

18-9847 **ORIGINAL**
No. _____

Supreme Court, U.S.
FILED

JUN 10 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

LAWRENCE JOSEPH PETITTA — PETITIONER
(Your Name)

VS.

P. COVELLA-WARDEN RJDCF — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LAWRENCE JOSEPH PETITTA
(Your Name)

480 ALTA ROAD
(Address)

SAN DIEGO, CA 92179
(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- ①. "IS THERE A "CONFLICT OF LAW" WHEN THE STATE OF CALIFORNIA EXCEEDED THE UNITED STATES CONSTITUTIONAL LIMITATIONS FOUND IN ARTICLE 1, CLAUSE 10 UNNECESSARILY, WHEN THE STATE WAS NOT CONFRONTED WITH AN EXIGENT CIRCUMSTANCE, NOR A STATE OR NATIONAL EMERGENCY THAT REQUIRED THE STATE TO USE IT'S INHERENT RESERVED POLICE POWER NEEDED TO AMEND A LAW [CA. P.C. 667], OR MAKE A LAW [CA. P.C. 1170.12], THAT IMPAIRS THE STATE'S OBLIGATION TO PRIOR CONTRACTS WITH PETITIONER AND OTHER DEFENDANTS IN SIMILAR CIRCUMSTANCES WITH THE STATE ?"
- ②. "IS THERE A "CONFLICT OF AUTHORITY" WHEN THE STATE OF CALIFORNIA MADE LAWS THAT UNCONSTITUTIONALLY VIOLATED THE STATUTORY PROHIBITIONS SET-FORTH IN ARTICLE 1, CLAUSE 10, AND THEN PROCEEDED TO ENFORCE THE LAWS ON PETITIONER AND OTHER DEFENDANTS IN SIMILAR CIRCUMSTANCES IN VIOLATION OF THE LEGAL SUPERIORITY OF THE UNITED STATES FEDERAL CONSTITUTION'S "SOVEREIGNTY" THAT IS OVER ANY CONFLICTING LAW OR STATE CONSTITUTION AS DECLARED BY THE "SUPREMACY CLAUSE" FOUND IN ARTICLE 6, CLAUSE 2 ?"
- ③. "IS THERE A "CONFLICT OF JURISDICTION" WHEN THE CONSTITUTIONAL VALIDITY OF THE MATERIAL TERMS OF THE PLEA BARGAIN AGREEMENT, CENTRAL TO THIS CASE, HAS A CONNECTION TO TWO OR MORE JURISDICTIONS ?"
- ④. "IS THERE A "CONFLICT" BETWEEN STATE AUTHORITY AND FEDERAL SUPREMACY, AND BETWEEN AN INDIVIDUAL'S RIGHTS AND GOVERNMENT POWERS THAT HAS HARMED PETITIONER AND OTHER DEFENDANTS IN SIMILAR CIRCUMSTANCES ?"

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A	UNITED STATES COURT OF APPEALS- NINTH CIRCUIT COURT
APPENDIX B	UNITED STATES DISTRICT COURT- NORTHERN DISTRICT
APPENDIX C	UNITED STATES COURT OF APPEALS- "EN-BANC"
APPENDIX D	CALIFORNIA SUPREME COURT
APPENDIX E	COURT OF APPEAL OF CALIFORNIA - SIXTH DISTRICT
APPENDIX F	NEWS PRINT ARTICLE BY PRISON LEGAL NEWS
G	U.S. DIST. COURT- N.D. ORDER TO FILE SECOND AMEN. PETITION
H	INFORMA PAUPERIS ORDER

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BOARD OF ADMINISTRATION V. WILSON, 5a Cal App 4th 1109	6
DOE V. HARRIS, 57 Cal 4th 64, 3d. 390	6
BRADY V. U.S., 197 U.S. 742 _____	8
PEOPLE V. WEST, Cal S. Ct. (1970) _____	8

STATUTES AND RULES

PLEA BARGAIN AGREEMENT ACT
28 U.S.C. § 2254(a)
U.S. FED. CONST. ART. I, CL. 10
U.S. FED. CONST. ART. 6, CL. 2
S. Ct. RULE 10 (a)(b)(c)

OTHER

ARTICLE BY PRISON LEGAL NEWS:
"CALIFORNIA PRISONS STRUGGLE WITH ENVIRONMENTAL THREAT"

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 B 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 D 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 OF CALIFORNIA - SIXTH DIST. court appears at Appendix E 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 NOVEMBER 21, 2018.

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: APRIL 01, 2019, and a copy of the order denying rehearing appears at Appendix C.

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 _____. A copy of that decision appears at Appendix b.

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

CONSTITUTION OF CALIFORNIA ARTICLE 3, SECTION 1, DECLARES:

"THE STATE OF CALIFORNIA IS AN INSEPARABLE PART OF THE UNITED STATES OF AMERICA, AND THE UNITED STATE'S CONSTITUTION IS THE SUPREME LAW OF THE LAND."

CA. CONST. ART. 1, CLAUSE 9, DECLARES: "A BILL OF ATTAINDER, EX POST FACTO LAW, OR LAW IMPAIRING THE OBLIGATION OF CONTRACTS MAY NOT BE PASSED.

CA. CONST. ART. 1, SECTION 31, (h), DECLARES: "THIS SECTION SHALL BE SELF-EXECUTING. IF ANY PART OR PARTS OF THIS SECTION ARE FOUND TO BE IN CONFLICT WITH FEDERAL LAW OR THE U.S. CONSTITUTION, THE SECTION SHALL BE IMPLEMENTED TO THE MAXIMUM EXTENT THAT FEDERAL LAW AND THE UNITED STATE'S CONSTITUTION PERMIT. ANY PROVISION HELD INVALID SHALL BE SEVERABLE FROM THE REMAINING PORTIONS OF THIS SECTION.

CA. CONST. ART. 2 SECTION 1, DECLARES: "ALL POLITICAL POWER IS INHERENT IN THE PEOPLE. GOVERNMENT IS INSTITUTED FOR THEIR PROTECTION, SECURITY AND BENEFIT, AND THEY HAVE THE RIGHT TO ALTER OR REFORM IT WHEN THE PUBLIC GOOD MAY REQUIRE.

U.S. CONST. ART. 1, CLAUSE 10, DECLARES: "NO STATE SHALL ...¹⁰ PASS ANY BILL OF ATTAINDER EX POST FACTO LAW, OR LAW IMPAIRING THE OBLIGATION TO CONTRACTS, OR GRANT ANY TITLE OF NOBILITY."

U.S. CONST. ART. 6, CLAUSE 2, DECLARES: "THE CONSTITUTION ...¹¹ AND ALL TREATIES MADE, OR WHICH SHALL BE MADE, UNDER THE AUTHORITY OF THE UNITED STATES, SHALL BE THE SUPREME LAW OF THE LAND.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDED CA. PENAL CODE 667

CA. PENAL CODE 1170.12

PLEA BARGAIN AGREEMENT ACT.

STATEMENT OF THE CASE

LAWRENCE J. PETITTA, A CALIFORNIA STATE PRISONER PROCEEDING PRO SE, FILED A PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254.

IN 2011, PETITIONER WAS ARRESTED FOR 2ND DEGREE ROBBERY AND WAS SENTENCED TO A TERM OF IMPRISONMENT IN A STATE PRISON AFTER ENTERING INTO A PLEA AGREEMENT IN SANTA CLARA COUNTY SUPERIOR COURT. PETITIONER HAS FILED UNSUCCESSFUL DIRECT APPEALS AS WELL AS STATE HABEAS PETITIONS IN THE CALIFORNIA STATE COURTS.

PETITIONER FILED THE INSTANT PETITION ON MAY 24, 2017 IN THE UNITED STATES DISTRICT COURT, CASE NUMBER: 17-CV-02996 NC. PETITION DENIED.

PETITIONER'S REQUEST FOR CERTIFICATE OF APPEALABILITY IN THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT WAS DENIED. PETITIONER REQUESTED A REHEARING IN EN BANC, AND REQUEST WAS DENIED.

PETITIONER NOW SUBMITS A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT.

REASONS FOR GRANTING THE PETITION

IF IT PLEASES THE COURT, THE CONFLICT OF LAW, THE CONFLICT OF AUTHORITY, AND THE CONFLICT OF JURISDICTION CREATED BY A "QUESTIONABLY INVALID IMPAIRMENT TO CONTRACT OBLIGATIONS" IS A BALANCING TEST, REQUIRING THE COURT'S JURISPRUDENCE TO MEASURE THE COMPETING INTERESTS - AS BETWEEN AN INDIVIDUAL'S RIGHTS AND GOVERNMENT POWERS; OR BETWEEN STATE AUTHORITY AND FEDERAL SUPREMACY - AND WHICH INTERESTS SHOULD PREVAIL!

THE UNITED STATES SUPREME COURT HAS GENERALLY INTERPRETED THE "CONTRACT CLAUSE" SO THAT STATES CAN REGULATE CONTRACTUAL OBLIGATIONS "IF" THE REGULATION IS REASONABLE AND NECESSARY TO SERVE AN IMPORTANT PUBLIC SERVICE OR PURPOSE.

THE CALIFORNIA SUPREME COURT HAS GENERALLY INTERPRETED THE PLEA BARGAIN AGREEMENT CONTRACTS WILL BE DEEMED TO INCORPORATE AND CONTEMPLATE NOT ONLY EXISTING LAW BUT THE RESERVE POLICE POWER OF THE STATE TO IMPAIR PRIOR OBLIGATIONS TO P.B.A. CONTRACTS BY AMENDING A LAW OR MAKING A NEW LAW "WHEN" IT IS NECESSARY, AND FOR THE PUBLIC'S GOOD, AND IN PURSUANCE OF POLICY. SEE DOE V. HARRIS,

WHILE A MINIMUM ALTERATION OR IMPAIRMENT OF A P.B.A. CONTRACT IS CONSTITUTIONALLY VALID, THIS MAY END THE INQUIRY AT ITS FIRST STAGE. BUT AN UNREASONABLE AND SEVERE IMPAIRMENT ON THE OTHER HAND, WILL PUSH THE INQUIRY TO A CAREFUL EXAMINATION INTO THE NATURE AND PURPOSE OF THE STATE LEGISLATURE. SEE BOARD OF ADMINISTRATION V. WILSON,

A CONFLICT OF LAW HAS OCCURRED WHEN THE LOWER COURTS DID NOT MEASURE THE "REASONABLENESS" OF AN IMPAIRMENT AGAINST

THE "SEVERITY" OF THE IMPAIRMENT. OR, MEASURING THE "JUSTIFICATION" OF THE IMPAIRMENT AGAINST THE STATE'S "LACK OF NECESSITY" FOR THE IMPAIRMENT. BARRING IN MIND THAT THE STATE WAS NOT CONFRONTED WITH "EXIGENT CIRCUMSTANCES", NOR, "STATE OR NATIONAL EMERGENCY" AT THE TIME OF THE LEGISLATIVE ENACTMENTS.

USING THE CONSTITUTIONAL STATUTORY LIMITS OF THE U.S. FED. CONST. ART 1, CL. 10, WILL MEASURE UNLAWFUL IMPAIRMENT CREATED BY THE AMENDED CA. PENAL CODE (667), AND TO THE LAW CREATED BY BALLOT CA. PENAL CODE 1170.12.

AS A PRESUMPTIVE INFERENCE OF A CONSTITUTIONALLY VALID P.B.A. CONTRACT OBLIGATION IS MEASURED BY IT'S PERFORMANCE IN ANY SUBSEQUENT CONVICTION THAT MAY OCCUR IN THE FUTURE, WHEREBY, THE COLLATERAL CONSEQUENCE OF THE EARLIER P.B.A. WILL BE USED TO INCREASE PUNISHMENT FOR THE SAME OR SIMILAR OFFENSE FROM THE LOWER TERM OF THE ORIGINAL SENTENCING GUIDELINE TO THE MIDDLE TERM, OR UPPER TERM. A DEFENDANT WHO HAD EARLIER NEGOTIATED A SIXTEEN MONTH TERM AND COMPLETED IT WOULD NOW BE SUSCEPTIBLE TO A 2-YEAR MIDDLE TERM, OR A 3-YEAR UPPER TERM IF CONVICTED AGAIN FOR THE SAME OR SIMILAR OFFENSE.

A PRESUMPTIVE INFERENCE OF A CONSTITUTIONALLY INVALID P.B.A. CONTRACT THAT HAD IT'S OBLIGATIONS IMPAIRED IS MEASURED BY IT'S PERFORMANCE, AS IN THE EXAMPLE MENTIONED ABOVE.

BUT THE "BALANCE TEST" IS USED WHEN THE IMPAIRMENT IS SO SEVERE DUE TO AMENDED LAW, OR A NEW LAW, THAT TO SUFFER A SUBSEQUENT CONVICTION FOR THE SAME OR SIMILAR OFFENSE NOW CAN RESULT IN A 25-YEAR TO LIFE SENTENCE WITH NO OPPORTUNITY FOR A PLEA BARGAIN AGREEMENT.

HERE, PETITIONER AND OTHER DEFENDANTS ALIKE NEED THIS COURT TO USE IT'S JURISPRUDENCE TO MEASURE THE STATE'S

"UNREASONABLE AND UNJUSTIFIED" IMPAIRMENT TO THE STATE'S PRIOR CONTRACT OBLIGATIONS SO THEY CAN HAVE THE "PERFORMANCE" OF AND "BENEFIT" OF CONSTITUTIONALLY VALID PLEA BARGAIN RIGHTS RESTORED PURSUANT TO ART. I, CL. 10, THE PLEA BARGAIN AGREEMENT ACT, AND THIS COURT'S RULING IN BRADY V. U.S.

AND IF THIS COURT WILL ALSO MEASURE THE HARM THAT WAS A "CONTRIBUTING CAUSE" FOR THE C.D.C.R. TO BE FOUND IN VIOLATION OF MANY STATE HEALTH AND ENVIRONMENTAL CODES THAT OCCURRED IN STATE PRISONS DUE TO UNCONSTITUTIONALLY INVALID P.B.A. CONTRACTS THAT HAVE RESULTED IN UNLAWFUL AND LENGTHY SENTENCES PUTTING INMATES, CORRECTIONAL OFFICERS AND STAFF IN JEOPARDY ALIKE, [SEE P.L.N. REPORT] DUE TO EXTREME OVERCROWDING IN THE PENAL SYSTEM.

LASTLY, IF THIS COURT FINDS THAT THE STATE ENFORCED LAWS THAT WERE EXCEEDING CONSTITUTIONAL PROHIBITIONS, THEN THE COURT CAN MEASURE THE CONFLICT OF AUTHORITY BY THE SUPREMACY CLAUSE, FOUND IN THE U.S. FED. CONST. ART. 6, CL. 2, DECLARING THAT ALL LAWS MADE IN THE FURTHERENCE OF THE CONSTITUTION, AND ALL TREATIES MADE UNDER THE AUTHORITY OF THE U.S. ARE THE "SUPREME LAW OF THE LAND" AND ENJOY LEGAL SUPERIORITY OVER ANY CONFLICTING PROVISION OF A STATE LAW OR STATE CONSTITUTION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

L. J. Petillo

Date: JUNE 07, 2019