

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Matter of the) Case No.
Application of JOHN WEBSTER,)
) SANTA CLARA COUNTY SUPERIOR
Petitioner,) COURT CASE NUMBER 139218
)
for the Writ of Habeas)
Corpus.)
)
)
_____)

FILED

PETITION FOR WRIT OF HABEAS CORPUS; SEP 25 1998

Court of Appeal - Sixth App. Dist.
BY _____
DEPUTY

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Attorney for Petitioner JOHN
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PETITION FOR WRIT OF HABEAS CORPUS

Petitioner John Webster alleges the following facts:

1. On July 20, 1990 an information (Case Number 139218) was filed in the Superior Court of Santa Clara County charging John Webster with 3 felony counts of Penal Code section 266(j), one felony count of Penal Code section 653f(c), and one felony count of Penal Code section 313.1.

2. On September 6, 1990, the District Attorney amended the charges to allege two felony counts of attempted child pandering (P.C. 664-266(j)). Mr. Webster entered a plea of no contest to the charges.

3. At the time of the plea, Mr. Webster was promised that he would not be sentenced to state prison and that he would not have to register with the authorities as a convicted sex offender.

4. On October 17, 1990, imposition of sentence was suspended. Mr. Webster was placed on probation for a period of 5 years and was sentenced to serve 1 year in the County Jail as a condition of probation.

5. Mr. Webster satisfied all conditions of probation, has had no new arrests and has no current or pending charges against him.

6. In April of 1997, the California State Department of Justice revised its policy on who must register under P.C. 290 to include individuals such as Petitioner Webster.

7. On July 8, 1997, Mr. Webster was contacted by the Santa Clara Police Department and was informed that he now had to register with them as a convicted sex offender.

8. Mr. Webster did indeed register as required and remains registered.

9. Since registration Mr. Webster has been illegally threatened with exposure, by the Santa Cruz Police Department, and told that he is unwelcome in Santa Cruz. (See attached declaration by counsel)

10. The registration requirement is illegal as it applies to Mr. Webster in that it deprives him of the benefit of his bargain, is cruel and unusual punishment, constitutes ex post facto punishment, and subjects Mr. Webster to continued illegal harassment by police officials.

11. Petitioner has no other speedy or adequate remedy at law.

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WHEREFORE Petitioner prays that:

1. His plea be set aside and he be allowed to enter a plea of not guilty to the charges in Case Number 139218;

2. Or in the alternative, the Court declare and order that he need not register with any law enforcement agency as a convicted sex offender;

3. For such further relief as the court deems just and proper.

DATED: : 9/24/98

{signature}
DANIEL M. MAYFIELD, Attorney
for Petitioner, JOHN WEBSTER

1 9. I took this action under protest and only after the threat of prosecution. I have
2 always maintained that I am NOT required to register as a sex offender under
3 Penal Code 290 or any other section. I have acted in a diligent and timely
4 manner to challenge my alleged "duty to register".

5
6 10. On September 3, 1998, I received a telephone message from a Sgt.
7 Steven Clark of the Santa Cruz police. He was calling me concerning a
8 woman named Susan with whom I had a developing relationship and had
9 informed that I was a registered sex offender. Sgt. Clark told me that Susan
10 did not want to see me any more and then stated "...I've notified her of your
11 status as a serious sex offender, and we've also notified the neighborhood
12 there, we've passed out flyers to that effect, and if you try to contact her
13 again we will come to your neighborhood and pass out those very same flyers
14 notifying your neighbors of your status... so heed the warning...". The full text
15 of the two telephone calls I received from Sgt. Clark is attached hereto as
16 an exhibit.

17
18 11. Importantly, I have never been told directly by Susan to stay away from her.
19 She does not have, and I have not been served with, any civil restraining
20 orders concerning Susan. And, finally, Susan only knows that I am a
21 registered sex offender because, in an attempt to be honest in a developing
22 relationship, I told her of my status.

23
24 ///

25 ///

1 contact from you and she certainly does not want you around her children in any
2 way. So you need to heed the warning and to take the appropriate steps that
3 you need to take to make sure that there is not a future legal problem in your, in
4 your near future surrounding this. And if you need to discuss this you can
5 contact me a 429-3723 and that's area code 831 now."
6

7 4. In listening to this tape recording, I was struck not only with the actual words
8 (such as the repeated statement "you need to heed the warning") but I was
9 also struck with the voice tone that was used, which I took to be very
10 threatening. Certain words were given greater emphasis to make the
11 telephone message even more threatening than it might have been (for
12 example "YOUR neighbors", and "HEED the warning")
13

14 5. On September 9, 1998, I called Sgt. Clark at the Santa Cruz Police
15 Department twice at the number given to Mr. Webster. The telephone was
16 answered by a phone answering machine. I left a message explaining who I
17 was and that I wanted to discuss the situation concerning Mr. Webster.
18

19
20 6. When Sgt. Clark telephoned me back I asked him why he thought it was
21 "OK" to distribute leaflets concerning my client and why he has threatened to
22 distribute the leaflets in Santa Clara county. He replied "I thought one of my
23 colleagues had done that... we did not distribute a flyer on that... with his status
24 we can't" Sgt. Clark went on to tell me that John was "NOT welcome in our
25

1 town" and "I don't think that he has broken any laws at this time... there is not
2 criminal violation at this point."
3

4 7. Signed under penalty of perjury in San Jose, California, on September 9,
5 1998.
6

7 DATED: 9/22/98

{signature}

DANIEL M. MAYFIELD

DECLARATION OF JOHN VAUGHN

1
2 1. My name is John Vaughn, and I was the attorney for Mr. JOHN WEBSTER in
3 September of 1990 when he settled his case.

4 2. Although many years have passed since that date and time I am absolutely
5 sure that Mr. Webster would NOT have settled his case for a criminal violation
6 that would have required registration.

7 3. I remember that we discussed various ways to settle the case and that Mr.
8 WEBSTER was always opposed to a settlement that would require registration
9 as a sex offender.

10 4. The crime of P.C. 664-2660) was specifically chosen, and agreed to by all
11 parties, including the District Attorney and the Judge, because it did not
12 require registration as a sex offender.

13
14
15 Signed under penalty of perjury in San Jose, California on September 9th, 1998

16
17
18 DATED:

_____ {signature} _____

19 JOHN VAUGHN
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DECLARATION OF SERVICE

RE: Application of John Webster for Petition for Writ of Habeas Corpus

I, Daniel M. Mayfield, am over the age of 18 years, am not a party to the within entitled cause, and maintain my business address at 131 George Street, San Jose, California 95110.

I served the attached **PETITION FOR WRIT OF HABEAS CORPUS** on the following individuals/entities by placing a true and correct copy of the document in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Jose, California, addressed as follows:

Attorney General
50 Fremont Street Suite 300
San Francisco, CA. 94105-2239

Clerk of the Santa Clara County Superior
ATTN: The Honorable Daniel Creed
190 W. Hedding Street
San Jose, CA. 95110

District Attorney, Santa Clara County
70 W. Hedding Street
San Jose, CA. 95110

John Webster
BY HAND DELIVERY

I declare under penalty of perjury that service was effected on September 25, 1998 at San Jose, California and that this declaration was executed on September 25, 1998 at San Jose, California.

_____{signature}_____
DANIEL M. MAYFIELD