INSTRUCTIONS FOR A *COOK* HABEAS CORPUS PETITION

- For habeas corpus petition based on *People v. Cook* (2015) 60 Cal.4th 922 -

Sentences for murder or manslaughter cannot be enhanced by great bodily injury enhancements under Penal Code section 12022.7, subdivision (a).

☐ **GENERAL INSTRUCTIONS:**

    ▫ **TIME TO FILE**: Although there is no specific deadline for a Cal. habeas corpus petition, the courts do require you act without unreasonable delay. File it promptly. Explain any delay.

    ▫ **WHERE TO FILE**: The petition is filed first in the superior court where you were sentenced. If that is denied, you may then file in the Court of Appeal and the California Supreme Court, in that order.

    ▫ **REQUIRED FORM**: Use form MC-275 (enclosed). Follow the instructions on the front page of MC-275 carefully and answer *every* question.

    ▫ **RULES OF COURT:** Habeas corpus proceedings in the superior court are governed by California Rules of Court, rules 4.550-4.552. Rules 8.380-8.388 govern habeas in the Court of Appeal and Supreme Court.

    ▫ **CORRECTNESS:** *Be accurate, complete, and truthful.* This Petition and the Attachment are under penalty of perjury. Do not say anything you cannot back up with facts. You need to show the court it can trust you.

    ▫ **COSTS:** If you cannot afford to copy or mail your petition, make a formal request for costs from your counselor under the Code of Regulations, title 15, § 3138.

☐ **FRONT PAGE OF MC-275:** Fill out blanks.

☐ **PAGE 2 OF MC-275:**

    ▫ **CHECK BOX:** This petition concerns "A sentence."

    ▫ **ANSWER** questions 1-5.

☐ **PAGE 3 OF MC-275:** Question 6, GROUNDS FOR RELIEF. In the spaces for Ground 1: Write "*Please see attached*" if it is not already printed there.

☐ **"ATTACHMENT: ANSWERS TO QUESTION 6, GROUNDS FOR RELIEF" (enclosed):** Read the instructions carefully.

    ▫ **SECTION (a), SUPPORTING FACTS:** Fill in the blanks.

    ▫ **VERIFICATION (last page of Attachment):** Date and sign the Verification under penalty of perjury.

    ▫ **ATTACHMENT:** Add the Attachment to the MC-275 petition.

☐ **PAGE 4 OF MC-275, QUESTION 7:** If you have other claims for the habeas corpus petition, answer question 7. Use additional sheets if needed. California's "successive petitions rule" requires you to include all claims attacking the same judgment in one petition.

☐ **PAGES 5-6 OF MC-275:** Answer questions 8-18.

☐ **PAGE 6 OF MC-275**: Check everything. Date the MC-275 Petition and sign under penalty of perjury in the spaces on page 6.

☐ **PREPARING TO FILE:**

    □ **COPIES:** Make a copy of the Petition with Attachment for your own use.

    □ **DELIVERY:** Deliver the Petition and Attachment, addressed to the court where you will be filing them, to a prison official authorized to accept mail. Ask for a receipt to show the date of delivery (which is legally the date of filing for a person in custody).

☐ **WHAT HAPPENS AFTER PETITION IS FILED**

    □ **ACTION BY COURT:** (a) The court may deny the petition without asking for a response. (b) It may ask the prosecution for an informal response. You would then have a chance to file an informal reply; the court will notify you of the due date. (c) The court may issue an order to show cause requiring the prosecution to file a return, also called a denial. At that point the court must appoint counsel if you cannot afford your own lawyer.

    □ **REVIEW BY COURT OF APPEAL:** If the superior court denies the petition and you want to continue, promptly update and file this habeas corpus petition (_not a notice of appeal_) in the Court of Appeal. On page 6 of the petition, questions 12-14, be sure to add the superior court petition that was just denied. You may briefly explain why you think the denial was wrong.

    □ **REVIEW BY CALIFORNIA SUPREME COURT:** If the Court of Appeal denies the petition without issuing an order to show cause, one option is to file a petition for review in the California Supreme Court within 10 days after the denial. Another option is to file this habeas corpus petition, updated to show the superior court and Court of Appeal decisions, within a reasonable time in the Supreme Court. The time frame to file a habeas corpus petition may be more realistic for you.