

19-7124

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 16 2019

OFFICE OF THE CLERK

Derwin Lee Butler, Jr — PETITIONER
(Your Name)

VS.

STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of California

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

PETITION FOR WRIT OF CERTIORARI

Derwin Lee Butler, Jr (LSC #AC4481)
(Your Name)

D.O. Box #901
(Address)

Imperial, CA 92251
(City, State, Zip Code)

NONE
(Phone Number)

QUESTIONS

1. Does a criminal defendant become deprived of his constitutional rights when the trial court fails to read an agreed upon stipulation and instruction to the jury that acted as substitute for two of the defense witnesse (Michelle Nichols and Dep. Hurian.)?
2. Is it a constitutional violation when the trial court denys a defendant motion based on grossly misrepresents trial facts; resulting in the denial of the defendants (petitioners) rights to call witnesses in his favor and his due process rights in the post trial Marsden Hearing?
3. If the trial record is contrary to the courts claim that it read and instructed the jury to accept the stipulated facts as true..., what remedy/relief is the petitioner entitled to when the courts error prejudiced the petitioner?
4. Is the ADPEA applicable when the state and federal courts fail to acknowledge and provide a remedy for a clear and convincing court error that denied petitioner of due process ?

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.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A · SUPREME COURT OF CALIFORNIA DECISION

APPENDIX B · MARSDEN HEARING RECORDED TRANSCRIPTS.

APPENDIX C · DEPUTY HURIANS POLICE REPORT

APPENDIX D · MICHELE NICHOLS EXAMINATION REPORT (BALLISTIC)

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

People v. Marsden (1970) 2 Cal.3d 118

PAGE NUMBER

(2) (3)

STATUTES AND RULES

United States Constitution 6th (sixth) Amendment	(2) (3)
United States Constitution 5th (Fifth) Amendment	(2) (3)
Penal Code § 211	(1)
Penal Code § 459	(1)
Penal Code Section § 205	(1)
Penal Code Section § 273a	(1)
Penal Code Section 12022.53	(1)
Penal Code Section 1192.7	(1)
Penal Code Section 213	(1)
Penal Code Section 12022.5	(1)

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 _____ 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

[] 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 7/18/2019. 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

AMENDMENT V OF THE UNITED STATES CONSTITUTION [section 1.]

NO Person shall be deprived of life, liberty, or property, without DUE PROCESS OF LAW...

AMENDMENT VI OF THE UNITED STATES CONSTITUTION [section 1.]

In all Criminal Prosecutions, the accused shall enjoy the right to have COMPULSORY Process for Obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

1 STATEMENT OF THE CASE

2 PETITIONER DERWIN BUTLER, JR WASCHARGED IN A SEVEN COUNT FELONY WITH
3 ROBBERY (211)-counts 1 and 5, robbery in concert in a inhabited
4 dwelling (211/213, subd (a)(1)(A))-counts 2 assault with a firearm
5 (205,subd,(a)(2))- counts 4 and 7: burglary (459)- counts 5 and
6 child endangerment (273a)-count 6. As to count 1, it was further
7 alleged petitioner personally used a firearm, in violation of sec.
8 12022.53, subd (b), and as to counts 2 and 3, it was alleged that
9 petitioner discharged a firearm, with the meaning of sec. 12022.53(c)
10 as to counts 4 through 7, it was alleged that petitioner personally
11 used semiautomatic handgun within the meaning of sec. 12022.5(c) and
12 1192.7 (c)(8)

13 Following a jury trial petitioner was found guilty as charged in each
14 count, all special allegations were found true, and robbery in count
15 3 was found to be first degree. On April 2, 2010, the court sentenced
16 petitioner to a total term of 35 years and 4 months in prison.

17 STATEMENT (OF THE FACTS)

18 Javier Duarte testified that on may 25, 2009 at around 10 pm,
19 he saw people removing tires from a car, shortly there after, seven
20 to eight men came running at him, and one of the men who he first
21 identified as one of the seven to eight that ran at him was the only
22 black juror(an alternate juror) Duarte later doubtedly identified
23 petitioner after being leas to look in petitioners direction by the
24 prosecutor.

25 After being beaten by two of the sven to eight men, Duarte ran into
26 Raul Villas house and heard the sound of windows breaking. Raul Villa
27 his wife and child were both in the house. eventually several men
28 broke into the home causing duarte and villa to retreat into the
bedroom. Raul Villa testified that he witnessed duarte being beat up
befdore retreating imnside the home. He identified petitioner as the
person who held the gun. Prior to trial villa failed to make a i.d
in a photo lineup. Duarte failed to make a positive identification
when given a photo line prior to trial.

29 Oscar Julian, a niebhor of villas identifies petitioner as one of
30 duartes attackers. julian called 911 bcause the men had broken his
31 windows before villas windows. Prior to trial, oscar failed to make
32 a positive identification. additionally, mr. julian told police the
33 night of the incident that he saw nothing and no one commit the acts.

34 Roberto Lareos, the victim in count 7, testified that he was walkinh
35 toward Duarte when trouble started, but the man he identified at trial as
36 trial as petitioner pionted a gun at him. Lareos was inside his
37 home when he heard gunshots. Prior to trial lareos was given the
38 same phot lineup and failed to make a identificaion.

39 Maria Alcala, is Roberto lareos wife and testified that she saw the
40 man pionting a gun at laroers. She was unable to identify the man she
41 saw in court when asked to do so. Also, Alcala could not make a i.d
42 when given a photolineup prior to trial.

43 On the night of june 10, 2009, deputy Herian of the Morena Valley
44 sheriff department arrested a Marcellous Oliver(inthe same area of
45 the incident) with a 25 caliber handgun that was silver/chrome in
46 color. (APPENDIX C)

47 On july 30th 2009, after recieving the 25 cal handgun that was
48 recovered from the possession of Oliver, Michelle Nichols of the
49 D.O.J conducted a ballistics exam and determined that that gun was
50 the gun used on the night of May 25 2009 against DUARTE.

51 (APPENDIX D)

1 In preparation for trial defense counsel Paresh Makan submitted his
2 list of witnesses that he call in favor of petitioners defense.
3 Those witnesses consisted of 1. Michell Nichols of the D.O.J (that
4 would have testified that she conducted a ballistics exam on the a
5 25 cal gun and determined it to be the gun used in the may 25th
6 incident.) 2. Dep. Herian of the Moreno Valley sheriff department
7 (would have testified that he arrested a marcellous oliver with a
8 25 handgun). 3.Keyona West (was petitioners alibi and was to testify
9 that petitioner was home with her and their child when the incident
occurred.) and 4. Genisis Guerro (lareos and alcala daughter. She
was to testify that she knew who the gun man was the night of the
crime and that it was not petitioner).

7 The prosecution began to present its case, once he rested, Mr.
8 Makan was givien the chance to present his defense. Without speaking
9 with petitioner, Makan rested his defense without rebuttal or
calling any of the witnesses that awaited to be called for the
defense.

10 Peteitioner was found guilty. Prior to sentencing, petitioner filed
a motion for a MARDSEN HEARING (~~APPENDIX B~~) requesting
11 substitute counsel to assit in filing a new trial arguing I.A.C
substitute counsel to assit in filing a new trial arguing I.A.C
based on counsels failure to call defense witnesses.
12 THE court held the hearing, allowed petitioner to state his caes
regarding his attorneys alleged ineffectiveness. The court also
13 allowed defense counsel to argue against each claim made by
petitioner. After hearing the two rivals, the court denied the
14 motion to substitute reasoning that defense counsel was not
ineffective in relationto his failure to call defense witnessses.

15 REASONS FOR GRANTING PETITION

16 However, the focus of the presnt issue relates to the courts
17 reasoning that petitioners rights(5th and 6th amendments of the U.S
18 Constitution) to call witnesses Michelle Nichols and Dep. Herian
had not been denied because the court read to the jury, a
19 stipulation that was agreed to by both the defense and prosecutor
and went uncontested by petitioner, that informed the jury that the
20 gun used in the incident was silver in color,fired all shots and
rounds and was recovered on another person on another day not the
defendant.The court further reasoned that it addionally instructed
21 the jury to accept those stipulated facts as true (~~APPENDIX B~~
p.541)

22 The problem with the courts reasoning is that it is extremely flawed
and demonstrably contrary to the trial courts action and record.
23 Petitioners trial defense was a mistaken identity, deputy Hurian was
a witnesssed that would have testified to the facts of his reports
that he arrested marcellous oliver... with a silver 25 caliber hand
24 gun...on the night of june 10, 2009. Michelle Nichols onced called to
testify would have testified that she conducted a ballistics exam on
that 25 caliber handgun recovered from Oliver and determined it to be
the gun that fired all the shots and rounds in the incident on May 25
2009 against Mr. Duarte.

25 The importanced of the agreed upon stipulation and added instruction
(for the jury to accept thatthe stipulated facts as true)rested in
the fact that it substituted for the facts that would have been
introduced to the jury had defense witnesses Hurian and Nichols
26 testified at trial.

27 The trial court clearly overlooked the importanced of the stipulation
and instruction as well as the courts duty to read them to the jury
whenit failed to do so.

1 It is important to this nation that the Supreme Court hears this
2 case because it is a battery against the rights of Due process.
3 In the interest of justice, courts are required to be impartial, fair
4 and steady advocate against the violation of the Constitutional
5 rights of the nations citizens. How is that interest upheld when a
6 court ignores and fails to read a stipulation that was agreed upon by
7 both sides of a case without justification; especially when that
8 stipulation preserves the 5th and 6th Amendments rights of the
9 defense. Moreover, how is it in the interest of justice to this that
10 the subsequent courts and office of the attorney general are allowed
11 to give creditability to the trial courtss flawed reasoning and error
12 by continuously ignoring the trial record when it clearly contradicts
13 the courts posttrial Marsden Hearing statement.
14

15 If any reasonable, impartial and unbiased person or fact finder were
16 to investigate this matter by examining the recorded trial transcripts/
17 record, they will without a shadow of a doubt discover that the trial
18 record infact is contary to the trial courts Marsden hearing
19 statements.
20

21 This reasonable and fact finder will discover that the trial court did
22 not read the stipulation, nor did the trial court instruct the jury
23 accept the stipulated facts as true.
24
25
26
27
28

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe", is written over a horizontal line.

Date: 02/16/2019