

No. _____

19-8451

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Skinner

(Your Name)

PETITIONER

vs.

Raymond Madden

ORIGINAL

— RESPONDENT(S)

FILED
APR 16 2020

ON PETITION FOR A WRIT OF CERTIORARI

OFFICE OF THE CLERK
SUPREME COURT, U.S.

the United States Court of Appeals for the Ninth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Michael Skinner # AS9418

(Your Name)

P.O. Box 921

(Address)

Imperial, California. 92251

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Is a State Court Decision an Unreasonable Determination of the facts When it Determines That a Claim Was not Sufficiently Developed in the Record for Appellate Review When the Trial Record Shows that the Claim was in fact Properly Developed and Not Procedurally Defaulted.

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

. Skinner v. Madden, No. 2:16-cv-06968, U.S. District Court for the Central District of California. Judgment entered December 21, 2018.

. Skinner v. Madden, No. 19-55122, U.S. Court of Appeal for the Ninth Circuit. Judgment entered January 28, 2020,

TABLE OF AUTHORITIES CITED

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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 is unpublished.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 is unpublished.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 _____ 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 is unpublished.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 January 28, 2020.

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: January 28, 2020, and a copy of the order denying rehearing appears at Appendix A.

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). **This petition is timely filed pursuant to 28 U.S.C. § 2101(c).**

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

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 Constitutional Provisions involved are the Fifth and Sixth, and Fourteenth Amendments of the United States Constitution. The Statutory provisions involved are 28 U.S.C. § 2254.

STATEMENT OF THE CASE

An information filed December 2, 2013, charged appellant Michael Dwayne Skinner with three counts of second degree robbery (Counts 1-3; § 211), with the further allegation that appellant used a handgun in the offenses (§§ 1203.06, subd. (a)(1), 12022.5, subd. (a), & 12022.53, subds. (b) & (e)(1)). (C.T. pp. 38-41.) During trial, the court dismissed the personal use enhancement (§ 12022.53, subds. (b) & (e)(1)) on the prosecutor's motion. (C.T. p. 51.)

The jury was sworn on February 28, 2014, and found appellant guilty as charged on March 3, 2014. (C.T. pp. 50, 106; R.T. pp. 7, 185-186.) The court immediately sentenced appellant to the maximum term of 20 years, 4 months. (See R.T. pp. 190-191 [sentence].) The court granted 208 total days of credit and imposed various fines and fees. (R.T. p. 191.)

On March 10, 2014, appellant filed a notice of appeal. (C.T. p. 112.)

STATEMENT OF FACTS

On March 31, 2013, Miguel Hernandez was returning from lunch when three men approached him from behind and a man, whom he identified as appellant, asked him for the time. (R.T. pp. 66-68.) Appellant then jumped in front of him and pulled a gun out and said, "Don't move." (R.T. p. 67.) The other two men pulled a ring and necklace off of him. (R.T. p. 67.) Hernandez described all three identically, stating they were wearing hoodies and were 5'8", 160 to 165 pounds, 20 to 25 year old black males. (R.T. pp. 70, 113.) Hernandez noticed nothing unusual about appellant's face and could not say if he was dark or light skinned or what kind of nose or lips he had. (R.T. p. 80.)

On April 18, 2013, Hernandez picked appellant from a six-pack photographic lineup. (R.T. pp. 81, 104-105.) At trial he said that he was 100 percent sure it was appellant, but when he picked him from the lineup, he only said appellant "Looks like the guy who showed me the gun." (R.T. p. 84.)

On April 10, 2013, soon after 8 a.m., two minor brothers, Alejandro and Marcos, were walking to school when a man walked up behind them and asked for the time. (R.T. pp. 27-29, 51-52.) Alejandro gave him the time and put his phone back in his pocket. (R.T. p. 29.) The man had a black backpack and put it on his chest, pulled a gun out, and said, "give me your

phone or I will shoot you right now." (R.T. p. 29.) Alejandro identified appellant as the man with the gun; Marcos, however, denied that it was appellant at trial. (R.T. p. 28, 64.) Alejandro and Marcos gave the man their phones. (R.T. p. 30.)

Alejandro described the perpetrator as a black male, no age, with short curly hair, a hoodie and a black backpack. (R.T. p. 43.) Marcos described him as being as a black male, 15 to 16 years old, 5'7" to 6', with a skinny build and short curly hair. (R.T. p. 56.) Marcos added that his backpack was multi-colored, with red and green. (R.T. p. 59.)

On April 23, 2013, Alejandro and Marcos were shown a six-pack photographic lineup and chose appellant as the person who had robbed them. (R.T. pp. 34, 102-104.) Marcos' statement to the officer at the time was that "he looks like the one who robbed me and my brother." (R.T. p. 54.) Although appellant had braces, Alejandro never told the police that the person had braces, but he later stated that he did not see his teeth. (R.T. pp. 100-101.)

At trial, Marcos recanted his identification of appellant because appellant was shorter than the robber, and his mouth, teeth and hair looked different. (R.T. pp. 60-66.) He added that the person who robbed them did not have braces. (R.T. p. 65.)

Appellant was 5'10", 140 pounds, and 18 years old. (R.T. p. 108.)

Appellant was first detained on April 16, 2013. (R.T. p. 106.) On April 23, 2013, Detective Abel Morales spoke with appellant in booking. (R.T. p. 107.) Morales didn't know if appellant had braces then, and noted that no one, including Hernandez, described him as having braces. (R.T. pp. 111, 113.) Appellant had been told he was being arrested for three armed robberies, and appellant replied, "How can that be. There is no video and my prints were not on the gun." (R.T. pp. 107-108.) Appellant also stated to Officer Jennifer Arzola, who was moving him to a holding cell, "So, wait, I am getting arrested for something I did a long time ago?" (R.T. p. 117.) She had not talked to him about any charges and was not the officer that arrested him, and she had no idea what he was talking about. (R.T. p. 118.)

Jazmine Judge, appellant's girlfriend, testified on appellant's behalf. (R.T. p. 122.) On Easter Sunday, March 31, 2013, she and appellant attended church; appellant was wearing a grey shirt, black pants, and black shoes, and was not wearing a hooded sweatshirt or backpack. (R.T. pp. 123-124.) She denied ever seeing appellant with a gun or hearing him talk about robbing anyone. (R.T. p. 126.) On April 10, 2013, she was probably with him. (R.T. p. 126.) On March 31, he had braces and had worn them for two years. (R.T. pp. 126-127.) She did not tell the police they

had the wrong guy because they would not have believed her. (RT.
pp. 129-130.)

REASONS FOR GRANTING THE PETITION

Summary of Argument

At trial, Marcos, one of the three witnesses against petitioner, testified that petitioner was not the person who robbed him and his brother. (RT. pp. 60-66.) In closing argument, the prosecutor argued that the court should reject Marcos' testimony because of petitioner's demeanor at trial. (RT. p. 158.) Marcos' recanting his identification was significant to petitioner's innocence. Petitioner's counsel failure to object violated his right to Effective Assistance of Counsel.

The California Court of Appeals, Division One, ultimately procedural barred the claim on appeal. That court ruled that the claim was not properly raised within the states procedural rules and could not therefore be reviewed. The district court agreed with the California Court of Appeal and held that petitioner was not entitled to habeas relief because the state court decision was based on a procedural default in light of the state court record. On appeal, the Ninth Circuit affirmed the district courts decision. The State Court record (See, Appendix B), however, show that petitioner raised an Ineffective Assistance of Counsel for failing to object to the prosecutor misconduct which was rejected by the state and federal lower courts.

ARGUMENT

The state court (trial) record clearly shows that petitioner's Prosecutorial Misconduct claim was not procedurally barred due to the claim not being raised properly within the states procedural

rules.

As the lower court's decision sanctions a departure from well settled precedent of other U.S. Circuit Court's decisions which have recognized when a state court decision is contrary to U.S. Supreme Court law requiring habeas relief, Certiorari should be granted. See, Strickland v. Washington, (1984) 466 U.S. 668; Berger v. United States (1935) 295 U.S. 78; Green v. White, 232 F.3d 671, 672 n.3 (9th Cir. 2000); Torres v. Prunty, 223 F.3d 1103, 1109 (9th Cir. 2000); 28 U.S.C. § 2254(d)(2)(e)(1).

Finally, these circumstances call for this Honorable Court's supervisory power where the record of the state court proceedings were properly developed. SUPREME COURT RULE 10.(a)(b)(c).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 4-15-20