

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EDWIN DAVID CORBETT — PETITIONER
(Your Name)

VS.

STATE OF WASHINGTON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS, DIVISION II, OF THE STATE OF WASHINGTON
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EDWIN DAVID CORBETT

(Your Name)

SCCC, 191 CONSTANTINE WAY,

(Address)

ABERDEEN, WASHINGTON, 98520

(City, State, Zip Code)

N/A

(Phone Number)

QUESTIONS PRESENTED

This Court's precedent in *Jackson v. Virginia*, 443 U.S. 307 (1979), and *Sanders v. U.S.*, 373 U.S. 1 (1963), controls as follows:

1. The alleged victim, six-year old J.O., made several inconsistent out-of-court statements, and trial testimony, that the petitioner assaulted her on four different occasions. Despite incredible testimony at trial, a jury found petitioner guilty as charged. On direct appeal, petitioners' defense counsel misapplied court of appeals decisions involving J.O.'s' unbelievable statements and testimony, and consequently, petitioner's conviction was affirmed. Petitioner made an attempt to revive his insufficient evidence claim, and the state court of appeals denied his petition on the ground that this claim is not exempt from the time limitations set forth in Revised Code of Washington, §10.73.100(4).

The question is whether §10.73.100(4), holding that insufficiency of evidence claims are not exempt from the one year limitations period, bar petitioner from relitigation of his sufficiency of evidence claim?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES AND RULES

Revised Code of Washington: **§10.73.090**
§10.73.100(4)

OTHER

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 judgment below.

The opinion of the Supreme Court of Washington, appears at APPENDIX A, to the petition and is UNPUBLISHED.

The opinion of the Court of Appeals, Division II, of Washington, appears at APPENDIX B, to the petition and is UNPUBLISHED.

JURISDICTION

The date on which the Supreme Court of Washington decided this case was FEB 07, 2018. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution, provides that "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

1. Introduction

Mr. Edwin David Corbett's state petition was based solely on an insufficiency of evidence claim, generally exempting him from the one year time bar set forth in §10.73.090. See §10.73.100(4).

However, when Mr. Corbett attempted to relitigate his insufficiency of evidence claim due to his appellate counsels' misapplication of state court decisions, the state court's denied his petition on the ground that his insufficiency of evidence claim was barred by the time limitations set forth in §10.73.090, despite legislative statute that exempts petitioner's from the one year time bar.

Even though the sufficiency of evidence was presented by Corbett's appellate counsel on direct appeal, Corbett reasoned that the "ends of justice" would be served by reaching the merits of his federal claim. Otherwise, a manifest injustice would result if he was denied this opportunity.

Secondly, there was no testimony that the four separate and distinct acts of assault occurred within the charging period as outlined by the State in its charging documents. In this regard, Corbett submitted to the state courts that no rational juror would have reasonably inferred that, because of J.O.'s incredible testimony, Corbett was guilty-
3.

beyond a reasonable doubt.

REASONS FOR GRANTING THE PETITION

This Court has so eloquently held that, in viewing the evidence in the light most favorable to the state, the question is whether any rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979). In making this determination, a court must respect the province of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts by assuming that the jury resolved all conflicts in a manner that supports the verdict. See Cavazos v. Smith, 132 S.Ct. 2, 6 (2011) (per curiam) ("Jackson instructs that a reviewing court faced with a record of historical facts that support conflicting inferences must presume - even if it does not affirmatively appear in the record - that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution."), (quoting, Jackson, 443 U.S., at 326)).

On the other hand, this Court's decision in Sanders holds that a petitioner cannot renew an issue that was raised and rejected on direct appeal, "unless the interests of justice require relitigation of that issue." See Sanders, 373 U.S., supra at 15. In its essentials, an appellate court may refuse to consider a federal claim,

thereby giving controlling weight to the reviewing court's determination on direct appeal if:

- (1) the same ground presented in the state petition was previously determined adversely to the petitioner;
- (2) the prior determination was on the merits, and
- (3) the ends of justice would not be served by reaching the merits of the claim.

Sanders, Id.

In this case, Mr. Corbett submitted to the state courts that his appellate counsel on direct appeal, erroneously argued his insufficiency of evidence claim when it relied on a court of appeals decision in *State v. Alexander*, 64 Wash. App. 147, 822 P.2d 1250 (1992). There, the court of appeals in *Alexander* held that "cumulative error" resulted in a new trial. However, Corbett did not have any cumulative errors to justify a 'new trial,' but rather, dismissal of the charges due to insufficient evidence under *Jackson*, and its progeny.

In this regard, the interests of justice would have been served by allowing Mr. Corbett an opportunity to correctly argue his federal claim and apply clearly established federal law as determined by this Court in *Jackson*.

Mr. Corbett seeks an opportunity to be heard as to his federal claim advanced herein, and in viewing the evidence in the light most favorable to the state, the record below compels this conclusion. In considering that Corbett's counsel misapplied controlling authority, he asks that the Court grant the writ.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


EDWIN DAVID CORBETT

Date: July 09, 2018