

18-8173  
No. \_\_\_\_\_

Original  
Supreme Court, U.S.  
FILED

MAY 01 2019

OFFICE OF THE CLERK

RUBEN R. HERRERA

IN THE  
SUPREME COURT OF THE UNITED STATES

RUBEN R. HERRERA — PETITIONER  
(Your Name)

vs.

BARANDON PRICE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES SUPREME COURT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RUBEN R. HERRERA C-000795-5

(Your Name)

UNIT 16  
COALINGA STATE HOSPITAL P.O BOX 5003  
(Address)

COALINGA CALIFORNIA 93210  
(City, State, Zip Code)

559-934-0687  
(Phone Number)

QUESTION(S) PRESENTED

(PETITIONER RUBEN R. HERRERA WITH GOOD FAITH)  
IS REQUESTING THIS COURT TO GRANT THIS REHEARING. ON THE ISSUE'S THAT HAS BEEN  
ADDRESSED. #1 UNDER GOOD FAITH PETITIONER PERTAINS THE QUESTION  
UNDER PROP 57, THE NEW LAW THAT IS BEING APPLIED TO  
INMATES, IN CDCR ALSO APPLY'S TO PETITIONER HERRERA.

#2 PETITIONER HAS A DUE PROCESS RIGHT TO RECEIVE THIS  
SECTION OF THE LAW AND THE LOWER COURT'S CAN ADDRESS THIS  
MATTER IF THIS COURT GRANT'S THIS REHEARING. BECAUSE  
UNDER GOOD FAITH PETITIONER WAS NOT ABLE TO ADDRESS THIS  
MATTER AND THIS OF THE LAW APPLY'S TO ME AND IT'S  
ADDRESSED (NOT ANY DELAY PROCESS)

#3 THE 14TH AMENDMENT ALLOW'S FOR THIS CASE TO BE  
REVIEWED

Original

## 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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*Original*

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### STATUTES AND RULES

RULE 44  
2254 (2)  
2254 (1)  
2254 (a)  
2254 (e) (1)  
2254 (ii)  
14.1 (a)  
1170.126 (b)(3)  
2244 (b) (3)  
18 U.S.C. SECTION 3582 (2)

U.S CON, ART. I, 9, CL. 2.

### 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.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ 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[ ] is unpublished.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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 appears at Appendix \_\_\_\_\_ to the petition and is

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[ ] is unpublished.

STATEMENT OF THE CASE

(PETITIONER WITH GOOD FAITH)

Request this Supreme Court to Grant this rehearing under Rule 44.

#1 A new Abstract of Judgment was done five years later, February 17, 2009.

Which removed the "Forcible Oral Copulation" and removed "Child" and Forcible and replaced with "Sodomy with a Person Under 16" petitioner's sentence was reduced to Non-Forcible Crimes, and the rest was dismissed.

And "Both Counts were explicitly stipulated by the Deputy District Attorney.

Now to recount the process, in October 14th 2004, Petitioner received a two-year sentence and due to time credits, issues Petitioner was placed on parole. Petitioner was incarcerated for Failure to Register under Section 290. And received a 16 month prison stay. And was paroled in June 15th

Petitioner was arrested on June 19th 2007 for violation of parole. And on December 4th 2007 Petitioner received another violation (Case#07CRSP6787762) which a petition was filed to have Petitioner declared a Sexually Violent Offender 6600. Petitioner Herrera has been detained ever sense, on a non-violent sense.

## REASONS FOR GRANTING THE PETITION

Under Good Faith, Petitioner is asking this Supreme Court to grant this rehearing, because the 1) U.S. District Court, was not allowed to review the legal issues, and Petitioner has a due process right to have the facts of the case litigated on the law that's being addressed. And this writ will allow the court to have a hearing on Section 32(a) which provides 'anyone convicted of a non-violent felony offense and sentenced to state prison shall be eligible for early parole consideration, after completing the full term for his primary offense. This interpretation is supported by section 32(a)(1), 2) Petitioner Herrera, should not be excluded from section 3491(b)(3). For consideration of the early parole because it will run afoul of section 32(a)(1). Petitioner is that this case is remanded back to the lower courts for review. And for the court's to hold an evidentiary hearing to have the merits of the claim heard. The factual matters of Petitioner's [non-violent] sentence and the new law that's not being applied to Petitioner are distinguished as one because the characteristics are incorporated mean the same thing. And under Proposition 57, Petitioner Herrera is requesting for a ful hearing on the Merits of the Claim. Petitioner is asking that this court review this case as a First Habeas Corpus so that the U.S. District Court may review the claims and order the lower court's Superior Court" to hold an evidentiary hearing on the claim for "Non-Violent Sentence" because the Violent Offense was removed. Petitioner states that under the current version of Prop 57, the court may exercise its discretion under the statute of the law. This Supreme Court may "order the lower court's to hold a hearing, Petitioner Herrera has made a Prima Facie Showing. Petitioner is not challenging the underlying conviction, 561 U.S. at 342. Petitioner falls under Section 2244(b)(2) and this writ should not be viewed as a second or successive petition.

Petitioner is asking this court to grant this rehearing and order this case

## REASONS FOR GRANTING THE PETITION

remanded so that a hearing on the merits of the claims litigated.

I would like to take this opportunity to thank you for looking at my case. I just want to say a couple of words. I want to believe in Justice with all my heart. I knock on the door of the United States Supreme Court, as if I was knocking on God's door. I understand that I will never be here again. This is my only issue: I am innocent of any forcible sex offense. I took a plea deal, and they promised me my convictions were non-forcible. That was my understanding. If someone was to look at my convictions (PC 286[b]) and PC 288[c][1]) these convictions are non-violent convictions.

The American system, Grounded in The British Common Law, has long erred on the side of protecting innocence.

Thus, we presume an accused person's innocent until they Proven Guilty.

As the Preeminent English Jurist, William Blackstone wrote: "**Better than 10 guilty persons escape, than 'ONE innocent suffer**".

This principle can also be found in religious text, and in writing of **The American Founders**. Benjamin Franklin went further arguing: "**It is better 100 Guilty persons should escape THAN 1 INNOCENT PERSON SHOULD SUFFER**".

I never admitted to anything forcible, nor was I ever found guilty of anything forcible.

## **CERTIFICATE**

I, Ruben R. Herrera, am a party in this matter. The following statements with in this petition is based on fact's of the case that was not presented in the first patition.

Petitioner has given a brief description of the fact's for this court to review and rule on.

Petitioner has presented the grounds that are to be ruled on. The grounds are [limited] to the intervening circumstances of the substantial and controlling effect to the other substantial grounds that was not previously presented. Petitioner Herrera is stating that this rehearing request is being done in (Good Faith) and not for delay. The undisputed fact's deal's with the statutory basis for the court to review and rule on. Petitioner is stating that here at Coalinga State Hospital, the law library do not have (all of the rules of the Supreme Court) Petitioner has done the best he can with what I have here.

Petitioner Herrera has presented this writ in good faith and prays that this rehearing is granted in full, and the case remanded back to the lower court's.

RUBEN R. HERRERA.

06/19/2019

Robert Herrera

1                   **DEAD LINE LEGAL WORK FOR MAY OF 2019 REHEARING UNDER**

2                   **RULE 44 IS BEING PRESENTED [IN GOOD FAITH.]**

3                   Petitioner is requesting this Supreme Court, to grant this 'Rehearing on  
4                   the Merits of the Claim.' Petitioner received a denial on March 15th 2019.

5                   Petitioner is presenting this claim in good faith and not for any delay. There  
6                   was a new change in law that is being applied within the Department of  
7                   Corrections, that deals with 'Non-Violent Offenses.' and Petitioner is asking  
8                   this Supreme Court to review the claim on the, merits. Petitioner by law had to  
9                   ask this court for a response. Under Rule 44. The decision was clearly,  
10                   [contrary] to the law that is being applied. And petitioner is entitled to a  
11                   rehearing on that claim and is requesting that relief be granted. The Superior  
12                   Courts, sentence was in 'error'. Petitioner has presented the new law in motion  
13                   and as the courts can see petitioner did not have a [violent crime.] The ruling  
14                   that Petitioner received was clearly under 2254(1) was contrary to or involved  
15                   and unreasonable application of, clearly established Federal Law, as determined  
16                   by The Supreme Court of the United States. And under 2254(2) the decision that  
17                   was made clearly was based on an unreasonable determination of the facts in  
18                   light of the evidence presented in the state court.

19                   **[REHEARING UNDER RULE 44.]**

20                   This request for a rehearing, address's only the error, by the State Court  
21                   and the new Mandated Law that's being "Applied to Petitioner Herrera's case.  
22                   The new inacted law now that is being applied, for non-violent offenses is a  
23                   change of law that affects Petitioners [Liberty Interest] Petitioner has  
24                   developed the factual basis of my claim to the Supreme Court in good faith.

25                   For review. Petitioner request this matter be 'transferred back to the  
26                   lower courts, so that the U.S. District Court, can order the Superior Court to  
27                   hold an [Evidentiary Hearing] on the claim, on the "Non-Violent Offense Issue"  
28                   the new law that is being applied is "retroactively" being applied for all

1 Department of Correction inmates. And this law also applies to Petitioner  
2 because Petitioner is still under the custody of the Department of Corrections,  
3 Jurisdictional Rules and Control and Violations, and under 2254,(a) state  
4 custody remedies in Federal Court allows Petitioner to receive a hearing, on the  
5 custody issue, that is in violation of the Constitution or laws. (E)(1) of 2254  
6 states that by clear and convincing evidence, Petitioner had to show by law, the  
7 correction in the rebutting of the facts . . . and under section 2254(ii) a  
8 factual predicate that could not have been previously discovered through the  
9 exercise of 'Due Diligence. As Petitioner point's out the law just changed in  
10 Jan. 28, 2019. Case No# B289852. Court of Appeals. Petitioner had no idea  
11 that the law had changed so that non-violent offenders could receive [early  
12 release] consideration. The "only difference in this case, is that Petitioner  
13 never had a violent offense] from the start. Petitioner received a contrary  
14 ruling. And Petitioner Herrera, is asking this Supreme Court to "Rehear" this  
15 claim on the merits and order this case back to the lower courts and order for  
16 an, 'Evidentiary Hearing because Petitioner never had a violent offense. This  
17 claim has been [presented in Good Faith.] This brief on the merits under  
18 14.1(a) are only the questions that are being presented. The 'Evidentiary  
19 Hearing' shall be addressing the issue's as to the (Forcible Oral Copulation,)  
20 being removed, on February 17th, 2009 five year's later. Which is clearly  
21 addressed on the new abstract of judgment. The issue on the charges being (non-  
22 violent) an non-forcible crimes, PC 286(b)(2). And PC 288(c)(1).

23 This legal issue, "only" address's the non-violent offense, and the new  
24 ruling that's being applied to all Department of Corrections inmates, which, I'm  
25 still under their legal custody.

26     ///

27     ///

28     ///

1 PETITIONER'S REHEARING REQUEST CHALLENGING THE DENIAL SHOULD  
2 NOT BE SUBJECT TO 'SECOND OR SUCCESSIVE PETITION BARED UNDER 28 U.S.C. 2244(b)

3 [In Good Faith,] this is being presented because Petitioner, has a  
4 controvertel issue, being presented for a 'Rehearing. Petitioner's petition,  
5 for a Rehearing should not be subject to second or successive petition. 28  
6 U.S.C. 2244(b) for challenging the State Courts Denial of the Petition for  
7 Resentencing. Under California Penal Code. section 1170.126(b)(3).

8 Petitioner seeks review of this issue pursuant to 28 U.S.C. 2244(b)(3).

9 Petitioner, points out that this court has stated that Habeas Petitions  
10 that are filed Second-Time are not necessarily second or successive. See case  
11 law Penetti vs Quarterman 551 U.S. 930, 943 (2007) Also see Slack vs McDoniel  
12 592 U.S. 473, 486 (2000)

13 This Court also stated in, Magwood vs Patterson 561 U.S. 320 (2010) which  
14 made it clear that Second-In time Habeas Petitions, challenging new or  
15 intervening judgments are not Second or Successive. 674 F.3d 1124. The courts  
16 stated that a 'Subsequent Petition is not Successive, even if . . . the  
17 Petitioner effectively challenges an unamended component of the Judgment.' Id.  
18 AT 1127. Also see case law Hill vs Alaska, 297 F3d 895(9th cir 2002) That case  
19 was dealing with the calculation of a Prisoner's release date on the basis of  
20 parole eligibility was not Second or Successive." Id AT 899.

21 This Court has clearly stated that there will be no decline to read 2244 to  
22 bar or preclude a Prisoner from bring a Habeas Claims that could not have  
23 brought in earlier petition, Id AT 898 citing Slack, 529 U.S. AT 487. Also the  
24 courts in a recent decision in 2017) Sherrod vs United States, 858 F.3d 1240  
25 (9th cir 2017) that a sentence reduction under 18 U.S.C. 3582(c)(2) is not a  
26 new, intervening judgment for the purposes of second or sucessive analysis does  
27 not dictate a different result. Section 3582(c)(2) provides that [i]n the case  
28 of a Defendant who has been sentenced . . . based on a sentencing range that has

1 subsequently been lowered . . . the court may reduce the term of imprisonment."  
2 18 U.S.C. 3582(c)(2). Petitioner Herrera's case falls within this same line.  
3 Even though Petitioner has not been resentenced" Petitioner is now subjected to  
4 a new ruling that apply's to all inmates in California. Dealing with non-  
5 violent offenses and early release and Petitioner is still legally an inmate as  
6 stated bty the courts. Petitioner address's the case's that allow the Rehearing  
7 of Petitions filed that were not Second or Successive Petitions.

8 Also, Petitioner may point-out to this court on the ruling, under 2244(b)  
9 that clearly, states and is consistent with the suspension clause of the United  
10 States Constitution in Felker vs Turpin, 518 U.S. 651, 664 (1996) the Suspension  
11 Clause provides that "[T]he privilege of the Writ of Habeas Corpus shall not be  
12 suspended, unless when in cases of rebellion or invasion the public safety may  
13 require it" U.S. Cont. Art. I, 9, CL.2. And in Petitioners case, this writ  
14 should not denied as a Second or Successive Petition. See case law Medberry vs  
15 Crosby, 351 F3d 1049, 1062 (11th cir. 2003) James vs Walsh, 308 F.3d 162, 168,  
16 (2d Cir 2002). Challenge to calculation of release date was not Second or  
17 Successive because it was based on facts that "did not exist" at the time of the  
18 initial Habeas Petition.

19 Also see Crouch vs Norris, 251 F.3d 720, 725 (8th cir 2001) a refusal to  
20 grant parole was not a Second or Successive because the facts underlying the  
21 claim did not exist at the time of the initial Habeas Petition) see also Walker  
22 vs Roth, 133 F3d 454, 455 (7th cir. 1997) Petition was not Second or Successive  
23 because it "challenge[d] the Constitutionality of a proceeding which obviously  
24 occurred after [Petitioner] filed and obtained relief, in his First Habeas  
25 Petition) and see case law, United States vs Scott, 124 F3d 1328-29, 1330 (10th  
26 cir. 1997) Ineffective Assistance of Appellate Counsel the claim raised in the  
27 petition, did not exist at the time of Petitioner's Initial Petition); and  
28 section 2244(b) preserves this bedrock Constitutional Right by requiring the

1 Court of Appeals to grant an application for Habeas Review when clear and  
2 convincing evidence is present . . . and Petitioner is requesting a hearing on  
3 the 'non-existing law that was not in place at that time. This issue deals with  
4 a law, [not a rule.] which this court can not review State Court Applications of  
5 State Procedural [Rules]. Petitioner has made a Prima Facie showing that the  
6 claim was not presented in the prior to application. And Petitioner is asking  
7 this court to remand back to the lower court so that the District Court can  
8 assess whether this petition is cognizable. Petitioner has shown the violation  
9 of my Federal Due Process Rights that the Superior Court violated. The State  
10 Court did not hold a hearing. The Petition was denied" thereby depriving me of  
11 a liberty interest that I was due.

12 See case law Swarthout vs Cooke 562 U.S. 216 221 (2011).

13 See also Gutierrez vs Griggs, 695 F.2d 1195, 1197-98 (9th cir 1983).

14 And this court knows that this is particularly true where as a pro se  
15 Petitioner raises a question "not yet clearly decided. See case law Greenholtz  
16 vs Inmates of NAB. Penal Code & Corr. Complex, 442 U.S. 1, 9, 12 (1979).

17 Federal Due Process protection for State Inmates for Parole and good time  
18 but not resentencing); see case law Porter vs Ollison, 620 F.3d 952, 958 (9th  
19 cir 2010). This case deals with a Pro Se Prisoner Pleadings which are given the  
20 benefit of liberal construction and for them to order the Lower Court to hold an  
21 Evidentiary Hearing on the claim. The non-violent sentence, that was added and  
22 the violent offense was removed. And with CDCR mandating a new law under  
23 Proposition 57 Petitioner is requesting a ruling on the merits of this claim.  
24 The Rehearing will allow the court to have a hearing on section 32(a) which  
25 provides 'any person convicted of a non-violent felony offense and sentenced to  
26 state prison shall be eligible for parole consideration after completing the  
27 full term for his primary offense. Early parole eligibility must be assessed  
28 based on the conviction for which an inmate is now serving at state prison.

1 This interpretation is supported by section 32(a)(1). Petitioner should not be  
2 excluded from section 3491(B)(3) The early parole consideration is mandated by  
3 this new law now. And full consideration should be given to Petitioner. See  
4 case law Martinez-Villareal vs Stewart 118 U.S. 637 (1998). Also see case law  
5 Porter vs Ollison 620 F3d 952.

6 **CONCLUSION**

7 Petitioner prays that this Rehearing is granted in full and the case  
8 remanded back the lower courts to be considered on the merits of the claim.

9  
10 Date: 6-19-2019

11  
12 Ruben Herrera  
13 Ruben Herrera