

No. 19-8664

ORIGINAL

FILED

MAY 15 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES T. KIRVIN — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

CHARLES T. KIRVIN

(Your Name)

C. S. P. - LAC

P.O. BOX 8457

(Address)

Lancaster, CA. 93539

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ARBITRARILY & ERRONEOUSLY denied APPELLANT CERTIFICATE OF APPEALABILITY stating, "Petition fail to state any Federal Constitutional claim debatable among Jurist OF REASON. When... the district court denied Relief on Procedural Grounds, and stated, "the Petitioner seeking a C.O.A. must show both "that Jurist OF REASON would find it debatable whether the Petition states a valid claim of the denial OF a constitutional RIGHT and that Jurist's OF REASON would find it debatable whether the district court was correct in its Procedural Ruling." (Quoting Slack V. McDaniel, 529 U.S. 473, 484 (2000)).

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

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 *Decision of UNITED STATES COURT OF APPEALS*

APPENDIX B *Decision of UNITED STATES DISTRICT COURT*

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- ACKERMAN V. U.S. (1950) 340 U.S. 193, 197 —————
- MACKAY V. HOFFMAN, 682 F.3d 1247 (9th Cir. 2012) ———
- GONZALEZ V. CROSBY, (2005) 545 U.S. 524 —————
- Pioneer Inves. Serv. Co. V. Brunswick Assoc. Ltd. Partnership
507 U.S. 380, 393-394 —————
- HAI V. HAWES, 861 F.3d 977, 987-988 (9th Cir. 2017) ———
- Tanner V. Yukins, 776 F.3d 434, 439 (6th Cir. 2015) ———
- Tammer V. Harris, —————
- Lil Deberg V. Health Services Acquisition Corp. (1988) —
486 U.S. 847, 864 —————
- BANK OF WAUNAKEE V. ROCHESTER CHEESE SALES, INC. V. MEL BOHANNON
ROOFING, INC. 906 F.2d 1185, 1191-1192 (7th Cir. 1990) ———
- Belmont V. Erie Ry., 52 Barb. 637, 641 (N.Y. App. Div. 1869) ———
- Klappart V. U.S. (1949) 335 U.S. 601, 614-615 —————

STATUTES AND RULES

- Fed. R. CIV. P. 60 —————
- Fed. R. CIV. P. 60(b)(1) —————
- Fed. R. CIV. P. 60(b)(6) —————

OTHER

California Code of Regulation, Title 15, § 3160 —————

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 _____ 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 DEC. 23, 2019.

☐ 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 MAY 21, 2020 (date) on Pending (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 _____.
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

FEDERAL RULES OF CIVIL PROCEDURE, Rule 60(b)(1) provides in pertinent parts:

(b) Grounds for relief from a final judgment, order, or proceedings on motions and just terms, the court relieves a party... from a final judgment, order or proceedings for the following reasons!

(1) mistake, inadvertence, surprise, or excusable neglect;

F. R. CIV. P. RULE 60(b)(4) Ill Health and obstructionist conduct by prison officials have both been held to constitute good reason for considering under Rule 60(b).

- STATEMENT OF THE CASE -

THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT ARBITRARILY & ERRONEOUSLY DENIED APPELLANT CERTIFICATE OF APPEALABILITY (C.O.A.), SEEKING PERMISSION TO APPEAL FROM THE JUDGMENT DENYING PETITIONER'S "PETITION FOR WRIT OF HABEAS CORPUS", IN THE FOREMENTION MATTER.

PETITIONER RE-ALLEGES ALL ASSERTED FACTS, ASSERTIONS, legal grounds and records supporting ALL ISSUES on which the "C.O.A." was sought, and further alleges as follows:

(1) THE DISTRICT COURT ERRED IN summarily denying without an evidentiary hearing, Petitioner's claim of (A) Trial Court ABused its discretion when it found Petitioner competent to stand trial; (B) THE Trial Court abused its discretion when it denied Petitioner's REQUEST TO REPRESENT himself pursuant to Faretta v. California; (C) THE COURT ABused its discretion when it deem not to hear claim's (3) APPELLANT WAS Improperly Convicted OF Six Separate Counts of Section 136.1, subdivision (B)(2) and whether the Bailey doctrine applies to Penal Code section 136.1 subdivision (B)(2); and (4) Whether the legislature Intended Penal Code Section 136.1 subdivision (b)(2) To be devisible and charged as separate crimes when committed AGAINST THE same victim with one objective, which the DISTRICT



1 COURT ABUSED its discretion NOT TO HEAR claim's
2 Three & Four when THESE issues already Been
3 presented To The COURT of Appeals and THE
4 California Supreme Court, but however the District
5 Court denied Federal Review due To claim's wasn't
6 Federalized because Petitioner's APPELLATE Counsel
7 Never Alerted the California Supreme Court To
8 the Federal Nature of the Claims when they were
9 Presented To THE STATE'S HIGHEST COURT In such
10 A manner THAT THEY LIKELY ALERTED THE STATE
11 COURT TO THE CLAIMS FEDERAL NATURE claiming A
12 Particular Right specifically Guaranteed by the
13 Constitution and even though Appellate's counsel
14 used Application of STATE Law, THE Patterns of
15 Facts was well within the ~~main~~ mainstream of
16 Constitutional Litigation that fall within the
17 Double Jeopardy Clause of the Federal Constitution's
18 5th Amendment which Prohibits Multiple Punishments
19 For the same offense.

20 Petitioner's APPELLANT Counsel Failure To Federalize
21 Grounds Three, "THE Bailey Doctrine Applies To
22 Section 136.1, Subdivision (B)(2)," and Ground Four,
23 "THE LEGISLATURE Never Intended Section 136.1,
24 Subdivision (b)(2) To be divisible and charge as
25 separated crimes when submitted AGAINST THE
26 same Victim with one objective In mind," caused
27 the claim to be Procedurally Barred As unexhausted
28 in Federal Court denying Petitioner Federal Review



1 due to Petitioner Appellate Counsel not satisfying
2 the exhaustion Requirements because the court
3 Ruled Petitioner must fairly present his federal
4 claims to THE STATE'S highest court and expressly
5 alerting the state's highest court to the federal
6 Basis of his claims by citing in conjunction
7 with the claim the federal source of law
8 which petitioner relies on or a case by labeling
9 the claim "federal."

10 The District Court barred Petitioner Federal
11 Review on these two Grounds because Petitioner
12 Appellate Counsel failed to Alert the California
13 Supreme Court to THE Federal Nature of these
14 two claims which constitutes Ineffective
15 Assistance of Appellate Counsel or Abuse of
16 THE District Court discretion when these two
17 claims was procedurally barred from federal
18 Review as an Result which clearly demonstrate
19 a substantial showing of the denial of a Consti-
20 tutional Right of Effective Assistance of
21 Appellate Counsel or denial of a fair & Impartial
22 hearing when Petitioner Federal Review was barred
23 on Ground Three & Four as an Result of
24 Appellants Counsel failure to federalize
25 claims and was Ineffective Assistance of
26 Appellate Counsel when counsel also failed to
27 Bring up other Grounds In the initial STATE
28 Post Conviction Proceedings that Petitioner Requested



1 e.g., (1) Ineffective Assistance of Trial Counsel, (2)
2 Prosecution Misconduct, and (3) Prosecution Suppression
3 of evidence favorable To Accused. Petitioner was
4 not aware as To whether Appellate Counsel Raised
5 these Grounds on his behalf until after the
6 California Supreme Court denied Review and
7 Petitioner Appellate Counsel Sent Petitioner All
8 His Appeal Transcripts which it was too late to
9 file these additional claims on Direct Appeal
10 which deprived Petitioner Review of these addition-
11 al Claims and effective Assistance of
12 Appellate Counsel as well as ~~the~~ Petitioner
13 Appellate Counsel Failure to Federalize Grounds
14 Three & Four In Petition for Review In THE
15 California Supreme Court which caused claims
16 To be Procedurally Barred from Federal Review.

17 Appellate Counsel ~~also~~ Failed to do so as to deny
18 Petitioner effective Assistance and base on that
19 fact Petitioner procedural default of grounds
20 Three & Four should have been excused because
21 because it was Petitioner Ineffective Assistance
22 of Appellate Counsel Failure to Alert THE California
23 Supreme Court To THE Federal NATURE of Those
24 claims OR Abuse of the District Court discretion
25 To not Hear Claims Three & Four on Federal
26 Review when even though Petitioner Appellate
27 Counsel used Application of STATE Law, THE Pattern
28 of Facts was well within the mainstream



1 of Constitutional Litigation that fall within the
2 Double Jeopardy Clause of Federal Constitution's
3 5th Amendment which Prohibits Multiple
4 punishments for the same offense.

5 Petitioner ATTEMPTED TO FILE A MOTION
6 FOR A STAY & ABeyance TO EXHAUST grounds
7 THREE & FOUR, but was UNSUCCESSFUL because
8 the California Supreme Court indicated that
9 Petitioner's documents could not be considered
10 due to a "lack of jurisdiction," so petitioner
11 ~~used due diligence~~ used due diligence TO exhausted
12 All ~~the~~ claims and it was the ineffectiveness
13 of Appellate Counsel why Ground three &
14 Four got rejected by the District Court
15 denying Federal Review On the two ~~Constitutional~~
16 Constitutional Claims.

17 THE DISTRICT COURT ERRED IN summarily
18 denying without an evidentiary hearing, Petitioner's
19 claim of (1) "THE TRIAL COURT erred when IT Found
20 Petitioner competent To stand Trial," and (2) "THE
21 Trial Court erred by denying Petitioner's Request
22 To Represent himself pursuant To FARETTA V.
23 California, 422 U.S. 806 (1975) Pet. at 3)

24 THE summarily denial, without an evidentiary
25 hearing Petitioner's claim of the Trial Court erred
26 when it Found Petitioner competent To stand
27 Trial Resulted in a decision that was based
28 On an unreasonable determination of the facts



1 in light of the evidence presented in the state's
2 court proceedings and was contrary to or
3 involved an unreasonable application of
4 clearly establish federal law as determined
5 by the Supreme Court of the United States.

6 Petitioner Request For C.O.A. should
7 have been granted by the 9th Circuit. To
8 deny Petitioner's Petition For Writ of Certiorari
9 would be a miscarriage of justice.



- REASONS FOR GRANTING THE Petition -

BASE ON THE FACTS STATED IN THE STATEMENT OF THE CASE PETITION FOR WRIT OF CERTIORARI should be GRANTED being Petitioner was being denied Law Library during the time of his established deadlines to file his objection to the District Judge Report & Recommendation, i.e., (EXHIBIT A) which he was not allowed his Right to Rebuttal the District Judge Report & Recommendation due to the fact Prison Official Intentionally and Actively interferred with his Access TO THE COURTS with their deliberate denials OF Access To Law Library which obstructed petitioner From filing objection to the District Judges Report & Recommendation which violated Petitioner's 1st Amendment Right and their Own California Code of Regulation (C.C.R.), TITLE 15, Section 3160. Being that the Petitioner could not file objections and Rebut the Report & Recommendation which the Report & Recommendation was accepted and lead to Petitioner Appeal being dismissed, i.e., (EXHIBIT B).

ALL THESE FACTS SURROUNDING the circumstances OF Petitioner's Failure to timely make the above mention deadlines was excusable neglect and Showing OF Good cause in connection with the



1 Judgment From which Petitioner ^{is} seeking Relief
2 Pursuant to Fed. R. APP. P. (4)(a)(6).

3 Petitioner showed that jurists of Reason
4 would find it debatable whether the petition
5 states a valid claim of the denial of a
6 constitutional Right and that jurists of reason
7 would find it debatable whether the district
8 court was correct in its procedural ruling and
9 the 9th Circuit should have granted Petitioner
10 C.O. A.

11 In *Tammer v. Yukins*, 776 F.3d 434, 438-444
12 (6th Cir. 2015) the 6th Circuit Federal Court of
13 Appeals examined a similar instance of interference
14 by Prison officials with habeas Petitioner's Access
15 to the courts and stated: "Federal Courts would
16 be required to acquiesce in the unconstitutional
17 conduct of Prison Guards who delay an inmate's
18 ability to file an appeal until it is too late
19 to meet deadlines."

20 Petitioner asserts that it would be an
21 miscarriage of Justice to deny the
22 Petition for Writ of CERTIORARI.

23 I declare under Penalty of Perjury under
24 the Laws of THE United STATES that the
25 foregoing is True and correct. Executed
26 AT C.S.P. Lancaster on May 2020.

27
28 Charles T. Kirvin
PETITIONER

(16)



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles T. Kurvin

Date: May 2020