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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RALPH RUAL CONTRERAS, PETITIONER

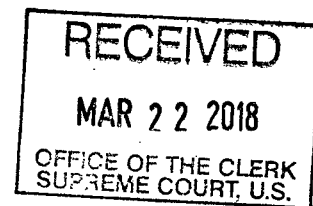
VS.

F. CHAVEZ, Warden, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

RALPH RAUL CONTRERAS
SIERRA CONSERVATION CENTER
CALIFORNIA DEPARTMENT OF CORRECTIONS
5150 O'BYRNES FERRY ROAD
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95327



QUESTION PRESENTED

1 Petitioner contends that a criminal defendant is entitled to
2 counsel at all crucial stages of the proceeding. United states
3 Constitution, Sixth Amendment; California Constitution Article
4 1, §15. Once counsel has become attorney of record all legal
5 steps must be taken by the attorney. Petitioner contends that
6 the word "must" when used in this text is not permissive.
7 Generally the attorney controls all decisions affecting trial
8 tactics and court proceeding. (People v. Masterson (1994) 34
9 CR2d 679.

11 Petitiner asserts that a criminal defendant is guaranteed
12 the right to the assistance of counsel by the Sixth Amendment
13 tot the United States Constitution, and Article 1, section 15
14 of the California Constitution. Petitioner assert's that these
15 constitutional right includes the correlative to representation
16 free from any conflict of interest that under mines counsel's
17 loyalty to his or her client.

18 Petitioner contends that when attorney fees are paid by other
19 than the client lawyer's must ensure that their loyalties are
20 reserved solely for the client. California Rules of Proffessional
21 Conduct mandate that the attorney must obtain the client's
22 informed written consent before representation begins, (See
23 Cal Rules of Prof Cond 3-310(F)(3). Again the word "must" is
24 not permissive when used in this text.

26 The question before this court is, Does a state created right
27 such as an attorney must obtain a written consent from a client
28 when other's pay the attorney's fees, constitute a denial

1 of conflict free counsel, thus denying the petitioner his
2 Sixth Amendment right to counsel. The state created right
3 specifically states that the written consent must be obtained
4 "before" representation begins. California Rules of Professional
5 Conduct. In this text the State of California indicates that
6 representation does not begin until the written consent is
7 obtained, if a written consent is not obtained, petitioner
8 was never provided with conflict free counsel, therefore
9 leading to denial of counsel within the good faith meaning of
10 the Sixth amendment and the California Constitution.
11

12 LIST OF PARTIES

13 ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE

14 INDEX TO APPENDICES

15 APPENDIX A NINTH CIRCUIT OF APPEALS DENIAL FOR A CERTIFICATE
16 OF APPEALABILITY.

17 APPENDIX B ORDER ADOPTING FINDINGS AND RECOMMENDATIONS,
18 RECOMMENDING DENIAL OF THE PETITION BY THE UNITED
19 STATES DISTRICT COURT FOR THE EASTERN DISTRICT
20 OF CALIFORNIA.

21 APPENDIX C MAGISTRATE JUDGES FINDING AND RECOMMENDATION,
22 RECOMMENDING DENIAL OF THE PETITION, UNITED STATES
23 DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA.

24 APPENDIX D PETITIONER OBJECTIONS TO THE MAGISTRATE JUDGES
25 RECOMMENDATIONS.

26 APPENDIX E NINTH CIRCUIT COURT OF APPEALS DENIAL OF MOTION
27 FOR RECONSIDERATION.

28 APPENDIX F KERN COUNTY, STATE OF CALIFORNIA'S DENIAL OF THE
PETITION FOR A WRIT OF HABEAS CORPUS.

APPENDIX G CALIFORNIA COURT OF APPEALS FIFTH APPELLATE DISTRICT'S
DENIAL OF THE PETITION FOR WRIT OF HABEAS CORPUS.

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TABLE OF AUTHORITIES CITED

1 Sixth amendment to the United States Constitution.

2 California Constitution, Article 1, §15.

3 California Rules Of Professional Conduct 3-310(F)(3).

4 California State Bar Formal Opinion No. 1975-35.

5 Business and Professional Conduct Code §6068(e).

6 California Case

7 People v. Masterson, (1994) 34 Cal.3d 460, 468-69.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The denial for a Certificate of Appealability appears at Appendix "A" to the petition. The denial was issued by the Ninth Circuit Court of Appeals.

The Ninth Circuit Court of Appeals denial of petitioners motion for reconsideration appears at Appendix "E" of the petition.

The United States District Court for the Eastern District of California's denial of the petition for a writ of habeas corpus appears at Appendix "B"

The Magistrate Judges Recommendations, recommending denial of the petition appears at Appendix "C".

Petitioners Objections to the Magistrate Judge's recommendations appears at Appendix "D"

JURISDICTION

The date on which the United States Court of Appeals for the Ninth Circuit denied petitioner request for a Certificate of Appealability was October 19, 2017. (Appendix "A")

The date on which the United States Court of Appeals for the Ninth Circuit denied petitioners motion for a Reconsideration was December 18, 2017. (Appendix "E").

The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution.

California Constitution Article 1, §15.

California Rules Of Professional Conduct 3-310(F)(3).

STATEMENT OF THE CASE

For the factual background of this case petitioner adopts the Magistrate Judge's "BACKGROUND" found in the Findings and Recommendations Recommending Denial of the Petition. (Appendix "C").

Petitioner will now provide a more concise statement of the case containing facts material to the question presented to this court. 1. Was the petitioner provided conflict representation? 2. Does California's state created right that attorney's hired by a third party must first obtain a written consent before representation begins deny petitioner his Sixth Amendment right to an attorney if the attorney's fail's to get the written consent? 3. Does the failure to get a written consent rescind 1./ any representation that follow's?

1. The hiring of attorney Mr. Seki, by the Union entitled C.O.P.S.

Trial counsel Mr. Seki, was retained for the petitioner by his Union entitled C.O.P.S. the Union paid Mr. Seki's fees and also paid the fee's of the other defendant's who were all law enforcement officer's. It should be noted that only low level detention officer's were charged with the death of Mr. Moore, even though testimony at trial developed that supervisory staff did in fact give petitioner order's. Testimony was also given that supervisory staff had actually participated in the beating of Mr. Moore by deleivering "baseball swings" with a baton, and placing "carotid holds".

1./ Blacks Law Dictionary defines "recind" as follows; 1. To abrogate or cancel (a contract). 2. To make void; to repeal or annul.

1 The jury found petitioner guilty as charged of second degree
2 murder and assault under color of authority. The court imposed
3 a sentence of fifteen years to life for second degree murder,
4 and stayed a two year sentence of assault under the color of
5 authority. Co-Defendant Lindini, who was at the head of the
6 gurney with petitioner, was tried together with petitioner and
7 found guilty of involuntary manslaughter and assault under
8 color of authority. On direct appeal the California court of
9 Appeal affirmed the conviction. Following a denial for a pet-
10 ition for review from the California supreme court petitioner
11 the filed his habeas corpus petitions. 2./ In his petition for
12 a writ of habeas corpus petitioner asserted that he was denied
13 his constitutional Sixth Amendment right to the effective ass-
14 istance of counsel. Petitioner contended that trial counsel
15 failed to obtain a written consent from him in compliance with
16 California Rules of Professional Conduct section 3-310(F)(3),
17 which specificall reads as follows, "The attorney must obtain
18 the client's informed written consent before representation
19 begins". The troubling aspect to this trial counsel's represent-
20 ation was that C.O.P.S. the Union that was paying trial counsel's
21 Mr. Seki, fee's had over seventeen member's either participate
22 in the beating of Mr. Moore or supervised the beating of Mr.
23 Moore, during the trial testimony was given that supervisory
24 staff specifically but not limited to Sergeant Holz, had beaten
25

26
27 2./Even though petitioner specifically asserted that his Sixth
28 Amendment right to the appointment of counsel had been denied
the Kern County Superior Court, The Court of appeals, the Calif-
ornia Supreme Court, and The United States District Court, never
addressed the issue of failure to obtain the written consent,
see Appendix "A" thru "G".

him. Testimony was developed during trial that Sergeant Holtz
1 hit the victim Mr. Moore with a baton two to five times in the
2 legs, a second officer tripped Moore and he landed on his back
3 on the concrete, a third officer kicked him twice in the center
4 of his face and once in his upper chest, a fourth officer got
5 on top of Moore and punched him about three time's in the kid-
6 ney's. Testimony was also given that Sergeant Holtz applied a
7 carotid hold around Moore's neck from behind causing Moore to
8 lose consciousness for five to ten seconds. Following the car-
9 otidid choke hold bening applied by Sergeant Holtz, blood
10 was coming from Moore's eye's, ears, and mouth, and he was
11 missing a tooth. It should be noted that Sergeant Holtz was
12 petitioner's direct supervisor during this time and ordered
13 the petitioner and another officer to take Moore by car to a
14 hospital according to departamental policy following the app-
15 lication of a carotid hold.
16

17 Sergeant Holtz is also the Union Rep for the union C.O.P.S
18 the same union that paid Mr. Seki's fees. One of the responsib-
19 ilites of a Union rep is to insure that Mr. Seki's fee's are
20 paid, it would also be safe to assume that Sergeant Holtz was
21 involved in retaining the attorney's for his constitutes
22 and fellow Union member's.
23

24 As previously stated the troubling factor is that even though
25 Mr. Seki, had this information available to him he never con-
26 tacted or sent an investigator to speak to these material wit-
27 nesses, who were all member's of the Union C.O.P.S. surely
28 any competent attorney would have made some attempt to obtain

1 their incriminating statement's, which implicated each other
2 in the beating of Mr..Moore. Surely, if the jury had heard
3 the testimony of fourteen other officers participating in the
4 beatings with supervisory staff such as Sergeant Holtz giving
5 order's it would have minimized petitioner's culpabilty.
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REASON FOR GRANTING THE PETITION

Petitioner contends that lawyer's must insure that their loyalties are reserved solely for the client when someone other than the client is paying for the client's representation. This means that a lawyer may not do anything, or promise anything, that may impair the attorney's ability to zealously represent the client with individual loyalty. California State Bar Formal Opinion No. 1975-35; Cal Rules of Prof Cond 3-310(F). The lawyer is forbidden from disclosing the client's confidences and secrets to anyone, including the person paying for his or her representation. See Bus & P C §6068(e). Finally, the state of California in all it's wisdom has added an additional safeguard in order to preserve the integrity of the representation of a third party paid attorney, "the attorney 'must' obtain the client's informed 'written' consent before representation begins. Cal Rules of Prof cond 3-310(F)(3). 3./

Petitioner assert's that the purpose of these additional safeguards when it comes to third party paid attorney's is to prevent a "chilling effect" from any third party meddling.

In this matter the Union C.O.P.S hired Mr seki, to represent the petitioner. Mr. Seki never obtained the written consent nor did he inform the petitioner that he was required to obtain a consent. Mr. Seki never called any supervisory staff, such as Sergeant Holz, who had actually beaten the victim with "bat like swings" of a baton.

8.


3./ Petitioner never signed an informed consent, nor was one ever filed with the court. The word 'must' is not permissive when used in this text.

1 Petitioner assert's that the State of California in all
2 it's wisdom had enough foresight to impliment and additional
3 safeguard to the Sixth Amendment of the United States Con-
4 stitution, this safe guard being California Rules of Professional
5 Conduct 3-310(F)(3) which specifically read, "the attorney
6 'must' obtain the client's informed written consent 'before'
7 representation 'begins'". As previously emphasized by the
8 petitioner the word "must" is not permissive and there is no--
9 thing ambiguous about this additional safe guard to the Sixth
10 Amendment.
11

CONCLUSION

THE PETITION FOR A WRIT OF CERTIOARI SHOULD BE GRANTED

RESPECTFULLY SUBMITTED,


RALPH RAUL CONTRERAS

DATED: MARCH 16, 2018.