep
15 his false (contractual) promises. Because the Petitioner made
16 all these false promises - didn't intend to fulfill any of his
17 false promises like refunds (contractual obligations,) we know
18 he was operating a scam or a ponzi scheme. 2.) Petitioner is a
19 corrupt, dishonest individual with wholly self-serving interests
20 which are the criminal traits of those who operate scams and
21 Ponzi schemes to steal money from vulnerable people by fraud and
22 embezzlement. His past is not irrelevant here: He made huge
23 commissions for him- self in 2006 with that Haven of Hope
24 Fourplex deal but drove one of the organization's officers into
25 bankruptcy AND the organi- zation also lost the property. He
26 took a car from Mr . Mora , promised to pay for it but never did.
27 He stiffed his landlord out of \$10,000 he promised to pay for
28 rent He told all the victims the same lies because that is
(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 87.)

1 what he does. So pay no attention to his explanations about
2 anything. It is all a pack of lies. How can we be sure of
3 that? He was operating this Ponzi scheme. Rent To Own was
4 nothing but a scam.

5 Of course, the same evidence graphically demonstrated
6 Petitioner's Rent To Own program was a business that failed
7 primarily because the real estate market conditions took
8 veterans by surprise, definitely not attractive to most
9 legitimate private investors, and because HUD denied the
10 application to the Neighborhood Revitalization Program. These
11 two (2) calamities came as unexpected surprise blows to the
12 Petitioner whose best information was: Receipt of private
13 investor funds and Approval of the HUD application are imminent.
14 The same personal history the prosecution presented as to
15 Petitioner's dishonest, corrupt, self-serving behavior was
16 factually evidence of Petitioner's helpful, generous,
17 considerate nature and impeccable reputation - at least in the
18 eyes of the witnesses who offered the testimony.

19 The cyclic reasoning, illogical false conclusions drawn from
20 insufficient evidence, false evidence were largely enabled by
21 defense counsel's ineffective assistance. This is most clearly
22 illustrated by counsel's failure to investigate and counsel's
23 failure to obtain funds for expert witness testimony. Less
24 obvious however is the likelihood Petitioner's defense counsel
25 hadn't, couldn't and didn't comprehend nor anticipate the
26 evidence and arguments the prosecution was putting together in
27 the People's case against the Petitioner. The latter occurred
28 for two reasons: 1.) Counsel's lack of knowledge regarding
(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 88.)

1 accepted real estate market practices, private investor funding
2 and applicable state and federal laws. 2.) The prosecution
3 deliberately overwhelmed the defense with questionably relevant
4 evidence, withheld evidence in the state's possession and misled
5 the defense about their intention to utilize specific evidence.
6 Hence we observe again the inter-relatedness of insufficient
7 evidence, false evidence and defense's lack of expert witness
8 testimony in both of the Petitioner's grounds raising
9 ineffective assistance of counsel and prosecutorial misconduct.

10 And once again we observe the heightened cumulative impact
11 culminating in deprivation of Petitioner's right to a fair trial
12 because there was no post-conviction judicial review in result
13 of appellate counsel's myopia and exclusive focus on pre-
14 sentence custody credits for direct appeal.

15 **E. INEFFECTIVE ASSISTANCE OF COUNSEL:**

16 Petitioner largely presented the basis of the claims that
17 his trial counsel provided ineffective assistance of counsel in
18 the foregoing. Subsequently, he pointed to how and why the
19 cumulative effect of everything from the prosecution's unfair
20 'advantage of time' in result of denying Petitioner his right to
21 a speedy trial, missing elements of the offense and problems
22 with evidence resulting from denial of Petitioner's right to a
23 fair trial. Petitioner further contends; Given the reality he
24 remained in jail, and thus unable to assist in crafting his own
25 defense; Counsel's woeful lack of knowledge about acceptable
26 practices, standards, definitions and ethics in the real estate
27 industry, defense counsel's acknowledgment he needed Petitioner
28 at his side to properly represent him: It would be very highly
(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 89.)

1 improbable, if not virtually impossible for any criminal
2 defendant under these circumstances to receive a fair trial if
3 in fact they were pinning all their faith and hopes on the
4 performance of an over-worked public defender Nevertheless
5 this was exactly the naive Petitioner's situation.

6 The prosecution had correctly sized up the situation early
7 on in pretrial matters. Prosecutor concluded as long as he
8 could keep the Petitioner in custody and invite his public
9 defender to chase his tail in the proverbial haystack, winning a
10 conviction in the matter would be as easy as shooting fish in a
11 barrel.

12 But the prosecution had no interest in the pursuit of
13 justice. If the prosecutor claimed he was seeking justice for
14 the complaining witnesses, he lied to himself. The prosecution
15 knew before filing charges against the Petitioner that the
16 complaining witnesses would be made financially whole and
17 receive a full refund of the fee they paid to Petitioner through
18 the Bureau of Real Estate's Consumer Recovery Fund. The
19 prosecution also knew Petitioner had already provided customers
20 the necessary information and directed them how to obtain their
21 refund them. The prosecutor knew some individuals had already
22 obtained their refund in this manner.

23 The prosecution lied to these complaining witnesses; telling
24 them they would only obtain their refund if they testified
25 against Mr. Russell in a criminal trial. Justice for these
26 complaining witnesses would have allowed them to obtain their
27 refund 3-4 years earlier rather than delay their refund
28 application until after the trial concluded

(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 90.)

1 Obviously, the prosecution had no interest or intention in
2 the innocent Petitioner obtaining justice - the prosecutor was
3 only concerned with obtaining Mr. Russell's conviction and so
4 "the end justified the means." The cumulative effect of all the
5 foregoing ordained it virtually impossibility of the Petitioner
6 receiving a fair trial.

7 And why did this monumental miscarriage of justice escape
8 judicial review on direct appeal? Appellate counsel narrowly
9 focused on the award of pre-sentence custody credits as the
10 singular appeal issue.

11 F. PROSECUTOR'S MISCONDUCT

12 Petitioner contends all the foregoing created the perfect
13 storm for a miscarriage of justice and the perfect storm was
14 driven largely by the prosecution's misconduct.

15 The sensational prosecution of the elderly Petitioner on
16 fifty-two counts of grand theft by fraud or embezzlement did not
17 occur in some vacuum of time and space. The California Bar
18 Association was receiving a steady stream of complaints about
19 lawyers operating scams purported to save property owners from
20 foreclosure on their homes. Sacramento news media had begun
21 breaking these stories. The allegations in these stories about
22 unscrupulous lawyers had uncanny resemblance to the false public
23 allegations against Petitioner. Public sentiment was 'this is
24 wrong, somebody should have to pay.' The jury in the instant
25 case were representative of the Sacramento area and likely
26 harbored the same sentiment: 'this is wrong, somebody should
27 have to pay.' Petitioner wasn't a lawyer but he made a living
28

(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 91.)

1 in real estate so that was good enough. Ironically, the
2 prosecutor who painted Petitioner to be a self-serving
3 opportunist saw his opportunity in time and place to personally
4 score big time in this case by obtaining a conviction. We can
5 infer this much from the record. Prior to arraignment, the
6 court entertained discussion by counsel whether the case was in
7 fact really a civil matter or a criminal matter. For Deputy
8 D.A. Archibald, it was his (perhaps only) golden opportunity for
9 career advancement He was willing to shell out tens of
10 thousands of dollars in witness fees and spring for the cost of
11 a twenty-seven (27) day trial. Subsequently, with that sizeable
12 investment the prosecutor was "justified" for demonstrating his
13 "end justifies the means", win at any cost philosophy, utilizing
14 his over-the-top tactics to convict Petitioner.

15 **G. INEFFECTIVE APPELLATE COUNSEL.**

16 The 74 year old Petitioner spent 583 days (nearly 20 months)
17 in the county jail while the prosecution investigated assembling
18 more than 7,000 pages of documentation. In a twenty-seven day
19 long trial the prosecution presented repetitive testimony of
20 fifty-four complaining witnesses but no direct evidence of any
21 kind demonstrating Petitioner stole anyone's money, and for that
22 matter, no direct evidence of any kind demonstrating Petitioner
23 committed any crime at all. His defense counsel was largely
24 unprepared, had no clear trial strategy, called no expert or
25 rebuttal witnesses and didn't make a case for defense. The
26 judicial process created a record on appeal consisting of
27 seventeen (17) volumes. The record on appeal is prepared and

28 (Ronald Russell, Habeas Corpus Petition, Ground Seven, page 92.)

provided to the indigent Petitioner's appointed appellate counsel. Appellate counsel has custody and control of the record for twenty-seven (27) months, requests a series of time extensions delaying filing of Petitioner's opening appeal brief. The only issue appellate counsel addresses - presentence custody credits is a matter of statute and had previously and quickly resolved by a California Department of Corrections and Rehabilitation records technician shortly after Petitioner enters the Department of Corrections an Rehabilitation rendering it "a non-issue." The People agree with appellate counsel that Petitioner received significantly less custody credit than the law provides and the Appellate Court weighs in holding both appellate counsel and counsel for the People are correct. Appellate counsel never consults with Petitioner regarding the content of the record, appealable issues or tentative direction or progress on the appeal. Petitioner receives the Appellate Court's opinion in July 2016.

Petitioner has been a model prisoner. Based on the current law and regulations governing award of custody credit, Petitioner is due to be released on parole in February 2017. He will be 77 years of age. Mr. Russell continues to maintain his innocence of any criminal wrong doing in these matters and will do so until the day he dies. Heretofore, Petitioner set forth with particular clarity how the added cumulative effect of these errors led to his conviction, denied him a fair trial and hence denied him justice.

The ineffective assistance of appellate counsel factors into the cumulative effect in that it further denied justice to (Ronald Russell, Habeas Corpus Petition, Ground Seven, page 93.)

1 Petitioner. Petitioner had a right to appeal which in this case
2 would have required significantly more than a cursory review of
3 sentencing hearing record. At the least, Petitioner, on appeal
4 was entitled to an objective examination of the entire record to
5 determine whether the evidence supports the assumption this was
6 a criminal matter and not as Petitioner has continued to
7 maintain, a civil case about contractual matters of specific
8 non-performance. Petitioner, as a matter of appeal right was
9 entitled to judicial review that would closely examine the
10 legality of the prosecution's premise that the jury need not
11 rely on the evidence provided proving all the necessary elements
12 in a specific count, but should rely on the totality of the
13 evidence generally. Petitioner, as a matter of appeal right was
14 entitled to judicial review that in this case would closely
15 examine the legal legitimacy of the prosecution's basic premise
16 that Petitioner was operating a ponzi scheme or scam the
17 Petitioner called his Rent To Own program business. This
18 erroneous premise is particularly important because the element
19 of criminal intent of the operator is assumed in a ponzi scheme
20 Appellate counsel's ineffective assistance precluded post
21 conviction judicial review in this case effectively negating
22 Petitioner's right to appeal.

23 Cumulatively speaking, the ineffective assistance of
24 appellate counsel caused further delay in Petitioner obtaining
25 justice and combined with the others continued to deny justice
26 to the Petitioner. At age 77, statistically speaking Petitioner
27 has met, perhaps exceeded his life expectancy. It is clearly
28 unlikely Petitioner will obtain post-conviction relief before he

(Ronald Russell, Habeas Corpus Petition, Ground Seven, page 94.)

1 is released from custody but will continue his quest for relief
2 during his period of parole supervision for a single purpose:
3 Judicial recognition he was wrongfully charged, wrongfully
4 convicted for crimes of which he is innocent and must clear his
5 name before his death.

6 Conclusion
7

8 If an evidentiary hearing is granted in this matter,
9 Petitioner will argue each of the grounds cited in themselves
10 warrant reversal. He will present evidence showing the
11 seriousness and prejudicial nature of an earlier ground is
12 manifestly compounded in later grounds such that the cumulative
13 effect denied Petitioner a fair trial, acquittal on all charges
14 in the interests of justice. Petitioner will argue the only
15 reasonable and proper relief to be granted at this juncture is a
16 complete reversal of his wrongful conviction.

17 APPLICABLE CASE LAW:

18
19 Chambers v. Miss., 410 U.S. 284 (1949) Petitioner was denied
20 DUE PROCESS by the combined effect of individually harmless
21 errors which, in combination (i.e. CUMULATIVE ERROR) rendered
22 the defense far less persuasive than it other would have been
23 violating petitioner's Fifth Amendment right to due process.

24
25
26
27
28 (Ronald Russell, Habeas Corpus Petition, Ground Seven, page 95.)

Russell v Borders

*Writ
Of
Habeas Corpus*

Ground 8

*Ineffective Assistance
of
Appellate Counsel*

1 GROUND 8. INEFFECTIVE ASSISTANCE
2 OF APPELLATE COUNSEL

3 Petitioner contends his appointed appellate counsel
4 Christine Vente associated with the Central California Appel-
5 late Program in Sacramento provided ineffective assistance of
6 counsel to him on appeal. April 25 2014 the Sacramento County
7 Superior Court sentenced him to a determinate term of 13 years
8 four months in state prison. (5C.T. 1252-1255), (12R.T.
9 3543-3544) Appellant filed a timely notice of appeal on April
10 28 2014. (5C.T.:1256) The Court Transcript, contained in five
11 (5) volumes and the Reporter's Transcript, contained in twelve
12 (12) volumes was provided to Ms. Christine Vente as soon as they
13 were prepared and available.

14 Appellate counsel argued the trial court incorrectly appli-
15 ed the pre-January 25, 2010 version of §4019 to calculate his
16 presentence conduct credits. The People agreed the trial court
17 erred in awarding Petitioner a total of 873 days of pre-
18 sentence custody credit and further agreed Petitioner was
19 entitled to a total of 1,165 days of presentence custody credit
20 under the current credit accrual rate in section 4019. The
21 California Court of Appeal agreed in an unpublished undated
22 decision received by Petitioner in August 2016.

23 Petitioner's appellate counsel presented no other issues on
24 direct appeal and thus Petitioner argues to the extent the
25 issues addressed in Grounds 1 through 7 in the instant habeas
26 petition could have been and/or should have been raised on
27 direct appeal appellate counsel was ineffective.

28 (Ronald Russell, Habeas Corpus Petition, Ground Eight, page 96.)

Petitioner received assistance in researching and preparing the instant habeas petition from a fellow prisoner. Neither Petitioner nor the fellow prisoner has previous formal legal training or experience. The fellow prisoner began by having a month long series of continued discussions with the Petitioner regarding the underlying facts of the case, his memory of critical issues developing as the case moved toward trial, Petitioner's memory of critical points and issues during the trial and his thoughts about the evidence both presented and excluded at trial. Waiting for the Reporter's Transcripts to arrive, the assisting prisoner began researching what appeared to him to be matters of law by day in the prison's sparse and spartan law library. He intently studied the twelve volumes of Reporter's Transcripts by night making copious notes referring to potential habeas material after Petitioner obtained the transcripts in July, 2016. He reviewed his notes and narrowed the issues to the eight grounds contained herein.

At an evidentiary hearing, this prisoner will testify he has no formal legal training and experience but the grounds for direct appeal and a habeas petition attacking Petitioner's conviction literally jumped off the page for him. If an evidentiary hearing is granted Petitioner will argue the point: In a matter of 3-4 months a fellow prisoner with no legal training and extremely limited access to only basic legal research facilities recognizes and identifies countless issues then narrows them to all the issues presented herein; while his appellate counsel in the course of 27 months ONLY identifies the most obvious pre-trial custody credit issue to which the People

(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 97.)

1 agreed BECAUSE THE ISSUE HAD BEEN RESOLVED LONG BEFORE THE
2 APPELLANT'S OPENING BRIEF WAS FILED. Petitioner will argue this
3 dichotomy represents evidence he did not receive effective
4 assistance from appellate counsel.

5 Petitioner offers the following as further indications why
6 appellate counsel was ineffective:

7 A FAILURE TO CONSULT
8 WITH APPELLANT REGARDING APPEAL

9 Appellate Attorney Christine Vento's communication with
10 Petitioner was limited to correspondence confirming her to be
11 Petitioner's counsel on appeal, correspondence pertaining to the
12 Appellate Court's granting her a series of time extensions to
13 file Appellant's opening brief that were based on her personal
14 situation. She responded in writing to Petitioner's first
15 request to send him all of the transcripts, saying she couldn't
16 release them until the appeal was concluded. She responded in
17 writing to Petitioner's second request to send him all of the
18 transcripts, saying she had identified the pretrial custody
19 credit issue above and was about to file Petitioner's opening
20 brief; adding she had informal conversations with the Deputy
21 Attorney General who agreed with her position about the credits.
22 She responded to a telephone call from Petitioner's brother Mr.
23 Richard Russell inquiring into the status of the appeal, stating
24 she was waiting on the Respondent's brief. She did not accept
25 any of Petitioner's collect phone calls. In July, 2016
26 Petitioner wrote her a letter listing his reasons why he
27 intended to file a complaint about her with the State Bar,
28 (Ronald Russell, Habeas Corpus Petition, Ground Eight, page 98.)

1 further describing what she could do to avoid a complaint to the
2 State Bar. Petitioner had two simple requirements: 1.) Bring
3 his appeal to a conclusion, and 2.) Send Petitioner all of the
4 transcripts. Ms. Vento fulfilled those two requirements. A few
5 weeks later she sent him a copy of the Appellate Court ruling
6 with a "sticky note" attached to the first page which read
7 "Ronald - As you know we won! Christine"

8 Attorney Vento never solicited any input from Petitioner
9 regarding the appeal. She did not seek any clarification
10 regarding pre-trial matters, trial matters and issues, or the
11 factual substance of Petitioner's defense.

12 Attorney Vento, who lives and works out of her home in Los
13 Angeles, made no attempt or arrangements for an attorney-client
14 visit despite the fact Petitioner is housed at California
15 Institution for Men in Chino, California approximately an hour
16 or less from Los Angeles. Attorney-client visitation is
17 available during normal business hours Monday through Friday at
18 CIM.

19 The direct result of appellate counsel's failure to consult
20 with the Petitioner, when all the while, the attorney had
21 exclusive control of the Court and Reporter' Transcripts was,
22 Petitioner didn't really receive "legal counsel" about
23 appealable issues, remained in the dark for 27 months about
24 progress on his appeal, and was sorely restricted from moving
25 forward in seeking post-conviction relief because his appellate
26 counsel maintained control of all relevant documentation while
27 the appeal process and decision dragged on and on.
28

(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 99.)

1 **B. CONTINUED DELAYS RESULTING FROM MULTIPLE TIME EXTENSIONS**

2 Appellate counsel requested and was granted a total of 6
3 time extensions to file an Opening Brief. Counsel complained
4 about her workload, the enormous size of the record, personal
5 illness and her temporary physical disability as the basis for
6 these time extensions. But counsel admitted she worked from
7 home, in Los Angeles, and objectively speaking that is her
8 tacit admission she has at least an extra two (2) hours a day
9 that other people spend commuting between home and work. Her
10 reasons for time extension after time extension were part and
11 parcel of circumstances under her own control. If you can't
12 handle the workload you have, don't take on additional work. If
13 you can't deal with seventeen (17) volumes of transcripts from a
14 26 day trial, revisit your expectations and revise your
15 priorities. True, professional people become ill, but unless
16 you are in the hospital and comatose, you can undertake basic
17 tasks like reading transcripts and making notes from your
18 sickbed, particularly if you are fortunate enough to work from
19 home. (NOTE: The elderly physically disabled seriously ill
20 prisoner who assisted the Petitioner studied transcripts and
21 made notes from his prison bunk!)

22 Petitioner contends his appellate counsel found as many
23 reasons as she could to delay working on Petitioner's appeal
24 because she simply dreaded taking on the task. Petitioner
25 compares the final product as only rising to the standard of "at
26 least something." The final product reflected a trending motto:
27 We aspire to mediocrity and sometimes almost achieve it!"
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(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 100.)

1 If an evidentiary hearing is granted in this matter,
2 Petitioner will argue Appellate counsel's performance mirrored
3 trial counsel's performance. Both took a great deal of time to
4 accomplish very little. Appellate counsel was ineffective from
5 the standpoint of how much time she wasted for not even a
6 marginal result to the benefit of the Petitioner.

7 C. FAILURE TO RAISE ANY SIGNIFICANT ISSUE:

8 Petitioner contends when the trial court essentially says:
9 "I don't care let counsel deal with it on appeal!" (R.T.
10 3548:4 - 3549:9) the trial issue BECOME PLAINLY OBVIOUS, but not
11 necessarily significant. This is the case with the pre-trial
12 custody credit matter, the only issue to catch the attention of
13 appellate counsel. Petitioner has included in the instant
14 petition equally obvious issues that are unmistakably
15 significant in the context of this entire case, not the least of
16 which being Petitioner's right to a fair and speedy trial, lack
17 of necessary elements of intent and wrong doing, and Brady
18 concerns.

19 Petitioner has maintained his innocence since before his
20 arrest. As a starting point, counsel should have wondered: The
21 defendant is 73 years old, never been subject of a complaint
22 about business practices during his 30 years in the real estate
23 industry, and has no criminal history. He says he's innocent.
24 With all the evidence presented, how or why does he maintain his
25 innocence - This is a mystery and requires something of an
26 intellectual journey.

27 The journey, once begun by carefully walking through all the
28 evidence, eventually leads to the legal conclusion that as a

(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 101.)

1 matter of law, Petitioner is innocent on all counts. Petitioner
2 violated no state or federal law in setting up and conducting
3 his Rent To Own business. The case against Petitioner was
4 predicated on an untested assumption he was operating a scam or
5 "Ponzi scheme" and the available evidence then cherry-picked to
6 create an illusion congruent with the untested assumption. The
7 law however, presumed the Petitioner to be innocent until proven
8 guilty beyond a reasonable doubt of each and every necessary
9 element and in each and every crime (count).

10 Beginning with the presumption Petitioner is innocent, the
11 evidence conclusively demonstrated: 1.) The experienced Real
12 Estate Broker was operating a legitimate business. 2.) Peti-
13 tioner advertised for a specific group of customers who might be
14 interested in the services he intended to provide. 3.) Petition-
15 er signed a contract with each customer promising to provide
16 specific services, or if the customer changed their mind, Peti-
17 tioner would refund the fee the customer paid to the Petitioner
18 in consideration for these promised services. 4.) The customers
19 understood Petitioner was not obligated to them and would not
20 provide services to them UNTIL AFTER they paid the fee to Peti-
21 tioner. 5.) Once the fee was tendered to Petitioner, as a matter
22 of law, the fee became Petitioner's property. 6.) Petitioner
23 exercised his right to finance his business operations using the
24 fees he collected. 7.) Based on the best information available
25 to Petitioner provided by his attorney handling recruitment of
26 private investors, Petitioner believed receipt of the required
27 private investment was imminent. 8.) Petitioner encountered
28 unexpected business conditions resulting

(Ronald Russell, Habeas Corpus Petition, Ground "Eight page 102.")

1 in an inability to attract private investors and private
2 investor funds thus making it impossible for the time being to
3 honor his contractual promise to buy and rent homes to his
4 customers. 9.) Customers 'changed their mind' requested refunds
5 of the fee paid to the Petitioner 10.) Petitioner paid refunds
6 while funds were available. 11.) Petitioner pursued an
7 application to HUD for participation in the Neighborhood
8 Revitalization Program. 12.) Petitioner's best information
9 provided by then Senator Lungren was the HUD application
10 approval was imminent 13.) Responding to complaints about
11 Petitioner and his Rent to Own program the Bureau of Real Estate
12 launched a six (6) month investigation and concluded no
13 violations or wrong doing on Petitioner's part 14.) Petitioner
14 obtained a letter of commitment for \$5 million from a private
15 investor. contingent upon approval of the HUD application. 15.)
16 To Petitioner's utter surprise and disbelief. the HUD
17 application was denied. 16.) The majority of customers, whipped
18 into a frenzy by an opportunist customer began demanding
19 immediate refunds creating a "run on the bank." 17.) Petitioner
20 provided information to these customers allowing them to obtain
21 their refund from the Consumer Recovery Fund Petitioner had paid
22 into during the many years he bought and sold real estate. 18.)
23 Petitioner completely ceased business operations including
24 advertising and accepting new customers. 19.) Petitioner's
25 customer's remained in contact with Petitioner via e-mail. 20.)
26 Petitioner's business failed. 21.) Customers received full
27 refunds through the Consumer Recovery Fund. 22.) A Broker's
28 License remains suspended until the broker fully reimburses the
(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 103.)

1 fund monies paid to the broker's clients or customers.

2 Only after carefully walking through the evidence with the
3 presumption of innocence can anyone begin to identify the
4 significant issues that contributed to Petitioner's conviction
5 on all counts, BECAUSE THE PIVOTAL ISSUES IN CASE WERE
6 PETITIONER'S INTENT AND KNOWLEDGE OF WRONG DOING. Petitioner
7 did not expect or intend his appellate counsel to "re-try" the
8 case, but did expect counsel to attend to fundamental issues
9 arising from erroneous interpretation of law made by and
10 repeatedly relied on by the prosecution in order to obtain
11 Petitioner's conviction. (i.e. Did the complaining witnesses
12 pay Petitioner a fee for services or pay the Petitioner a rental
13 deposit? Once paid to the Petitioner, were the funds
14 Petitioner's property or did they remain the property of the
15 party who tendered funds to Petitioner?) At an evidentiary
16 hearing, Petitioner will demonstrate evidence and subsequently
17 argue: 1.) There are several issues appearing to be "matters of
18 law" and erroneous interpretation of legal principles similar to
19 the fore-mentioned. 2.) These are significant and underlie
20 Petitioner's conviction. 3.) Petitioner received ineffective
21 assistance of appellate counsel because his appellate counsel
22 could not, would not and did not identify any of these
23 underlying significant issues.

24 D . "W E W O N !"

25 The truth of the matter is W E W O N N O T H I N G !
26 The error in computing presentence time credits was corrected by
27 a Records Technician almost immediately after Petitioner entered
28 (Ronald Russell, Habeas Corpus Petition, Ground Eight, page 104.)

1 into the custody of the California Department of Corrections and
2 Rehabilitation. The correction required mere minutes for a
3 clerk to accomplish compared to appellate counsel's
4 approximately twenty-eight months to obtain the same result.
5 The award of pre-sentence custody credits determined by statute
6 are not within the discretion of the Court. Presumably
7 appellate counsel knew or should have known this to be true.
8 Had counsel made a couple of telephone calls soon after
9 receiving the transcripts she would have discovered the error
10 had been corrected even before she had the transcripts in hand -
11 HENCE IT WAS A NON ISSUE for appeal. Had counsel consulted
12 with the Petitioner just once regarding his appeal, she would
13 have discovered the error had been corrected before she received
14 the transcripts. - HENCE IT WAS A NON-ISSUE for appeal.
15 Petitioner contends that counsel taking credit where no credit
16 is due reflects an ethical problem and suggests counsel's
17 professional ethics as an attorney played a role in her
18 providing ineffective assistance of appellate counsel.

19 C O N C L U S I O N

20 If an evidentiary hearing is granted in this matter,
21 Petitioner will present voluminous evidence of appealible issues
22 which escaped his appellate counsel's scrutiny, demonstrating he
23 did not receive effective assistance from appellate counsel and
24 will argue; the magnitude of issues require detailed review of
25 the case and warrant reversal of his conviction on all counts.

26 A P P L I C A B L E C A S E L A W :

27 Smith v. Robbins, 528 U.S. 259 (2000) The U.S. Supreme Court
28 found the Petitioner's appellate counsel was ineffective in
(Ronald Russell, Habeas Corpus Petition, Ground Eight, page 105.)

1 violation of petitioner's Sixth Amendment right to counsel.
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28 (Ronald Russell, Habeas Corpus Petition, Ground Eight, page 106.)

They say that justice is blind

**I say that justice in not blind
its only colored blind
and only see's the color
\$\$ GREEN \$\$**



**Up to this time I have represented myself as pro-se (without an attorney).
To continue to seek justice I will need help with legal fee's to take my case all
the way to the US Supreme court if needed,**

**With Your Help
I will Stand up for the Constitution
Prove My Innocents
Expose California's Corrupt Justice System
Giving Hope to other Wrongfully Convicted Californian's**