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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

PAUL ADAME,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E055880

(Super.Ct.No. CR69121)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Helios (Joe)

Hernandez, Judge. Petition granted.

Paul Adame, in pro. per., for Petitioner.

No appearance for Respondent.

Kamala D. Harris, Attorney General, and Holly D. Wilkens, Deputy
Attorney General, for Real Party in Interest.

In this matter, we have reviewed the petition and the response by the People conceding that the writ of mandate should be granted. In light of this concession, issuance of a peremptory writ in the first instance is appropriate. (*Palma v. U. S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

Penal Code section 1405, subdivision (b)(1), requires that a court appoint an attorney to represent an indigent convicted person to prepare a motion for performance of deoxyribonucleic acid (DNA) testing. The appropriateness of filing a motion for DNA testing is not to be determined when the person requests the appointment of counsel. (*In re Kinnamon* (2005) 133 Cal.App.4th 316.)

Therefore, we must conclude that the superior court erred in denying petitioner's request for appointment of counsel.

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to vacate its previous denial and to appoint counsel solely for the purpose of (1) investigating the appropriateness of DNA testing as to petitioner's conviction, and (2) filing a motion for DNA testing if counsel's investigation reveals that such testing would be appropriate under Penal Code section 1405.

The People are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

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McKINSTER
Acting P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.