

No. _____

19-6407

IN THE
SUPREME COURT OF THE UNITED STATES

DERRAN SMILEY

(Your Name)

PETITIONER

FILED

OCT 11 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

FOR THE PEOPLE, FOR THE STATE

OF CALIFORNIA, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS, STATE OF CALIFORNIA

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

PETITION FOR WRIT OF CERTIORARI

DERRAN SMILEY

(Your Name)

23500 KASSON ROAD

(Address)

TRACY, CA 95304

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1.) APPELLANT OFFENSES WERE COMMITTED IN 2004, BUT, IN 2006 PENAL CODE 667.6(d) WAS AMENDED AND INCREASED THE PUNISHMENT WHILE CHANGING THE VIOLATING SECTION THEREIN. UNDER THIS NEW LAW AS AMENDED 2006, USED AGAINST APPELLANT SMILEY, DID THIS CHARGE AND SENTENCE VIOLATE THE "EX POST FACTO CLAUSE" OF THE UNITED STATES CONSTITUTION FOR WHICH CHANGED THE VIOLATION SECTION THEREIN 667.6(d) FROM PC 220 TO 261 THAT WAS THE LEGAL CONSEQUENCES OF ACTS AND INCREASED THE PUNISHMENT BEFORE ITS EFFECTIVE DATE?
- 2.) DID THE PROSECUTOR OF THE STATE OF CALIFORNIA AND THE STATE OFFICIAL'S OFFICE OF, OAKLAND, ALAMEDA COUNTY, COMMIT FRAUD AGAINST THE STATE COURT AND THE DEFENDANT WHEN THE STATE OFFICIAL AND ITS OFFICE CHARGED THE DEFENDANT WITHIN THE CHARGING INFORMATION AND PROSECUTOR'S STATEMENT OF PROBABLE CAUSE, THAT SAID DEFENDANT DID VIOLATE PENAL CODE SECTION 667.6(d), DUE TO A VIOLATION OF PC 261 CA) () WHICH WAS NOT THE LAW THAT EXISTED ON THE DATE OF THE OFFENSE ^{see} (FORM LAW OF 667.6(d)), BECAUSE THE LAW THAT EXISTED ON THE DATE OF THE OFFENSE, A PERSON WOULD HAVE TO BE CHARGED WITH VIOLATING PEN CODE SECTION 220 TO QUALIFY UNDER THE THEN EXISTED FORMER LAW, BUT INSTEAD CHARGED UNDER THE NEW LAW AS AMENDED IN 667.6(d) ALMOST TWO YEARS BEFORE ITS EFFECTIVE DATE OF NOVEMBER 8, 2006 FOR WHICH DID INCREASE THE PUNISHMENT FOR THE OFFENSE?
- 3.) ^{WAS} DEFENDANT'S TRIAL AND APPEAL ATTORNEY INEFFECTIVE WHEN BOTH FAILED TO RECOGNIZE THE EX POST FACTO VIOLATION WHEN A REASONABLE LAWYER WOULD INVESTIGATE THE SENTENCING SCHEMES THAT WAS IN EFFECT ON THE DATE OF THE COMMITTED OFFENSES TO PROTECT THE DEFENDANT FROM ANY DISADVANTAGES THAT COULD SERIOUSLY VIOLATE HIS CONSTITUTIONAL RIGHTS?

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:

RELATED CASES

DERRAN SMILEY V. STATE OF CAL, NO. C149560, ALAMEDA COUNTY SUPER. CT OF OAKLAND CAL. JUDGMENT ENTERED MAY. 12, 2006

DERRAN SMILEY V. STATE OF CAL, NO. A113874, COURT OF APPEAL, STATE OF CALIFORNIA. JUDGMENT ENTERED SEPT. 19, 2007

DERRAN SMILEY V. STATE OF CAL, ON HABEAS CORPUS; PETITION FOR REVIEW IN CALIFORNIA SUPREME COURT, NO 256466. JUDGMENT ENTERED JULY 31, 2019

DERRAN SMILEY V. STATE OF CAL, ON MOTION FOR MODIFIED SENTENCE, ALAMEDA COUNTY SUPER. CT NO. 149560. JUDGMENT ENTERED MARCH 17, 2015.

DERRAN SMILEY V. STATE OF CAL, NO. A144914, COURT OF APPEAL, STATE OF CALIFORNIA, MEMORANDUM OPINION, JUDGMENT ENTERED 8-31-15

DERRAN SMILEY V. STATE OF CAL, ON PETITION FOR REVIEW, IN CAL SUPREME CT. NO S229631. JUDGMENT ENTERED NOV. 10, 2015.

DERRAN SMILEY V. STATE OF CAL, WARDEN, NO. CV. 15-5507, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. JUDGMENT ENTERED SEPT. 27, 2016

DERRAN SMICEY V. WILLIAM MUNIZ, WARDEN, NO. 16-17002, U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, JUDGMENT ENTERED AUG. 24, 2018

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>MCNALLY V. U.S.</u> , 483 U.S. 350, 97 L.Ed.2d 292, 107 S.Ct. 2875 (1987)	
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<u>CALDER V. BULL. SUPRA</u> , 386, 1 L. Ed. 648 (1788)	
<u>MILLER V. FLORIDA</u> , 482 U.S. 423, 429-30, 107 S.Ct. 2446, 2450-51, 96 L.Ed.2d 351 (1987)	
<u>KAISER, INFRA</u> N.6 494 U.S. AT 855, 108 L. Ed. 2d 842, 110 S.Ct. 1070	

STATUTES AND RULES

P.C. 209(b)(1)
 P.C. 261(a)(2)
 P.C. 654
 P.C. 667.6(d) (FORMER LAW)
 P.C. 667.61(d)(2), (e)(1)
 P.C. 667.61(g)

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 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 APPEAL STATE 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 _____.

☐ 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 JULY 31, 2019.
A copy of that decision appears at Appendix C.

☐ 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

UNITED STATES CONSTITUTION. ART. I, § 9, CL. 3, ART. I, § 10, CL.

ARTICLE III OF THE CONSTITUTION

U.S.C. § 1251-1258

28 U.S.C. 1257

FORMER LAW OF CAL. PEN. CODE OF 667.6 (d) (EXISTED 2004)

NEW LAW AMENDED OF CAL. PEN. CODE 667.6 (d) (AMENDED 2006)

FORMER LAW. 667.6 (d) PROVIDED:

A FULL, SEPARATE, AND CONSECUTIVE TERM SHALL BE SERVED FOR EACH VIOLATION OF SECTION 220, OTHER THAN AN ASSAULT WITH INTENT TO COMMIT MAYHAM PROVIDED THAT THE PERSON HAS BEEN CONVICTED PREVIOUSLY OF VIOLATING SECTION 220, (ADDED BY STATE SENATE IN 1979; AMENDED 2002 BY SENATE BILL 1798).

NEW LAW OF 667.6 (d) PROVIDED:

A FULL, SEPARATE, AND CONSECUTIVE TERM SHALL BE SERVED FOR EACH VIOLATION OF AN OFFENSE SPECIFIED IN SUBDIVISION (e) IF THE CRIMES INVOLVE SEPARATE VICTIMS OR INVOLVED THE SAME VICTIM ON SEPARATE OCCASIONS. (STATE SENATE. 2006, C 337 SENATE BILL. 1128, 32 EFFECTIVE NOV. 8, 2006.)

STATEMENT OF THE CASE

BY INFORMATION FILED ON MARCH 28, 2005, AND AMENDED ON FEBRUARY 21, 2006, THE ALAMEDA COUNTY DISTRICT ATTORNEY CHARGED APPELLANT WITH KIDNAPPING TO COMMIT RAPE (PEN. CODE, 209(b)(1), COUNT ONE) AND RAPE (§ 261(a)(2), COUNTS TWO THROUGH SIX), WITH ALLEGATIONS AS TO THE RAPE COUNTS THAT APPELLANT KIDNAPPED THE VICTIM AND THAT THE MOVEMENT SUBSTANTIALLY INCREASED THE RISK OF HARM TO THE VICTIM OVER AND ABOVE THE LEVEL OF RISK INHERENT IN THE COMMISSION OF THE OFFENSE (§ 667.61(c)(2) AND THAT THE RAPES WERE COMMITTED AGAINST THE SAME VICTIM ON SEPARATE OCCASIONS (§ 667.6 (c), (d)). (1 CT 178-186, 2 CT 270-279.)

ON MARCH 16, 2006, THE JURY FOUND APPELLANT GUILTY ON ALL COUNTS AND FOUND THE SPECIAL ALLEGATIONS TO BE TRUE. (2 CT 316-330; 7 RT 1560-1566.) ON MAY 12, 2006, THE TRIAL COURT SENTENCED APPELLANT TO 25 YEARS TO LIFE CONSECUTIVE TO A DETERMINATE TERM OF 24 YEARS. (2 CT 425-431; 7 RT 1580-1583.)

REASONS FOR GRANTING THE PETITION

Pg. 5.

ELEMENTARY CONSIDERATIONS OF FAIRNESS DICTATES THAT INDIVIDUALS SHOULD HAVE THE OPPORTUNITY TO KNOW WHAT THE LAW IS AND TO CONFORM THEIR CONDUCT ACCORDINGLY! SETTLED EXPECTATIONS SHOULD NOT BE LIGHTLY DISRUPTED. FOR THAT REASON, THE PRINCIPLE THAT THE LEGAL EFFECT OF CONDUCT SHOULD BE ASSESSED UNDER THE LAW THAT EXISTED WHEN THE LAW TOOK PLACE HAS TIMELESS AND UNIVERSAL APPEAL, KAISER, INFRA A.6 494 U.S. AT 855, 108 L. Ed. 2d 842, 110 S. CT 1070 (SCALIA J. CONCURRING).

THE LATIN PHRASE "EX POST FACTO" LITERALLY ENCOMPASSES ANY LAW PASSED AFTER THE FACT AND HAS BEEN LONG RECOGNIZED BY THE UNITED STATES SUPREME COURT, THAT THE CONSTITUTIONAL PROHIBITION ON THE EX POST FACTO LAWS APPLIES TO PENAL STATUTES WHICH DISADVANTAGE THE OFFENDER EFFECTIVE BY THEM. SEE CALDER V. BULL, 3 DALL 386, 390-92 1 L. ED 648 (1788) (OPINION OF CHASE. J.) Id., AT 396, 1 L. ED 648 (OPINION OF PATTERSON, J.) Id., AT 400, 1 L. ED. 648 (OPINION OF MEDALL, J.)

ARTICLE ONE OF THE CONSTITUTION PROVIDES THAT NEITHER CONGRESS NOR ANY STATE SHALL PASS ANY EX POST FACTO LAW. U.S. CONST. ART. I, § 9 CL. 3, ART. I, § 10, CL. 1. FOR A LAW TO BE CONSIDERED EX POST FACTO IT MUST BE RETROSPECTIVE, THAT IS, IT MUST APPLY TO EVENTS OCCURRING BEFORE ITS ENACTMENT, AND MUST DISADVANTAGE THE OFFENDER EFFECTIVE BY THEM.. THE UNITED STATES SUPREME COURT FIRST ANALYZED THE CONSTITUTION'S EX POST FACTO CLAUSE IN CALDER V. BULL SUPRA, 386, 1 L. ED 648 (1788). THERE JUSTICE CHASE OF THE COURT STATED IN RELEVANT PART:

I WILL STATE WHAT LAWS I CONSIDER EX POST FACTO LAWS, WITHIN THE WORDS AND THE INTENT OF THE PROHIBITION. (1) EVERY LAW THAT MAKES AN ACTION DONE BEFORE THE PASSING OF THE LAW, AND WHICH WAS INNOCENT WHEN DONE, CRIMINAL, AND PUNISHES SUCH ACTION. (2) EVERY LAW THAT AGGRAVATES A CRIME, OR MAKES IT GREATER THEN IT WAS, WHEN COMMITTED. (3) EVERY LAW THAT CHANGES THE PUNISHMENT, THEN THE LAW ANNEXED TO THE CRIME, WHEN COMMITTED. (4) EVERY LAW THAT ALTERS THE LEGAL RULES OF EVIDENCE, AND RECEIVE LESS, OR DIFFERENT TESTIMONY, THAN THE LAW REQUIRED AT THE TIME OF THE COMMISSION OF THE OFFENSE, IN ORDER TO CONVICT THE OFFENDER. Id. AT 390. (EMPHASIS ADDED).

MORESO, JUSTICE CHASE FORMULATION REMAINS THE CORE OF THE EX POST FACTO PROHIBITION. SEE MILLER V. FLORIDA, 482 U.S. 423, 429-30, 107 S. CT. 2446, 2450

IN ORDER TO PROTECT THE WELL EXSTABISHED PRINCIPLE OF THE EX POST FACTO PROHIBITION WITHIN THE U.S. CONSTITUTIONAL LAW, PROVIDED WITH LONG RECOGNIZED U.S SUPREME COURT OPINION AS SHOWN ABOVE IS A REASONABLE REASON FOR GRANTING THE PETITION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Derran Smiley

Date: 10-10-19