

20-5135

I N T H E

SUPREME COURT OF THE UNITED STATES

JAMES BOWELL, PETITIONER

vs.

STATE BAR OF CALIFORNIA, RESPONDENT(S)
C A L I F O R N I A S U P R E M E C O U R T

PETITION FOR WRIT OF CERTIORARI

Denied October 5, 2020

PETITION FOR REHEARING RULE 44
ON THE MERITS WITH CERTIFICATION

PRESENTED IN GOOD FAITH

EXTRAORDINARY CIRCUMSTANCES EXIST

James BoWell, In Pro Se

CDC #H04180, C-12-221

480 Alta Road

San Diego, CA 92179

Phone: # 1-619-661-6500

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WRONGFULLY CONVICTED & ENHANCED TWICE
THE BASIS OF PC 290 REGISTRATION

A serious examination of 1991 conviction State Case PA003248 California Penal Code §§§ 664/207/220 & Failure to Register 1/12/99 State Case BA191442/9-1-00 while on parole serving five year enhancement Case A325882/2-28-77 in direct violation of the California Judges Benchbook (1991) on page 138 Felony Sentencing citing The Supreme Court in People v. Smith, (1983) 34 C3d 251, holding that Proposition 8 applies only to prosecutions for crimes committed on or after its June 9, 1982, effective date. A copy incorporated herewith on p. 47-61.

Arguments to suggest a more sweeping reversal of convictions at the heart staying within the bounds of the factual record focusing on 1991 case alleged assault on Anna Marie Shriber (aka Cathy Warmack) in North Hollywood California May 12, 1990 at midnight as she exited my vehicle with my wallet in her hand stealing my money, as a police car was passing by, I fled the scene and was arrested in 1991.

At the Preliminary Hearing February 27, 1991 on direct examination Ms. Shriber states:

Q. And BoWell never tried to rape you, did he?

A. "No!" (PT p.23) A copy herewith on p.17.

Judge Paul I. Metzler PA003249 2/27/91(PT p. 33) Quote:

The Court: It really doesn't sound much more than a 242 to me; (a misdemeanor battery). A copy on p.19.

Verbally on the spot the precise content of Jury Trial PA003248 1991 direct testimony of Alice Shriber:

Q. BoWell never tried to rape you did he?

A. "No!" (TT p.71) A copy herewith on p.26.

The prosecuting District Attorney D. Levine case PA003248 1991 withholding Brady impeachment material evidence from my defense "rap sheet" of Ms. Shriber revealing six prior felony arrest and in his closing speech to Juror's Quote: (Shriber's rap sheet herewith p.39-40.)

Mr. Levine: There was nothing introduced by the defense to attack Ms. Shriber's credibility, because there is nothing to attack Shriber's credibility with. I've attacked BoWell's credibility with his past convictions. The Public Defender Alan Budde would have done the same if he could have. There was nothing to attack her credibility with. (TT p.134-135), a copy herewith on p.35-38.

Furthermore, the prosecutor D. Levine engaged in misconduct by concealing impeachment evidence well before the trial knowing that Ms. Shriber was arrested 1/14/91 for Theft of Property with a bench warrant being issued 2/7/91 still pending during and after BoWell's jury trial, the warrant for Shriber's arrest outstanding which she finally appeared on the warrant theft of property 9/3/91 after the conclusion of my jury trial in case PA003248/7-31-91. People v. Little, (1997) 59 Cal. App. 4th 426, Prosecutor has a duty under Brady to disclose felony convictions of material witness if record is accessible.

The prosecutor D. Levine not only withheld exculpatory material evidence regarding the credibility of alleged victim crucial prosecution witness Alice Shriber that testified that she never entered the blue Camaro vehicle.(RT pages 57 & 71) a copy herewith on p. 25 & 27.

Furthermore, Deputy District Attorney D. Levine in his closing argument to Juror's stated:

We are simply asking you to find the defendant guilty of an attempted kidnapping.(RT page 125) a copy herewith on p.31.

Mr. Levine: He moved her toward the door of the vehicle and the testimony of the victim was but for her putting her foot up on the door and pushing off the car he would have put her inside the vehicle with the engine on.(RT page 126) a copy herewith on p.32.

Mr. Levine" In any case it's almost a kidnapping in and of itself except for he was not able to get her inside the car.(RT page 127) a copy herewith on p.33.

Mr. Levine: There was nothing introduced by the defense to attack her credibility because there is nothing to attack her credibility with. I've attacked the defendants credibility with his past convictions, because they go to his truth and veracity. Mr. Budde would have done the same if he could have. There was nothing to attack her credibility with.(RT pages 134-135) herewith arrest report of Alice Shriber 1/14/91 #91p00503 Theft of Property, Bench Warrant issued 2/7/91 recalled 9/3/91. A copy herewith on p.35-38.(Some immunity deal struck with Shriber?)

NEW EVIDENCE

Private Investigator Frank Mackey interviewed Alice Shriber on July 16, 2000 and Ms. Shriber (aka Garcia) relayed that she rode in BoWell's vehicle on 5/12/90 she admitted for the first time that she accepted a ride. There was no attempted kidnapping! See p. 28-29.

NEWLY OBTAINED AFFIDAVIT

Mr. Gilliland King was at the Pink Motel around September of 1991 in Sun Valley California and overheard Alice Shriber telling a small group of drug addicts that she was indeed forced to falsely testify against James BoWell in jury trial or be prosecuted and sent to prison for theft of property and forgery on the original police report 5/12/90 as she sat in police car handcuffed under arrest never taken to jail, with pending warrants for her arrest? See p.125.

CERTIFIED CLARIFICATION VIA JAMES BISNOW STATE BAR # 65224 FILED 7/18/00

Most importantly, the jury never learned that the key witness Alice Marie Shriber, at the very time she testified, had a warrant for her arrest for theft of property, on which she appeared and pled guilty only after the BoWell trial. Together, the prosecutor and Public Defender's failure to reveal Ms. Shriber's warrant and argument to the jury by D. Levine the prosecutor in closing claiming credibility for her he knew did not exist, denied Mr. BoWell Due Process of Law and entitle him to a new trial. Failing to reveal exculpatory evidence unconstitutionally where the jury never had a chance to fairly evaluate her credibility, the prosecutions main witness. See p.109-124.

My jury gained a false picture of the prosecution witness Alice Marie Shriber through the misconduct of the prosecutor. The police ran Shriber's criminal rap sheet May 14, 1990 submitted as part of police report to District Attorney's Office concealing Shriber's past arrest consisting of:

- (1) F Throw Subs At Vehicle W/GBI Intent BKG 7128918
- (2) M Petty Theft BKG 7213715
- (3) F ADW RENUM-245(A)(1) PC/245(A)(2)PC BKG 7225324
- (4) M Prevent/Dissuade Wit/Vict From Report BKG 7317615
- (5) M Use/Under Influence Phencyclidine BKG 7599109
- (6) M Poss Controlled Subs Paraphernalia BKG 1043290
(A copy on p. 40.)

Mr. D. Levine, Deputy District Attorney PA003248/1991 trial record Quote: Other than BoWell's statements there was nothing to corroborate any idea or any fact that Ms. Shriber was a prostitute. She was not a prostitute. She was truthful, she was honest, with no motive to lie.(TT pages 136), a copy herewith on p. 41-44.

Shortly after my jury trial Ms. Shriber was arrested for soliciting prostitution on 11/6/91 North Hollywood area in California Case # 91p10784 Arraignment 11/7/91 L.A. Van Nuys Div 101 and for possessing heroin demonstrating I am truly innocent of PC 664/207/220 falsely convicted. See p. 111-117.

I submitted a Notice of Appeal 7/31/91 in Superior Court PA003248 and on 8/12/92 the right to appeal was dismissed per Rule 17A because

the Second District Court of Appeal in California failed to appoint Appellate Attorney in Case 2 Criminal B061874 Los Angeles #PA003248 placing me into alleged default per California Rules of Court. See p. 62-63, and California Supreme Court Order on p. 64-66.

I firmly believe prison guards stole my Affidavit of Financial Ability which the clerks claimed never recieved 10/7/91 and 4/14/92 Opening Brief deprivation, i.e., circumstances beyond my control left me with cause to excuse alleged procedural default Martinez v. Ryan, (2012) 132 S. Ct. 1309, Excusing procedural default where there was no counsel appointed. Trevino v. Thaler, (2013) 133 S. Ct. 1911, The unconstitutional Brady suppression of evidence by prosecutor's is cause to excuse procedural default if initial collateral proceedings was without counsel on original appeal as of right. Lackawanna County District Attorney v. Coss, (2001) 121 S. Ct. 1567, A tolling exception exist where there was a failure to appoint counsel in direct violation of the Constitutions Sixth and Fourteenth Amendments in connection with the prior convictions.

As in Cone v. Bell, (2008) 173 L. Ed. 2d 701, at p. 722, The suppression of that probative evidence deprived defendant/petitioner of his right to a fair trial. In 27 years no court has reached the merits of claim that state prosecutor violated Brady duty to disclose "rap sheet" Milke v. Ryan, 2013 U.S. App. Lexis 5102, Prosecutor failed to turn over impeachment material evidence about key prosecution witness whose testimony was essential to the states case implicating a menagerie of lies via the prosecutor requiring reversal of convictions.

The Government violated Brady by failing to turn over evidence of prime witness prior arrests, conduct and convictions citing U.S. v. Price, (9th Cir.2009) 566 F. 3d 900, Impeachment evidence withholding violation was prejudicial to outcome of jury trial requiring a Reversal of convictions. Kyles v. Whitley, (1995) 131 L. Ed. 2d 490, Accused is entitled to a New Trial because of the prosecutors failure to comply with Due Process Clause obligation to disclose material evidence favorable to the accused concerning innocence of the crime.

Furthermore, Evitts v. Lucey, (1985) 496 U.S. 387, Guarantees the right on first appeal to effective counsel under the 14th Amendment. Douglas v. California, (1963) 83 S. Ct. 814, Indigent defendant denied Equal Protection of the laws where the merits of the one appeal as of a right from conviction was decided without the benefit of counsel. Dealing with the First Appeal citing Burden v. Zant, (1994) 114 S. Ct. 654, The record of evidence in this case at hand strongly supports the accused contention that some sort of immunity deal had been struck. Accordingly, this case must be Reversed outright. Chapman v. California, (1967) 87 S. Ct. 824, In dertermining the prosecutions tactics that did affect substantial rights of Petitioner. We overturn the convictions!

As a matter of right, Swenson v. Bosler, (1967) 87 S. Ct. 996, at 997, We think the documents contained in this transcript demonstrate his desire for effective counsel on appeal, i.e., even if a request had not been made, we do not think its absence would amount to a waiver of rights. It is now settled that the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not de-

pend on a request. When a defendant whose indigency and desire to appeal are manifest, it simply cannot be inferred that he knowingly and intelligently waived his right to appointment of appellate counsel. Please review the incorporated PA003248/7-31-91 Notice of Appeal and California Court of Appeal 2 Criminal Bo61874 dismissal 8/12/92. A copy herewith on p. 62-66, with California Supreme Court letter 9/4/20 and denial order 8/30/95 S047645 complete denial of First Appeal.

The current incarceration in State Case BA191442/9-1-00 one count of California Penal Code § 290(G)(2) Failure to register as an alleged sex offender while serving parole revocation 5/11/99 under California Penal Code § 290(h) ten months specifically for the same offense 1/12/99 failure to register concerning Zichko v. State of Idaho, (9th Cir.2001) 247 F. 3d 1015, Holding that a prior conviction can be attacked where the prisoner is imprisoned on the basis of his failure to register as a sex offender, i.e., an element of original State Case PA003248/7-31-91. (A copy of Zichko herewith on p. 67, and Revocation documents located on p. 68-82.)

A matter of grave concern, the state prosecutor D. Levine, PA003248 1991 deliberate falsehoods in his closing arguments to Juror's outright lies creating a fundamental miscarriage of justice citing Ayestas v. Davis, (3/21/18) 138 S. Ct. 1080, Conspiracy to wrongfully convict, swelled sentence, is reasonably necessary to make a determination of compelling evidence. Garza v. State of Idaho, (2/27/19) 139 S. Ct. 738, Ineffective assistance of counsel precedents certainly results in Petitioner Wins simply by counsel's deficient performance constitutionally ineffective assistance. Rompilla v. Beard, (2005) 125 S. Ct. 2456, Violating Sixth Amendment wrongfully withheld exculpatory evidence that would have influenced Juror's appraisal. Reeves v. Alabama, (2017) 138

S. Ct. 22, Constitutionally deficient counsel warrants Reversal of Convictions.

As in the instant case ineffective or no counsel at all on appeal for State Case PA320048/7-31-91 2 Ciminal B061874 8/12/92. Furthermore, ineffective counsel in B144266 8/28/01 please read p.120-124.


The authorities to entertain and reopen O'Neal v. McAnich, (1995) 115 S. Ct. 992, When Justices have a grave doubt as to harmlessness of State trial, Petitioner automatically Wins! House v. Bell, 2006 U.S. Lexis 4675, In light of the evidence, twenty years later showing the prosecutor violated Brady v. Maryland, (1963) 373 U.S. 83, at 87, Failing to disclose exculpatory material evidence to the defense and Juror's is sufficient to overcome state alleged procedural default rule entitling Petitioner to Federal Relief. Authorized as timely Reyes v. Lynch, (2015) 135 S. Ct. 2150, Granted.

C O N C L U S I O N

It was the Legislative power to "punish" parolee 5/11/99 under CA PC §§ 290(h) & 3057(a)(c)(1), Brady violation 5/14/91, 6/29/76 Plea obligation.

Warranting Reversal of the State Case's BA191442/9-1-00, PA003248/7-31-91, and A325882/2-28-77. Any further relief this honorable court deems appropriate and just focusing on accountability guaranteeing my success!

Dated: October 14, 2020


James BoWell, Petitioner

**Additional material
from this filing is
available in the
Clerk's Office.**