

V89

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

DATE: \_\_\_\_\_

FILE: \_\_\_\_\_

RECEIVED: \_\_\_\_\_

BY: \_\_\_\_\_

RECEIVED: \_\_\_\_\_

TRANSCRIPT OF HEARING

Before me, \_\_\_\_\_

Hearing held at \_\_\_\_\_

Los Angeles County Central Jail  
Los Angeles, California 90012

Hearing held on \_\_\_\_\_

Conducted by \_\_\_\_\_  
Clerk-Treasurer

CHARGE:

\_\_\_\_\_

Language: \_\_\_\_\_

DEPUTY ATTORNEY GENERAL

IS BEHALF OF \_\_\_\_\_

\_\_\_\_\_

James C. Jones, Esq.

\_\_\_\_\_

2000 West 3rd Street

\_\_\_\_\_

Los Angeles, California 90012

I hereby certify that the foregoing is a true and correct copy of the transcript of the hearing held on \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_

Special Agent in Charge

May 14, 1954

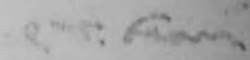
190

The allegations of fact and charges of deportability contained in the Order to Show Cause herein are hereby adopted by me as my findings of fact and conclusions of law.

In view of the recency of respondent's conviction, on which he is still confined and serving the aforementioned term of probation, it is concluded that the proper relief is available for any form of discretionary relief from deportation. His deportation must and will be ordered.

ORDER: IT IS ORDERED that the respondent's application for termination of these proceedings be and it is hereby denied.

IT IS FURTHER ORDERED that the respondent be deported from the United States to Jordan on the charges contained in the Order to Show Cause.

  
\_\_\_\_\_  
Michael F. Lyons  
Special Inquiry Officer

191

California law that a writ must be obtained by a party to a judgment, entered at any time and in any place by any interested party. Carter v. Carter, 1917, 143 S. A. 2d 341, 307 P. 2d 639). Even going on the assumption of Section 144, California Evidence Code, aforementioned, the Board of Immigration Appeals held that lack of judicial jurisdiction by a court must be affirmatively established by the Service. (Matter of O'Sullivan, 1961, 10 I&N Dec. 320). Section 342(b)(4) (8 U.S.C. 1252(b)(4)) requires that "no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence."

It is well settled that the sentence in a criminal case is a final judgment of conviction (cf. Matter of T-, 6 I&N Dec. 835). The aforementioned Minute Order of May 25, 1967 (Exhibit 4) does not recite any action of law or other authority for its exercise. It does not appear to constitute the granting of a writ of error coram nobis or the granting of a motion to set aside the judgment within the period of time permitted for such a motion. There is no provision known to me in California law which permits the vacating of a final judgment of conviction more than 6 months thereafter, with no intervening appeal, writ of error coram nobis or motion to set aside the judgment. It must be and is concluded that the Minute Order of the Superior Court entered on May 25, 1967, aforementioned, was entered when the proceedings herein were no longer "pending", therefore, entered without jurisdiction over the subject matter and of no force or effect. The respondent's motion for termination of these proceedings must and will be denied.

192

Juvenile Court has and has ordered that proceedings under the present law resume or be commenced."

The problem in this case is what effect, if any, was had upon the judgment of conviction entered on October 13, 1966 (Exhibit 2) by the Minute Order entered by another judge of the same Superior Court on May 25, 1967 vacating the finding of "guilty" and certifying the case to the Juvenile Court, presumably under the provisions of Section 604(5), Welfare and Institutions Code. (Exhibit 4). The said section permits the discretionary certification to the juvenile court "whenever a case is pending in any court." (emphasis supplied). The record indicates that the criminal case against the respondent was not "pending" on May 25, 1967 but appears to have become a final judgment upon the expiration of 10 days after the rendition of the judgment, aforementioned, on October 13, 1966 without notice of appeal having been filed therein, as provided by Rule 31, Judicial Council (California Penal Code, Section 1247k).

The California Evidence Code provides the following rebuttable presumption:

"Section 666. Judicial Action Lawful Exercise of Jurisdiction. Any court of this state or the United States, or any court of general jurisdiction in any other state or nation, or any judge of such a court, acting as such, is presumed to have acted in the lawful exercise of its jurisdiction. This presumption applies only when the act of the court or judge is under collateral attack."

The question of whether a court has jurisdiction to make an order may be raised in any form. Matter of H., 9 14N Dec. 460, Board of Juvenile Appeals, 1961). Prior to the enactment of the California Evidence Code, effective January 1, 1967, it was held in one



193

W and I Code) in criminal offense charged against a person under the age of 18 years at the time of the alleged commission thereof may be tried by any court "unless the matter has first been submitted to the juvenile court by petition as provided in Article 7 (commencing with Section 630), and said juvenile court has made an order directing that such person be prosecuted under the general law. (Section 603, W and I Code). This respondent was born on [REDACTED] and accordingly, was not under the age of 18 years at the time of the alleged commission, on June 10, 1966, of the aforementioned offenses. The respondent did not, therefore, come under the mandatory certification to the juvenile court provisions of Section 604(a) of the Welfare and Institutions Code.

Section 604(b), Welfare and Institutions Code of California, provides as follows:

"(b) Whenever a case is pending in any court upon an accusatory pleading and it appears to the satisfaction of the judge that the person charged is under the age of 21 years, the judge may certify the case to the juvenile court of his county in manner prescribed by subdivision (a) of this section." (emphasis supplied)

Section 604(c) of the Welfare and Institutions Code of California provides as follows:

"(c) When a court certifies a case to the juvenile court pursuant to subdivision (a) or subdivision (b), it shall be deemed that jeopardy has not attached by reason of the proceedings prior to certification, but the court may not resume proceedings, nor may a new proceeding under the general law be commenced in any court with respect to the same matter unless the juvenile court has found that the minor is not a fit subject for consideration under

194

(Exhibit 4). The Government's Trial Attorney objected to the receipt in evidence of this latest court order on the ground that the Superior Court was without any authority to enter it and it therefore constitutes an invalid order. Respondent's counsel has represented that, pursuant to the aforementioned certification, the Juvenile Court has accepted jurisdiction of the matter.

Article VI, Section 5, Constitution of California provides that "The superior courts shall have original jurisdiction in all criminal cases amounting to felony and cases of misdemeanor not otherwise provided for."

Section 737 of the Penal Code of California provides that "All public offenses triable in the superior court must be prosecuted therein by indictment or information, except as provided in the Government Code, the Juvenile Court Law and Section 859a of this code." Section 794 of the California Penal Code provides that "Where an offense is within the jurisdiction of two or more courts, a conviction or acquittal thereof in one court is a bar to a prosecution therefor in another."

The present Juvenile Court Law is found in the Welfare and Institutions Code of California, Sections 550, et seq. Section 602 thereof provides as follows:

"Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the Juvenile Court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

The Court exercises the jurisdiction of the juvenile court sitting as such is known as the juvenile court (Sec. 550,

195

State of California. This charge is denied by the respondent who also denies that he was on October 12, 1966, committed in the Superior Court of the State of California, for the County of Los Angeles for the offense of unlawful possession of marijuana in violation of Section 11530 of the Health and Safety Code of the State of California.

The record establishes through a certified copy of information, Minutes of October 13, 1966 and Minutes of December 1, 1966 that a criminal action was instituted against the respondent by the filing of an information in the Superior Court of the State of California, for the County of Los Angeles in which the respondent was accused of the crime of violation of Section 11530, Health and Safety Code, committed on or about June 10, 1966, for unlawful possession of marijuana (Count I) and a violation of Section 11531, Health and Safety Code of California committed on the same day, for unlawfully offering to sell, furnish and give away marijuana (Count II). The case was submitted to the court by stipulation on the testimony contained in the transcript of proceedings had at the preliminary hearing and the Superior Court on October 13, 1966 found the respondent guilty as charged as to both counts. On December 1, 1966, the proceedings were suspended and the respondent was granted probation for five years, a condition of which was that he spend the first year in the county jail (Exhibit 2).

On May 23, 1967, a Minute Order was entered in the aforementioned criminal action which states as follows: "Finding of 'Guilty' is entered and defendant is certified to Juvenile (sic) Court. Remanded."

196

UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

NO. 11 1957

File: [REDACTED] Los Angeles

In the Matter Of )

MUSTA BISHARA SALAMON BISHAN, )

IN DEPORTATION PROCEEDINGS

Respondent )

CHARGE:

Imm Act - Section 241(n)(11), convicted of violation  
of law relating to illicit possession of  
marijuana (Section 11590, Health and Safety  
Code of California)

APPLICATION: Termination of Proceedings

ON BEHALF OF RESPONDENT:

David C. Marcus,  
Attorney at Law  
215 West 5th Street  
Los Angeles, California

ON BEHALF OF GOVERNMENT:

William S. Howell  
Trial Attorney  
Los Angeles, California

DECISION OF THE SPECIAL INQUIRY OFFICER

Respondent is a 19-year-old native of Palestine and a citizen of Jordan. He entered the United States at New York, New York on January 12, 1957, when he was admitted as an immigrant. Respondent is charged herein with being subject to deportation under the provisions of Section 241(n)(11) of the Immigration and Nationality Act on the ground that he at any time has been convicted of a violation of any law or regulation relating to the illicit possession of marijuana in violation of Section 11590 of the Health and Safety Code of the



197

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

JUVENILE COURT ON PETITION CALENDAR

In the Matter of  
JAMES H. HIGDON  
19 years

LA 343777-0235042 PD

FINDINGS AND ORDER OF REFERENCE

APPEARANCES:

EXHIBITS/EXHIBITING

Minor  
Mother, Mary Sirhan  
Brother, Adel Sirhan  
Atty David C. Marcus, for minor  
Deputy Probation Officer Leon  
Court Reporter M. Wachsman

This matter came on regularly to be heard on this date being on, a reference of this court, and evidence having been received and considered. I find:

1. That notice of this hearing has been duly given as required by law.
2. That the allegations of the petition (as amended) filed July 12, 1967, are, as admitted by counsel on behalf of minor and said petition is sustained.

3. That the above named minor comply with the provisions of Section 602 of the Juvenile Court Law.

4. That minor was born on [REDACTED]
5. That minor's counsel represented on this Court that Judge Leopoldo Sanchez agreed to the certification of this matter. The findings of guilt in Superior Court Case Number 32944 were ordered vacated. The case was certified by Judge [REDACTED], Pasadena Superior Court.
6. That minor and mother waive further hearing and request immediate adjudication of the petition.

THEREFORE, IT IS ORDERED AND ADJUDGED THAT:

Case is continued for disposition to the [REDACTED] calendar of

July 31, 1967, 1:45 P.M.

Certification of Case Number 32944 - From the Superior Court of the State of California, Executive Session is hereby accepted.

The petition filed July 12, 1967, is amended to show the father's name and address as, "HIGDON, [REDACTED] - whereabouts unknown."

Minor is detained at the Los Angeles County Jail pending further hearing.

Minor's mother is ordered to return without further notice or subpoena.

Dated: July 14, 1967  
BHS:KRC

Referee of Juvenile Court

Names and addresses of persons to be notified:

HIGDON: L.A. County Jail  
MOTHER: Mary Sirhan, 695 East Nevada St., Pasadena, Calif.  
ATTY: David C. Marcus, 215 W. 5th St., L.A. 13, Calif.

FINDINGS AND ORDER OF REFERENCE (on Judge's signature required)  
ADJUDICATION HEARING

198

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
JUVENILE COURT**

PETITION

In the Matter of

**MUNIR SIRHAN**

Case Number **343777-0235062-FO-NEW**

Claim Number

Petitioner is informed and believes, and therefore alleges,

that **MUNIR SIRHAN**

at **696 EAST HOWARD STREET, PASADENA, CALIFORNIA**

is **19** years of age on **JULY 15, 1966**

and comes within the purview of Section 1002 of the Welfare and Institutions Code of California, in that:

PARAGRAPH I - SAID MINOR, ON OR ABOUT JUNE 10, 1966, AT AND IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DID WILLFULLY, UNLAWFULLY AND FELONIOUSLY HAVE POSSESSION OF A NARCOTIC, TO WIT, MARIJUANA; THEREBY VIOLATING SECTION 11530 OF THE HEALTH AND SAFETY CODE.

PARAGRAPH II - SAID MINOR, ON OR ABOUT JUNE 10, 1966, AT AND IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DID WILLFULLY, UNLAWFULLY AND FELONIOUSLY OFFER TO SELL, FURNISH OR GIVE AWAY A NARCOTIC, TO WIT, MARIJUANA; THEREBY VIOLATING SECTION 11531 OF THE HEALTH AND SAFETY CODE.

THE FOREGOING UNVERIFIED PETITION IS A REPETITION IN SUM AND SUBSTANCE OF CASE NUMBER 324904 CERTIFIED TO THE JUVENILE COURT BY THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, DEPARTMENT NE A.

The name and residence address of each parent and guardian of minor, known to me, is as follows:

MOTHER: **MARY SIRHAN, 696 EAST HOWARD STREET, PASADENA, CALIFORNIA**

The name and residence address of an adult relative residing within the county, or if there is no such person known, the name and residence address of the adult relative known to me to reside nearest to the court, is:

Minor was taken into custody by

at **LOS ANGELES COUNTY JAIL (HONOR RANCHO).**

IS **detained.** The present

THEREFORE, petitioner respectfully requests that this minor be adjudged and declared a ward of the Juvenile Court and dealt with as such.

**LELAND C. CARTER, PROBATION OFFICER, Petitioner**

**A. A. DICKERSON**  
Deputy Probation Officer

I certify under penalty of perjury that the foregoing is true and correct, according to my information and belief.

Executed on (date)  
**JULY 15, 1967**

Executed at  
**7-21-67 DEPT. SFV**

Signed  
**NO**  
Date filed with Juvenile Court Clerk  
**JULY 15, 1967**

Executed at  
**LOS ANGELES, California.**

Signed

**WADKUM**

199

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

MINUTES

Department No. NORTHEAST A

MAY 25 1967

19

Present Hon. H BURTON EGGLE Judge

APPEARANCES:

(Presence and Contact checked if present.  
Contact shown appropriate parties represented.)

Case No. 324984

THE PEOPLE OF THE STATE OF  
CALIFORNIA

X Evette I. Younger, District Attorney, by  
S. Lewis Deputy

E.J. Hayden, Public Defender, by  
Deputy

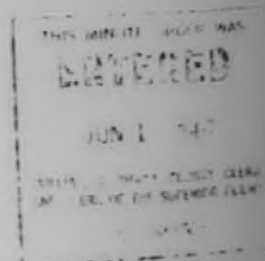
X MUNIR BISHARA SALAMEH SIRHAN

X D. Marcus

Advanced to 9:30 A M on motion of the defendant. Finding of  
"Guilty" is vacated and defendant is certified to Juvenile Court.  
Remanded.

PROB. 1 AUD.     DMV      
LAPD     CSHR.     CYA      
CO. J.     JUV.     C. CLK.      
SHER.     PSYC.     MISC.    

MINUTES



2050

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

MINUTES

MAY 18 1967

Department No. NORTHEAST A

Present Hon. H. HURTON KOEHL Judge

Case No. 324984

THE PEOPLE OF THE STATE OF  
CALIFORNIA

vs

APPEARANCES:

(Parties and Counsel checked if present;  
Counsel shown opposite parties appearance.)

☒ Evette J. Younger, District Attorney, by  
E. Lewis Deputy

E. J. Horder, Public Defender, by  
D. Marcus Deputy

☐ MUNIR BISHARA SALAMEN DIRHAN

☐

☐

Continued to May 25, 1967 at 2 PM for further proceedings, upon the  
request of counsel for defendant. Remanded.

PROR. ☐ AUD. ☐ DMV ☐  
LAPD ☐ CSIR. ☐ CYA ☐  
CO. J. ☐ JUV. ☐ C. CLK. ☐  
SHER. ☐ PSYC. ☐ MISC. ☐

MINUTES





201

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

MINUTES

MAY 12 1967

Department No. ROBERTA T. A.

19

Present Hon. H. DEITCH WOLFE Judge

APPEARANCES:

*(Plaintiff and Counsel checked if present,  
Counsel shown appearance pattern, separate sheet)*

Case No. 324964

THE PEOPLE OF THE STATE OF  
CALIFORNIA

Evelle L. Younger, District Attorney, by  
Deputy

E. J. Herndon, Public Defender, by  
Deputy

MONTE DEBATA SALAMON TIRHAN

D. Marcus

On the Court's own motion matter is referred to Juvenile Court.  
Present continuance date of May 14, 1967 to remain as is.

AUD. DMV  
LAWD CSHR. CYA  
CO. J. C. CLK.  
SHER. PSYC. MISC.

MINUTES

202

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

MINUTES

Department No. NORTHEAST A

APR 27 1967

10

Present Hon. H. BURTON ROGUE Judge

APPEARANCES:

(Plaintiff and Counsel checked if present;  
Counsel whose appearance is by written instrument.)

Case No. 326986

THE PEOPLE OF THE STATE OF  
CALIFORNIA

Evella J. Younger, District Attorney, by  
Deputy

E. J. Hardeo, Public Defender, by  
Deputy

MUNIR BISHARA SALAMEN BUTRHA

D. Fargus

Continued to May 11, 1967, 9:30 AM for further proceedings on  
motion of counsel for defendant. (defendant is in custody).

AUD. \_\_\_\_\_ DMV \_\_\_\_\_  
CSIR. \_\_\_\_\_ CYA \_\_\_\_\_  
JUV. \_\_\_\_\_ C. CLK. \_\_\_\_\_  
PSYC. \_\_\_\_\_ MISC. \_\_\_\_\_  
SHER. \_\_\_\_\_

MINUTES

THIS MINUTE ORDER WAS  
**ENTERED**  
MAY 3 1967  
WILLIAM C. SHARP, COUNTY CLERK  
AND CLERK OF THE SUPERIOR COURT  
CJA 40070

203

County of Los Angeles

I, the undersigned, am: I am the \_\_\_\_\_

to the above entitled action, I have read the foregoing \_\_\_\_\_

and know the contents thereof; (and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true); (\*\*that I am informed and believe the matters therein to be true and on that ground believe that the matters stated therein are true.)

I testify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on \_\_\_\_\_ (date) at \_\_\_\_\_ (place), California.

(Signature)

\*For use when the verification is made by the individual party.

\*\*For use when the verification is made by the attorney for the reason that the parties are absent from the county where he has his office, or for some other cause are unable to verify it, or when the verification is made on behalf of a corporation or public agency by an officer thereof.

Strike out this portion not applicable.

Received copy of the within \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Attorney for \_\_\_\_\_

Received copy of the within \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Attorney for \_\_\_\_\_

(PROOF OF SERVICE BY MAIL - 1013a, and 2013.5 C.C.P.)

State of California.

County of Los Angeles

} ss.

I, \_\_\_\_\_, a citizen of the United States and a resident of the county aforesaid, I am over the age of eighteen years and not a party to the above entitled action; my residence/business address is:

\_\_\_\_\_ Fifth Street, Los Angeles, California

\_\_\_\_\_ 18, 19\_\_\_\_ 67 Notice of Motion and Motion

by Terms of Probation and Sentence, Vacate Finding of Guilt, Set Aside Verdict and Judgment, and Revoke Probation of Defendant to Los Angeles County Juvenile Court and Declaration of David G. Marcus in Support Thereof. \_\_\_\_\_ plaintiff

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail, directed to \_\_\_\_\_

\_\_\_\_\_ Los Angeles, California

as follows:

Los Angeles County District Attorney  
211 West Temple Street  
Los Angeles, California 90013

I certify (on behalf of \_\_\_\_\_) under penalty of perjury\* that the foregoing is true and correct.

Executed on \_\_\_\_\_ April 18, 1967 at \_\_\_\_\_ Los Angeles, California.

(date)

(place)

K. Venable  
(Signature)

\*Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

204

1 Your declarant further alleges that the defendant being  
2 subject to this court's jurisdiction by virtue of the nature of  
3 the judgment and sentence of this court, this court is possessed  
4 of jurisdiction to alleviate the harsh, severe, and drastic provisions  
5 of the Immigration and Nationality Act and its undue application  
6 to this minor.

7 WHEREFORE, your declarant respectfully requests that  
8 this court permit the withdrawal of the finding of guilt and  
9 modify the terms of probation and sentence heretofore imposed to  
10 time served, and certify the defendant to the Juvenile Court of  
11 the County of Los Angeles.

12 Further declarant says: th not.

13 I declare under penalty of perjury that the foregoing  
14 is true and correct.

15 Executed on April 17, 1967, at Los Angeles, California.

16  
17  
18 DAVID G. MARCUS

19 Attorney for Defendant  
20  
21  
22  
23



205

1 and Notice of Hearing in Deportation under the provisions of  
2 section 242 of the Immigration and Nationality Act, in the matter  
3 entitled "In the Matter of Munir Bishara Salameh Zikhan, Respond-  
4 ent," bearing number AIG 711 000, charging that the defendant was  
5 a citizen of Jordan who last entered the United States in New York  
6 on January 12, 1957, and at the time of his entry was admitted  
7 as an immigrant; and that on October 12, 1956, in the Superior  
8 Court of the State of California for the County of Los Angeles  
9 was convicted for the offense of unlawful possession of marijuana  
10 in violation of section 11530 of the Health and Safety Code of the  
11 State of California, and that on the basis of his alienage and  
12 conviction he became a deportable alien pursuant to the provisions  
13 of section 241(a)(11) of the Immigration and Nationality Act.  
14 That hearings have been conducted before said Immigration Service  
15 and the defendant has now become subject to deportation.

16 That defendant stands to be deported and banished from  
17 the United States to be separated from his father, mother, and  
18 family, to a country strange and unknown to him, and to a penalty  
19 and hardship much worse than death.

20 Your declarant was properly advised by defendant's attorney  
21 of record that if he had known of the provisions of the Immigration  
22 and Nationality Act at the time of his representation of the  
23 defendant before the above entitled Superior court, he would have  
24 sought to have the defendant certified to the Juvenile Court and  
25 treated as a juvenile.

Your declarant alleges that if the defendant had been  
certified to the Juvenile Court and charged and prosecuted as  
a juvenile, he would not have become amenable to the harsh and  
severe penalties of deportation under the Immigration and  
Nationality Act as the statute is not applicable to minors when  
prosecuted as juveniles.

2006

1 On behalf of defendant Munir Sirhan, declarant further  
2 recites:

3 That at the time of the establishment of the Israeli  
4 Government, when defendant was eight years of age, defendant, his  
5 father, mother and family, consisting of four brothers and one  
6 sister, who were non-Jews, were forced to flee, as refugees, the  
7 country of their birth and journeyed to Jordan and resided in that  
8 country, that while residing in Jordan the Sirhan family was sub-  
9 jected to great hardship and deprivation. That on September 24,  
10 1956, the United States Consulate at Amman, Trans-Jordan, issued  
11 its visas to the Sirhan family, granting them a 4A(4) Non-Quota  
12 visa PH203 upon Trans-Jordanian passport for travel purposes.  
13 That on January 12, 1957, the Sirhan family was admitted as per-  
14 manent residents to the United States of America in New York, New  
15 York. Defendant was then nine years of age. That the Sirhan  
16 family then journeyed to California, establishing their home and  
17 residence in Pasadena, California, where defendant attended grade  
18 and high schools. All of the defendant's family are now permanent  
19 residents of the United States, residing at 546 East Howard,  
20 Pasadena, California.

21 That during the trial proceedings had before the above  
22 entitled court, the defendant was represented by an attorney.  
23 However, his counsel was not cognizant of the statutes, laws, and  
24 regulations of the Immigration and Nationality Act of the United  
25 States nor the interpretation of the United States courts of the  
26 grounds of deportation as related to one found guilty of the  
27 possession of narcotics in any form by an alien.

28 That subsequent to the finding of guilt and during the  
29 defendant's incarceration as aforesaid, the Immigration Department  
30 ascertained that the defendant was an alien and had been found  
31 guilty of the illegal possession of marijuana, and thereupon and  
32 on January 11, 1967, caused to be issued its Order to Show Cause

207

1 DAVID C. MARCUS  
2 Attorney at Law  
3 215 West Fifth Street  
4 Los Angeles, California 90013  
5 Telephone: 628-4788

6 Attorney for Defendant

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF CALIFORNIA,

11 Plaintiff,

12 vs.

13 MUNIR SHIRHAN,

14 Defendant.

No. 20000

MOTION TO MODIFY TERMS  
OF PROBATION AND SENTENCE,  
VACATE FINDING OF GUILT,  
AND CERTIFY DEFENDANT  
TO LOS ANGELES COUNTY  
JUVENILE COURT AND  
DECLARATION OF DAVID  
C. MARCUS IN SUPPORT  
THEREOF

15  
16 DAVID C. MARCUS does hereby certify:

17 That he is the attorney for the defendant in the  
18 above entitled proceedings. That he is informed and believes and  
19 therefore alleges:

20 That Defendant Munir Shirhan, born [REDACTED] [REDACTED], in  
21 Palestine, was charged by an information filed by the District  
22 Attorney of Los Angeles County of a violation of section 11530 of  
23 the Health and Safety Code of the State of California; that at the  
24 time of the commission of the alleged offense, the defendant was  
25 a minor, eighteen years of age.

26 In proceedings had before the above entitled court the  
27 defendant was found guilty of the charge, and on December 1, 1966,  
28 his sentence was suspended and he was placed on probation for five  
29 years on the condition that he serve one year in the County Jail.  
30 That defendant is presently confined at the Sheriff's Wayside  
31 Honor Farm pursuant to the provisions of the judgment of said  
32 court.

208

1 DAVID C. MARCUS  
2 Attorney at Law  
3 215 West Fifth Street  
4 Los Angeles, California 90013  
5 Telephone: 620-4700

6 Attorney for Defendant

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF CALIFORNIA,  
11 Plaintiff,

No. 33474

NOTICE OF MOTION

12 vs.  
13 MUNIR SHIPHAN,

14 Defendant.

15  
16 TO: THE PLAINTIFF ABOVE NAMED AND TO EVELLE YOUNGER,  
17 DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES

18 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the  
19 21<sup>st</sup> day of April, 1967, at the hour of 1:30 a.m. on said date,  
20 defendant through his counsel will move the above entitled court  
21 to modify the terms of probation and sentence heretofore imposed  
22 by the above entitled court, to time served and to permit the  
23 defendant's release from custody, and that the finding of guilt  
24 be vacated and set aside and the defendant certified to the Juvenile  
25 Court of the County of Los Angeles.

26 Said motion will be based upon the files and record in  
27 the proceedings and upon the declaration of David C. Marcus,  
28 attached hereto.

29 DATED: April 17, 1967.

30  
31 DAVID C. MARCUS

32 Attorney for Defendant

FILED  
APR 19 4 36 PM '67  
WILLIAM S. GILBERT  
COUNTY CLERK  
LOS ANGELES



209

1 is not a separable office.

2           Respondent therefore moved to vacate the decision of the  
3 Special Inquiry Officer and, citing the foregoing, urges that  
4 immediate reconsideration is both necessary and proper.

5           Dated: May 28, 1957.

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/s/ David G. Brown  
DAVID G. BROWN  
Attorney for Respondent

210

The sole issue stressed in the Decision of the Special Inquiry Officer is,

"... what effect, if any, was had upon the judgment of conviction entered on October 13, 1966 (Exhibit 3) by the Minute Order entered by another judge of the same Superior Court on May 25, 1967 vacating the finding of 'guilty' and certifying the case to the Juvenile Court, presumably under the provisions of Section 604(b), Welfare and Institutions Code. (Exhibit 4). The said section permits the discretionary certification to the juvenile court 'whenever a case is pending in any court.'"

As stated earlier, his conclusions are clearly erroneous and the Minute Order of May 25, 1967, remains proper under the circumstances herein. The suspension of proceedings and granting of probation maintained the court's jurisdiction, rendering the defendant's case as "pending." Because of the lack of finality, the subsequent certification, on May 25, 1967, to the Juvenile Court, was in conformity and compliance with California precedent.

Section 503 of the Welfare and Institutions Code of the State of California provides:

"An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding."

#### CONCLUSION

The Superior Court had jurisdiction to vacate its finding of guilt and remand the minor defendant to the Juvenile Court under Section 503 of the Welfare and Institutions Code of the State of California. The adjudication of a minor to be a ward of the Juvenile Court is not to be deemed the conviction of a crime for any purpose nor shall the proceedings in the Juvenile Court be deemed criminal proceedings. It therefore must be determined that the respondent

211

1 Section 1203.3 of the Penal Code provides, in part,  
2 "The court shall have (1) authority at any time during the term of  
3 probation to revoke, (2) modify or change its order of suspension  
4 its order of suspension of imposition or execution of sentence."  
5 (Emphasis added.) California clearly holds that the court maintains  
6 complete and exclusive jurisdiction over a probation during the  
7 term of said probation.

8 "... the jurisdiction of the trial court over the pro-  
9 bationer is not exhausted when it imposes the original  
10 conditions of probation; but on the contrary, at all  
11 times during the probationary period, it may exercise  
12 control over him. . . ." People v. Roberts, 136 Cal.  
13 App. 709, 712 (1934).

14 "The court, during the term of probation may modify its  
15 original order." In re Marcus, 11 Cal. App. 2d 359 (1950); People  
16 v. Matias, 130 Cal. App. 2d 439, 444 (1955); People v. Martin, 147  
17 Cal. App. 2d 625, 627 (1957).

18 In People v. Brown, 111 Cal. App. 2d 406, 408 (1952), the  
19 court said, "when the term of probation expired the court lost jurisd-  
20 iction to vacate its former order." (Emphasis added.)

21 The foregoing is settled law of the state, and no collateral  
22 attack, by a purely administrative department of the federal govern-  
23 ment can impeach, affect, or attack the jurisdiction exercised by a  
24 duly constituted court of the state administering its inherent  
25 powers and discretion in probationary criminal proceedings.

26 The Special Inquiry Officer concludes in the following  
27 solution:

28 "In view of the recency of respondent's conviction, on  
29 which he is still confined and serving the aforementioned  
30 term of probation, it is concluded that the respondent is  
31 ineligible for any form of discretionary relief from  
32 deportation. . . ."

212

1 In People v. Harincar, 49 Cal. App. 2d 554, 555-556 (1962),  
2 the court said,

3 "Although defendant's motion to vacate the judgment,  
4 it is in legal effect under the practice of this state a  
5 Petition for a Writ of Error Coram Nobis. In People v.  
6 Vernon, 9 Cal. App. 2d 136 (1935), it is held that a  
7 Writ of Error Coram Nobis, 'is nothing more nor less than  
8 a motion to vacate a judgment,' and that the remedy provided  
9 by the Writ could be designated by 'the more simple and appropriate  
10 name of a motion to vacate a judgment.'"

11 A motion in the nature of coram nobis may be made at any  
12 time after judgment, or time for appeal has passed, and no such  
13 limitation governs the application of said remedy. The court, in  
14 People v. Martinez, 88 Cal. App. 2d 767, 773 (1948), instructed,

15 ". . . an appeal for a Writ of Error Coram Nobis should  
16 be made within a reasonable time. Diligence is required.  
17 A convicted person is not permitted to allow years to  
18 pass during which witnesses die, disappear or forget, and  
19 his own imagination grows and expands."

20 The major criteria for determining whether or not the  
21 writ has been exercised under the circumstances of "due diligence"  
22 includes a showing that the matter was not apparent to the defendant  
23 at trial and upon its ascertainment he acted promptly in its  
24 assertion.

25 Irrespective of the writ of coram nobis, the court was  
26 possessed with jurisdiction to make such order as the cause was  
27 still "pending." By virtue of the Order, suspending proceedings  
28 and placing the defendant on probation for a period of five years,  
29 the court's jurisdiction over the respondent continued during the  
30 entirety of probation. The court could, during such time interval,  
31 revoke, alter, change, or modify its order of suspension, imposition  
32 or execution of sentence.



213

1 2d 675, 676 (1965), the court offered an explanation applicable to  
2 the instant case:

3 "Defendant purports to appeal from 'the judgment'  
4 of the trial court. However, the record discloses that  
5 following defendant's conviction the proceedings in the  
6 instant case were suspended without imposition of sentence  
7 and probation was granted pursuant to defendant's motion.  
8 Thus, there was in fact no judgment entered in the instant  
9 matter. However, under the 1961 amendment to Penal Code,  
10 section 1257, subdivision 1, an order granting probation  
11 is deemed to be a final judgment for purposes of appeal.  
12 Since that amendment it has been held that an appeal  
13 which purports to be taken from the judgment may be  
14 treated as an appeal from the probation order and that  
15 for purposes of appeal the two are interchangeable  
16 terms. . . ."

17 Based on the foregoing, it must be deemed proper to effect  
18 an appeal from the Order of December 1, 1966, granting probation,  
19 as said Order shall be construed a "Final Judgment."

20 The Declaration in support of the motion to vacate and  
21 the motion itself are in the nature of a writ of coram nobis.  
22 "The non-statutory motion to set aside the judgment is the equivalent  
23 of a writ of error coram nobis." People v. O'Brien, 37 Cal. App. 2d  
24 391, 392 (1950). California law permits both the writ of coram  
25 nobis and motion to vacate and set aside the judgment to be used  
26 interchangeably when there exist matters unknown to the defendant  
27 at trial, and which are subsequently asserted, on exercise of "due  
28 diligence." People v. Del Campo, 174 Cal. App. 2d 217 (1959).  
29 "A motion to vacate a judgment is an application for relief in the  
30 nature of a writ of error coram nobis." People v. McCoy, 115 Cal.  
31 App. 2d 565, 567 (1953); People v. Wilson, 105 Cal. App. 2d 719,  
32 718 (1951).