

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY DANIEL LOWREY, PETITIONER

VS.

CALIFORNIA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SIXTH APPELLATE DISTRICT

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

SIXTH DISTRICT APPELLATE PROGRAM

EDWARD DALLAS SACHER
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State Bar #100175
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(408) 241 -6171

Counsel of Record for Petitioner,
TIMOTHY DANIEL LOWREY

TO THE HONORABLE CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE COURT:

Pursuant to Rule 39 of the Rules of the Supreme Court of the United States, petitioner, Timothy Daniel Lowrey, respectfully requests leave to file a petition for writ of certiorari in forma pauperis. In making this application, petitioner notes that he has been represented by appointed counsel in both the California Court of Appeal and the California Supreme Court. This fact is memorialized in the attached declaration of counsel.

The petitioner's declaration in support of this motion is attached hereto.

Dated: October 10, 2002

Respectfully submitted,

EDWARD DALLAS SACHER
Attorney for Petitioner,
Timothy Daniel Lowrey

DECLARATION OF EDWARD DALLAS SACHER

I am an attorney licensed to practice in California. I am a member of the bar of this court. I am the attorney of record for petitioner Timothy Daniel Lowrey.

The facts stated in this declaration are within my personal and firsthand knowledge. If called as a witness in this action, I could and would testify under oath to the following facts.

At present, petitioner is incarcerated at the California State Prison in Soledad, California. Petitioner has been in custody since 1999.

On December 1, 1999, petitioner filed a notice of appeal. On January 4, 2000, I was appointed by the California Court of Appeal to represent petitioner. I have remained petitioner's counsel of record to this time.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of October, 2002, at Santa Clara, California.

EDWARD DALLAS SACHER

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TIMOTHY DANIEL LOWREY, Petitioner,

VS.

STATE OF CALIFORNIA, Respondent

AFFIDAVIT ACCOMPANYING MOTION FOR
PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion.

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: _____

Instructions:

Complete all questions in this application and then sign it. Do not leave any blanks. If the answer to a question is "O", "none," or "not applicable (N/A)", write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Dated: _____

My issue on appeal is: 1. A sentence of 25 years to life for a violation of California Penal Code section 290 is unconstitutional under the eighth Amendment.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

<u>Income Source</u>	<u>Average monthly amount during the expected past 12 months</u>	<u>Amount next month</u>
	You	You
Employment	\$ _____	\$ _____
Self-employment	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____
Gifts	\$ _____	\$ _____
Alimony	\$ _____	\$ _____
Child support	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____
Public assistance (such as welfare)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly income	\$ _____	\$ _____

2. List your employment history, most recent employer first.

(Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. How much cash do you and your spouse have? \$ _____

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of account	Amount you have	Amount your spouse has
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home	(Value)	Other real estate	Motor Vehicle #1
_____		(Value)	(Value)
_____		_____	Make & Yr. _____
_____		_____	Model: _____
		_____	Registration# _____
Motor Vehicle #2 (Val.)		Other Assets (Value)	Other assets (Value)
Make & Yr. _____		_____	_____
Model: _____		_____	_____
Registration #: _____		_____	_____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family.

Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home mortgage payment) (include a lot rented for mobile home Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$ _____	\$ _____
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ _____	\$ _____
Clothing	\$ _____	\$ _____
Laundry and dry cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____
Transportation (not including motor vehicle payments)	\$ _____	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments) Homeowner's or renter's	\$ _____	\$ _____
	\$ _____	\$ _____

Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments) (specify): _____	\$ _____	\$ _____
Installment payments	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Credit Card (name): _____	\$ _____	\$ _____
Department store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support, paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses	\$ _____	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

9 Yes 9 No If yes, describe on an attached sheet.

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? 9 Yes 9 No

If yes, how much? \$ _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid - or will you be paying - anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? \$ _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fee for your appeal.

13. State the address of your legal residence.

Your daytime phone number: (____) _____

Your age: _____ Your years of schooling: _____

Your social security number: _____

Case Number: _____

CERTIFICATION OF FUNDS

IN

PRISONER'S ACCOUNT

I certify that attached hereto is a true and correct copy of the prisoner's trust account statement showing transactions of Timothy Daniel Lowrey for the last six months at Soledad State Prison where he is confined.

Dated: _____

Authorized Officer of the Institution