No. 19-5494

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

SOBHY ISKANDER — PETITIONER
(Your Name)

vs.

DEAN BORDERS, WARDEN (A) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, FOR NINTH CIRCUIT

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

LAST CASE NO: 19-71288

PETITION FOR WRIT OF CERTIORARI

Rules 59 (e) Motion To Amend Judgement

Rules 60(b) (3) Relief From Judgement or order

SOBHY F.A. ISKANDER
(Your Name)

(Address)

2535 AMY WAY
RIVERSIDE, CA 92506

(City, State, Zip Code)

(951) 369-9938
(Phone Number)

ORIGINAL

QUESTIONS PRESENTED

MR. ISKANDER WAS RELEASED FROM PRISON ON FEBRUARY 3, 2018 AFTER SERVING SIXTEEN YEARS (INCLUDING 2 CONCORDANT TO 6 CONCORDANT YEARS WITHOUT SUBSTRACTION FOR CREDIT) MR. ISKANDER IS 84 YEARS OLD NOW AND WAS NEVER TESTIFIED AND WAS PRAYING FOR GRANTED PETITION TO TESTIFY WITH NEW INFORMATION AND KNOWLEDGE OF HIS CASE.THIS CURRENT APPEAL IS ALSO IN RESPONSE TO THE FOLLOWING LATE FEDERAL COURT ORDERS DETAILED AS FOLLOWED.

CASE NO. 18-70230 DATE FILED MAY 21. 2018
BEFORE: THOMAS, CHIEF JUDGE, W. FLETCHER AND CALLAHAN, CIRCUIT JUDGES.

DENIED AND JUDGMENT OF PETITION

CASE NO. 18-70321 DATE FILED SEP 20 2018

BEFORE: HONORABLE LEAVY, HAWKINS, AND TALLMAN, CIRCUIT JUDGES.

AMENDED APPEAL ISSUES WERE ORDERED

(IN SPITE I WAS USING NEW LEGAL RULES. RULES 59 (E) MOTION TO AMEND JUDGMENT AND RULES 60 (B) (3) RELIEF FROM JUDGMENT OR ORDER.)

CASE NO. 18-56639 DATE FILED MAR 15 2019
BEFORE: CANBY AND WARDLAW, CIRCUIT JUDGES.
THE ISSUE THAT WAS JUDGED WAS THE APPEALABILITY CREDIT ISSUE AND THE DENIAL OF PROOF OF MY CONSTITUTIONAL RIGHTS AND NEVER JUDGED MY LATEST APPEALS WHICH PROVIDES NEW INFORMATION ON MY ORIGINAL CASE REFERENCED ABOVE

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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STATEMENT OF JURISDICTION

Petitioner was a state prisoner, layperson at law. He has a federally Protected rights to file " Collateral Challenges" on post conviction proceeding that involves the filling of motions to vacate, set aside, or to correct an error of a State or Federal Court at any time the new evidence is made available to petitioner. In the instant case, A District Court may consider the entry of judgment or other final order under either Federal Rule of Civil Procedure 59(e) (motion to alter or amend a judgment) or Rule 60(b) (relief from judgment or order) Reconsideration is appropriate when " the district court (1) is presented with newly discovered evidence (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law, or other, highly unusual circumstances warranting consideration " School District No . IJ. Multnomah County, or V.Acands, Inc, 5 F3d 1255,1262-63 (9th cir 1993), see

CASE NO. 18-6643

SUPREME COURT OF THE UNITED STATES

DATE JANUARY 14, 2019

RE: SOBHY FAHMY AMIN ISKANDER

V.

UNITED STATES DISTRICT COURT FOR THE

CENTRAL DISTRICT OF CALIFORNIA, ET AL

JUDGMENT: THE PETITION FOR A UNIT OF CERTIORARI WAS DENIED, THE ADDITIONAL INFORMATION WHICH WAS PROVIDED TO 9TH COURT WAS NOT INCLUDED IN THE CASE THAT WAS SUBMITTED TO THE UNITED STATES SUPREME COURT REGARDING MY ORIGINAL TRIAL AND WAS NOT EVEN CALLED TO THE CONFERENCE SETUP BY U.S. SUPREME TO TESTIFY MY CASE.

COPIES OF ALL REFERENCE FORMS ARE ATTACHED

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

[X] 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.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was _____

[X] 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 N/A.

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

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

Jurisdiction is proper

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 3/9/2016. A copy of that decision appears at Exhibits attached.

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

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

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

Jurisdiction of Court---Proper

STATEMENT OF THE CASE

Petitioner was convicted by the superor Court of California, County of Riverside on four (4) counts under pen.code 288(A) Lewd act w/child under 14 on 4/14/210. A non-violent offense. Any enchancement were determined to be unwarranted. Petitioner was sentenced to 16 years.

STATEMENT OF PERTINENT FACTS

Trial Testimon Re-police Failure to Preserve Crime Scene Evidence3.

The prosecution's theory in this case is highly exaggerated. The evidence on R/T Page #4, when the mother of the child was asked "Ms Susan Rodgers" on line-12 her answer was "I dont have a ny details regarding what happened to my daughter. Further on line-25 she states "I was very protective of my daughter". Over-protective, most people joked, My kids were either left with family members, or extremely close friends

and never left with strangers or home alone. They didn't walk to or from school alone until they were in high school. Also on R/T-page # 3 line 22 Ms. Susan Rodgers stated "I don't have many details regarding what happened to my daughter". She chooses not to discuss it with me, (possibly nothing happened).Petitioner holds a Master's degree, working in high level program system for major corporations. He has been well respected with a big family of his own, and an Honorably Discharged Veteran, a charitable donor to church and community. After a long period of serendipitous financial familiarization routines with Unprecedented access to photos and transportation and computers a rancor envolved when it suddenly ended. A refusal to return to this status fostered a spiteful revenge. The case teetered on tenuous testimony uncorroborated by any evidence. Nevertheless, petitioner suffered the conviction. Petitioner is over 80- years old, Diminished physical condition, half blind in both eyes, is remorseful, and Reduced risk for future violence. Petitioner diligently seek reconciliation with everyone Affected in this matter.

REASONS FOR GRANTING THE WRIT

ARGUMENT SUMMARY

The following factors were all present in T case.

1. The police failure to preserve crime scene evidence, and without giving defense An opportunity to test it, and other physical evidence which could have exonerated Petitioner.
2. Any Evidence in question consisted of an lewd act w/child that could have easily And definitively subjected to DNA testing had it been preserved.
3. The failure to collect the evidence was at the least the product of negligence By the police.
4. The evidence which was not collected was "material" to the defense in that In that absence deprived the defense of the ability to corroborate petitioner's Testimony as to necessary elements of his defense.
5. Once the crime scene had been released without sufficient evidence, it was Impossible for the defense to obtain the substitute evidence.

6. The strength of the prosecution's case was impaired by major controdictions in the testimony of witness, by inconsistencies, and by lack of credible motive.

7. Violation of the constitution, laws and treaties of United States

8. Violation of Liberty Interest, Due Precess, and Equal Protection of laws.

9. Petitioner sentenced under p.c.288(a) non-violent, and Not under p.c.288 (b) Subsection (c) of 667.5 of the penal code.

10. Proposition 57 is complicating and contradiction, CDCR CAN NOT substitute its judgement for what it wishes the drafters of propsition 57 had said, nor may CDCR department regulations override a clear directive in the constitution. Accordingly, CDCR's current regulations must be set aside.

11. A Discrict Court must re-consider the entry of judgement or other final order under either Federal Rules of Civil Procedure 59(e) (motion to alter or amend judgement) or Rule 60(b) (relief from judgement or order).

12. Not withstanding all of the above factors, based on court's decision, Petitioner's due process claim ariasing from the police's destruction of evidence material to defense was fore-closed, because of the defenses inability to demonstrate "bad-faith" on part of the police. Petitioner maintains that requiring a showing of bad faith as a pre-condition to a due process challenges, regardless of how negligent the actions of the court system or how material their omissions may have been--- should be reconsidered and replaced by a multi-factor balancing test. Petitioner respectufily maintains that it is time for this court to re-examine the rules and re-place it with a multi-factor, balancing test that is far more consistent with contemporary science, sound public policy, and fundamental fairness.

13. In Brady V Maryland, 373 US 83 (1963) the court held that, irrespective of the good or bad faith of the court where the

Evidence is material factor to deny, the suppression of such Evidence violates due process. see in United States V Augurs, 427 US 97 (1976), the court held that the duty to provide Material evidence to the defense is so basic that it exists, even in absence of a specific defense request.

14. Requiring a defendant to prove bad faith in Judicial system, places a virtually impossible burden on defendant, which will necessarily result in incorrect person being denied the constitute institutional right to present a defense.

15. Factors relating to extent of prejudice to defendant, including (a) importance of the facts in establishing the elements pre-sentenced for relief, (b) the secondary or substitute evidences probative value and reliability, (c) the probable weight of the factual inferences or proof, and (d) the effect of the absence of the evidence would likely have on judiciary system, such as unfounded speculation or bias.

16. Significantly, adoption of such a flexible approach would still allow for bad fith to be fully factored into the analysis. however , bad faith would be one of many factors to be considered not the sole and determinative factor.---

(a) It will allow for a test fixable enough to be adopted on a nationwide basis, thus eliminating the wide variances in due process, based solely on the state in which a defendant happened to be prosecuted.

(b) A balancing test would eliminate the inherent unfairness in forcing a potentially innocent defendant to prove bad faith as to evidence exclusively controlled and handled by attorney general of united states while allowing for more felxiable remedy than dismissal of those cases before defendant could prove bad faith.

(c) The cost to prosecute in particular and to society in general would be reduced when the justice system protect innocent inmates from due process violation by state and federal and grant more Habeas relief.

THE TRIAL CASE

Here, on the August 20, 2010 , at the Petitioner's probation and sentence hearing, he lawyer Ed Welbourn did not presented any statements of mitigation and aggravation. Furthermore, the court stated petitioner was eligible for probation and asked counsel for the evaluations pursuant to Penal Codes: 288.1 and 1203. 03. The court alsostated that it did not received any qualified Psychiatric or psychological evaluations this actions predicate ineffective assistance of counsel. By excluding highly relevant and necessary defense to proper Judge.

V. Washington(1984) 466 U.S. 668; Crane v. Kentucky (1986) 476 U.S. 683, 690. Because Welbourn never submitted Iskander to the above probation requirements the court denied Iskander probation.

The prosecution's witness Susan Roger's testimony stating she did not have any details regarding what happened with her daughter because she did not wanted to talk about it. Further Elizabet P. 's letter did not mentioned any allegations of physical violence or force in regards to memories and events sexual misconduct by petitioner, even though she was 17 years old.

Petitioner was illegally sentenced to 12 years in state prison pursuant to Penal Code 288(a) times 4 counts of 288 (a) . However in year 2015 the Riverside County Superior Court corrected petitioner's abstract of judgment but denied / refused to deduct the 4 years off his sentence of 12 years. (see statement of the case at case no. U.S.D.C.ED-CV-18-2288-SJO(MRM).

Returning now to the district court's order denying a COA to demos-trate how the court erred, it becomes immediately apparent that the lower court fundamentally misinterpreted Slack by finding that all of the claims failed the constitutional component test, even though each one facially alleged the denial of a federal constitutional right.

In the first place, the court does not even acknowledge -let alone apply - the " facial allegation" test mandated by Lambright, Petrocelli, and Valerio.

Rather, the court ignores those holdings entirely, puporting to rely solely on Slack. However, the Slack court " did not attempt to determine whether

Slack, supra, at 1604. Hence, the district court relied solely on a case which did not address the mechanics of applying the constitutional component test (See doc.7 at page 4): 28 U.S.C. 2244(b); Burton, 549 U.S at 156; Brown, 889 F.3d at 667; Prince, 733 F. App'x at 384. While ignoring the 4 cases from this court, directly in point, which specify exactly what to do: namely to "take a quick look" to see if the petition facially alleges, the violation of a constitutional right.

Moreover, the district court's analysis itself clearly violates the Lambright-Petrocelli-Valerio rule by failing to consider what the petition facially alleges, by failing to take the allegations in the petitions true, and by focusing instead on contrary evidence that, in the district court's view, undermines the claims on the merits. Specifically, the court denies claim I: Police failure to preserve the crime scene evidence without giving defense an opportunity to test it, and other physical evidence which could have exonerated petitioner. In violation of Brady V. Maryland, 273 U.S. 83(1963). **I** Claim **II**: THE STRENGTH OF THE PROSECUTION'S CASE was impaired by major contradictions at trail in the testimony of the witness, by inconsistencies, and lack of credible motive. **III**: INEFFECTIVE ASSITANCE OF COUNSEL by failing to present statements of mitigation and Agravation and failing to submit psychological and psychiatric evaluations qualified. **IV**: Petitioner was illegally sentenced to 18 years including 6 years Concordant, pursuant to PC. 288 (a) X 4 counts, the sentencing court refused to deduct 4 years off his 18 years sentance. **V.** PETITIONER'S CHARGE OF 288 (a) is not defined as violent pursuant to PC 290, and 667.5 He was erroneously sentenced under PC 3058 and PC 290. **VII**: THE DISTRICT COURT MUST CONSIDER the judgment the entry of Judgement pursuant to the final judgment under Federal Rules of Civil Procedure, Rule 59(e), and Rule 60 (b). **VIII**: UNDER THE NEW REVISED proposition 57, PETITIONER alleges he was discriminated because CDCR refused to treat him by not giving him 50% credits on his Recalculation CDCR-1897-U Sheet, While CDCR gave other inmates received early release on their sentences.

The above mentioned claims further contradictions the facial allegations in petitions 1 to 4, for which the lower court should have been looking at in applying Slack's consitutional component test. In short, the distict court's anlaysis is fundamentally flawed at it's core. Applying instead of

required analysis from Lambright;Petrocelli and valero, it is abundntly clear that each of the claims alleged in all of the petition, petitioner satisfied the Slack's constitutional component test. Accordingly, and with the district court having already determined that the procedural component of slack has _____ met, a COA must issue on all VIII claims FILED IN the U.S. Central District court, as well as this court.

VI

REASONABLE JURISTS COULD DIFFER AS TO WHEATHER THE DISTRICT COURT PROPERLY DENIED APPELEANT'S PETITIONS AND MEMORANDUMS, AND ALL OF THE HABEAS CLAIMS CONTAINED THERIN.

The district court denied appellant's petitions, which realleged constitutional and additional claims. A sheld in Petrocelli V. Angelone, spurs, The Slack rule applies here, even to claims not contained in the original petition, but that are later asserted in his amended petitions. Petrocelli,Spura,248 F. 3d at 885. Furthermore, Appellant contends that even if he was charged with PC. 288(c), or 288(b), this court has ruled on Mendezx V. whitaker Cited as: 2018 DJDAR 10780 No's. 14-72730;16-70365: that 288 is niether categorically a crime involving moral turpitude nor categorically a "crime of child abuse" therefore PC. 288(a) criminalizes conduct that does not necessairly constitute lewd or lascivisious conduct to those elements of the generic federal crime for what petitioner Iskander was illegally convicted(see Bonilla V. Lynch, 840 F.3d 575, 588(9th Cir. 2016) (re-open for reasoning decisions behind legal constitutional errors).; Fregozo V. Holder, 576 F. 1030, 1034 (9th cir.2009) The Procedural rulings denying petitioner's Iskander's petitions and Memorandums or ruling denying Leave to Amend persuant to Federal Rules of Civil Procedure, Rule 15(a). A habeas petitioner may amend his pleadings once as matter of course before a responsive pleasing is serbe and may seek leave of the court to Amend his pleadings at any time during the proceeding. (see Mayle V. Felix, 545 U.S. 644 (2005); See rule 11, FED.R.of Civ.Actions 28 U.S.C. 2242: Thornton V Buttler (2009) U.S Dist. LEXIS 64820

VII,

REASONABLE JURISTS COULD DIFFER AS TO WHEATHER THE DISTRICT COURT CORRECTLY DETERMINED THAT APPELLANT HAD FAILED TO MAKE A SUFFICENT SHOWING OF "ACTUAL INNOCENSE" TO MERIT FURTHER PROCEEDINGS ON THAT ISSUE IN THE DISTRICT COURT.

Accordingly, Appellant is entitled to a COA on his claims that, even if the district court correctly determined that statutory and equitable tolling are insfficent to toll the AEDPA statue of limitations, Appellant should nevertheless be permitted to proceed with his defaulted claims because he is "actually innocent" under Schlup V. Delo, 513 U.S. 298 (1995); standard componenet. 28 U.S.C. 2244(d) (1) (d). Mcquiggin, 133 S. Ct. at 1929

The two over weight witnesses denied that they knew each other for a long time, So they can testify in court in spite they were both serving me at millys restaurant for years prior to their alleged allegations.
The first witness changed her testimony on the last day of the short time trial to get the jury on board with her lies.

If what they claim happened then why did they wait nine years to come up with false allegations, when the restaurant where they both worked closed down. They were most likely desperate for money making it seem impossible to get another job.
The investigator whom Mr. Iskander hired to bring in the main witness (the manager of the two witnesses at the time at millys resturant)
The Investigator had disqualified himself by visiting the two witnesses at millys two days before the trial date.

Also the 12 jurors were sent off to discuss and decide their verdict THREE different times because they could not come to an agreement

CONCLUSION/ PRAYER FOR JUDGEMENT

based on the foregoing, this case should be granted
To Reverse the Judgement of the Superior trail court for the county of Riverside
declare to innocent judgement
Cas No. RIF 148198 8/20/2010
due to illegal Sentence of multiple legal errors, witnesses false testimony and other main reasons in detail.
And order district attorney & CDCR to immediate implentation
which include canceling Mr. Iskandar's current parol and the registration.

I, Sobhy F. A. Iskander "Appellant/Petitioner" declares under pentalty of prejury that the above information mentioned here is true and correct under the United States and the state of California Laws. So Help Me God!.

DATE: 06 / 13 /19

Sobhy F A Iskander

SOBHY F. A. ISKANDER

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sobhy F.A. Iskander

Date: 06/ 13 /2019