

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

CERTIFICATION PRESENTED IN GOOD FAITH
Compelling News Coverage & Interviews Soon

I, James BoWell acting In Pro Se per Rule 44 presenting extraordinary intervening circumstances of a substantial and controlling effect other grounds not previously presented on the docket July 22, 2020 the original record relevant transcript parts thereof clarification to expose a complete miscarriage of justice in the instant case above.
Certiorari denial October 5, 2020

GROUND ONE

I was wrongfully convicted and sentenced in state case PA003248/7/31/91 CA Penal Code §§§ 664/207/220 & § 667(a) five year enhancement. (29 years ago, currently serving enhancement right now?)

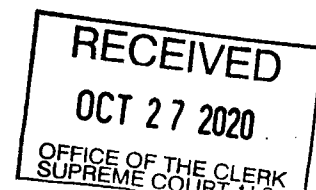
The deputy district attorney D. Levine's failure to disclose the alleged victims criminal police rap sheet in direct violation of Brady v. Maryland, (1963) 373 U.S. 83, 87, Material evidence to defense and jurors. Milke v. Ryan, 2013 U.S. App. Lexis 5102, The prosecutor failed to turn over impeachment material evidence about key prosecution witness whose testimony was essential to the states case. A Brady Constitutional violation transpired by the undisclosed impeachment evidence, false statements under oath with a menagerie of lies that require reversal of convictions.

(Reporter's Transcript of Proceedings is set out herewith):

(RT p.134-136) "A Touchstone Of Reality I'M Innocent"

Mr. Levine: There was nothing introduced by the defense to attack her credibility because there is nothing to attack her credibility with. See p.35-38.

Alice Marie Shriber had a rap sheet showing six arrest. See p.40.



The Office of the District Attorney did make their file in PA003248 available to attorney James Bisnow July 17, 2000 and it contained the "rap sheet" of Ms. Shriber. See p.39.

One case 91P00503 involved a charge of theft of property 1/14/91 with a bench warrant issued 2/7/91 for Alice Marie Shriber issued by the municipal court three months before my trial. Her warrant remained outstanding in May 1991 during my jury trial and Ms. Shriber's testimony. She appeared on the warrant September 3, 1991 after the conclusion of my trial and sentence. See p.37-38.

During the jury trial Ms. Shriber questioned:(RT p.48,57, & 71)

Q. Did a part of your body actually enter the vehicle when he was trying to get you inside?

A. No. See p.24, 25, & 27.

Q. Defendant never tried to rape you, did he?

A. No, he did not rape me. See p.26.

Declaration of Frank Mackey Private Investigator July 17, 2000 that interviewed Alica Marie Shriber and she relayed that she accepted the ride from BoWell placing herself inside of the car. See p. 28-29.

For the first time admitting that she voluntarily rode in my vehicle demonstrating there was no attempted kidnapping! See p. 30.

(RT p.125-127)

Mr. Levine: We are simply asking you to find the defendant guilty of an attempted kidnapping. See 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. See 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. See p.33.

(RT p. 136)

Mr. Levine: Other than the defendants statements there was nothing to corroborate any idea or any fact that the victim was a prostitute. She was not a prostitute. She was truthful, she was honest, she is credible, with no motive to lie. See p. 41.

Ms. Shriber was arrested for "prosttuion" case 91P10784 11/6/91 prosecutor's misleading characterization in closing argument. See p.43-44.

People v. Little, (1997) 59 Cal. App. 4th 426, The prosecutor has a duty to disclose the felony convictions of all material witnesses if the record is reasonably accessible. Brady v. Maryland, supra, A court must order a new trial for a Brady violation whenever there is reasonable doubt possibility that had the evidence been disclosed to the defense and jurors, the result of the proceeding would have been different. The existence of felony convictions of any material witness for the prosecution whose credibility is critical to the outcome of the trial must be disclosed to the defense.

California Supreme Court letter 9/4/20 & 1995 S047645 denial order also furthermore, my first appeal was dismissed by the California Court of Appeal August 12, 1992 in case 2 Criminal B061874 because the appellate court failed to appoint appellate attorney. See p.62-66.

The fundamental Sixth Amendment violation Evitts v. Lucey, (1985) 496 U.S. 387, A criminal defendant is entitled to effective assistance of counsel on first appeal as of right. Douglas v. California, (1963) 372 U.S. 353, Where the merits of the one appeal was denied implicates Equal Protection Clause of the precedents, reversal is mandatory. In Trevino v. Thaler, (2013) 133 S. Ct. 1911, Procedural default rule does not bar federal relief on the merits. Martinez v. Ryan, (2012) 132 S. Ct. 1309, If there was no counsel. Reeves v. Alabama, (2017) 138 S. Ct. 22, A convicted prisoner making a claim of ineffective assistance of trial attorney must identify the acts or omissions that are alleged to have been the result of Constitutional error given the full factual record. Cone v. Bell, (2008) 173 L. Ed. 2d 701, 722, The suppression of that probative (criminal police rap sheet of only prosecution witness) deprived petitioner of a fair trial. In 27 years no court has reached the merits which cast doubt on the entire prosecutions case requiring a reversal of conviction. Ayestas v. Davis, (3/12/18) 138 S. Ct. 1080, It is reasonably necessary for a determination of entitlement because of the conspiracy of officials to wrongfully convict, case remanded. Garza v. Idaho, (2/27/19) 139 S. Ct. 738, Ineffective assistance of co-counsel precedents certainly results in a defendant always Wins, making it improper to impose that role upon defendant simply by deficient trial counsel, Constitutionally ineffective performance. Montgomery v. Louisiana, (2019) 136 S. Ct. 718, A new substantial rule of constitutional law controlling the outcome of violations by permitting opportunity to demonstrate the truth. People v. Harrison, (2017) 16 Cal. App. 5th 704, Currently enhancement declared invalid on nonviolent felony.

GROUND TWO

My parole revocation hearing by Board Of Parole Hearings 5/11/99 for 1. Absconding; 2. Traveling beyond 50 miles; and 3. Failure to Register per CA PC § 290(h) strictly under CDCR jurisdiction until my official discharge date of 2/12/02 beyond the reach of the Los Angeles Superior Court Case BA191442/9-1-00 date of sentence 25 years to life. See p. 68-108.

U.S. v. Davis, (2019) 139 S. Ct. 2319, It was unconstitutional to

impose additional punishment beyond the statutory Legislature construction. U.S. v. Haymond, (2019) 139 S. Ct. 2369, This court has already recognized that punishments for revocation of supervised release arise from and are treated as part of the penalty for the initial offense. People v. Wiley, (6/28/19) 36 Cal. App. 5th 1063, Finding a violation of parolee failing to register per CA PC § 290(h) while on parole the court can only revoke parole and return to CDCR jurisdiction of BPH for a determination of how long to reimprison inmate/parolee for a maximum of 12 months per CA PC § 3057(a)(c)(1)(2) period. The Legislature's directive is clear and we are not at liberty to alter it. Courts must take a statute as they find it and its operative results, the remedy therefore lies with the Legislative authority Williams v. Superior Court, (2014) 230 Cal. App. 4th 636.

State parole agent Joseph Praster and Cecil Roberts took it upon himself Mr. Praster to file with the municipal court in Los Angeles California a FELONY COMPLAINT FOR ARREST WARRANT 8/26/99 for one count of CA PC § 290(h) FAILURE TO REGISTER 1/12/99 the exact same offense I was serving parole revocation for at Chino State Prison where Mr. Praster spoke with me directly and Cecil Roberts attended parolee revocation hearing 5/11/99 given ten months. See p. 83-92.

Quoting this very court: 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 were also punishment for the same offense. *Id.* at 529 U.S. p. 700-701, We therefore attribute postrevocation penalties to the original conviction. Glover v. U.S., (2001) 121 S. Ct. 696, Ineffective counsel failing to argue the point establishing prejudice requiring a reversal.

On remand from U.S. Supreme Court U.S. v. Sperling, (9th Cir. 8/23/19) 2019 U.S. App. Lexis 25379, Petitioners sentence was vacated to impose no greater time than specified in statute.

In the instant case my revocation for CA PC § 290(h) failure to register a resident home address with local police department as a parolee on parole until 2/12/02 under CA PC § 3057(a)(c)(1) maximum term of reimprisonment for the alleged failure to register 1/12/99 was only 180 days. Sentencing transcript BA191442/9-1-00 on p. 93-108. CA Const. Art. 1, § 32(a)(1)(A) Effective 11/9/16 Nonviolent primary felony offense must exclude imposition of enhancement. In re Edwards, 2018 DJDAR 9087, We shall void CDCR parole regulations Granted. GROUND THREE

While serving the first unconstitutional enhancement under CA PC § 667(a) in case PA003248 1991 at Chino State Prison as a parole violator 5/11/99 I was taken out to court and enhanced again under § 667(b-i) given 25 years to life sentence twice breaching the June 29, 1976 Plea Contract Quote: Deputy District Attorney Mr. Watson: The maximum possible sentence is five years to life. You could receive theoretically nothing or up to one year. Boykin v. Alabama, (1969) 89 S. Ct. 1709, Reversible where the plea of guilty was made without knowledge of the "consequences" People v. Cross, 2015 DJDAR 5444, Because of the unwarned prior conviction had direct consequences of subjecting to a longer prison term sentence must be set aside. Lane v. Williams, (1982) 102 S. Ct. 1322, Declaring void the parole term that has expired.

As in the instant case I was not made aware of the consequences other than the five years to life sentence would turn into CA PC § 211 Robbery defined punishment Operative July 1, 1977 two, three, or four years being my maximum term plea bargain agreement 6/29/76 date of the actual sentenceing 2/28/77 in State Case A325882. See p. 49-55. (44 years ago, currently serving enhancement right now?)


Focusing on the interpretation of the record with emphatic articulation and Constitutional responsibility reversing course to cure the most essential command technically citing Lackawanna County District Attorney v. Coss, (2001) 121 S. Ct. 1567, Exception exist where there was a failure to appoint counsel in violation of the U.S. Constitutions Sixth Amendment in connection with the prior convictions. Zichko v. State of Idaho, (2001) 247 F.3d 1015, A prisoner may challenge an underlying expired alleged attempted rape conviction while in custody for failure to register as alleged sex offender current conviction that is the product of an unconstitutional conviction. See p.67, a copy of Zichko. Noel Reyes Mata v. Lynch, (2015) 135 S. Ct. 2150, Motion to reopen authorized as timely based on merits judicial obligation. Artuz v. Bennett, (2000) 121 S. Ct. 361, Tolling.

PRAYER FOR RELIEF

Jesus is my savior humbly asking you to do the right thing and forgive all of my past sins, 21 years sober and clean, ready to abide by all laws in the community as a productive citizen 65 years of age 11/5/20 my social security number is 550-04-8921. Please grant order my release from custody as quickly as possible, as God is my witness that I have suffered long enough because of the errors in judgments. Honestly, enforce the precedent laws of this very courthouse. Schulp v. Delo, (1995) 130 L. Ed. 2d 808, The fundamental miscarriage of justice exception.

I hereby declare under the penalty of perjury that the foregoing is true and correct to the best of my understanding and belief all the party's required to be served have been served per Rule 29.

Dated: October 14, 2020


James BoWell, Petitioner
Certifier In Pro Se

Byrd v. Phoenix Police Dept., (9th Cir.11/14/17) 2018 DJDAR 2428, Court's have an obligation to analyze Pro Se prisoner filings liberally not narrow in opinion or judgment, tolerant, not orthodox, generous, suitable for a merits hearing.

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUL 27 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAMES EDWARD BOWELL,

No. 20-71110

Applicant,

v.

ORDER

MARCUS POLLARD, Warden,

Respondent.

Before: SCHROEDER, HAWKINS, and CALLAHAN, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C.

§ 2254 habeas corpus petition in the district court is denied. The applicant has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Any pending motions are denied as moot.

No further filings will be entertained in this case.

The applicant's request for a copy of his application is granted. The Clerk will send the applicant a copy of his application (Docket Entry No. 1).

DENIED.

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 5, 2020

Mr. James E. Howell
Prisoner ID CDC # H-04180
480 Alta Road, C-12-221
San Diego, CA 92179

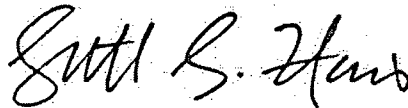
Re: James Howell
v. State Bar of California
No. 20-5135

Dear Mr. Howell:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris".

Scott S. Harris, Clerk