

Name Aubree N. Hogue

Address P.O. Box 1508

Chowchilla, Ca. 93610

513-21-300

CDC or ID Number X29098

Merced County Superior Court

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

Aubree N. Hogue
Petitioner

vs.

No. _____

(To be supplied by the Clerk of the Court)

Merced County Superior Court
Respondent

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

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

1. Your name: Aubree N. Hogue
2. Where are you incarcerated? Central California Womens Facility
3. Why are you in custody? Criminal Conviction Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

(2) Gross vehicular manslaughter while intoxicated, (2) Driving under the influence of alcohol or drugs w/injury, (enhancement- great bodily injury)

b. Penal or other code sections: 191.5, 23153(a)(b), 12022.7(a)

c. Name and location of sentencing or committing court: Merced County Superior Court

d. Case number: MF47292

e. Date convicted or committed: October 20, 2007

f. Date sentenced: February 7, 2008

g. Length of sentence: 11 years 8 months

h. When do you expect to be released? November 2017

i. Were you represented by counsel in the trial court? Yes. No. If yes, state the attorney's name and address:

Peter Kapetan
1236 M²⁺ Fresno, Ca. 93721

4. What was the LAST plea you entered? (check one)

- Not guilty
- Guilty
- Nolo Contendere
- Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

- Jury
- Judge without a jury
- Submitted on transcript
- Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

Unequal Protection of the Law - On October 20, 2007, I was convicted of Gross Vehicular Manslaughter while intoxicated (PC 191.5), Driving Under the Influence of Alcohol with injury (PC 23153)(a)(b), Great Bodily Injury (PC 12022.7)(a), and sentenced to 11 years 8 months on February 7, 2008 by Merced County Superior Court.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Do to a conviction of Gross Vehicular Manslaughter while intoxicated, Driving Under the Influence of Alcohol with injury, and Great Bodily Injury; On February 7, 2008 I was sentenced to a term of 11 years 8 months. When in similar based offenses, maximum sentences ranged from 3 to 10 years while others received half time, which violated my 14th Amendment of equal protection of the law.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

See exhibits

(A) Dylan Morse vs Sonoma County

(B) Khushdeep Gill vs Merced County

(C) Daniel Moore Jr vs Merced County

Grossly unfair and Disproportionate Sentence

a. Supporting facts:

My sentence of 11 years 8 months at 85 percent is grossly unfair and disproportionate when compared to similar cases. Given the fact that I had completed two semesters of college, was working full-time, and had no prior convictions, I'm thrown into an environment for a lengthy amount of time with murderers, harden criminals and lifers. People who with full intent and no remorse committed their crimes. While I, accidentally and having no clear knowledge of the damages my actions would cause, being under the influence, am left without hope at the tender age of just 20 years old. It is unfair to use someone else's actions against me. Most males in similar cases never received a sentence as harsh as mine. Why is that? Why am I being discriminated upon and made the example of? I was a functioning member of society. Even now, during my time of incarceration, I am still trying to do things to better myself. I have completed Vocational Office Services and Related Technologies and a spiritual self-help group named What Happened. I am also currently on the list for independent college courses, as well as the Joint Venture Program.

b. Supporting cases, rules, or other authority:

- See exhibits
- (A) Dylan Merse vs Sonoma County
- (B) Khushdeep Gill vs Merced County
- (C) Daniel Moore Jr vs Merced County

8. Did you appeal from the conviction, sentence, or commitment? Yes. No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

b. Result _____ c. Date of decision: _____

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

e. Issues raised: (1) _____

(2) _____

(3) _____

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

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

a. Result _____ b. Date of decision: _____

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

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

This claim is based on newly discovered evidence that, despite due diligence, was not discovered until December 2009, when a DV's fatality sentence of 12 years 4 months was reduced to 3 years 4 months.

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

b. Did you seek the highest level of administrative review available? Yes. No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or **issue** in any court? Yes. If yes, continue with number 13. No. If no, skip to number 15.

13. a. (1) Name of court: _____

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

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (Attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

This claim is based on newly discovered evidence that, despite due diligence, was not discovered until December 2009, when a DUI fatality sentence of 12 years 4 months was reduced to 3 years 4 months.

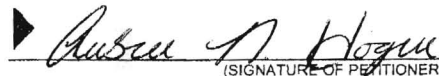
16. Are you presently represented by counsel? Yes. No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes. No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 12-22-2010


(SIGNATURE OF PETITIONER)