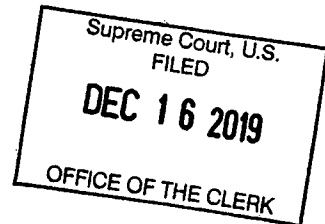


No. 19-7124

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



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 (LDC #A64481)
(Your Name)

P.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 witnesses (Michelle Nichols and Dep. Hurian.)?
2. Is it a constitutional violation when the trial court denies 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:

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(1)

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(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 WAS CHARGED 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 doubtfully identified
23 petitioner after being lead to look in petitioners direction by the
24 prosecutor.

25 After being beaten by two of the seven 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
before retreating inside 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.

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

Roberto Lareos, the victim in count 7, testified that he was walking
toward Duarte when trouble started, but the man he identified at trial as
petitioner pointed a gun at him. Lareos was inside his
home when he heard gunshots. Prior to trial lareos was given the
same photo lineup and failed to make a identification.

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

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

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

(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
10 occurred.) and 4. Genisis Guerro (lareos and alcala daughter. She
11 was to testify that she knew who the gun man was the night of the
12 crime and that it was not petitioner).

13 The prosecution began to present its case, once he rested, Mr.
14 Makan was given the chance to present his defense. Without speaking
15 with petitioner, Makan rested his defense without rebuttal or
16 calling any of the witnesses that awaited to be called for the
17 defense.

18 Petitioner was found guilty. Prior to sentencing, petitioner filed
19 a motion for a MARSDEN HEARING (Appendix D) requesting
20 substitute counsel to assist in filing a new trial arguing I.A.C
21 based on counsels failure to call defense witnesses.
22 THE court held the hearing, allowed petitioner to state his caes
23 regarding his attorneys alleged ineffectiveness. The court also
24 allowed defense counsel to argue against each claim made by
25 petitioner. After hearing the two rivals, the court denied the
26 motion to substitute reasoning that defense counsel was not
27 ineffective in relation to his failure to call defense witnesses.

28 REASONS FOR GRANTING PETITION

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

12 The problem with the courts reasoning is that it is extremely flawed
13 and demonstrably contrary to the trial courts action and record.
14 Petitioners trial defense was a mistaken identity, deputy Hurian was
15 a witness that would have testified to the facts of his reports
16 that he arrested marcellous oliver... with a silver 25 caliber hand
17 gun... on the night of june 10, 2009. Michelle Nichols once called to
18 testify would have testified that she conducted a ballistics exam on
19 that 25 caliber handgun recovered from Oliver and determined it to be
20 the gun that fired all the shots and rounds in the incident on May 25
21 2009 against Mr. Duarte.

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


27 The trial court clearly overlooked the importance of the stipulation
28 and instruction as well as the courts duty to read them to the jury
when it 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 continously ignoring the trial record when it clearly contradicts
13 the courts posttrial Marsden Hearing statement.
14 If any reasonable, impartial and unbiased person or fact finder were
15 to investigate this matter by examing the recorded trial transcripts/
16 record, they will without a shadow of a doubt discover that the trial
17 record infact is contary to the trial courts Marsden hearing
18 statements.
19 Thisreasonable and fact finder will discover that the trial court did
20 not read the stipulation, nor did the trial court instruct the jury
21 accept the stipulated facts as true.
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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 02/16/2019