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Materials for habeas corpus petition seeking a *Franklin* hearing to memorialize mitigating evidence for use in a future youth offender parole hearing pursuant to Penal Code section 3051

Thank you for your interest in asking for a court hearing to make a record of how your young age at the time of your offense affected your actions. In *People v. Franklin* (2016) 65 Cal.4th 261, the California Supreme Court said a defendant who will be entitled to a youth offender parole hearing under Penal Code section 3051 may ask the superior court for permission to preserve evidence that is expected to helpful at the parole hearing.

Enclosed materials

Appellate Defenders, Inc. (ADI), has prepared the enclosed materials to help defendants who have no attorney because their cases are final – meaning the appeal is over or the time for appealing is past. They are intended for your use if all of the following are true:

- (1) Your judgment is final – meaning your appeal is over or the time for appealing is past;
- (2) You committed the offense or enhancement that led to the longest term of your sentence before you turned 23 years old;
- (3) Your sentence does *not* include a term for “life without the possibility of parole” (LWOP), it does *not* include a “One Strike” sentence based on a sex offense that is subject to “Jessica’s Law” (§ 667.61), it is *not* a “Second Strike” or “Third Strike” sentence (§§ 667, subs. (b)-(i)), and it does *not* include a five-year prior serious felony enhancement (§ 667, subd. (a));¹

¹You are not eligible for a youth offender parole hearing if your sentence has any of these characteristics. *Do not use these materials if it does.* If your total sentence is a long one and you committed the crimes before you were 18 years old, ADI may have other materials that can be used to help you.

(3) You have committed no crime after turning 23 years old for which you were sentenced to life in prison or for which “malice aforethought” is a necessary element of the crime;

(4) *Either* you have a sentence for a specific number of years and an expected release date that will result in more than 15 total years of incarceration (including consideration of conduct credit) *or* you have life-top sentence with the possibility of parole; and

(5) You were not given an adequate opportunity at your sentencing hearing to make a record of relevant evidence that you expect to be helpful when you become eligible for a youth offender parole hearing.

Relevant evidence includes but is not limited to evidence that you were immature at the time of the crime, favorable psychological assessments and risk assessments, and favorable testimonials from family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about you and your life circumstances before the crime.

If your case does not fit all of these categories, do not use these materials; instead, ask ADI whether it has materials for your situation.

The enclosed materials are to be used in preparing a petition for a writ of habeas corpus asking for a hearing to preserve evidence under *Franklin*. They include the standard habeas form MC-275, an attachment for completing the section on why the evidence presented at your sentencing hearing was insufficient and needs to be supplemented, and instructions for both. The ADI materials are necessarily very general: they just lay out important recent cases and some broad legal principles. *They were not written for a specific case and therefore do not talk about the facts in your case. Providing those is your job, and that is in many ways the key part of your petition.*

Legal representation

Once your trial and direct appeal are over, you no longer have the right to an appointed lawyer to file new petitions, including habeas corpus. Appellate Defenders, Inc. (ADI), is not able to represent you or assign an attorney to do it. Because ADI is not your attorney, we cannot analyze your particular case or give you legal advice. It is up to you to complete and file the petition. If the court finds your petition states facts that may entitle you to relief, it will then appoint a lawyer.

Possible risks

There is always some risk in reopening a case or attaching documents to something filed in court. Errors in your favor could be discovered and corrected, or something incriminating might come up, leaving you worse off than before you took action. If you have any doubts, consult your former trial or appeals lawyers, who are familiar with your case and may be able to help.

Of particular importance here, if the trial court gives you permission make a record of favorable evidence, *the prosecution will be allowed to make a record of unfavorable evidence*. If you obtain permission for a hearing, your appointed lawyer will discuss this possibility with you. He or she may ultimately advise you to withdraw your petition.

We hope you find these materials helpful and wish you the best in your efforts.

APPELLATE DEFENDERS, INC.

Encl: Judicial Council Habeas Corpus Petition Form (MC-275)
Answers to Question 6, Grounds for Relief
Instructions for a *Franklin* Habeas Corpus Petition

IMPORTANT

These materials are **not legal advice** to you. Your use of the ADI materials does not create an attorney-client relationship between you and ADI or anyone at ADI. The statements in the materials are not guaranteed to be complete or free from error or up to date (the law is constantly changing). You may use them only at your own risk and should always check to make sure what you are saying in your petition is correct and up to date, both as to fact and law.