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Attorney on Appeal for
Defendant/Appellant
James John McBride

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

In re JAMES JOHN McBRIDE) No.
_____)
JAMES JOHN McBRIDE) REQUEST FOR APPOINTMENT
Petitioner) OF COUNSEL PURSUANT TO
) COURT OF APPEAL'S
vs.) ORDER TO SHOW CAUSE
)
JAMES A. YATES,) Underlying Conviction
Warden) Sup. Ct. No. FBA006698
_____)
PEOPLE OF THE STATE OF)
CALIFORNIA,)
Real Party in Interest)

TO THE HONORABLE MICHAEL A. SMITH, SUPERVISING JUDGE in
Department S19:

Petitioner is presently without counsel to represent him in the superior
court on his petition for writ of habeas corpus, pursuant to the Court of
Appeal's order to show cause before this Court, granted on May 16, 2006.

REQUEST FOR APPOINTMENT OF COUNSEL PURSUANT TO COURT OF
APPEAL'S ORDER TO SHOW CAUSE

Accordingly, petitioner respectfully requests this Court appoint counsel to represent him.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF APPOINTMENT OF COUNSEL**

On September 12, 2005, Mr. McBride filed a petition for writ of habeas corpus in the Court of Appeal, Case No. E038805, alleging ineffective assistance of counsel for failing to present an expert witness at trial. On May 16, 2006, the Court of Appeal found sufficient facts to present a prima facie showing for relief in the petition and issued an order to show cause before this Court. (See Exh. A.) It further ordered, “All further proceedings in the superior court shall be in accordance with California Rules of Court, rule 4.551(c)(2) and (d) through (h).” (See Exh. A.)

California Rules of Court, rule 4.551(c)(2) provides, “Upon issuing an order to show cause, the court must appoint counsel for any unrepresented petitioners who desire but cannot afford counsel.” The language is mandatory.

Appellate counsel filed petitioner’s writ of habeas corpus in the Court of Appeal as part of her appointment. Appellate counsel’s appointment does not extend to superior court matters beyond the filing of the writ petition. Consequently, petitioner is presently unrepresented in the superior court. Petitioner cannot afford counsel; he was appointed counsel in the underlying case and in the Court of Appeal and has been incarcerated since January 13, 2002.

In *In re Clark* (1993) 5 Cal.4th 750,780, the California Supreme Court stated, “[I]f a petition attacking the validity of a judgment states a prima facie case leading to an issuance of an order to show cause, the appointment of counsel is demanded by due process concerns.” Because an order to show cause (“OSC”) has been issued, petitioner is entitled to appointment of counsel to represent him at all phases of the OSC proceeding. Petitioner presently has no one representing him to review respondent’s return due on June 15, 2006, to prepare and file a denial pursuant to the Court of Appeal’s order to show cause, or to represent him at an evidentiary hearing in the event one is required. (Cal. Rules of Court, rule 4.551(d) -(f); Exh. A.)

Because the order to show cause is based on ineffective assistance of petitioner’s court-appointed IDC attorney, in light of the serious nature of the case and the investigative work, petitioner respectfully requests this Court appoint Patricia Ihara, petitioner’s appellate counsel, to represent him in the review of the return and filing of the denial because she is familiar with this case. If an evidentiary hearing becomes necessary, petitioner requests that trial counsel be separately appointed in that capacity because of Ms. Ihara’s inexperience in trial court matters. Alternatively, petitioner requests that Ms. Ihara be permitted to have associate counsel represent petitioner at the evidentiary hearing.

If the court decides to appoint trial counsel from the Alternate Public Defenders, Ms. Ihara requests she be timely served with all documents and

notices of any and all proceedings and dispositions relating to Mr. McBride's petition for writ of habeas corpus.

CONCLUSION

For the foregoing reasons, the requested relief should be granted.

Respectfully submitted,

Dated: May 22, 2006

Patricia Ihara, S.B. #180290
Attorney for Petitioner,
James John McBride

