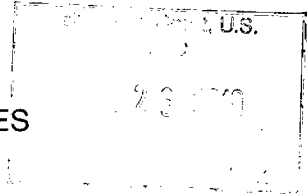


19-6754

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Cesareo Vizcarra Medina, — PETITIONER
(Your Name)

vs.
The People Of The State Of
California,
_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court Of Appeal Of The State Of California, Second Appellate District
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cesareo Medina, CDCR#: BF 7636

(Your Name)

California State Prison Corcoran (CSP-Cor.)
P.O. Box 8800

(Address)

Corcoran, CA 93212

(City, State, Zip Code)

(Appellant In Propria Persona)

N/A

(Phone Number)

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☐ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☐ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☐ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____, 20____

(Signature)

QUESTION(S) PRESENTED

V. Trial Counsel was ineffective for failing to object to the prosecutorial misconduct and violated defendants' rights to Counsel under the 6th Amendment of U.S. Constitution.

Strickland v. Washington, 466 U.S. 668 (1984); Williams v. Taylor, 529 U.S. 362 (2000).

VI. The Defendant's' claims should be considered as the results of ineffective assistance of counsel in violation of his right to Counsel and the Due Process of Law, 5th and 6th Amendments of U.S. Constitution. U.S. v. Cronin, 466 U.S. 648 (1980).

VII. The prosecution failed to pled as to all of the counts one through four as well as five and six any Special Circumstances and violated Defendants' Federal Constitutional Rights to be informed of the nature of the accusations and charges against him. under the 5th and 6th Amendments of U.S. Constitution. Cole v. Arkansas (1948, 333 U.S. 196, 201.

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:

Pursuant to Supreme Court Rule 14 1(b), Petitioner Cesareo Vizcarra Medina, certifies that the names of all, parties to this action/ proceeding appear in the caption of this Petition For Writ of Certiorari.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-5
REASONS FOR GRANTING THE WRIT	6-10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A	Supreme Court of The State of California, Case No. S252618/ Court of Appeal of The State of California, Second Appellate District, Division Five Remittitur, dated January 07, 2019
APPENDIX B	Forensic Medical Report Sexual Assault Examination
APPENDIX C	Sentencing Transcript, Superior Court of the State of California For the County of Los Angeles, Case No. VA 140440, dated January 12, 2018
APPENDIX D	Defendant's Daughter Testimony Under Penalty of Perjury.
APPENDIX E	Defendant's Declaration Under Penalty of Perjury.
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Jackson v. Virginia, 443 U.S. 307 (1979)	.i
In re Winship, 397 U.S. 358 (1970)	.i
U.S. v. Rushell, 411 U.S. 423 (1973)	.i
U.S. v. Young, 470 U.S. 1 (1985)	i
Strickland v. Washington, 466 U.S. 668 (1984)	.i
Williams v. Taylor, 529 U.S. 362 (2000)	i
U.S. v. Cronin, 466 U.S. 648 (1980)	i
Cole v. Arkansas, 333 U.S. 196, 201 (1948)	i
People v. Flood (1988) 18 Cal. 4th 470, 523	9
Sullivan v. Louisiana (1993) 508 U.S. 275, 277-278	10
In re Winship (1970) 397 U.S. 358, 364	10
Sandstrom v. Montana (1978) 442 U.S. 510, 520	10
Tot v. U.S. (1943) 319 U.S. 463, 466	10

STATUTES AND RULES

Please see page 4

Please see, Appendix B at page 7, hereby incorporated by reference

OTHER

Cal. Const., art. I, § 15, see, Appendix B at	... 26, 36
U.S. Const., 5th Amend.	... i, 3, 6, 8, 9
U.S. Const., 6th Amend...	... i, 3, 6, 8, 9
U.S. Const., 14th Amend...	... i, 3, 6, 8, 9

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 Court of Appeals, supra, 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 Jan 02, 2019.
A copy of that decision appears at Appendix A.

☐ 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

The following Constitutional provisions and Statutes are involved in this case:

United States Constitution, Amendment V [1791]

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...nor shall be compelled in any criminal case to be a witnesses against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment VI [1791]

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

United States Constitution, Amendment XIV [1868]

"Section 1:" All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Declaratory Judgment Act, 28 U.S.C. § 2201(a)

In a case of actual controversy within its jurisdiction,...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

STATEMENT OF THE CASE

A second amended information charged appellant Cesareo Medina as follows:

- Count One: First Degree Burglary, person present (§ 459, Cal. P.C.)
- Count Two: Forcible Oral Copulation (§ 288a, subd.(c)(2)(A))
- Count Three: Sexual Penetration by Foreign Object/Minor Victim Over 14 or under 18 years of age (§ 289, subd.(a)(1)(C))
- Count Four: Attempted Forceable Rape (§§ 664/261, subd. (a)(2))
- Count Five: Forceable Oral Copulation (§288a, subd. (c)(2)(A))
- Count Six: Attempted Forcible Rape (§§ 664/261, Subd.(a)(2))

(1CT 72-79.)

It was alleged on count five that the victim was under the age of 18 and the offense was committed during a burglary (§ 667.61, subd.(1) & (e)). (1 CT 78.) It was alleged on count two three and five that the victim was under 18 and the offense was committed during a first-degree burglary with the intent to commit rape (§ 667.61, subd. (1) & (d)). (Ibid.) It was alleged as to all counts under section 667.5, subd (b) that Medina had served a prior prison term for a conviction for transporting/ selling/ furnishing a controlled substance (Health & Saf. Code, § 11379). (1CT 80.)

A jury convicted Medina on all charges. (1CT 154-159.) On count two through six, the jury found true that Medina committed the offense during a first-degree burglary and that the victim was between 14 and 18 years old. (2CT 155-159, 162-164.)

Medina was sentenced on January 12, 2018. (1CT 202.) On counts two, three and five, he was ordered to serve "life without the possibility of parole". (1CT 209-210.) On count one, he was ordered to serve the midterm of four years in prison, but the sentence was stayed pursuant to section 654. (1CT 209) He was ordered to serve the midterm of 54 months on count four and the high term of 66 months on count six, with the sentence on count six

to run concurrent to the sentence on count four. (1CF 207-208, 210-211.)

He was ordered to serve the determinate sentence in count four and then serve the indeterminate sentences in count two, three and five. (1CF 206.) He was also ordered to pay fines and fees. (1CF 208-210.)

A notice of appeal was timely filed on January 12, 2018. (1CF 217.)

According to information and belief, the court of appeal, issued the remittitur for my appeal, which is the finalization of the Court of Appeal's Opinion. See, Appendix A, attached hereto. In addition, because the Court of Appeals decided to send my case back to the trial court to reverse my conviction on count four or six, according to appellate counsel, which until this day has not forward or provide me with a written court of appeals' opinion, I am not aware or know the status or decision by the Court of Appeals or the Trial Court on those matters. See, Appendix H, attached hereto.

On Feb. 14th, 2019, I filed a Motion Requesting Trial Court Transcripts For This Appeal. See, Appendix I, attached hereto. No reply or answer from the court has been received yet. In addition I write a letter to my appellate counsel requesting to be provided with my Transcripts and the Opinion of the Court of Appeals without any success neither.

///

///

///

///

///

REASONS FOR GRANTING THE PETITION

I.

THE QUESTIONS PRESENTED ARE OF EXTRAORDINARY
NATIONAL IMPORTANCE THAT THE LOWER COURT WILL NOT FURTHER
ANALYZE

Because the State of California, Court of Appeals has exclusive jurisdiction over appeals from the district court in which the conviction was made, its decision on the merits will required juries on demand in a criminal case, which involve (Prosecutor Misconduct, Misconstruction Of Evidence, Ineffective Assistance of Counsel and a Wrongful Imprisonment), validity in trial nationwide. This case therefore presents " a matter of special importance to the entire nation."

Now more than ever this Honorable Court should take the opportunity to address Defendants' Federal Constitutional Rights afforded to a Defendant during a State Court Proceeding under the 5th, 6th and 14th Amendments of U.S. Constitution, supra.

Unless corrected by this Court, the Court of Appeal's ruling, and the Superior Court of the State of California For The County of Los Angeles miscarriage of justice and Judicial Bias will impose a significant burden and a human right violation on the defendant in this matter.

UNDISPUTED EVIDENCE:

- a) Forensic Evidence: Its undisputed that Ms. Daisy testify against the Defendant in this matter in a court of law, accusing him of attacking her, and numerous forceble sex offenses and a first degree burglary. See, Appendix C-E, attached hereto respectively.
- b) Forensic Evidence: Its undisputed that a DNA (Saliva) of the defendant in this matter was found in Ms. Daisy, a 17 years old girl, on May 4, 2015, See, Appendix D.
- c) Its undisputed that a Physical Examination was conducted by Nurse Jennifer Rivera of Ms. Daisy on May 04, 2015.(3RT 1211), See, Appendix A and D respectively.

- d) Its undisputed that such physical examination by Nurse Rivera reveals "no" bodily injuries (3RT 1211, 1214, 1220.) Rivera acknowledged, that the results were also consistent with someone who had a consensual encounter. (3RT 1224.) See, Appendix B, attached hereto at page 17.
- e) Its undisputed that a prior interaction between Daisy and Defendant Medina exist prior to the May 04, 2017 allegations. Daisy testified that Mr. Medina gave her a ride to school at least twice, once when Laura's daughter was present and once, when it was raining, Laura's daughter was not present. (2RT 345.) Daisy told Detective Toone, however, that Medina "had given her a ride to school a few times while taking his daughter Jocelyn to" school, but Daisy never mentioned to Detective Toone that she had ever been in the car by herself with Medina. (2RT 972.) Daisy testified also that when Medina lived in the front house, "[h]e would try and make short conversation with [her]." (2RT 371.) He always made her feel "uncomfortable" because of the way he looked at her. (Ibid.) She never voluntarily spend time with him, had any sort or relationship with him, or had a crush on him. (2RT 372.) At no point had she ever been alone with him in the front house. (2RT 373.)
- f) Laura, testifying for the defense, stated that Daisy asked her for a ride to school on approximately ten different occasions. (3RT 1248.) Laura also saw Daisy ask Medina for a ride, when none of the other children were present, approximately 15 times. (3RT 1249.) Laura specifically recalled a rainy day when she saw Medina arriving to their house with Daisy in his vehicle. (3RT 1249.) Laura also recalled seeing Daisy in the front house. (3RT 1250.)
- g) Rigoberto Arredondo, testifying for the defense also, and stated that in March of 2015, two months prior to the May. 04, 2015 incident, he observed Daisy and Medina together in the front house watching the movie Forrest Gump around 9:00 p.m. (3RT 1265-1266.) Nobody else was home. (3RT 1266.) Daisy denied watching Forrest Gump in the front house with Medina and denied that Rigoberto walked in on them as they were watching. (2RT 605.) She maintained that she had never been in the front house. (2RT 606.)
- h) At first Defendant Medina denied any close relationship with Ms. Daisy during the interview conducted by Detective Toone on Dec. 16, 2015. (3RT 1277.) Medina indicated that his interactions with Ms. Daisy were limited to occasionally driving her to or from school and the occasional "hi" in passing. (1CT 120-124.) He never went inside the converted garage where Daisy lived and did not remember Daisy ever being invited into the front house. (1CT 123-124.)
- i) During trial defense counsel correct the records and defense theory of the case was that this was a consensual encounter in which "two people ...are hooking up and neither one wants the other side to know. One doesn't want his wife to know and the other one doesn't want her family to know." (3RT 1528.) As Medina exercised his right not to testify, this entire case depended on the credibility of Daisy in describing her encounter with Medina.

- j) Daisy's credibility was undermined by several pieces of evidence, including her own testimony, which appears to be inconsistent. Please See. Appendix B at Appellate Counsel Opening Brief hereby incorporated by reference (Id. at pp. 33-36.)

DISPUTED EVIDENCE:

- k) Ms. Daisy's testimony was false and fabricated, because of resentments towards Mr. Medina who inform her in the morning of May 04, 2015, that their relationship was finish/ done. See, Appendix F and G, hereby incorporated by reference.
- l) There is insufficient evidence to supports Defendants; entire convictions, Defendant rest on Appellate Counsel Opening Brief arguments and the testimony of vital witnesses and Defendant's Declaration Under penalty of perjury. See, Appendixs B, F and G, attached hereto. Hereby incorporated by reference.
- m) Prosecutor/ State violated Defendant's 5th, 6th and 14th Amendments of U.S. Constitution, when they obtained an invalid conviction from a jury, without proven every element of each crime alleged beyond a reasonable doubt, as required by law. See, Appendix B at pp. 18-20; and Appendix F hereby incorporated by reference.
- n) Defense Counsel ineffective assistance of counsel is established throughout his acts and omissions to act, pleading, lack of investigation and poor defense on Defendants behalf. Defense Counsel fail to object to prosecutorial misconduct, sentencing and to call witnesses on defendants behalf resulting in prejudice to the defendant in this matter.. See, Appndix B, F and G, hereby incorporated by reference.

///

///

///

///

II.

THE COURT OF APPEALS FOR THE STATE OF CALIFORNIA'S DECISION CONFLICTS WITH MANY DECISIONS OF THIS COURT AND OTHER DISTRICT AND CIRCUITS.

- A. The Court of Appeals and the Supreme Court of the State of California Has Rejected Outright This Court's Basic Test For Determining The Scope Of 5th, 6th and 14th Amendments Rights During Jury Trial.

The 5th Amendment preserves the right of a Defendants during indictments and jury trial proceeding under the Due Process of Law. The due process clause of the Fourteenth Amendment to the United States Constitution, which incorporates the Fifth and Sixth Amendments thereto, including the Fifth Amendment's due process clause and the Sixth Amendment's jury trial clause, requires that, before it may obtain a valid conviction from a jury, a state must prove every element of a crime, and must do so beyond a reasonable doubt. (People v. Flood (1988) 18 Cal. 4th 470, 523, citing Sullivan v. Louisiana (1993) 508 U.S. 275, 277-278; see In re Winship (1970) 397 U.S. 358, 364; U.S. Const. 5th, 6th & 14th Amendments; see also Sandstrom v. Montana (1978) 442 U.S. 510, 520; Tot v. United States (1943) 319 U.S. 463, 465.). Appellant incorporated Appendix B at pp. 18-20 arguments hereby by reference.

- B. The Court of Appeals For The State Of California's Decision Is In Direct Conflict With This Court's Precedents Holding Cited Above, Supra.

The relief sought by the Appellant in this Matter is a declaration that his conviction are invalid or reversed. Please see under questions presented case laws. supra. (Id. at p. i.)

- C. The Court's of Appelas's Decision Creates a Conflict Among The Circuits.

State Court of Appeals' decisions can create a district and other courts conflict on issues not dependent upon an interpretation of State Constitution and Federal Constitutions rights (Criminal Law.) That is precisely the case here. The Court of Appeal's decision in this case does not interpret defendants 5th,

6th and 14th Amendments Constitutions rights afforded to a defendant during a judicial proceeding. Instead, it purports rest entirely upon general principles of the state laws and the declaratory judgment act.

Because the Court of Appeals For The State Of California's decision creates a district conflict in areas well beyond the Court's of Appeals' exclusive subject matter jurisdiction, this Court should grant certiorari.

III.

THE COURT OF APPEAL'S DECISION IS IN CONFLICT WITH THIS COURT'S DECLARATORY JUDGMENT JURISPRUDENCE.

A. This Court's Precedents Establish That Declaratory Relief Is Essentially Equitable.

Since the enactment of the Declaratory Judgment Act, 28 U.S.C. § 2201, this Court has explained on many occasions that declaratory relief is a discretionary, equitable remedy. See, e.g., *Samuels v. Mackell*, 401 U.S. 66, 70-71 (1971); *Abbott Labs. v. Gardner*, 387 U.S. 136, 155 (1967); *Rickover*, 369 U.S. at 112 (declaratory judgment action to invalidate a copyright). As this Court explained in *Great Lakes Dredge & Dock Co., v. Huffman*, 319 U.S. 293, 300 (1943), declaratory relief is "essentially an equitable cause of action" and is "analogous to the equity jurisdiction in suits quia timet or for degree quieting title." Indeed, even before the passage of the Declaratory Judgment Act, this Court, per justice Brandeis, explained that declaratory relief "would...come under a familiar head of equity jurisdiction." *Willing v. Chicago Auditorium Ass'n*, 277 U.S. 274, 289 (1928).

///

///

///