

No. 20-5135

IN THE
SUPREME COURT OF THE UNITED STATES

In re JAMES BOWELL, — PETITIONER
(Your Name)

vs.

CALIFORNIA SUPREME COURT, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



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

PETITION FOR WRIT OF CERTIORARI

James BoWell, CDC #H04180
(Your Name)

480 Alta Road, C-12-221
(Address)

San Diego, CA 92179
(City, State, Zip Code)

1-619-661-6500
(Phone Number)

QUESTION(S) PRESENTED

1. Would it be considered a 6th Amendment deprivation violation ineffective assistance of counsel for a court appointed attorney refusing to present for a criminal defendant on habeas an issue where the superior court judge could impose no sentence other than Legislative Statute's maximum for a parolee's revocation while serving original crime of conviction, subject to certain limits specified in the Statute's?
2. If the specific "consequences" of a plea agreement is not explained to defendant by the original court judge at the time entered at issue, severe "punishments" the prior conviction used in this current offense unknown "consequences", is it reversible error where the record did not disclose that defendant voluntarily and understandingly entered his pleas of guilty, made without knowledge of the absurd "consequences"?
3. Where the acts of violation are criminal in their own right, would it raise a double jeopardy issue if the revocation of supervised release on parole was also "punishment" for the same offense, attributing postrevocation penalties to the original conviction?
4. Was the superior court sentence of 25 years to life for failing to register as alleged sex offender unconstitutional and unenforceable that annexes a higher degree of "punishment" swelling the penalty above what the Legislative Statute's authorized maximum 180 days for a felony parolee's revocation under the Board of Parole Hearings jurisdiction?
5. Imposing a new "punishment" now confronted statutory sentencing enhancement that increased "punishment" associated with the initial offense and parole revocation. Does it trigger a new prosecution or does revoking parole constitute a part of the original crime sentence that I was still serving as a parolee?

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:

Office of the District Attorney

Post-Conviction Litigation & Discovery Division

Habeas Corpus Litigation Team

320 W. Temple Street, Rm. #540

Los Angeles, CA 90012

California Supreme Court
Tani G. Cantil-Sakauye, Chief Justice
350 McAllister Street, Room 1295
San Francisco, CA 94102

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW.....	1-12
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	14
STATEMENT OF THE CASE	15
REASONS FOR GRANTING THE WRIT	17
CONCLUSION.....	22
PROOF OF SERVICE 28 U.S.C. § 1746	87

INDEX TO APPENDICES

APPENDIX A BOARD OF PAROLE HEARINGS REVOCATION DOCUMENTS . . .	23-37
APPENDIX B SUPERIOR COURT ABSTRACT OF JUDGMENTS BA191442. A325882 PLEA TRANSCRIPT 6/29/76, SENTENCING 2/28/77 TRANSCRIPT CERTIFIED ON REVERSE SIDE . . .	38-76
APPENDIX C CALIFORNIA DEPT. OF CORRECTIONS SCREENING FORM QUOTE: SUBJECT HAS NO QUALIFYING OFFENSE	77
APPENDIX D THE STATE BAR OF CALIFORNIA COMPLAINT REVIEW RESPONSES 1/31/20 & 11/13/19	78-83
APPENDIX E	
APPENDIX F	

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).

A P P E N D I X "1"

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 3/25/20.
A copy of that decision appears at Appendix P.3.

[X] A timely petition for rehearing was thereafter denied on the following date: 5/22/20, and a copy of the order denying rehearing appears at Appendix P.2,

[X] An extension of time to file the petition for a writ of certiorari was granted to and including 8/18/20 (date) on 6/19/20 (date) in Application No. SCCA #S260608. See p. 11-12.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

The California Court of Appeals Order 3/11/20 on p.4.

The Superior Court Order 1/31/20 herewith on p.5-10.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Ayestas v. Davis</u> ,(2018) 138 S. Ct. 1080	20
<u>Boykin v. Alabama</u> ,(1969) 89 S. Ct. 1709, 1713	19 & 85-86
<u>Garza v. Idaho</u> ,(2018) 139 S. Ct. 738	20
<u>Johnson v. U.S.</u> ,(2000) 120 S. Ct. 1795, 529 U.S. 694, 700-701 . .	18 & 37
<u>People v. Cross</u> ,(CA Supreme Ct.5/18/15) 2015 DJDAR 5444 . .	18 & 84
<u>People v. Wiley</u> ,(6/28/19) 36 Cal. App. 5th 1063	16 & 35-36
<u>Reeves v. Alabama</u> ,(2017) 138 S. Ct. 22	20
<u>U.S. v. Davis</u> ,(6/24/19) 139 S. Ct. 2319	17
<u>U.S. v. Haymond</u> ,(6/26/19) 139 S. Ct. 2369	18
<u>U.S. v. Sperling</u> ,(9th Cir.8/23/19) 2019 U.S. App. Lexis 25379 .	21
<u>Wilson v. Sellars</u> , 2018 DJDAR 3360	20

STATUTES AND RULES

California Penal Code § 290(h)	15,16,21
California Penal Code § 3057(a)(c)(1)	16,21
California Penal Code § 290(G)(2)	21

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment I, The right to petition for a redress;
2. Amendment V, No person shall be deprived of liberty without Due Process of law;
3. Amendment VI, In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel;
4. Amendment VIII, Cruel and unusual punishment shall not be inflicted;
5. Amendment IX, The Constitution of certain rights shall not be construed to deny or disparage others retained by the people; and
6. Amendment XIV, The states shall not make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S., nor deprive of liberty or Equal Protection of the laws Due Process.

STATEMENT OF THE CASE

Upon release from Salinas Valley State Prison on 1/12/99 I timely reported to the Pasadena Parole Office on 1/13/99 attempting to file a CDCR Inmate/Parolee Appeal requesting a white parole officer. Parole Agent Cecil Roberts(black), stated: His supervisor wanted to violate my parole right then and there? Mr. Roberts said go get a cup of coffee and return in twenty minutes while he located a place for me to stay around skid row in Los Angeles area. I simply did not return to the parole office and rented a room in a townhouse for \$350. per month.

On 1/14/99 a fugitive arrest warrant was issued for 1. Absconding parole; 2. Traveling beyond 50 miles without approval; and 3. Failing to register as alleged sex offender. My parole was revoked and on 5/11/99 at a revocation hearing at Chino State Prison I accepted a ten month reimprisonment term, i.e., three months for absconding, one month for traveling beyond fifty miles, and six months for failing to register, in order to avoid the twelve month maximum that could have been imposed.

The California Dept. of Corrections, Board of Parole Hearings had already "punished" me for the crime that involves no violence. While serving the above revocation I was forced out to the Los Angeles Superior Court and charged with the exact same offense of failing to register on 1/12/99 State Case BA191442/9-1-00 date of sentencing 25 years to life for failing to sign a piece of paper with home residence location at a police station, a crime that was only a misdemeanor in 1991 at the time of PC 220 assault conviction requiring PC 290 registration as alleged sex offender, i.e., I have never been convicted of a sex crime! See p. 77.

Raising concerns with the leaglity of the sentence and conviction in State Case BA191442/9-1-00 current incarceration for the 1999 alleged failure to register while on parole. Please read the incorporated Board of Parole Hearings most recent letter 4/4/20 along with Board Appeal of 4/4/00 consisting of the original revocation hearing on 5/11/99 listing the exact circumstances as described herein above the charge sheets with Deputy Commissioner's signature ten months return to custody. See p.23-37.

To help expedite review of this matter I have attached a copy of California Penal Code § 290(h) which reads as follows: Parole violation revocation, any person released on parole required to register under this section, but fails to do so, the Board of Prison Terms, shall order the parole of the person revoked. See p. 31 & 33.

California Penal Code § 3057(a)(c)(1) Quote: Confinement upon revocation of parole, shall not exceed 12 months. Not more than 180 days for an act "punishable" as a felony. See p. 32 & 34.

The Legislature's directive is clear in People v. Wiley, (6/28/19) 36 Cal. App. 5th 1063, In 1991 Wiley was convicted and released on parole 3/9/17 failing to register as a sex offender as required under § 290. The Superior Court revoked Wiley's parole and remanded him to the custody of CDCR finding a parole violation under the jurisdiction of BPH for a determination of how to respond to that violation of "failure to register." As reflected the court may only order the parolee to serve up to 180 days in jail "punishment" accruing directly from the underlying conviction. A copy of Wiley herewith on p.35-36.

REASONS FOR GRANTING THE PETITION

It was unconstitutional to read the statute's to impose additional "punishment" that Congress intended the mandatory penalties that apply to conduct, a specific statute reading the penalties to reach nonviolent felony offense, meaning throughout the statute since it spoke of the offense, its nature involved a certain "punishment." U.S. v. Davis, (6/24/19) 139 S. Ct. 2319, The two statutes, thus, were originally designed to be read together, the statutes are not vague nor do they undermine Legislature's authorized responsibility. The imposition of criminal "punishment" can't be made, the problem, its long standing position looking at the scope of the statute's that actually commands specific "consequences." Pure statutory interpretation acknowledging as we recognize no vagueness, created Sixth Amendment complications raising serious questions we need to examine the statutes text, context and history. Defining as an element a fixed meaning simultaneously to illustrate its point, inherent features in plain English that entails the particular facts, overlooking the obvious reading of the text, the statute's referring to the conduct. Designed to be read together automatically penalties settled statute's language construction. The court invoked the canon to expand the reach of statute penalties employing additional "punishment" on top of everything else. The separation of powers suggests a court may not construe a criminal statute to penalize conduct it does not clearly prescribe. The statute itself rests mandatory penalties that apply. The task of statutory construction itself, the power of "punishment" is vested in the Legislature, not the judicial department. In other words, judges overblown invalidated severe punish-

ments, we remand to allow the court to address our decision.

Finding U.S. v. Haymond, (6/26/19) 139 S. Ct. 2369, The offense specified in the statute, takes away the judges discretion to decide whether violation of parole conditions should result in reimprisonment and for how long. Traditionally exposed a parolee to the remaining prison term authorized for original crime of conviction revocation statute, subject to certain limits. (Pinpointing Johnson v. U.S., (2000) 120 S. Ct. 1795, 529 U.S. 694, at 700-701, Where the acts of violation are criminal in their own right, they may be the basis for separate prosecution, which would raise an issue of "double jeopardy" if the revocation of supervised release on parole were also "punishment" for the same offense. We therefore attribute postrevocation penalties to the original conviction.) Declaring unconstitutional and unenforceable triggering statute's term up to the maximum period in revocation hearing Legislative functions to preserve judicial "Center Wheel of Liberties." See p. 37.

Exhibiting charges of the court, finding clearly erroneous in violation of the Constitution, in effect, the Boards "punishment" straightforward specific sanctions prescribed sentence in revocation. Imposing a new "punishment" was unconstitutional, not authorized!

Now confronted sentencing enhancement illegally prescribed in State Case BA191442/9-1-00 currently serving right this very minute State Case A325882/2-28-77 Plea Bargain Agreement "unknown consequences." Focusing on People v. Cross, (CA Supreme Ct. 5/18/15) 2015 DJDAR 5444, Because he was unwarmed that prior conviction had direct consequences subjecting him to a longer prison term, the sentence must be set aside. A copy of Cross on p.84.

When a defendant enters a guilty plea, the trial court is required to ensure that the plea is knowing and voluntary. Boykin v. Alabama, (1969) 395 U.S. 238, 243-244, To make sure the accused has a full understanding of what the plea "consequences" are. See p.85-86.

As in the instant case A325882/2-28-77 Plea transcript 7/22/76 Certified on reverse side of the Reporter's Certificate 7/24/96 from archive specifically on pages 11-12, Quoting: Defendant: On this plea bargain, does that mean thats what I am definitely going to take, or the sentence is. See p.51.

Mr. Watson, District Attorney: The maximum possible sentence, what I described to you, those are the maximum possible punishment. You could receive theoretically nothing. Its all up to the judge, you might not go to prison at all, you might be put on probation. Maybe no time at all, you might only be required to pay a fine. 100 percent truthful cooperation! Please read the transcript located on p.41-63.

The incorporated clear and convincing evidence Abstract of Judgment for Case A325882/2-28-77 Certified on reverse side 7/24/96 for this courts review articulation clarification to establish ineffective assistance of counsel failing to raise Constitutional merits in state habeas, sufficient basis to reopen both State Case's BA191442/9-1-00 and A325882/2-28-77. Boykin v. Alabama,(1969) 89 S. Ct. 1709, 1713, Reversible error where record did not disclose that defendant voluntarily and understandingly entered his pleas of guilty. The robbery convictions must be Reversed outright, because the record is inadequate to show

that Petitioner intelligently and knowingly pleaded guilty without knowledge of the "consequences." A copy of Boykin located herewith on p.85-86.

State Bar Complaint Unit letters dated 1/31/20 and 11/13/19 presenting a violation of Reeves v. Alabama, (2017) 138 S. Ct.22, A court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's conduct on the facts of the particular case, failing to act or omissions constitutionally resulting in deficient professional conduct "red flags" indicating error or deprivation intentionally, recklessly, with gross negligence, establishing ineffective assistance of counsel misconduct for failing to pursue arguments. See State of California Bar letters herewith on p.78-83.

Readily accessible material records herewith Garza v. Idaho, (2018) 139 S. Ct. 738, It is Constitutionally ineffective counsel anytime the attorney declines a criminal defendants request to appeal an issue, certainly, the original meaning of the U.S. Constitutions Sixth Amendment, i.e., the judge could not impose a sentence other than directed by statute's.

This court Granted Ayestas v. Davis, (2018) 138 S. Ct. 1080, Petitioner entitled to Habeas Relief, called for a determination "reasonably necessary" as set out in the statute's petitioner has a point, a viable Constitutional claim clear of any hurdles standing in the way. Wilson v. Sellars, 2018 DJDAR 3360, This very court focusing on California's pattern failing to rule on merits of habeas petitions based on their rubber stamp deception to undermine the value of

Liberty!

The lesson is clear, a narrow "punishment" for the initial offense considering the revocation 5/11/99 to be sure, Legislative power was the only legal limit fixed by the facts of failing to register as alleged sex offender under California Penal Code §§ 290(h) reflected "punishment" 3057(a)(c)(1) 180 days maximum!

On remand from this court U.S. v. Sperling, (9th Cir. 8/23/19) 2019 U.S. App. Lexis 25379, Defendants sentence was vacated, Granted.

This logic, the original meaning of postrevocation proceedings of a parolee are treated as part of the penalty for the initial offense quick and easy authorized by statute's the essence of parole before the completion of sentence, thus, harmonious with our decisions designed to **promote efficiency**. The true powers of justice and liberty!

J U S T I C E R E F O R M
P R A Y E R

Certainly, the need for a New precedent law that does not undermine the "punishment" remedy for a parolee. The precise content already in California statute's Penal Code as cited above to eliminate what role they are really playing. The fundamental claim with emphatic articulation requiring this courts command.

1. Please vacate the unlawful sentence and conviction in state case BA191442/9-1-00 failing to register as a parolee already serving the exact same revocation term of 180 days for the alleged offense PC 290(h) twice being "punished" the case is a complete miscarriage of justice. The court Abstract of Judgment reflecting PC 290(G)(2) same statute! See p.75-76.

2. Please reverse the 1976 Plea of guilty in state case A325882/2-28-77 current enhancement serving right this very minute. The convictions should be voided, set aside in the interest of justice because of the "unknown consequences" I have been punished three times for that breached plea agreement (a) the original sentence 2/28/77; (b) 7/31/91 enhancement of five years in state case PA003248 minute order located herewith on page 70; and(c) the current sentence in state case BA191442/9-1-00. The Plea was entered or made without knowledge of the "consequences."

Narrowing the incorporated material evidence certified clarification, to be sure, in other words, I am the victim!

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



James BoWell, Petitioner

Date: July 1, 2020