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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

DELANO JOHNSON,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E063479

(Super.Ct.No. FSB05066)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate/habeas corpus. The petition for writ of mandate/habeas corpus is granted in part.

Delano Johnson, in pro. per., for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

We agree with petitioner that it was improper to insist that he pay a civil filing fee in order to request discovery pursuant to Penal Code section 1054.9 or to otherwise comply with the civil case requirements listed by the court clerk. That section (unlike section 1405 relating to DNA testing) does not provide for the automatic appointment of counsel and courts should treat submissions by inmates with reasonable liberality.

On the other hand, it is not clear from the record just what petitioner submitted to the superior court or whether he demonstrated in that submission that he had sought the materials from trial counsel. Nor is it clear that he requested only materials falling within the ambit of Penal Code section 1054.9.

We will therefore direct that petitioner transmit a new request to the superior court pursuant to Penal Code section 1054.9 within 30 days of the finality of this order.

#### DISPOSITION

Let a peremptory writ of mandate/habeas corpus issue, directing the San Bernardino Superior Court to file any such resubmission by petitioner without requiring payment of a filing fee or compliance with other civil case rules. The superior court is further directed to consider any such request, in whole and in parts, on the merits and to proceed and rule accordingly.

Petitioner is directed to prepare and have the peremptory writ of mandate/habeas corpus issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

In the interest of justice this order shall be final in 15 days.

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CODRINGTON  
J.

We concur:

HOLLENHORST  
Acting P. J.

MILLER  
J.