

19-6102  
No.

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

ROOSEVELT MOORE — PETITIONER  
(Your Name)

vs.

DEBBIE ASUNCION (warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. DISTRICT COURT OF CALIFORNIA, CENTRAL DISTRICT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ROOSEVELT MOORE BK #5611359

(Your Name)

MENS CENTRAL JAIL

441 BAUCHET STREET

(Address)

LOS ANGELES, CAL. 90012

(City, State, Zip Code)

- N/A -

(Phone Number)

### QUESTION(S) PRESENTED

(1): WHETHER THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT SHOULD HAVE GRANTED PETITIONER A CERTIFICATE OF APPEALABILITY PURSUANT TO MILLER-EL V. COCKER, 537 U.S. 322 ON THE QUESTIONS OF HIS U.S. CONSTITUTIONAL RIGHTS? PERTAINING TO THE FOLLOWING:

(a) WHETHER THE 9TH CIR. DECISION IN MOORE V. BITER, 725 F.3d 1184 (2013) BECAME A VALID FINAL FEDERAL JUDGMENT THAT WAS A CONCLUSIVE DETERMINATION THAT WAS BINDING DURING THE SUBSEQUENT RESENTENCING AND STATE APPELLATE PROCEEDINGS INVOLVING THE SAME PARTIES, PER: ASHE V. SWENSON (1970) 397 U.S. 436, 443; U.S. V. CASTILLO-BASS, 478 F.3d 1025. ?... IF SO;

(b): WHETHER THE RESENTENCING COURT AND STATE APPELLATE COURT DECISIONS WAS CONTRARY TO CLEARLY ESTABLISH FEDERAL LAW, WHEN FAILING TO GIVE FINAL CONCLUSIVE DETERMINATION ON THE CONSTITUTIONALITY OF PETITIONER'S SENTENCE AS WAS ESTABLISHED BY THE 9TH CIR. IN MOORE, Id. WHEN FINDING THAT PETITIONER SENTENCE WAS NO LONGER UNCONSTITUTIONAL DURING THE RESENTENCING HEARING AND APPEAL PROCEEDINGS?

(c): WHETHER THIS HONORABLE COURT HAS ALREADY CONSIDERED AND REQUIRED MORE THAN KEEPING A LWOP SENTENCE FUNCTIONING ON A NONHOMICIDE JUVENILE OFFENDER, WHO IS ALREADY SERVING AN UNCONSTITUTIONAL SENTENCE UNDER GRAHAM V. FLORIDA, 360 U.S. 48 (2010) FROM THE OUTSET, SO THAT A STATE CAN MAKE A JUDGMENT (RATHER BY A PAROLE BOARD OR SPECIAL PROCEEDING, ETC.) ON THE JUVENILE'S INCORRIGIBILITY BASED ON PRISON MISBEHAVIOR OR FAILURE TO MATURE? IF SO;

(d): WHETHER THE RESENTENCING COURT DECISION TO KEEP THE ORIGINAL SENTENCE INTACT, PREDICATED ON A FUTURE PAROLE HEARING TO ASSESS PRISON MISBEHAVIOR OR FAILURE TO MATURE, WAS CONTRARY TO AND AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL

(i)

... CONT/OVER...

## QUESTIONS PRESENTED

LAW PURSUANT TO GRAHAM, Id.?

(e): WHETHER THE CALIFORNIA SUPREME COURT DECISION IN PEOPLE V. FRANKLIN (2016) 63 CAL. 4TH 261, CONCERNED FEDERAL 8TH AMENDMENT CLAIMS ARISING UNDER MILLER V. ALABAMA (2012) 567 U.S. 460? ... IF SO;

(f): WHETHER THE STATE APPELLATE COURT DECISION WAS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW PURSUANT TO WILLIAM V. BYLOR, 529 U.S. 362, 405-07; BENN V. LAMBERT, 283 F.3d 1040, 1051, WHEN UTILIZING THE WRONG FEDERAL AUTHORITY TO MOOT PETITIONERS FEDERAL 8TH AMENDMENT CLAIM UNDER THE FRANKLIN-MILLER DECISION, INSTEAD OF GRAHAM, Id.?

(g): WHETHER THE FRANKLIN DECISION CREATED TWO NEW EXCEPTIONS TO ITS MOOTNESS HOLDINGS, CONCERNING CLAIMS ARISING UNDER MILLER, Id.? ... IF SO;

(h): WHETHER PETITIONER FELL WITHIN THE FRANKLIN-MILLER EXCEPTIONS, EVEN IF HIS GRAHAM ISSUE SOMEHOW INTERTWINED OR BECAME A MILLER ISSUE? IF SO;

(i): WHETHER THE STATE APPELLATE COURT DECISION TO MOOT HIS GRAHAM, Id. ISSUE UNDER THE FRANKLIN-MILLER DECISION, CONSTITUTED AN ARBITRARY OR CAPRICIOUS DUE PROCESS VIOLATION, WHICH IS CONTRARY TO RICHMOND V. LEWIS, 506 U.S. 40 (1992); ROBINSON V. CAL-

(ii)

... CONT/OVER ...

QUESTIONS PRESENTED

1 IFORNIA, 370 U.S. 660 (1962) ?

2  
3 (i) WHETHER THE ASSISTANCE OF COUNSEL WAS INEFFECT-  
4 IVE, PURSUANT TO STRICKLAND V. WASHINGTON, (1984) 466  
5 U.S. 668, FOR FAILING TO INFORM THE COURT THAT IT  
6 MUST EXERCISE DISCRETION TO RESENTENCE PETITIONER  
7 TO A TERM OTHER THAN THE ONE HELD UNCONSTITUTIONAL  
8 UNDER GRAHAM, AND FOR FAILING TO DISCUSS ANY OF  
9 THE GRAHAM, AND TO A DEGREE MILLER, FACTOR'S, REGARDING  
10 THE SENTENCINGS OF JUVENILES, PARTICULARLY NONHOMICIDE  
11 JUVENILE OFFENDERS?  
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14 Thank you

15 Respectfully submitted

16 ROOSEVELT MOORE

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(iii)

## 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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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 F 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 CALIFORNIA SUPREME court 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.



## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 28, 2019.

☒ 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 JANUARY 24, 2017.  
A copy of that decision appears at Appendix F.

☒ A timely petition for rehearing was thereafter denied on the following date: FEBRUARY 16, 2017, and a copy of the order denying rehearing appears at Appendix E.

☐ 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

6TH AMENDMENT OF THE U.S. CONSTITUTION; "EFFECTIVE COUNSEL"

8TH AMENDMENT OF THE U.S. CONSTITUTION; "CRUEL & UNUSUAL PUNISHMENT"

14TH AMENDMENT OF THE U.S. CONSTITUTION; "DUE PROCESS RIGHT"

CALIFORNIA PENAL CODE SECTION 3051 "YOUTH OFFENDER PROTE HEARINGS"

## STATEMENT OF THE CASE

1. IN 1992, PETITIONER WAS SENTENCED TO 254 YRS, 4 MONTHS, FOR NONHOMICIDE CRIMES COMMITTED WHEN HE SIXTEEN YEARS OLD. (SEE: MOORE V. BITER, 725 F.3d 1184 (9TH CIR. 2013)).
2. ON MAY 17, 1993, ON ORIGINAL APPELLATE REVIEW, THE CALIFORNIA COURT OF APPEALS, SECOND DISTRICT, AFFIRMED THE CONVICTION AND SENTENCE. (SEE: PEOPLE V. MOORE, CASE NO: B065363). PETITIONER DID NOT SEEK REVIEW IN THE CALIFORNIA SUPREME COURT OR THE U.S. SUPREME COURT.
3. IN 2010, THIS COURT DECIDED GRAHAM V. FLORIDA, 560 U.S. 68 HOLDING THAT SENTENCING NONHOMICIDE JUVENILE OFFENDERS TO LIFE WITHOUT THE POSSIBILITY OF PAROLE FROM THE OUTSET IS UNCONSTITUTIONAL IN VIOLATION OF THE 8TH AMENDMENT.
4. ON AUGUST 7, 2013, THE 9TH CIR. U.S. COURT OF APPEALS, HELD THAT THE STATE COURT DECISION TO DENY PETITIONER RELIEF UNDER GRAHAM WAS CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW, AND THAT PETITIONER SENTENCE OF 254 YRS THAT WAS IMPOSED FROM THE OUTSET, WAS IRRECONCILABLE WITH GRAHAM'S MANDATE, AND THUS UNCONSTITUTIONAL IN VIOLATION OF THE 8TH AMENDMENT UNDER GRAHAM. (MOORE V. BITER, 725 F.3d 1184, 1194)
5. ON JULY 30, 2014, IN LIGHT OF THE 9TH CIR. OPINION AND ORDER, THE U.S. DISTRICT COURT - CENTRAL DISTRICT OF CALIFORNIA, GRANTED A CONDITIONAL WRIT, AND GAVE THE STATE OF CALIFORNIA 90 DAYS TO EITHER RESENTENCE PETITIONER IN A MANNER CONSISTENT WITH GRAHAM, OR TO RELEASE. (SEE: MOORE V. BITER, U.S. DISTRICT COURT, CASE NO: CV 11-4256 JAK (FFM)).

... CONT/OVER ...

## STATEMENT OF THE CASE

6. on OCT. 24<sup>TH</sup> 2014, A RESENTENCING HEARING WAS HELD, INSTEAD OF RESENTENCING PETITIONER, THE RESENTENCING COURT LEFT THE ORIGINAL SENTENCE UNDISTURBED AND ORDERED THE SENTENCE OF 254-YEARS TO REMAIN INTACT AND ORDERED THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR) TO CONDUCT A PAROLE HEARING FOR PETITIONER ON HIS 62<sup>ND</sup> BIRTHDAY. (SEE: ORDER ATTACHED AT APPENDIX-G)
7. on DEC. 12, 2014, PETITIONER FILED A NOTICE OF APPEAL.
8. on MAY 26, 2016, THE CAL. SUPREME COURT DECIDED PEOPLE V. FRANKLIN, (2016) 63 CAL. 4<sup>TH</sup> 261, HOLDING THAT JUVENILES "HOMICIDE" OFFENDERS WHO CHALLENGE THE CONSTITUTIONALITY OF THEIR SENTENCE UNDER MILLER, AND WHO IS ELIGIBLE FOR A PAROLE HEARING UNDER § 3051, APPEAL IS MOOT, BECAUSE THEIR SENTENCE "IS NEITHER LUMP NOR IT'S FUNCTIONAL EQUIVALENT" AND THUS GIVE RISE TO NO MILLER CLAIM. (FRANKLIN AT P. 280, QUOTING PEOPLE V. CONTRERAS 4 CAL. 5<sup>TH</sup> 349, 358-360)
9. on JAN. 24, 2017, THE STATE APPELLATE COURT HELD THAT PETITIONER'S ARGUMENTS THAT HIS SENTENCE REMAINS UNCONSTITUTIONAL UNDER GRAHAM, AND THAT HIS LAWYER WAS INEFFECTIVE, ARE MOOT, UNDER FRANKLIN. (SEE: APPELLATE OPINION AT APPENDIX-F)
10. on FEB. 16, 2017, PETITIONER'S PETITION FOR REHEARING WAS DENIED. (SEE: DENIAL AT APPENDIX-E)
11. on JUNE 5, 2017, THE CALIFORNIA SUPREME COURT DENIED

REVIEW. (SEE: APPENDIX-D).

12. ON AUGUST 31, 2018, THE U.S. MAGISTRATE JUDGE FILE A REPORT AND RECOMMENDED THAT THE RER BE ACCEPTED, AND THAT THE HABEAS PETITION BE DISMISSED WITH PREJUDICE. (SEE: APPENDIX-C)

13. ON OCTOBER 15, 2018, THE U.S. DISTRICT JUDGE ISSUED AN ORDER ACCEPTING THE MAGISTRATE'S RER, AND DENIED THE PETITION. AND DENIED A CERTIFICATE OF APPEALABILITY. (SEE: APPENDIX-B)

14. ON JUNE 28, 2019, THE U.S. COURT OF APPEALS DENIED PETITIONER'S REQUEST FOR CERTIFICATE OF APPEALABILITY. (SEE: APPENDIX-A).

PETITIONER NOW PROPERLY SUBMIT TO THIS HONORABLE COURT, FOR A PETITION FOR CERTIORARI.

### REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT CERTIORARI, BECAUSE THE U.S. COURT OF APPEALS HAS ENTERED A DECISION TO DENY PETITIONER A C.O.A., AND SUCH DENIAL CONFLICTS WITH THIS COURT'S STANDARD ON WHEN THE GRANTING OF A C.O.A. IS APPROPRIATE, PRESENT TO MILLER-EL et al.... BASED ON THE CONSTITUTIONAL QUESTIONS CONTAINED HEREIN, PETITIONER HAS AT LEAST MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT. PETITIONER HAS MET THE BURDEN OF ESTABLISHING THAT JURISTS OF REASON COULD DISAGREE WITH THE DISTRICT COURT RESOLUTION OF HIS CONSTITUTIONAL CLAIMS ON THAT JURISTS COULD CONCLUDE THE ISSUES PRESENTED ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER. (SEE REQUEST FOR C.O.A. ATTACHED AT APPENDIX-H).

FURTHERMORE, THE QUESTIONS PRESENTED ESTABLISH THAT THE STATE COURT DECISIONS RELATIVE TO Grattam, MATTER'S ARE CONTINUOUSLY IN CONFLICT WITH THIS COURT'S Grattam's DECISION.

LIKewise, A IMPORTANT QUESTION OF FEDERAL LAW NEEDS TO BE SETTLED BY THIS COURT. THAT QUESTION IS:

"WHETHER A NONHOMICIDE JUVENILE OFFENDER WHO HAS ALREADY BEEN SERVING AN UNCONSTITUTIONAL SENTENCE UNDER Grattam FROM THE OUTSET, CAN REMAIN UNDISTURBED AND LEFT INTACT, SO THAT A STATE CAN ONCE AGAIN MAKE A

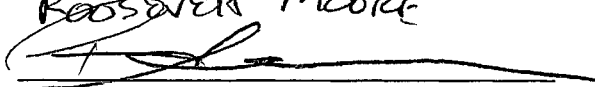
Judgment concerning incorrigibility, based on prison misbehavior or failure to mature at a future parole hearing"? (see question #4, questions presented)

THIS QUESTION IS EXTREMELY IMPORTANT, BECAUSE IF LEFT UNSETTLED BY THIS COURT, IT WOULD ALLOW A STATE TO MAKE A JUDGMENT THAT A NONHOMICIDE JUVENILE OFFENDER IS INCORRIGIBLE BASED ON PRISON MISBEHAVIOR OR FAILURE TO MATURE, WHEN SUCH A JUDGMENT HAS ALREADY BEEN MADE BY THE IMPOSITION OF THE LIFETIME SENTENCE THAT WAS IMPOSED FROM THE OUTSET. THUS, THE PRISON MISBEHAVIOR THAT IS BEING USED TO ESTABLISH INCORRIGIBILITY IS BASED ON A LACK OF MATURITY THAT IS REINFORCED BY THE PRISON TERM.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Roosevelt Moore  


Date: Sept. 30, 2019