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IN THE

SUPREME COURT OF THE UNITED STATES

In Pro Se. of America

Skye E. Gipson — PETITIONER
(Your Name)

et al. vs.

Berzon — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Should the court hear this writ of Certiorari, I am asking for a Certificate of Appealability (COA), and to be heard on merits under Federal Rules of Civil Procedure 60(b) to override Antiterrorism and Effective Death Penalty Act's 1 year statute of limitations (AEDPA) procedual default due to "Miscarriage of Justice" & "Actual Innocence" claim which overides AEDPA 1-year statute of limitations

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: Circuit Judges (9th Cir) Berzon & Ikuta

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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.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the Court of Appeal - State of California court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was 10-9-2018. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

Constitutional and Statutory Provisions Involved

Due to Antiterrorism and Effective Death Penalty Acts 1-year statute of limitations (AEDPA) my habeas corpus has been dismissed in state and federal courts without being heard on it's merits. Which is why I am now seeking a Certificate of Appealability (COA) in US Supreme Court, because I have reasons for "Equitable Tolling." Along with my reasons for equitable tolling, I also show violation of my constitutional rights under the 5th, 6th and 14th Amendment to the United States Constitution. Including violation of my due process, non-relevant charges, prejudical evidence, and cause from the ineffectiveness of my court, trial, and appellate counsel. This miscarriage of justice overrides AEDPA's statute of limitations by showing "Exception to Cause and Prejudice Requirement for Fundamental Miscarriage of Justice" and "Actual Innocence Gateway" as a "Equitable Exception in this case

Statement of Case

Under AEDPA's 1-year statute of limitations. I was late in filing my habeas corpus (2254) due from my ineffective assistance of trial and appellate counsel. Which is why I am seeking a Certificate of Appealability (COA), to finally be heard and judged on the merits of my habeas corpus, since State Courts, District Court, and U.S. Court of Appeals (4th Cir) did not. Other reasons I am seeking to be heard on the merits of my habeas petition is due to a miscarriage of justice that shows violation of my Constitutional rights. This includes being convicted of non relevant and unjust charges (Limping & Slandering) inadmissable prejudical evidence, and violation of my due process, that proves my actual innocence. My habease corpus I filed after the AEDPA's 1-year of limitations had ran, was denied in State Courts without reason (Apdx. A) I then filed in District Court, where my habeas corpus was initially dismissed under the Antiterrorism and Effective Death Penalty Act (AEDPA) 1-year statute of limitations after responding with my Objection to Motion to Dismiss. My objection to their Motion to Dismiss under the AEDPA statute was done in error as I was advised by a fellow inmate who was more experienced in law than I assisted me in that initial response to their Objection to Dismiss, where "Equitable Tolling" was disregarded and unknown to me at that time. Therefore my "Objection to Motion to Dismiss" was only based on entitlement to be heard on the merits of issues in my habeas petition that would be initially be heard for the first time, which it was not, instead of reason for Equitable Tolling. After that initial dismissal in District Court, I was able to file for a COA, where I was now aware of Equitable Tolling due to the reason why the District Court dismissed without hearing my habeas petition. Since "Extrodinary Circumstances" beyond my control was the reason for the

late filing of my habeas corpus. I expressed in my reason for a COA. Which resulted in being denied four times now in District and, US Court of Appeals (9th Cir). I now went through the process under Fed Rule 60(b) and was again denied a COA. (Apdx. A)

Reason for Equitable Tolling:

Reason for Equitable Tolling:

It is said that two showings are required to receive a Certificate of Appealability (COA) which is showing that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" the petitioner must also make a showing that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling".

The final ruling in this case states that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling" was not proved debatable by me in regards to my relief under Rule 60(b). In my Rule 60(b) motion I did satisfy one of the two req. prongs to receive a COA which is "jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right". My constitutional right violation violated my due process rights under article I, section 7 14th Amendment to the United States Constitution. As is codified by ineffective assistance of counsel, violation of due process, violation of statutory provisions P.C. 954, and Cal Ev. Code 352. Which is shown in my Rule 60(b) motion with evidence that supports these violations. Because I am able to show these violations in my Rule 60(b) motion that "jurists of reason would find debatable whether the petition states a valid claim of the denial of a constitutional right" demonstrates "Actual innocence claim" which can override the AEDPA 1 year statute of limitations.

If the violation of my constitutional rights under article I section 7, 14th amendment and codified violations that followed shows Actual innocence is it debatable whether the district court was correct in its procedural ruling by denying me a COA? The violation of my constitutional rights and codified violations shows that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling" in light of new evidence in writ and Rule 60(b) motion. No reasonable juror would have convicted me in light of the new evidence Schlup 513 U.S. at 327 Proving "Actual innocence claim" that is a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits Harris v. Nelson 394 U.S. 286, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969) My petition is regarding the violation of my rights and "Actual innocence" to have my charges dismissed that should overcome AEDPA's 1 year limitation period pursuant to McQuiggin v. Perkins ___ U.S. ___, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013) Purpose of Rule 60(b) is to correct erroneous legal judgements that would prevent the true merits of petitioner's constitutional claim from ever being heard. Phelps v. Alameida (9th Cir 2009) 569 F3d 1120. Would it be constitutional to disregard the evidence and violations of my constitutional rights that proves innocence by never hearing the merits of my petition? My petition and Rule 60(b)(6) motion shows the evidence of the "chain of events" that resulted from the violation of my due process and

constitutional rights. Dismissing my petition without being heard on its merits would allow the continuance of events that stemmed from the violation of my constitutional rights. I am asking that the courts view my claim in the correct standard for a ruling on the merits, considering "Actual innocence claim" that overrides AEDPA's statute of limitations.

Document #33 pg3 of the Denial of my Certificate of Appealability Judgement aknowleges the satisfaction of one of the two requirements that are needed for a Certificate of Appealability. The court "only" foxad that I did not show that "jurists of reason would find it debatable whether the district court was correct in it's procedural ruling". Where I did satisfy the court was the showing that "jurists of reason would find it debatable whether the underlying section 2254 petition I states a valid claim of the denial of a constitutional right". I now ask that the Ninth Circuit also aknowlege the violation of my constitutional rights, that is the violation of my "Due Process" rights under article I, section 7 14th Amendment to the United States Constitution. As codified by "Ineffective Assistance of Counsel," "violation of "Due Process", violation of statutory provisions P.C. §954, and Cal. Ev. Code 352. Which was shown in my Rule 60(b) motion with evidence that supports these violations. As denying this showing of the violation of my constitutional rights would further show the courts abuse of discretion. I ask that the court view my claim in the "Correct Standard". In light of this new evidence that shows the violation of my constitutional rights, along with the codified violations "jurists of reason would find it debatable whether the underlying section 2254 petition I states a valid claim of the denial of a constitutional right".

I now ask that the Ninth Circuit correct the abuse of its discretion by viewing my claim in the correct standard. With regards to the violation of my "Due

Process" rights under article I, section 7 14th Amendment to the United States Constitution As codified by "Ineffective Assistance of Counsel", "Violation of Due Process, violation of statutory provisions P.C. §954, and Cal. Ev. Code 352. Which proves "Actual Innocence claim" that is a gateway through, which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits. Harare V. Collins, 506 U.S. 390, 404, 113 S. Ct. 853, 122 L. 3d 2d 203 (1993). My petition is regaurding the violation of my rights and "Actual Innocence" to have my charges dismissed that should overcome AEDPA 1-year limitations period pursuant to Mc Quiggin V. Perkins, ____ U.S. ____, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013). Purpose of Rule 60(b) is to correct erron-eous legal judgements that would prevent the true merits of a petitioner's constitutional claim from ever being heard. Phelps V. Alameida (9th Cir. 2009) 569 F 3d 1120. It would again be a abuse of the court's discretion to disregaurd my evidence and the violations of my constitutional rights, along with violations that follow. I ask that the court please view my claim in the correct standard of view.

Respectfully submitted
by Skye Ely Gipson
Skye Ely Gipson 11-26-2018

Excusing Procedural Default by Showing Cause & Prejudice
Federal Rules of Civil Procedure 60(b)

On April 15, 2010 petitioner was arrested due to a call reporting a robbery of a woman named Michelle although the person who the call alleges the robbery was known by the name "Alpha Con Man." Alpha Con Man has never been arrested or charged with this robbery or the subsequent charges for pimping the alleged victim who was later discovered to be a prostitute under the age of 18. When the alleged robbery victim was initially interviewed, there was no knowledge of her age or her occupation. (Police report #10-11479.) Ardx.D Upon discovering the prostitute's identity, it was discovered that she was a minor. It was also discovered that this was a person who had been prostituting for a while. There was no evidence presented at any stage of the proceeding in this matter that petitioner had knowledge of this person's age and the police did not even know that this person was a minor and no evidence was presented that would support that anyone who knew Michelle knew she was a minor. The arrest of petitioner occured the same date that Alpha Con Man had robbed the prostitute Michelle who was prostituting for the benefit of Alpha Con Man and herself, not petitioner. When Alpha Con Man approached Michelle on the date in question, 4/15/2010, he did not notice it was her until he got closer then he recognized it was her, he was clearly angry with her and he grabbed her by the neck and started cussing at her and he took her phone and threw her on the ground. (RT 100, lns 1-5.) Ardx.C Michelle then told Alpha Con Man she wanted her phone back upon which he threatened to have one of his other girls beat her up and he then got in his car and left. (RT 100, lns 6-9.) Ardx.C When she was questioned at trial regarding who was driving the car at that moment, Michelle then explained for the record that Alpha Con MAn was driving the car. (RT 100 lns 10-11), Ardx.C and when asked did she see the petitioner at the scene of the crime she said no. (RT 100 lns 12-13.) Ardx.C Petitioner was clearly not present and not a participant in Alpha Con Man's perpettration of this robbery, assault, and criminal threats of Michelle.. Michelle called the San Bernardino Police after this incident and she conversed with them and made a report. (RT 101, lns 16-22.) Ardx.C She did not tell the police who she really was because she was a runaway (RT 101 lns 23-28, RT 102 lns 1-7.) Ardx.C She admitted on record that prior to this incident and during the incident she did not know that Alpha Con Man and petitioner knew each other as petitioner was not at the scene of the incident and had nothin to do with what Alpha Con Man had done to her which was the justification for the report in the first place. (RT 102 lns 8-10.) Ardx.C

No act of prostitution was alleged to have been perpetrated on the date Alpha Con Man robbed Michelle, and NO act of prostitutionwas shown to have occured for the financial benefit of petitioner. Michelle admitted that she was a prostitute for Alpha Con Man and it was with him she had an agreement with as to how much to charge (RT 107 lns 18-23) Ardx.C but even this agreement between her and Alpha Con Man was shown to have occured on this date as this date is regarding a robbery. The report states in #10-11479 on 4/15/2010 that there was an anonymous call while in fact was by admission Ardx.D

Michelle stated for the record that it was she that called the police. Michelle was not stopped for committing any act of prostitution, she was never arrested or charged with the prostitution, No allegation exists in the charging papers that any act of prostitution occured on the date in question and the relevant charge was in regards to a police report of a robbery and the perpetrator was Alpha Con Man who is still to this day not charged with anything, to do with the crime that occured on 4/15/2010.

Petitioner was charged with robbery, receiving stolen property, pimping, and pandering a minor, and lewd acts on a minor, and sexual intercourse with a minor based on this report to the police alleging a robbery. All charges were and dated 4/15/2010 as if they were relevant and connected directly with and in the course of the robbery alleged and the evidence presented does not accurately show a sequence of relevant acts to bring these subsequent non relevant allegationsinto fruition according to the law and the rules of evidence. The call reported a robbery had taken place and the police responded to a robbery incident that occured on said date.

The robbery charge which was attached to petitioner although the evidence clearly shows him to not be the perpetrator, and which was the sole purpose for the police coming to the location was dismissed as petitioner was acquitted of the which was the sole justification for the police's presence at the scene.

Petitioner was convicted for the charge of pimping and pandering and all other charges that were stacked upon him were dismissed..

Petitioner was sentenced to 15 years in prison and filed a appeal which was subsequently affirmed and he comes now with a claim of contentions that there is insufficient evidence to support the conviction, the elements do not exist to support the undue conviction, that petitioner is innocent of the charges that were unjustly attached although nonrelevant and the person's representing his interest at trial and at the appellate phases were ineffective and their deficient representation fell below the objective standard of reasonableness and this prejudiced the outcome of the proceedings and the trial counsel indeed acted as second prosecution due to the inferably intentional acts and omissions and as a result thereof the proceedings resulted in a denial of his fundamental rights and he further contends that this case must be dismissed under the principles of double jeopardy forthwith.

THE ELEMENTS REQUIRED TO SUSTAIN THE UNJUST CONVICTION HAVE NOT AND CANNOT BE PROVEN AND THIS REQUIRES THE COURT TO VACATE THE JUDGMENT AND REVERSE THE CONVICTION WITH ORDERS TO DISMISS CHARGES

On 4/15/2010, an alleged robbery took place when alleged victim Michelle Doe, (minor female prostitue), was walking down the street (baseline Ave) in San Bernardino and some guy named "Alpha Con Man" took her cellphone and threw her on the ground. "Alpha Con Man" was driving the vehicle and he committed this act on his own and petitioner is not "Alpha Con Man" who is the actual perpetrator of said crime. Petitioner was not there (RT 100 lines 1 - 20). Petitioner had no involvement with this crime whatsoever. Michelle Doe called the police (RT 101 lines 16 - 22). Michelle admitted that on the date in question that she did not know that petitioner and "Alpha Con Man" even knew each other (RT 102 lines 8 - 10). Michelle admitted that she was a prostitute for "Alpha Con Man" and that he was her pimp. (RT102 lines 11 - 17 During this entire exchange "Alpha Con Man" is the person implicated as the perpetrator and it is a fact that petitioner was not involved in this incident that occured on 4/15/2010 which was regarding "Alpha Con Man" taking her cellphone and there is no evidence whatsoever that points to any exchange of money or encouraging a prostitute to perform any type of sexual act and no evidence that places the petitioner at the scene of this occurance. As clearly stated, she did not know that the two even knew each other so there is no way possible to allege that petitioner was working for "Alpha Con Man." This allegation is absurd. According to the testimony given by the victim/witness who was actually there at the time of the incident, petitioner was not involved. The charges alleged on the accusatory pleading specify petitioner being charged for crimes that occured on 4/15/2010. This incident calls for locating "Alpha Con MAn," as he is clearly the perpetrator of the criminal acts that occured on that date. Petitioner had nothing to do with "Alpha Con Man's" actions and they did no criminal act in concert nor did they conspire to commit any such act. This is solely the act of "Alpha Con Man" and petitioner has been dragged into a crime scene that occured 4/15/2010 whereby he did not commit any such act as he has been accused for occuring on 4/15/2010. There are no elements or evidence according to the transcripts that exist to suggest that on the day alleged, petitioner had anything to do with "Alpha Con MAn" and there is no corpus delicti to bring these assertions into fruition or that would show any implication of petitioner's involvment in any act perpetrated that day by anyone at that scene of the robbery and no evidence exists to support that a sexual act in exchange of money occured on that date the crime is alleged. The trial was based upon a theory that on 4/15/2010 petitioner had 1): Committed a robbery and, after this was clearly disproved, that 2): petitioner had pimped and pandered Michelle Doe on 4/15/2010 and there is no evidence presented in this trial to support these contentions. What has just been described are essential elements required to establish a conviction on the charges alleged. There been no proof presented whatsoever that on that date of accusation shown in accusatory pleadings that such crime occ

Essentially, petitioner has been unjustly accused and is actually innocent of the charges alleged which led to hi imprisonment and this conviction must not stand. The evidence presented before the trier of fact clearly shows petitione did not commit thecrimes he was convicted for and this totally undermines the prosecution's case as thetrial was based on the prosecution's version of "smoke and mirrors," as theprosecution focused on prejudicial evidence that had no relevance to the initial incident which was the reason for Michelle Doe calling the police which was based on a robbery that had taken place. There was nothing sufficient in the evidence relied upon that would actually prove beyond a reaso able doubt that the crimes alleged had occured but they were effective in the sense that it threw the trier of fact off the actual facts and the facts are that nothing like what was accused happened on the date the charge was alleged and prosecution relied upon the emotional sensationalism of this type of allegation which established extreme bias and the undue prejudice that comes along with these type of tactics which are extremely effective. There was no clear probative value under Ev. Code §352 but there was an extensive prejudicial effect that was essential to the "throw off" which worked for the prosecution as there were clearly no elements or evidence presented that would show beyond a reasonable doubt that the charges alleged and accused to have occured on 4/15/2010 in fact occured because they did not save the act of "Alpha Con Man." This presentation of the testimonial evidence now before the Court as accurately presented in this petition clearly refute and rebuts and accurately opposes any false or misleading presentation of the facts that were previously before the trier of fact and the Court in trial or appellate stages of proceedings. It is clear that the People's emotional driven false assertions claiming that there was sufficient evidence is false. Rather, as the evidence is constitutionally insufficient to establish that petitioner committed any such crime(s) required to prove the act(s) as charged, his conviction must be reversed. Because evidence viewed in a light most favorable to the state is insufficient to support such a finding of all the essential elements of the charges asserted and accused to have happened on the date in question beyond a reasonable doubt (Jackson v Virginia (1979) 443cU.S.307, 318-319), that conviction must be vacated with directions to dismiss those counts under the principles of double jeopardy. (U.S. Cons 5th & 14th Amendments; United State v DeFrancesco (1980) 449 U.S. 117, 127-128; Burks v United States(1978)437 U.S. 11; People v Hill (1998) 17 C.4th 800, 848; People v Belton (1979) 23 C.3d 516, 626; Cal Const., art I, §15.) The stat must prove all of the elements of each offense charged. This had not and cannot be done. Even if there was an accusati for conspiracy, the state must prove against each defendant all of the elements of the offense charged, notwithstandin alleged elements of one allegedly involved in the act, therefore, that does not mean that were specific offenses are charged, that the state does not have to prove each element. [citations.] The date of the accusation, 4/15/2010, as testified to at the trial showa the prosecution has not met the burden and this conviction must be reversed and the charge dismissed. P.C. §954 clearly explains that these charges cannot stand as accused.

The requirement that guilt of a criminal defendant be established by proof beyond a reasonable doubt dates, from at least our early years as a Nation. It is now accepted in common-law jurisdictions as the measure of persuasion by which the prosecution must convince trier of all the essential elements of guilt." (C McCormack, Evidence, §321 pp 681-682; see also 9 J Wigmore, Evidence, §2497.) Citing Jackson v Virginia (1979) 99 S.Ct. 2781, 443 U.S. 307), It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes denial of due process (Cole v Arkansas, 333 U.S. 196, 201, 68 S.Ct Presnell v Georgia, 439 U.S. 14, 99 S.Ct 235, 58 L.Ed2d 207.)

These standards no more than reflect a broader premise that has never been doubted in our constitutional system: that a person cannot incur the loss of liberty for an offense without noticeeand a meaningful opportunity to defend. (E.g., Hovey v Elliot, 167 U.S. 409, 416-420, 178 S.Ct 841, 844-846, 42 L.Ed 215. Cf. Boddie v Connecticut, 401 U.S. 2371, 2377-2379, 91 S.Ct 780, 785-787, 28 L.Ed2d 113.) A meaningful opportunity to defend, if not the trial itself, presumes as well that a total want of evidence to support a charge will conclude the case in favor of the accused. Accordingly, it was held in the Thompson case that a conviction based upon a record wholly devoid of any crucial element of the offense charged is constitutionally infirm. (See also Lachon v New Hampshire 914 U.S. 478, 94 S.Ct. 664, 38 L.ED 2d 666; Adderly v Florida 385 U.S. 39, 87 S.Ct 242, 17 L.Ed2d 149; Gregory v Chicago 394 U.S. 111, 89 S.Ct 946, 22 L.Ed 134.) The "no evidence" doctrine of Thompson v Louisville thus secures to an accused the most elemental of due process rights; freedom from a wholly arbitarily depreciation of liberty. This so-called trial was a real farce. The Winship doctrine requires more than simply a trial ritual. A doctrine establishing so fundamental constitutional standard must also require that the factfinder will rationally apply the standard to the facts in evidence. A 'reasonable doubt,' has often been described as one based on reason which arises from the evidence or lack of evidence." (Johnson v Louisiana, 406 U.S. 356, 360, 92 S.CT 1620, 1624, 32 L.Ed.2d 152.) Under the FRCP Rule 29, a motion for judgment of acquital would be proper. The case should have never gone to trial save for the fact the People wanted somebody, anybody, if they could not have "Alpha Con Man." It just so happens that they built a case that is non apparent from the evidence presented before the trier of fact and it is very clear that the conviction cannot stand. The showing of "cause" for the default and actual prejudice from the claimed violation of federal law in this case is apparent. Coleman v Thompson (1991) 501 US 722, 750, 111 S Ct 2546. The cause-and-prejudice standard applies to all procedural defaults (Coleman v Thompson supra,) including those occurring before trial, such as the failure to object to a grand jury's composition (Francis v Henderson (1976) 425 US 536, 96 S Ct 1708), and those occurring during trial such as the failure to contemporaneously object to the admission of evidence (Wainwright v Sykes (1977) 433 US 72, 75, 97 S Ct 2497 or to a jury instruction (Engle v Isaac (1982) 456 US 107, 124, 102 S Ct 1558). The cause-and-prejudice test also applies to post-trial defaults, such as the failure to raise an issue on appeal (Murray v Carrier (1986) 477 US 478, 486, 106 S Ct 2639). The true merits of my constitutional claim has never been heard. Federal Rules of Civil Procedure 60(b) is to correct erroneous legal judgements that would prevent the true merits of petitioners constitutional claims from ever being heard. See Phelps v Alameida (9th Cir 2009) 569 F.3d 1120. As I hope to be heard in this court.

Circumstances Held to Satisfy the Cause Requirement

Certain crimes are frowned upon in our society and highly politicized to the point that duly sworn officers of the court will resort to unlawful acts to secure convictions based on opinion, speculation, conjecture, insufficient and non relevant evidence and the convicitons although not constitutionally or morally valid, are unsually upheld because the method of obtaining the unjust convictions are subtle. The easiest and most frequently utilized method is by the prosecution employing the assistance of defense counsel acting as a second prosecutor and the presiding judge ignoring the improprieties. This is most effective when trying cases that allege sexual acts involving minors. The evidence codeis unjustly relaxed, or misinterpreted to the advantage of the prosecution and the nautral body close their eyes when the signs and symbols reflect the decision to convict at any cost including breaking the law to uphold the law. There are even cases in California that go totally against the United States Supreme Court holding cases that prevent the lower courts and their officers from engaging in "kangaroo court" procedures as they represent being against the fundamental constitutional provisions, and these certain lower court decisions allow ecvidence into the record that is non reliable non relevant, highly prejuriicial and unjust. So much to the point that any jury of so-called "peers" will be tainted and make a decision based upon erroneous jury instructions, misinterpretations that are veiled to layperson that do not understand "legalese" taking the english context instead of their legal meaning. whereby the process has become a travesty. These acts that have become the norm in the sovereign states are an insult to our constitution and our fundamental rights and these rogue decisions are a mockery of the fundamental concept of the constitutional laws. Defense attorneys have been protected by the relaxed definition of strategic choices and this is a green light to be incarpetent in subtle4 manners. In this case, the counsel failed to properly investigate and failed to be prepared and this is clearly obvious by the failure to raise objections agiainst the accusatory pleadings in violation of the petitioner's due process rights under article I, section 7, 14th Amendment to the United States Constitution and as is codified by the statutory provisions of P.C.§954, and Ev. Code §352. It takes an extremely meticulous person that will seek justice by investigation after the fact, to ensure that the injustices, regardless of how subtle and shrouded, will be exposed sufficient to obtain evidentiary hearing, and eventually, reversal.

A federal writ must be granted when a state court decision was contrary to, or involved an unreasonable application of clearly "established" precidents of the United States Supreme Court. (28 U.S.C. §2254(d)(1).) This unreasonable application" prong permits the writ to be granted when a state court identifies the correct governing legal principle but unreasonably applies it to the facts of a petitioner's case. (Williams v Taylor, 529 U.S. 362, 413, 120 S.Ct 1495.)

For this standard to be satisfied, the state court decision must have been "objectively unreasonable," (id. at 409, 120 S.Ct. 1495), not just incorrect or erroneous. An ineffective assistance claim has two components: A petitioner must show that counsel's performance was deficient, and that the deficiency prejudiced the defense. (Strickland v Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674). Performance is deficient if it falls below an objective standard of reasonableness, which is defined in terms of prevailing professional norms. (Id. at 688, 104 S.Ct. 2052.) Here, in this matter petitioner can easily and meritoriously show the deficient performance, and how the deficient performance caused the prejudice. In this matter non relevant evidence was wrongfully used to evoke an emotional bias against petitioner, and non relevant evidence was presented which had very little effect on the issues which should have been robbery charge that the basis of the police report was about. The robbery charge that initiated the report iin the first place was rendered an acquittal. The non relevant accusations of pimping and pandering which there was no evidence presented to show any prostitution had occured and no interaction between petitioner on date in question was in regard to Michelle prostituting for petitioner and no evidence presented showing petitioner unduly encouraging a non prostitute to engage in the profession of prostitution on date in question or encourging a known prostitute to engage in prostitution on date in question, along with evident fact that no one was accused or charged with engaging in prostitution on date in question, clearly diffuses the notion that petitioner engaged in an illicit act on date in question that would cause the petitioner to be charge with the crimes he was unjustly convicted for. Penal Code §954 protects persons from events such as this which led to introduction of invalid, prejudicial evidence which should not have been presented as there was no act to comensurate an allegation or information such as was unlawfully perpetrated in this instant matter. It was admitted by Michelle in open court that she did NOT know that Alpha Con Man and petitioner knew each other. That eliminates the pandering allegations regardless of the inadmissibilityof the text messages from dates non relevant to the charge of robbery. The assertion that petitioner was party to a robbery that he was not even present at suggests that petitioner was unl;awfully pulled into a case that he had no involvement in whatsoever and he should not have been entrapped into a situation he had nothing to do with. The theory that petitioner had on previous occaisions assisted Alpha Con Man was proven to be untrue as she clearly stated she did NOT know that Alpha Con Man and petitioner knew each other until after the robbery. This refutes the assumption that the theory and evidence presented at trial was sufficient to sustain a conviction. The prejudicial effect of presentation of this evidence suggesting that petitioner pimped and pandered Michelle cleary shows the charge non relevant to the robbery accusation was the charge pursued unjustly by police officers who resorted to creative writing and manipulation of the prostitute, who testified that she was scared to identify herself because she was a runaway. This speaks volures into what an advocate of the petitioner would have proceeded to in the case as to proceeding with cross-examination on suggestiveness, coercion by police in formation of report to bring non relevant matters into act

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The charges wer unjustly brought into the robbery allegation and this was not properly argued or objected to by lawyer representing petitioner at intial and trial proceedings which definately prejudiced the outcome of the proceedings. It has not, in any way, been shown that petitioner enticed or took away any female of previous chaste character from wherever she may be to a house of ill fame for the purpose of prostitution on the date in question or any date for that matter. The key here being that there was NO act of prostitution or pimping that occured in this instant case as the robbery involved this prostitute's pimp (Alpha Con Man), but Alpha Con Man was never captured or sought out by the police. Why didn't the attorney of record question this fact after clearly having the prostitute Michelle testify to the trier of fact that Alpha Con MAn was her pimp, he robbed her and petitioner was not there? Why is it that the record cannot reveal any diligence or conscientious effort to uphold petitioner's rights? Why is it that the attorney for petitioner refused to argue against the filing of the non relevant charges and did not offer evidence that would pin these allegations on Alpha Con Man? Why didn't the attorney for petitioner thoroughly investigate into this case and attempt to locate the perpetrator and why didn't the attorney for petitioner send an investigator out to interview Michelle or other persons who might have insught into her relationship with the perpetrator who pimped her and robbed her? Why didn't the attorney move for an arrest of judgment or motion for acquittal in a timely manner? The inference is simple; the attorney for petitioner was working in concert with the prosecution team and was in fact acting as a second prosecution. This was explained earlier to be the most effective means of obtaining and securing a conviction against bthe accused. many persons would look upon this in the court of opinion as "street justicew" through manipulative means whereby the court process is subversively abused by officers acting in concert to obtain the unlawful convictions. It is not a perfect system as it was designed to be. The petitioner is aware of the allegations as well as the fact of hisprior criminal history. Petitioner is ware now, that he was not properly represented and the charges should have been saved for Alpha Con man.

It is clear that counsel did not conduct a reasonable investigation which is contrary to the provisions of (People v Pope., 23 Cal..3d 412; People v Ledesma, 43 Cal.3d 171; In re Hall, 30 Cal..3d 408, 426, 179 CR 223; People v Friarson, 25 Cal..3d 142, 166 [158 CR 281, 599 P.2d 587]; Strickland v Washington, 466 U.S. at 690-691 [80L.Ed.2d at pp 695-696]; Wiggins v Smith, 123 S.Ct. 2527,539 U.S. 510; 156 L.Ed.2d 471..) Danyinh this type of failure has been held over and over again to be "an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." (28 U.S.C. §2254(d)(2).).There is no way humanly possible that it can be determined that counsel conducted a more thorough investigation than the one the Court describes. It is very clear that trial counsel's failures prejudiced petitioner Gipson's defense. To establiosh prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the proceedings result would have been different.

An accused is entitled to reasonably competent assistance of a lawyer acting as the accused's diligent and conscientious advocate. Defense counsel should be guided by the American Bar Association (ABA) standard, and should inter alia confer with client without delay and as often as necessary to elicit matters of defense, ascertain potential strategies and tactical choices with client, promptly advise client of rights and take prompt action to preseve client's rights. Conduct investigations to determine matterss of defense that can be developed, interview available prosecution witnesses, secure information in possession of the prosecution and so adequate research. See e.g., (United States v DeCoster (1973) 487 F.2d 1197.) Negligence, inattention, or professional icompetence of attorneys in handling client's affairs in criminal matters is a ground for disciplionary action. Misconduct of an attorney, due to his or her negligence or inattention rather to any intended or conscious violation of his or her professional duties, may amount to an act involving moral turpitude, dishonesty, or corruption. (Marcus v State Bar (1980) 27 Cal.3d 199, 165 C.R. 121), or to a violation of his or her oath to discharge the duties of an attornet at law to the best of the attorney's knowledg and ability. (Damain v State Bar (1970) 3 C.3d 381, 90 C.R. 420; Simmons v State Bar (1970) 2 C.3d 719.)

It is extremely clear, that no one is truly above being caught in their misconduct and this includes attorneys at law. An attorney vilates his or her oath as an attorney where through gross carelessness OR negligence, the attorney fails to faithfully discharge his or her duties to the best of their knowledge or ability. (Damain v State Bar (1980) 3 C.3d 381, 90 C.R. 420; Simmons v State Bar, supra, 2 C.3d 719.) Under both the 6th Amendment to the United States Constitution and article I section 15 of the California Constitution, a criminal defendant has a right to assistance of counse (E.g., Strickland v Washington (1984) 466 U.S. 6686, 694 [80 L.Ed.2d 674, 697-698, 104 S.Ct. 2052] People v Ledesma (1987) 43 C.3d 171, 215, 215; In re Cordero (1988) 46 C.3d 161, 179, 180; People v Pope (1979) 23 C.3d 412, 422.) "Criminal attorneys have a "duty to investigate carefully ALL defenses of fact and of law that may be available to the defendant.' [Citation.]" (People v Pope (1979) 23 C.3d 412, 425.) IF the failure to investigate results in the withdrawal of a crucial or potentially meritorious defense, the defendant HAS SHOWN ineffective assistance of counsel/ (Ibid.) When "the knowledge necessary to an informed tactical or strategic decision is absent because of counsel's ineptitude or lack of industry, NO such grounds of justification is possible." (Quoting In re Williams, 1 C.3d 168, 177.)A fact that is inadmissible under the law is not a fact at all. In this instant matter, petitioner was denied effective assistance of counsel by the obvious failures to argue the §954 language as well as the fact that the flagrant constitutional violations exceeded all common decendy and they let the real culprit get away. The attorney of record failed to perform the duties of a competent attorney in a similar situation. The statutory provisions of §954. and the clear language of Ev. Code §352 clearly disallowed the inadmissible "facts" relied upon in this case to seek a conviction. The petitioner ws NOT party to the initial actus reus/corpus delicti and the actus reus was in NO WAY releted to the NON RELEVANT assertions afer the fact. The crime reported on 4/15/2010 was a robbery. The suspect alleged was Alpha Con Man. Petitioner was NOT at the scene of the crime. He was NOt part of the crime and to be calle in and charged with a NON RELEVANT accusation is going deep into a "Gestapo-Like" society, where anyone can be lulled into a situation based on any NON RELEVANT reason. This is not a sound basis for placing an innocent person at a scer of a crime. NO ONE can hypothesize the outcome of a trial absent the inadmissible "facts" along with proper represen tation by a conscientious and diligent advocate working on behalf of the defendant's rights, and absent a jury findi

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II

PETITIONER WAS DENIED ADEQUATE REPRESENTATION ON APPEAL AS APPELLATE COUNSEL SHOWED CONTEMPT FOR PETITIONER SUCH AS HE WAS A SECOND PROSECUTOR AND THE JUDGMENT MUST BE VACATED

Counsel on appeal filed brief and intentionally fed information in support of attorney general's repondent brief wherby it was a "shoe-in" affirmation as it was apparently obvious that appellate counsel was under the same position regarding procurement language when in fact the language was encouragement and appellant counsel acted as second prosecution after the fact to seal the fate of a wrongfully charged person and appellate counsel refused to raise the issues that would render this matter to be vacated. There is no legitimate or sufficient evidence to support the unlawful conviction and the facts relied upon should have NEVER been before the trier of fact whose position was unduly contaminated by the misleading tactics relied upon at the trial.

Appellate counsel must play role of active advocate rather than mere friend of the court in a detached evaluation of appellant/petitioner's claim. Nominal representation on an appeal as of right -- like nominal representation at trial -- does not suffice to render the proceeding constitutionally adequate; a party whose counsel is unavailable to provide effective representation is in no better positin than one who has no counsel at all. A first appeal as of right is therefore not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney. The promise of (Douglass v California 372 U.S. 353, 83 S.Ct 814; (L.Ed.@d 799), that a criminal defendant has a right to counsel on his first appeal as of right -- like the promise of (Gideon v Wainwright, 372 U.S. 335), that a criminal defendant has a right to counsel at trial -- would be a futile gesture UNLESS it comprehended the right to effective assistance of counsel.Because the right to counsel is so fundamental to a fair trial., the Constitution CANNOT tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on its merits. In this case constitutionally ineffective assistance of trial and appellate counsel caused actual prejudice. Walker v Martel (9th Cir 2013) 709 F3d 925, 938.

Exception to Cause and Prejudice Requirement for Fundamental Miscarriage of Justice: The Actual Innocence Gateway "Equitable Exception"

Whether there is prejudicial error resulting in a miscarriage of justice must, depend on the particular facts of the individual case. (People v Weatherford (1945) 22 Cal.2d 401, 164 P.2d 753; People v Jenkins (1903) 223 Cal.App.2d 537, 35 CR 776.)

Although in criminal cases it has been said that the phrase refers to a case where a person probably innocent has been convicted, (People v Fleming (1913) 166 Cal. 357, 136 P. 291), this is not wholly correct, for the principle is equally applicable whether an acquittal or conviction has resulted from a form of trial in which the essential rights of the prosecution or of the defendant were disregarded or denied (People v Steelik (1921) 187 Cal. 361, 203 P. 78; People v Weatherford (1945) 27 Cal.2d 401, 164 P.2d 753; People v Arends (1957) 155 CA2d 496, 318 P.2d 532. Even convincing proof of a defendant's guilt does NOT necessarily mean, under all circumstances, that there has been no miscarriage of justice (People v Geibel (1949) 93 CA2d 147, 208 P.2d 743.) More specifically, a miscarriage of justice may result from a lack of due process OR from prejudicial denial of the rights of an accused person in the course of a trial. It extends beyond the mere question of whether an innocent person has been convicted or a guilty person acquitted. (People v Hooper (1949) 92 CA2d 529, 202 P.2d 117.) Accordingly, a trial court's exercise of discretion will not be disturbed UNLESS it appears that the resulting injury is sufficiently grave to manifest miscarriage of justice.

In this matter it is evident that the appellant counsel intentionally failed to properly raise the insufficient evidence and failure to establish required elements claim as well as the fact the trial counsel was ineffective and refused to object to admission of inadmissible evidence that was highly prejudicial and non relevant to the initial charge that was the basis for PD report to San Bernardino Police. The allegation made in the call to the police was reference to a robbery committed by a person known as "Alpha Con Man" and the petitioner was NOT involved in this crime and he should not have been pulled into a non relevant matter as there is no chain of events that cause the non relevant assertions that did not refer to the robbery which was the actus reus justifying the report.

Petitioner clearly demonstrates actual prejudice as a result of the violation of federal law, and failure to consider these claims will result in a further miscarriage of justice. Actual innocence can override the AEDPA 1 year statute of limitations. McQuiggin v Perkins (2013) — US —, 133 S Ct 1924, 1928; Characterized as an "equitable exception" than equitable tolling See Lee v Lampert (9th Cir 2011) 653 F3d at 933 n.5. As shown, it is more likely than not that no reasonable juror would have convicted me in the light of new evidence. Perkins, supra, quoting Schlup v Delo (1995) 513 US 298, 327, 115 S Ct 851

Conclusion

For the above stated reasons this petition for writ of Certiorari should be granted. Respectfully Submitted - 21

Skye E. Gibson Skye E. Gibson Nov. 26, 2018