

1 Name: _____

2 Address: _____

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4 *In Propria Persona*

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF _____

10 In the Matter of,) Case No.: _____
11 _____)
12 Petitioner,) PETITION FOR TRANSFER TO
13 A person Judicially Committed under Penal) OUTPATIENT TREATMENT
Code Section 1026) Cal. Penal Code § 1026.2
14 _____)

15 TO THE HONORABLE PRESIDING JUDGE AND JUDGES OF THE SUPERIOR
16 COURT:

17 PLEASE TAKE NOTICE that Petitioner, _____, committed
18 under California Penal Code section 1026 does hereby request a hearing on Petitioner's
19 suitability to be placed on conditional release. Petitioner has been confined to
20 _____ for _____, meeting the 180 day minimum required to obtain a hearing.
21 Cal. Pen. Code § 1026.2(d). Petitioner has received the full benefit of treatment, is not a danger
22 to the community, and respectfully requests placement in an appropriate outpatient treatment and
23 supervision program. Cal. Penal Code § 1026.2 (2008).

24 Petitioner requests appointment of counsel, a trial at which Petitioner has the right to be
25 present, present evidence, and cross-examine adverse witnesses.

26 This application is based on the attached Declaration, and the following analysis:
27

1 **INTRODUCTION**

2 Section 1026, *et seq.* of the California Penal Code provides the procedures for
3 commitment and release of individuals found not guilty by reason of insanity (NGI). *Id.* There
4 are two purposes served by committing an insanity acquittee, “to treat his mental illness and to
5 protect him and society from his potential dangerousness.” *People v. Wilder*, 33 Cal.App.4th 90,
6 100 (1995). Absent a diagnosis of mental illness, social dysfunctions, such as antisocial
7 personality, cannot be used for continued hospitalization, even if they create a danger to the
8 health and safety of others. *Foucha v. Louisiana*, 504 U.S. 71, 77-79, 118 S.Ct. 1780 (1992).
9 Continued hospitalization of an NGI acquittee remains valid only if it can be demonstrated that
10 the acquittee has a mental defect, disease, or disorder that makes the acquittee a danger to the
11 health and safety of others. Pen. Code § 1026.2(e)

12 **ANALYSIS**

13 I. PETITIONER IS ENTITLED TO A RESTORATION OF SANITY HEARING
14 COMPLIANT WITH STANDARDS OF DUE PROCESS UPON PETITIONER’S
15 APPLICATION UNDER CALIFORNIA PENAL CODE SECTION 1026.2 TO
16 DETERMINE PETITIONER’S SUITABILITY FOR TRANSFER TO COMMUNITY
17 OUTPATIENT TREATMENT.

18 Pursuant to Penal Code section 1026.2, Petitioner is entitled to apply for conditional
19 release on the basis that Petitioner’s sanity has been restored. Pen. Code § 1026.2(a). Petitioner
20 is entitled to a hearing on his petition for restoration of sanity. *People v. Siou*, 106 Cal.App.4th
21 1191 (2003). At this hearing, Petitioner has a right to counsel, to present evidence, and to
22 examine and cross-examine witnesses. *Id.* at 1199-1201; *In re Reyes*, 161 Cal.App.3d 655, 658
23 (1984). Petitioner contends that his right to present evidence includes the right to be examined
24 by two court-appointed psychiatrists, and that the Court must consider the findings of such
25 independent psychiatric examinations in determining Petitioner’s application for outpatient care.

26 A request for release based on a California Penal Code section 1026.2 commitment is a
27 two-step process. The first step is the court placing the acquittee in “an appropriate forensic
28 conditional release program for one year,” following a full court hearing on the matter, also
known as an outpatient placement hearing. *Siou*, 106 Cal.App.4th 1191, 1196 (quoting Cal.

1 Penal Code § 1026.2(e). The second step typically occurs after one year, where the court holds a
2 trial to determine whether sanity has been restored. *Id.*

3 The initial application for release of an NGI acquittee committed to a state hospital may
4 be made “either by the person, or the medical director of the state hospital or other treatment
5 facility...or by the community program director...” Upon the receipt of an acquittee’s
6 application for release, when the Court has found that the patient has been confined or on
7 outpatient status for 180 days, the Court is required to hold a hearing to determine if the
8 applicant would no longer be a danger to the health and safety of others if under supervision
9 and treatment in the community. Cal. Pen. Code §§ 1026.2 (d)-(e). Although the court must
10 obtain the hospital director’s recommendation pursuant to Penal Code section 1026.2(l),
11 Petitioner is entitled to a full judicial hearing whether or not the hospital’s recommendation is
12 favorable. Penal Code § 1026.2(e); see also *People v. Soiu*, 106 Cal.App.4th 1191, 1198 (2003).
13 (based on the express language utilized by the Legislature, we conclude that the trial court could
14 not deny defendant’s section 1026.2 release application without holding a hearing at which he
15 would be present”). Petitioner fulfills the statutory requirements under Penal Code section
16 1026.2 and is entitled to a hearing. Cal. Pen. Code § 1026.2(d). Based on the length of
17 Petitioner’s confinement and Petitioner’s timely application for release based on restoration of
18 sanity, Petitioner is entitled to a hearing under California Penal Code section 1026.2 *et seq.*

19 **II. PETITIONER WILL PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT**
20 **PETITIONER IS NO LONGER A DANGER TO THE HEALTH AND SAFETY OF**
21 **OTHERS, ALLOWING PETITIONER TO BE CONDITIONALLY RELEASED TO**
OUTPATIENT TREATMENT.

22 By a thorough presentation of evidence and witnesses, Petitioner will prove by a
23 preponderance of the evidence that Petitioner has been restored to sanity and is therefore eligible
24 for conditional release. In establishing that Petitioner has been restored to sanity, Petitioner must
25 prove by preponderance of the evidence that Petitioner is no longer a danger to the health and
26 safety of others due to a mental disease, defect, or disorder. Cal. Pen. Code §§ 1026.2(e) and (k).
27 By this standard, Petitioner must prove only that her or she would not be “a danger to the health
28

1 or safety or others... if under supervision and treatment in the community” or, in the alternative,
2 that Petitioner is no longer mentally ill. Cal. Pen. Code §1026.2(e).

3 Petitioner’s allegations of restored sanity do not require fact-pleading or detailed
4 particularity. *In re Jones*, 260 Cal.App.2d 906, 912 (1968). Petitioner’s claims need not be
5 artful. *Id.* Indeed, “skill and perfection in petitioner's method of alleging sanity is (sic) not
6 required.” *Id.*, citing *Stewart v. Overholser*, 186 F. 2d 339, 349 (C.A.D.C. 1951).

7 Petitioner will establish by a preponderance of the evidence that Petitioner is entitled to
8 conditional release. Petitioner’s Declaration establishes that Petitioner will no longer present a
9 danger to the health and safety of others.

10 **CONCLUSION**

11 Petitioner has satisfied the statutory requirements necessary to entitle Petitioner to a
12 restoration of sanity hearing under California Penal Code section 1026. At the hearing,
13 Petitioner will establish his eligibility for conditional release on the basis that Petitioner is no
14 longer a danger to the health and safety of others.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner prays:

- 17 A. That this Court hold a hearing to determine Petitioner’s suitability for community
18 outpatient treatment; and
- 19 B. That this Court appoint an attorney to represent Petitioner in this action; and
- 20 C. That this Court order an independent psychiatric examination to evaluate
21 Petitioner’s present mental condition; and
- 22 D. That this Court find that Petitioner is not a danger to the health and safety of
23 others and, in accordance with that finding, order Petitioner placed in an
24 appropriate outpatient treatment program.

25 Date: _____

Respectfully submitted,

27 Petitioner