20-5764 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

In re RODNEY BERRYMAN Sr. -PETITIONER

No. 10-99004

CAPITAL CASE

VS.

D.C. No. 1:95-cv-0539-AWI
(Fresno)

ROBERT WONG, et al. -RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

PETITION FOR WRIT CERTIORARI

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QUESTIONS PRESENTED:

1. Did the Ninth Circuit error by finding no basis for Interlocutory Appeal, (at 9th Cir. No. 02-80106) And after judgment refusing to allow petitioner to show the District Court prejudiced petitioner.

2. Did the Ninth Circuit error when declines to entertain pro se motion, at DKtEntry. 121...,"Because you are represented by counsel," at DKtEntry. 121-2....

3. Did the Ninth Circuit error by declining to entertain two pro se motions, because appellant represented by counsel, when one of the motions shows counsel admitted guilt over petitioner's objection, at DKtEntry. 330 and 329..., Request For Touch-DNA on Brooks Shoe.

4. Did the Ninth Circuit error by not issuing a Order for pro se motion requesting new trial, due to counsel admitted guilt over petitioner's repeated objection, at DKtEntry. 348....

5. Did the Ninth Circuit error in their Opinion on March 27,2020, when knowing before filed Opening Brief petitioner repeatedly objected to present counsel admitting guilt. See Opinion, At DKtEntry. 349....

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:

Brian R. Means (argued), Deputy Attorney General; "Kenneth N. Sokoler and Brian G. Smiley, Supervising Deputy Attorneys General; Michael P. Farrell, Senior Assistant Attorney General; Xavier Becerra, Attorney General; Office of the Attorney General, Sacramento, California; for Respondent Appellee."

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully pray that a writ of certiorari issue to review the judgment below.

"OPINION BELOW"

[✓]For Cases From Federal Court:

The Opinion of the United States Court of Appeals at Appendix A. 5 to the petition and is [✓] reported at "954 F.3d 1222."

The Opinion of the United States District Court appears at Appendix "B", to the petition and is reported at, or [✓] is unpublished.

FOOTNOTE

It must be noted that petitioner did try to find the Reported Opinion of the District Court - By contacting the Court through (wife) Mrs. Berryman, but, petitioner was not able to receive any helpful information. Petitioner believe there may not be a Published Opinion from the District Court. It is unknowing to petitioner due to he is not a jail house lawyer, and who do not have the help from present counsels.

JURISDICTION

[✓] FOR CASES FROM FEDERAL COURT:

The date on which the United States Court of Appeals decided my case was, "March 27, 2020."

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 20, 2020, and a copy of the Order denying rehearing appears at Appendix "C" page "XI".

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

"Argument" Under Rule 10, and 14.1(h)

Petitioner pray that this Honorable Court under Rule 10 review and grant this Writ of Certiorari, because, the United States Court of Appeals have, "departed from the accepted and usual course of judicial proceeding."

And, petitioner pray that this Honorable Court review and grant this Writ of Certiorari - Because this case is "rare" from most cases, due to the strong evidences petitioner believe that the (state) prosecutor did in fact used "Planted or False evidences, and False Testimonies to receive the conviction against petitioner."

Also, due to the United States Court of Appeals "errors" have allowed present counsel to continue to "admit guilt over petitioner's repeated objections (during this entire appeal)" because the Court refused to allow petitioner during this appeal to "show that the District Court did in fact (petitioner believe) prejudiced petitioner by the refusal to file petitioner's pro se motions."

It must be noted also because of the United States Court of Appeals errors, petitioner have been throughout his entire appeal at an unfair disadvantage. Due to petitioner have not been able to show that the District Court prejudiced petitioner - Allowed the Attorney General not to have to respond to the "Planted and False evidences, and the False Testimonies," that is argued in petitioner's pro se motions. Which, gives the Attorney General an unfair advantage over petitioner, thus, an unfair appeal, much like petitioner's trial.

CONSTITUTION AND STATUTORY PROVISION INVOLVED

Petitioner believe the "Statutory provisions" to confer on this Court Jurisdiction under Rule 14.1 (e) (ix), is under Rule 10.

RULE 10. CONSIDERATION GOVERNING REVIEW ON CERTIORARI

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

"(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last

resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

STATEMENT OF THE CASE

Mr. Berryman was convicted and sentence to death on December 6, 1988, for the September 6, 1987, rape and murder of Florence Hildreth. The district appeal proceeding in the Supreme Court were completed on December 27, 1993, with the issuance by the State High Court of an Opinion Affirming the conviction and sentence. Mr. Berryman's initial state habeas petition was denied on the same day. The federal action was commenced on April 27, 1995, with a request for appointed of counsel and a stay of execution.

The District Court appointed Charles M. Bonneau, Jr. and Jessie Morris, Jr. On November 4, 1996, Berryman's Habeas Corpus Petition was filed. On January 15, 2010, the District Court denied the petition, and issued a Certificate of Appealability on a single issue. On February 3, 2010, counsel filed a Notice of appeal, and on February 23, 2010, present counsels was appointed to the case.

On February 11, 2010, the Court of Appeals issued a scheduling Order directing Berryman to file his Opening Brief by May 12, 2010. Due to extensions of time requested by Mr. Stetler, and petitioner's pro se submissions, the Opening Brief ended up being filed on December 29, 2014.

On March 27, 2020, the Court of Appeals filed their Opinion Affirming the District Court's denial of petitioner's federal habeas corpus petition. Present counsel, then, filed on July 8, 2020, for "petition for rehearing and rehearing en banc." Which was DENIED on August 20, 2020....

The Five Questions Presented On Page (i):

The First Question; The Court of Appeals finding there was no basis for Interlocutory Appeal, on December 17, 2002. The Second Question; Is that the Court of Appeals on May 1, 2014, declined to entertain petitioner's pro se request for "COA" expanding. The Third Question; Is that the Court of Appeals on December 18,2018, declined to entertain two of petitioner's pro se motions - which was the "pro se request for the panel to grant motion due to petitioner repeatedly objected before trial to prevent trial counsel from admitting guilt during the trial." And, "motion requesting for Touch-DNA on shoes to be granted."

And the Fourth Question; The Court of Appeals did not issue a Order to the filed April 9, 2019, pro se motion to grant new trial under People v Eddy. And the Fifth Question; Is the Court of Appeals Opinion filed on 3/27/2020, affirming the District Court's denial of habeas corpus.

Addressing Question One on page (i): The Ninth Circuit Court Order on December 17, 2002, denied Pro Se "Petition permission to file Interlocutory appeal pursuant to 28 U.S.C. §1292(a)(1); And appeal in light of final ruling by lower court." (See Berryman v. Woodford Ninth Circuit Court No. 02-80106)

Present counsel did addressed this in his Opening Brief FootNote (25), of petitioner's pro se interlocutory appeal history when stated:

"The District Court pro se pleadings lead to a pro se interlocutory appeal to the Ninth Circuit Court, Berryman v. Woodford Ninth Circuit No. 02-80106, asserting an irreconcilable conflict with District Court counsel partly involving that counsel's failure to submit Berryman's pro se pleading and arguments and arguably referencing replacement of counsel in which on December 17, 2002, this Court issued an Order, granting the request to file the excerpts under seal, finding no basis for interlocutory appeal and alternatively construing the matter under standards governing a petition for writ of mandamus, denying it. On June 13, 2003, the Ninth Circuit Court denied the petition for rehearing and rehearing en banc." (See Appellant's Opening Brief, page 119, FootNote "25" At DKtEntry. 200...)

Because the Ninth Circuit Court denied petitioner's interlocutory appeal for rehearing and rehearing en banc - petitioner was forced to deal with nearly seven extra years of hardship with an irreconcilable conflict with District Court counsels. Who forced their strategy of "admitting guilt over petitioner's repeated objections," and who refused to submit petitioner's pro se pleading and arguments of his pro se misconduct evidence claims.

In the denial of the pro se interlocutory appeal on December 17, 2002, the Ninth Circuit Court stated:

"Because Berryman will be able to raise on appeal from a final judgment the issue of whether he was prejudiced by the District Court's refusal to file his pro se motion, immediate appeal is not available under either the collateral Order doctrine or 28 U.S.C. §129(a)(1). See Coopers & Lyband v. Livesay,437U.S.463,468(1978)Order is not immediately appealable

under collateral order doctrine unless effectively unreviewable on appeal from final judgment); Gamboa v. Chandler, 101 F.3d 90,91 (9th Cir. 1996) (en banc) Order that can be effectively challenged after final judgment is not immediately appealable under 1292 (a) (1)."

After the final judgment in the District Court on January 15, 2010, petitioner started showing the Ninth Circuit Court that he's responsible for ensuring he is afforded the opportunity for full review of his pro se claims, when, petitioner submitted his many pro se motions to the Court.

In Coleman v. Thompson, 501 U.S. 722(1991), This Honorable Court Stated; "In substance that there is no constitutional right to counsel in post conviction proceedings." Therefore, it is up to petitioner not counsel who is ultimately responsible for ensuring he is afforded the opportunity for full review of his claims.

The Ninth Circuit Court errored for not affording to petitioner the opportunity for full review of petitioner's pro se claims, "before judgment and after judgment in the District Court.

In the Ninth Circuit Court petitioner began submitting his pro se motions on September 15, 2010, (at DKtEntry. 11.) Which was seven (7) months after present counsel was appointed to this case. To which petitioner needed to give counsels time to view the District Court and trial records. But, present counsels focus was not on how the District Court prejudiced petitioner nor on filing and arguing petitioner's pro se claims to the Court. Present counsels focus was on agreeing with prior counsels strategies of "admitting guilt over petitioner's repeated objections. So petitioner continued submitting his pro se motions, as this, Honorable Court can see here the many pro se motions filed by the Court; "11,21,28,40,41,49,54,68,82,85,89,92,102,103,108,117,121,122,130,136,149, 160,177,183,194,195,202,207,208,210,255,259,311,317,319,329,330,331,348."

On May 5, 2014, the Ninth Circuit Court filed petitioner's pro se Interlocutory Appeal Motion, (At DKtEntry. 122.) In which the Ninth Circuit Court issued "no" Order that petitioner could find. Which, petitioner believe is an "error" for not entertaining and granting petitioner's pro se "Interlocutory Appeal Motion, At DKtEntry. 122...,Due to the Ninth Circuit Court Stated:

"Because Berryman will be able to raise on appeal from a final judgment the issue of whether he was prejudiced by the district court's refusal to file his pro se motion, immediate appeal is not available under either the collateral Order doctrine or 28 U.S.C. §129 (a) (1)." (See Berryman v. Woodford, Ninth Circuit Court. No. 02-80106...)

And, petitioner had in fact at that time pointed out in detail some of how he was prejudiced by the District Court, in petitioner's; "Pro se motion for reconsideration, under federal rules of civil procedure 60 (b) (6), at DKtEntry. 41." The Ninth Circuit Court Ordered counsel to respond in 2800 words, but counsel never responded in 2800 words, per the Court's Order, At DKtEntry. 44....

Petitioner believe that the Ninth Circuit Court error here is like a double error in one - Due to the fact that petitioner did cite his pro se motion for reconsideration (at DKtEntry. 41.) throughout the "pro se Interlocutory appeal motion, at DKtEntry. 122..." In which the Ninth Circuit Court did not entertain the pro se motions nor did the Court decide this maybe a good time to "REORDER" counsel to respond in 2800 words per the Court's Order, at DKtEntry. 44....

Petitioner believe that the Ninth Circuit Court errored by not allowing petitioner an "immediate appeal" during the District Court pro se pleadings. Because petitioner should have been "Afforded the opportunity for full review of his claims - Due to petitioner have no right to counsel in any post conviction proceedings." And after the District Court's final judgment the Ninth Circuit Court errored for not allowing petitioner to show that the District Court prejudiced petitioner by not filing petitioner's pro se motion.

Petitioner pray that this Honorable Court grant this petition for all the reasons mention herein above and below. And due to petitioner was never allowed by the Ninth Circuit Court to show before and after the final judgment that the District Court prejudiced petitioner - Which ended up continuing encouraging present and prior counsels to "admit guilt over petitioner's repeated objections."

Addressing Question Two on page (i): The Ninth Circuit Court Order on May 1, 2014, at DKtEntry,121-2...,Declines to entertain petitioner's pro se submission, at DKtEntry.121...,Request For Reconsideration of the Court's October 11, 2013, Order Denying, at DKtEntry.110...,Petitioner's pro se Request for "C.O.A." At DKtEntry.108....

Petitioner first would like to point out that the Ninth Circuit Court errored, when the Court didn't grant petitioner's pro se motions at DKt. 108 and 121...,Due to the Ninth Circuit Court read at DKtEntry.106...,The District Court's Order Denying the Pro Se Request for "C.O.A." on August 27 2013, at Doc. 462...,Which mean that the Ninth Circuit Court read the error when the District Court stated, "The state record followed Berryman's appeal to the Ninth Circuit."

The Ninth Circuit Court should have granted the Pro Se Motions, at DKt. 108 and 121...,When viewed the District Court's error by not requesting the Ninth Circuit Court for the state record:

"When the District Court considered claims B.1 and 10, at Doc.462...,Of the crime scene chain link. And stated, Berryman's contention that the link found at the crime scene was, in fact round, is CREDIBLE."
(See District Court Order, page 13, line 12-15, at Doc. 462....)

The District Court agreed that the crime scene chain link being round is credible! Which mean that it must also be credible of the trial prosecutor allowing his criminalist to present his "manufactured chain link evidence and false testimonies" By testifying that the crime scene link is; "A horse shoe shape link." If the District Court would have viewed the state record, then the District Court may have granted the "C.O.A." to the pro se Brady claims 1. and 10. In the request for "C.O.A." expanded, at Doc. 459....

Petitioner's argument here is the same "state record" that the District Court did not request the Ninth Circuit Court for the state record before denying claims B.2 and 11, at Doc. 462...,Of the "pair of Brooks Shoes used during the trial was not petitioner's shoes. And that there was two pairs of Brooks Shoes used during the trial - In the form of trial exhibits and the actual physical Brooks Shoes as exhibits 57 and 58."

Also the test tire rolled impression Claim B. 15, District Court Doc. 462. Here the trial prosecutor allowed his criminalist to present his "false evidences of the tire tracks test rolled impressions, and his false testimonies of those test rolled impressions."

It was an error by the Ninth Circuit Court for declining to entertain petitioner's pro se submissions (at DKtEntry. 121) Requesting for Reconsideration of the Court's October 11,2013, Order Denying (at DKtEntry.110) Petitioner's pro se request for "COA" at DKtEntry. 108...,Due to petitioner believe that the Ninth Circuit Court errored here because the Ninth Circuit know that it would not have been a hardship for the District Court to request the Ninth Circuit Court for the "state records."

The Ninth Circuit Court should have viewed that the District Court errored for not requesting the Ninth Circuit Court for the state records. Due to the fact that the District Court stated, "It is willing to tread through Berryman's request." See...III. Standard for Granting a Certificate of Appealability, at E.D. Doc. 462....

Petitioner believe that if the District Court was willing to tread through petitioner's request, then, the District Court should have also tread through the "state record" for the facts.

And if the District Court would have requested the Ninth Circuit Court for the "state record." Petitioner believe that the District Court would have found to be credible that there are "two pairs of Brooks shoes in this case, that was used during the trial. And that one of the pairs of Brooks shoes was planted into this case." (Claims B.2 and 11) Also the District Court would have found to be credible that the trial criminalist presented "false tire track test rolled impressions." (Claim B. 15)

Remember that the District Court stated, "Berryman's contention that the link found at the crime scene was, in fact round, is credible!" So why did not the District Court request for the "state record" from the Ninth Circuit Court to protect petitioner's constitutional right to a fair appeal?

The Ninth Circuit Court errored for denying petitioner his constitutional right to appeal the District Court's final Orders, at Doc. 333 and 462....

The Ninth Circuit Court errored by not entertaining both pro se request at DKtEntry. 108 and 121. Due to the fact that the District Court was willing to tread through petitioner's pro se request to expand the Certificate of Appealability. Although the District Court denied each of petitioner's pro se claims and contention, the District Court stated; "The Court is willing to tread through Berryman's request."

The Ninth Circuit Court errored by not allowing petitioner to appeal the denial of each of his pro se claims from the District Court. Who had tread through petitioner's request for "C.O.A." expanding, at Doc. 459.., Which was denied (at Doc. 462.). So if petitioner is not allowed to appeal the District Court's denial of each of petitioner's pro se claims, at Doc. 462...,Then who will and who can if present counsels will not, due to their focus is on "admitting guilt." Thus why, there have never been a full investigation into this case, and petitioner's pro se claims.

In Coleman v. Thompson, 501 U.S. 722(1991), This Honorable Court Stated; "In substance that there is no constitutional right to counsel in post conviction proceedings." Therefore, it is up to petitioner (not counsels) who is ultimately responsible for ensuring he is afforded the opportunity for full review of his claims. In which is an error by the Ninth Circuit Court for not providing an opportunity for full review of petitioner's pro se claims.

It also must be noted that the Ninth Circuit Court read at DKtEntry.106 which is the District Court's other error shown in the District Court Order denying, (at Doc. 462.) petitioner's pro se request for "C.O.A." at Doc. 459. The error here is that the District Court overlooked petitioner's argument of a substantial showing of the denial of a constitutional right. When the District Court mention petitioner's supported evidences, and stated; "He states that the supporting evidence, including a recording of telephone conversations between his appointed counsel and him, has been filed apparently multiple times, as exhibits to motions on the Ninth Circuit docket, numbers 21, 28, and 40." (See Under "B." Misconduct Claims, At Doc. 462.)

FOOT NOTE

It must be noted that petitioner had legal help by a jail house lawyer during the Pro Se Interlocutory Appeal to the Ninth Circuit Court, See Berryman v. Woodford, Ninth Cir. No. 02-80106. In which petitioner now do not have legal help from an inmate nor do petitioner have help from present counsels. Respectfully petitioner pray for forgiveness for any mistakes made in this Writ for Certiorari.

Petitioner first would like to point out that the District Court should not have made the error of overlooking petitioner's supporting evidences; "When the District Court read on pages 2, 4, and 38, in the pro se request for C.O.A." At Doc. 459...,That;

"Present counsel's agree during the recording of telephone conversations that the malfeasance on part of Kern County law enforcement officials is true in regarding crime scene chain link, Brooks shoes, blood on shoes, shoes imprint, and blood on Ms. Hildreth's body at crime scene."

So once the District Court saw that present counsels agreed with Berryman during the telephone conversations the District Court should not have over looked petitioner's supporting evidences. Truly when the District Court must have realized that the Court and prior counsels may have made a error or mistake when the District Court stated;

"To reiterate, the Court agrees with the assessment of Messrs. Bonneau and Morris that evidence of malfeasance on part of Kern County law enforcement officials (including investigators for the District Attorney's Office) in manipulating evidence cannot be developed due to nonexistence."
(See Order RE: Representation Of Appointed Attorneys, On February 23, 2005, At Doc. 333...,Petitioner Believe!)

And for argument sake the District Court saw petitioner's argument of the "telephone conversations between present counsel and petitioner, but may not have viewed the telephone conversations evidences," much like the state record due to it followed or is filed with the Ninth Circuit Court.

The District Court still should have went out of its way to not only view the "state record, but also the telephone conversations." So to be able to "correct their own mistakes with prior counsels who did not fully investigate petitioner's pro se claims." The District Court errored by over looking petitioner's supported evidence. To which the District Court should not have due to petitioner could be executed by the state with the state's false evidences against petitioner.

Second, the Ninth Circuit Court errored by not correcting the District Court's errors when the Ninth Circuit refuse to entertain the two pro se request, at DKtEntry.108 and 121, that supports petitioner's "planted" evidences claims. In which the Ninth Circuit Court is also overlooking.

On March 7, 2014, the Ninth Circuit Court filed petitioner's pro se request to remove counsel - Due to abandonment and misleading petitioner, at DKtEntry. 117. This pro se request is also based on petitioner showing the Ninth Circuit Court that present counsels stated that they would add petitioner's pro se misconduct evidence claims to the "C.O.A. Expanding."

But present counsels never added petitioner's pro se claims to the "COA" expanding. However present counsels instead abandon petitioner, and admitted guilt in their "Opening Brief at DKtEntry. 200." Which was over petitioner's repeated objections! (See Counsels letters stating they will add petitioner's pro se claims to the C.O.A. Expanding, As Exhibit to the Pro Se Request, At DKtEntry. 117.)

The Ninth Circuit Court and the District Court's errors have placed petitioner at an unfair disadvantage by not expanding the Certificate of Appealability with petitioner's pro se misconduct evidence claims. Due to the fact that the Attorney General did not have to respond to the "planted evidence, false evidence, and false testimonies in this case."

(See Evidences That Support Petitioner's Misconduct Evidences Claims, At D. C. Doc. 459...,And, At DKtEntry. 21, 28, 40, 108, 121, 117, and 177.)

Petitioner pray that this Honorable Court grant this petition due to petitioner should have a constitutional right to have his pro se claims added to the "C.O.A. Expanded - Or at least petitioner's pro se claims should have been entertained by the Ninth Circuit Court to see if the District Court did in fact error for denying each of petitioner's pro se claims at Doc. 333..., And for denying petitioner's pro se request for "C.O.A. Expanding" at Doc. 459.

Addressing Question Three on page (i): The Ninth Circuit Court Ordered on December 18, 2018, on two of petitioner's pro se motions. The first pro se motion addressed herein will be the "Request for the panel to grant motion, due to petitioner's repeatedly objected before trial to prevent trial counsel from admitting guilt during the trial." See DKtEntry.330....

And the Second pro se motion addressed herein is the "Request for the panel to grant Touch-DNA on shoes." See DKtEntry.329...,The Order States:

"Because Appellant is represented by counsel, only counsel may submit filings, and this Court therefore declines to entertain the submissions. And Appellant is advised that counsel is vested with the authority to determine which issue should be raised on appeal." (See Jones v. Barnes, 463 U.S. 745, 751-53 (1983))

The Ninth Circuit Court errored for not entertaining and granting the first pro se request (at DKtEntry.330) due to the fact that the Court knew that present counsel's Appellant Opening Brief - Its based view is that confessing guilt offers;

"The best chance to avoid the death penalty and execution, under claims 15 and 16 mental state defense and lack of intent." (See pages 76-77, at DktEntry. 200.)

And the Ninth Circuit Court errored here because the Court also know petitioner's history of;

"Repeatedly objecting to prior and present counsels strategy to admit guilt, even before during and after their filed Federal Habeas Corpus Petition, and the Appellant's Opening Brief filed on December 29, 2014, at DKtEntry. 200."

It must be noted that prior and present federal counsels strategies is not only supporting trial counsel's (blind side) strategy of admitting guilt, but that trial counsel should have pursued it vigorously over petitioner's repeated objection.

As this Honorable Court can see when prior counsel stated;
"The most promising line of defense recognized by defense counsel was the argument that defendant was at the scene and was responsible for the victim death but didn't commit rape or murder. 5-5-88. R.T.4, This line of defense was sacrificed in order to palliate the defendants complaint." 5-9-88....
(See Claim One; In the Traverse CR228 June 15, 2000, VIII, ER 13.)

The problem here is that this line of defense was not sacrificed. "Trial counsel still changed petitioner's not guilty plea to admitting guilt with out telling petitioner." And trial counsel provided "no defense to the not guilty plea, which is another form of admitting guilt as well as trial counsel agreed with the prosecutor's chain link (false) evidences that it is correct and we don't disagree, is a form of admitting guilt." (See R.T. 3408-3409)

However, what was sacrificed was petitioner's constitutional right to a fair trial and appeal, and petitioner's Sixth Amendment that states:

"The Sixth Amendment guarantees a defendant the right to choose the objective of his defence and to insist that his counsel refrain from admitting guilt, even when counsel's experienced based view is that confessing guilt offers the defendant the best chance to avoid the death penalty." (See Opinion of McCoy v. Louisiana on May, 14,2018, on page one)

The Ninth Circuit Court errored for allowing present counsel to continue on with prior counsel's strategy of the so called most promising line of trial defense and for this appeal is "admitting guilt," vigorously over petitioner's repeated objection.

Present counsel's Appellant's Opening Brief is based on agreeing with prior District Court counsel's strategy of admitting guilt during this appeal. Which prevented prior counsel and continue to prevent present counsel to fully investigate this case and petitioner's pro se claims. Which support petitioner's constitutional right to plea not guilty during his trial and throughout his appeal. (See Supported Evidence, At DKtEntry. 21,28,40,41,108,121,117, and 177.)

The Ninth Circuit Court know that there maybe evidences that could support petitioner's misconduct claims. Which supports petitioner's trial defense strategy of his constitutional right to "plea not guilty" and to continue his plea of not guilty throughout his appeal.

When the Ninth Circuit Court read present counsel Appellant's Opening Brief, that there maybe unexhausted violation claims in this case, when present counsel stated;

"There may be unexhausted claims under, eg., Brady v. Maryland, 373 U.S. 83 (1963), Napue v. Illinois, 360 U.S. 364, 269 (1959), regarding prosecutorial failure to disclose material impeaching evidence and false testimony, or additional ineffective assistance of counsel, or any number

of other claims. The matter is simply unknowable because Berryman is unable to communicate or cooperate rationally if competent, Berryman might be able to communicate rationally on any of these unknown matters, but also might be able to communicate on claims raised here, eg., various from of ineffective assistance of counsel, incompetency at trial, mental state at the time of the underlying events. Knowledge regarding the underlying events, etc." (See Appellant's Opening Brief, FootNote "28" Page 122, At DKtEntry. 200.)

It was an error for the Ninth Circuit Court to Not Order present counsel to investigate those "Maybe Unexhausted Violation Claims" mention herein above in footnote "28" on page 122, at DKtEntry. 200...,When the Ninth Circuit Court knew about petitioner's pro se motion with those same type of unexhausted violation claims - Which the Court Ordered counsel to respond to in 2800 words but counsel never responded in "2800 words," per the Court's Order, at DKtEntry. 44....

Plus, petitioner have been communicating and cooperating rationally with present counsels about those unexhausted violation claims mention above. Through petitioner's pro se motions with "telephone conversations between present counsels and petitioner." See Exhibits to the motions, At DKtEntry. 21, 28, and 177...,And petitioner's other communications have been through his pro se motions, (at DKtEntry. 40,41,108,121,117) And, there are many other pro se filings with the Ninth Circuit Court, who, have sent copies of petitioner's pro se motions to counsel.

Petitioner pray that this Honorable Court grant this petition for all the reasons mention herein above and below. Also due to the Ninth Circuit Court "Granting a New Trial in People v. Eddy on March 26,2019." Which is nearly 3 months after petitioner's December 18,2018, pro se request to grant motion, due to "petitioner repeatedly objected before trial to prevent trial counsel from admitting guilt during the trial," (at DKt. 330), And nearly two weeks before petitioner's pro se motion on April 9,2019, "to grant new trial under People v. Eddy," at DKtEntry. 348....

Petitioner will address here the Second pro se request, which is, the request for "Touch-DNA," at DKtEntry. 329...,Under "Addressing Question three (3) on Page (i) and Page (13)."

The Ninth Circuit Court errored by not entertaining petitioner's pro se request for Touch-DNA on the Brooks shoes, due to, the Court Order stated "Berryman will be able to raise on appeal from a final judgment the issue of whether he was prejudiced by the District Court's refusal to file his pro se motion." (See Berryman v. Woodford, Ninth Circuit, No. 02-80106.)

The Ninth Circuit Court error shows that the Court refuse to allow petitioner the opportunity to show that he was prejudiced by the District Court's refusal to file petitioner's pro se motion. Here, petitioner did request for DNA Testing on the Brooks shoes during the District Court's pro se pleadings on May 25, 2004, in petitioner's pro se letter. Which is attached to the pro se request for Touch-DNA on shoes, as "Exhibit A," at DKtEntry. 329....

And the Ninth Circuit Court errored for not entertaining and granting the pro se request for Touch-DNA (at DKtEntry.329) due to the Court knew about petitioner's pro se motion (at DKtEntry.40.) Which petitioner argued that "Law Enforcement Officers Planted A Pair Of Brooks Shoes into petitioner's case." In which the Court Ordered present counsel to respond in 2800 words, but, counsel never responded in 2800 words, per the Court Order, at DKtEntry. 44....

It must be noted that there is stronger evidences in photographs that shows that there are in fact "Two Pairs Of Brooks Shoes," in this case. (See Pro Se Request For Help From The Ninth Circuit, At DKtEntry. 162.)

Petitioner pray that this Honorable Court grant Touch-DNA Testing on the Brooks shoes, for all the reasons mention herein above and below. And due to trial counsel was ineffective for not allowing his expert to examine the Brooks shoes. Also because of counsel's ineffectiveness it allowed the prosecutor to mislead the jurors into believing that the evidence against petitioner was true - and that the prosecutor's experts was unimpeachable. See RT. 3342-3343...,It must be noted that if this Honorable Court deny petitioner's request for Touch-DNA, then petitioner may never be able to show that the Brooks shoes is not his shoes. Petitioner feel this is a fact because present counsel haven't and will not, due to counsel is admitting guilt instead of investigating petitioner's pro se claims. And for the fact that petitioner is on his last appeal, which is, petitioner's only hope to have a fair appeal is by this Honorable Court granting petitioner pray the Touch-DNA, and this petition.

Addressing Question Four on page (i): The Ninth Circuit Court did not issue a Order on the filed April 9, 2019, pro se motion to grant new trial under People v. EDDy, at DKtEntry. 348....

The Ninth Circuit Court errored here because the Court respectfully could have and should have ended on this appeal prior and present counsel admitting guilt - in their federal habeas corpus petition, and in the Appellant's Opening Brief, at DKtEntry. 200....

The Ninth Circuit Court filed on April 9, 2019, petitioner's face page argument in his pro se motion, (at DKtEntry. 348) Which was filed nearly two weeks after the Ninth Circuit Court's Opinion in People v. EDDy on March 26, 2019. In which petitioner believe is proof that the Ninth Circuit Court could have and should have ended the "Sixth Amendment Constitutional violation against petitioner during this appeal, and in his trial."

See petitioner's "Face Page" argument, at DKtEntry. 348...,And herein below on this page, which states:

"This Honorable Court should entertain this motion and grant petitioner a new trial due to the California Court Of Appeals Opinion by the Honorable Peter A. Krause, in People v. EDDy, 3DCA / California Courts Of Appeal, No. C085091, March 26, 2019. Which states; This appeal presents an issue of fundamental importance to all defendants facing criminal prosecution in California: Whether the Sixth Amendment to the United States Constitution, as interpreted by the Supreme Court of the United States in McCoy v. Louisiana (2018) 584 U.S._[200 L Ed.2d.821] (McCoy), affords a defendant an absolute right to decide the objective of his defense and to insist that his counsel refrain from admitting guilt, even when counsel's experience-based view is that confessing guilt might yield the best out come at trial. Because we conclude that defendant's absolute right under McCoy to maintain his innocence was violated, we must reverse both his conviction for first degree murder [Pen.Code.§187,subd.(a)] And the associated finding of true on the special allegation that he used a knife in the commission of the crime §12022, subd,(b). Having determined that defendant is entitled to a new trial, we do not reach his remaining contention." Petitioner pray that this Honorable Court will grant petitioner a new trial like in People v. Eddy, due to the Sixth Amendment violation shown in petitioner's pro se motion, at DKtEntry. 331-3...

The pro se motion at DKtEntry. 331-3...,Is the same pro se motion, at DKtEntry. 330...,Herein above in this petition under "Addressing Question three (3)." It must be noted that the pro se motion, at DKtEntry. 330..., do have strong supporting argument evidences that petitioner believe do show that his Sixth Amendment constitutional right was violated during his trial, and on his appeal.

The Ninth Circuit Court errored here by silencing petitioner's repeated objections to present counsel "admitting guilt" in their Appellant's Opening Brief (at DKtEntry. 200.) When the Ninth Circuit Court refuse to entertain and grant petitioner's pro se motions "to grant new trial under People v. Eddy, (at DKtEntry. 348.) And in the pro se request motion, at DKtEntry. 330...,Herein above under "Addressing Question Three (3)."

Petitioner believe that the Sixth Amendment urges petitioner "not to" remain silent, even when the Ninth Circuit Court sealed petitioner's mouth shut so not to hear petitioner's legal complaint - When the Ninth Circuit Court refused to entertain petitioner's pro se motions with "recorded telephone conversations between petitioner and present counsels at DKtEntry. 21, 28, and 177...,Which petitioner believes shows that prior and present counsels did not have to base their appeal strategies on "admitting guilt throughout petitioner's appeal."

The other supported evidences that shows prior and present counsels did not have to admit guilt over petitioner's repeated objections, during this appeal is, at DKtEntry. 40, 41, 108, and 330...,And in the District Court, at Doc. 459....

Petitioner pray that this Honorable Court grant this petition for all the reasons mention herein above and below - And also due to the fact that the Ninth Circuit Court Granted a new trial in People v. EDDy on March 26, 2019. Which was nearly two weeks before petitioner's pro se motion on April 9, 2019, to grant new trial under People v. EDDy...,And nearly three (3) months after petitioner's pro se motion filed on December 18, 2018, to grant motion, due to petitioner repeatedly objected before trial to prevent trial counsel from admitting guilt during the trial, at DKtEntry. 330....

Addressing Question Five on page (i): The Ninth Circuit Court's Opinion on March 27, 2020, at DKtEntry. 349....

The Ninth Circuit Court's Opinion respectfully should be viewed as an Errored Opinion - Due to the Court forced petitioner to "live and die with present counsel's strategy of admitting guilt, over petitioner's repeated objections."

The Ninth Circuit Court forced petitioner to live and die with present counsel's strategy - When the Court did not allow petitioner the opportunity to show that the District Court prejudiced petitioner by the refusal to file petitioner's pro se motion, when the Ninth Circuit Court refuse to entertain petitioner's pro se motions.

And, when the Ninth Circuit Court refuse to enforce their own Order, at DKtEntry. 44...,On present counsel to respond in 2800 words to two of petitioner's pro se motions, which, counsel never responded to in 2800 words, to the; "Ex Parte Request to Set Aside Conviction (at DKtEntry.40) And the Motion For Reconsideration Under Federal Rules Of Civil Procedure 60 (b) (6), At DKtEntry. 41."

The Ex Parte Request To Set Aside Conviction (at DKtEntry,40) addresses the states evidences against petitioner which is either; "Planted or false evidences, and False Testimonies, that the prosecutor presented to the trial court."

And, the Motion For Reconsideration Under Federal Rules Of Procedure 60 (b) (6), At DKtEntry. 41...,Addresses some of how the District Court prejudiced petitioner.

In the denial of the pro se interlocutory appeal on December 17, 2002, the Ninth Circuit Court stated: "Because Berryman will be able to raise on appeal from a final judgment the issue of whether he was prejudiced by the District Court's refusal to file his pro se motion, immediate appeal is not available under either the collateral Order doctrine or 28 U.S.C. § 129 (a) (1)." (See Berryman v. Woodford, 9th. Cir. Court, No. 02-80106)

As this Honorable Court may see petitioner pray herein above under Addressing Questions One (1) through Four (4), that petitioner was submitting pro se motions (after the final judgment in the District Court) to the Ninth Circuit Court to show that the District Court prejudiced petitioner.

But, the Ninth Circuit Court "did not" allow petitioner the opportunity to show that the District Court prejudiced petitioner. This error by the Ninth Circuit Court also denied petitioner the opportunity to show that petitioner was denied a fair trial due to the trial prosecutor presented to the trial court either; "Planted or False Evidences, and False Testimonies to get a conviction against petitioner."

It must be noted that the Ninth Circuit Court know that there is no constitutional right to counsel in post conviction proceedings." So the Ninth Circuit Court respectfully should not have made the error of denying petitioner the opportunity to show that the District Court prejudiced petitioner.

In Coleman v. Thompson, 501 U.S. 722 (1991) States; "In substance that there is no constitutional right to counsel in post conviction proceedings." Therefore, the defendant not counsel is ultimately responsible for ensuring he is afforded the opportunity for full review of his claims.

As this Honorable Court may also see petitioner pray that petitioner did submit many pro se motions, which shows, petitioner being responsible for ensuring he's afforded the opportunity for full review of his claims.

The Ninth Circuit Court errors for not affording petitioner that opportunity for full review of his claims - and when errored by forcing petitioner to "live and die" with present counsel's strategy of admitting guilt, over petitioner's repeated objections, denied petitioner a fair appeal, and his constitutional right to be "apart" of his appeal.

In the Ninth Circuit Court's Opinion it shows that it's based around present counsel admitting guilt. The Ninth Circuit Court Stated:

"Berryman argues that his lawyers should have presented expert testimony supporting the theory that, although he killed Hildreth, he did so with out premeditating or forming the specific intent to kill. In support, he points to Dr. Pierce's and Dr. Benson's testimony at the penalty phase, in which they offered their diagnosis of possible organic brain syndrome, as well as both doctors affidavits on state habeas review, in which they stated that they told Soria their findings could be helpful at the guilt phase of trial." (See Ninth Circuit Court Opinion, Under B. Claims 15 and 16, on Pages 13-14, At DKtEntry. 349-1.)

Petitioner also argue that the Ninth Circuit Court's Opinion is "mistakingly" viewing petitioner "to be cooperating (which he is not) with present counsel's strategy of admitting guilt during this appeal."

The Ninth Circuit Court errored when the Court refuse to entertain petitioner's pro se motions - which would have revealed that present counsel should not have "admitted guilt in the Appellant's Opening Brief at DKtEntry. 200." Due to petitioner's pro se motions would have also revealed the trial prosecutor's misconduct for presenting "planted or false evidences, and false testimonies in to the trial court."

Petitioner pray that this Honorable Court grant this petition - Due to the Ninth Circuit Court "gave present counsel complete control over petitioner's life." When the Court forced present counsel's strategy of admitting guilt on to petitioner - when the Court refuse to allow petitioner to show that the District Court prejudiced petitioner, and when the

Ninth Circuit Court refuse to entertain petitioner's pro se motions. Also this petition should be granted petitioner pray for all the reasons mention herein above and below - And due to the fact that the Ninth Circuit Court "granted a new trial in People v. EDDy on March 26, 2019." Which is one day short of a year before the Ninth Circuit Court's Opinion herein on March 27, 2020.

REASONS FOR GRANTING THE PETITION

Rule 10 of this Honorable Court's Rules provides; "A petition for a writ of Certiorari to review a case after a final judgment under Rule 10 (a) has so far departed from the accepted and usual course of judicial proceedings."

Petitioner believe that there is compelling reasons to grant this writ of certiorari due to the fact that the Ninth Circuit Court did not allow petitioner the opportunity to show that the District Court prejudiced petitioner. When the District Court refused to file petitioner's pro se submissions.

The District Court pro se pleading lead to a pro se interlocutory appeal, to the Ninth Circuit Court who issued the Order which states:

"Because Berryman will be able to raise on appeal from a final judgment the issue of whether he was prejudiced by the District Court's refusal to file his pro se motion, immediate appeal is not available under either the collateral Order doctrine or 28 U.S.C.§129(a)(1). See Coopers & Lyband v. Livesay, 437 U.S. 463, 468 (1978)(order is not immediately appealable under collateral order doctrine unless effectively unreviewable on appeal from final judgment); Gamboa v. Chandler, 101 F.3d 90,91[9th Cir. 1996] (en banc) Order that can be effectively challenged after final judgment is not immediately appealable under 1292 (a)(1)." (See Berryman v. Woodford, Ninth Circuit. No. 02-80106)

The compelling reasons to grant this writ is that the Ninth Circuit Court's "errors" have <u>first</u>; Denied petitioner the opportunity to show that the District Court prejudiced petitioner. When the Ninth Circuit Court refused to entertain petitioner's pro se submissions, after stating on December 17, 2002;
"Berryman will be able to raise on appeal from a final judgment the issue of whether he was prejudiced by the District Court's refusal to file his pro se motion."

Second, The Ninth Circuit Court refusing to allow petitioner the opportunity to show that the District Court prejudiced petitioner, lead, to both lower Courts prejudicing petitioner, due to, petitioner's pro se claims was not entertained by the Ninth Circuit Court and was not fully entertained by the District Court - In which allowed both lower Courts to not have to grant petitioner's pro se request for certificate of appealability "COA" At DKtEntry. 108 and 121. And in the District Court for denying (at Doc. 462) petitioner's pro se request for certificate of appealability "COA" At Doc. 459....

Petitioner believe those errors by both lower Courts have placed petitioner in an unfair disadvantage, by not adding petitioner's pro se claims to the "COA" expanding, allowed, the Attorney General "not" to have to respond to the pro se claims of: "Planted and False evidences, and the False Testimonies that the trial prosecutor presented to the trial jury, and trial court."

This, unfair advantage that the Attorney General have over petitioner have denied petitioner his constitutional right to a fair appeal, and his constitutional right to be able to show on his appeal that petitioner's constitutional right to a fair trial was violated, due to, the "planted and false evidences, and the false testimonies which reveals the trial prosecutor's misconduct, and the ineffectiveness of the trial counsels."

And Third, Petitioner will address here all "Three Addressing Questions Under Three, Four, and Five," located herein above this petition on "Page (i), and Pages (13), (17),and (19)." Due to petitioner believe there issues are the same strong compelling reasons to grant this writ of certiorari, because, petitioner did in fact "repeatedly insist in person even that trial and appeal counsels refrain from admitting guilt."

The California Court of Appeals Opinion by the Honorable Peter A. Krause on March 26, 2019, in People v. EDDy, 3DCA, No. C085091, States:

"This appeal present an issue of fundamental importance to all defendants facing criminal prosecution in California: Whether the Sixth Amendment to the United States Constitution, as interpreted by the Supreme Court of the United States in McCoy v. Louisiana (2018) 584 U.S. [200 L Ed.2d.821] (McCoy), affords a defendant an absolute right to decide the objective of

his defense and to insist that his counsel refrain from admitting guilt, even when counsel's experience based view is that confessing guilt might yield the best outcome at trial. Because we conclude that defendant's absolute right under McCoy to maintain his innocence was violated, we must reverse both his conviction for first degree murder [Pen.Code.§ 187,subd.(a)) And the associated finding of true on the special allegation that he used a knife in the commission of the crime §12022, subd,(b). Having determined that defendant is entitled to a new trial, we do not reach his remaining contention."

On March 27, 2020, the Ninth Circuit Court's Opinion affirmed the District Court's denial of Rodney Berryman's Federal Habeas Corpus Petition. In the Ninth Circuit Court's Opinion the Court pointed out that trial counsel had admitted guilt, when stated;

"Trial counsel briefly argued in the alterative that Berryman might have lost his temper after consensual sex and was guilty only of voluntary manslaughter."
(See page 5 third paragraph, in the Opinion.)

The Ninth Circuit Court have over looked that trial counsel clearly stated before trial during the Marsden Hearing that; "Petitioner does not wish at all to ever concede that he possibly have been there." 5-5-88. 4. 5-6....

Petitioner believe that the trial counsel should not have even briefly admitted guilt over petitioner's repeated objection. Also petitioner believe that trial counsel's admitting guilt was far more then briefly. When trial counsel and his criminalist agreed with the prosecution's chain link evidences against petitioner.

And, when Mr. Soria did not provide Mr. Schliebe with the physical relevant evidences that the prosecutor's expert had. Which would have impeached Mr. Laskowski's testimonies. Instead of impeaching Mr. Laskowski testimony. Mr. Soria agreed that Laskowski's chain link evidence is correct, when Soria stated in his closing argument;

"The metal. Except for one picture, which Mr. Schliebe say well, it shows something. We did examine it. We're not saying what Mr. Laskowski is saying he saw is incorrect. But what he's trying to show you he saw you can't see because the photograph is out of focus." (RT 3408 2-8)

The trial jury was not concerned about photographs being out of focus, "this is a capital case." The jury was concerned about actual evidences, that Mr. Soria stated that he and Mr. Schliebe agree is correct by stating; "We're not saying what Mr. Laskowski is saying he saw is incorrect." In which also the jury knew Mr. Laskowski had examined the actual physical evidences, and Mr. Schliebe had not!!! (RT 3102)

Mr. Soria continued to go out of his way to agree with Mr. Laskowski's chain link evidences. Right after Mr. Soria mention about the chain links inside petitioner's truck, and the crime scene chain link, then Soria stated;
"We don't disagree that could probably be from the chain, but when he tries to show you his work, that was a waste of time." (RT 3409 7-10)

Mr. Soria just conceded that petitioner was at the crime scene through the prosecutor's chain link evidence. Once again the trial jury was not concerned about out of focus photographs. The jury was concerned about how did that "chain link from petitioner's truck find it's way onto the crime scene next to the victim's body." To which happens to be the only physical evidence left at the crime scene that could "link" or "connect" petitioner to the crime scene.

Mr. Schliebe's testimony help confirmed Mr. Soria's admitting guilt and conceding that petitioner was at the crime scene - When Schliebe agreed that one of the photographs, "the crime scene chain link and the chain links recovered from petitioner's truck, left the same tool marks." (RT 3105 1-10) (See Full argument of Mr. Soria admitting guilt in other forms over petitioner's repeated objection, at DKtEntry. 330.)

This is why petitioner also believe that the Ninth Circuit Court errored by not allowing petitioner to show that the District Court prejudiced petitioner, for not filing petitioner's pro se motions.

If the Ninth Circuit Court would not have errored for refusing to allow petitioner to show that the District Court prejudiced petitioner, then, the Ninth Circuit Court would have saw from the "state records and the trial exhibits." The ineffectiveness of Mr. Soria "agreeing that the (false) states chain link evidences against petitioner is correct and we don't disagree (RT. 3408-3409) in which petitioner believe is another form of admitting guilt."

And, more importantly the Ninth Circuit Court would have also saw the prosecutor's misconduct for presenting in to the trial court - the "false chain links evidences that mislead the trial jury and the defense criminalist Mr. Schliebe."

One may ask how did the trial prosecutor mislead the defense expert Mr. Schliebe in to believing that the crime scene link was a horseshoe shaped chain link - when actually the crime scene chain link is a complete round circle that became trial exhibit "34" ?

Due to the discovery the prosecutor handed over to the defense Mr. Laskowski's photographs of the chain links evidences, and Laskowski's evidences report which states;

"On 9/9/87 Laskowski received from the Technical Investigation refrigerator items from scene one (1) item 1-11, one small coin envelope containing one yellow metal link some what in the shape of a horseshoe." (See Report page 299, as Exhibit "EEE" At DKtEntry. 40.)

Mr. Laskowski's crime scene item 1-11 of a horseshoe chain link is shown in Laskowski's photograph with his initial "G. E. L." which is Gregory E. Laskowski. (See Photograph with Initial "G. E. L." As Exhibit "DDD" in the Pro Se Motion, At DKtEntry. 40.)

Regarding the chain links, Schliebe's opined that the metal analysis can only produce a "test of similarity." The analyst must look to the tool marks for identification. One of the photographs showed a similarity in the tool marks. However, this only established that the same production tool may have been used, not that the links necessarily came from the same chain. Schliebe noted that the other photographs of the chain links were too blurry for an adequate comparison. He acknowledged, however, that Laskowski was looking "at the links themselves, and not merely at the photographs." (RT 3050, 3073, 3084, 3085, 3086, and 3103.)

So Mr. Schiebe's testimony is from viewing photographs prepared by Mr. Laskowski. And Laskowski's "false" photographs shows the crime scene link item 1-11 as a horseshoe shaped chain link - in the trial exhibits "76 through 79, and in the photograph with Laskowski's initial G. E. L. 1-11." Mr. Schiebe had no choice but to believe that the crime scene chain link is a horseshoe shaped link. So Schliebe test examinations are from photographs - And Schliebe testified that the "crime scene chain link and the chain links recovered from petitioner's truck, left the same tool marks." (RT 3105 line 1-10)

Thus, how petitioner believe Schliebe was mislead - Schliebe was so mislead he believed that the same <u>production tool</u> that creates horseshoe shaped chain links may have been used to create the horseshoe chain links recovered from petitioner's truck, and the chain link from the crime.scene. Petitioner believe Schliebe could not have known that the crime scene chain link was a <u>round circle</u> - due to the fact that a production tool that creates horseshoe shaped chain links <u>can not</u> create a "complete round circle chain link." Thus, it is impossible for the round circle crime scene chain link (exhibit 34) to have "a similarity in the tool marks with those of a horseshoe shaped chain link." (RT 3105 line 1-10)

In the District Court pro se pleadings which lead to the District Court Order dated on February 23, 2005. In the Court Order on page five "Foot-Note (2)" the District Court stated:

"The present theory of the case, as presented in the petition and supporting briefs filed by counsel, is that the victim had consensual intercourse with Mr. Berryman, but the intercourse was followed by a verbal altercation which escalated into a violent confrontation, resulting in her death." (See District Court Order, At Doc. 333.)

In the same District Court Order on page five (5) at Doc. 333..,States;

"Of great concern to appointed counsel is that pursuing a planted evidence theory would give credence to one of the defense strategies advance by Mr. Berryman's trial attorneys, that is, a total denial defense, which Messrs. Bonneau and Morris describe as totally incompetent."

Petitioner believe what should have been "of great concern" for prior counsel and the District Court is to not have violated petitioner's Sixth Amendment right "to have a total denial defense." Prior counsels should have been arguing to the District Court that it was "totally incompetent for trial counsel to not have had a defense, for petitioner's total denial defense."

And, that trial counsel was ineffective for allowing the prosecutor to present "planted evidence, false evidence, and false testimonies in to the trial court." Also it was trial counsel's ineffectiveness for "admitting guilt over petitioner's repeated objection, that prior District Court counsels should have been arguing to the District Court."

And, in the District Court Order on page 13 and 14, at Doc. 333..., States;

"The question to be finally re solved here, and which the Court already addressed in its September 26, 2002, Order, is whether the strategy advanced by Bonneau and Morris in this habeas proceeding is reasonable."

And, "The refusal of Mr. Berryman's appointed attorneys to advance the claims Mr. Berryman favors constitutes a reasonable strategy." (See Page 13, line 12-15. And Page 14, line 19-21.)

Prior counsel's strategy advanced in the habeas proceeding was not reasonable due to counsels only advanced this strategy of "admitting guilt was because a total denial defense to them is in competent." Thus,

their habeas strategy of "admitting guilt over petitioner's repeated objection." And their refusal to advance petitioner's claims.

This honorable Court's Opinion in McCoy v. Louisiana on May 14, 2018, explained;

"The right to defend is personal, and a defendant's choice in exercising that right must be honored out of that respect for the individual which is the lifeblood of the law. Ibid. (quoting Illinois v. Allen, 397 U.S. 337, 350-351(1970) (Brennan,J Concurring);See McKskle v. Wiggins, 465 U.S 169,176-177(1984) ("The right to appear pro se exists to affirm the dignity and autonomy of the accused.")." (See Page 6, in the Opinion)

And, this honorable Court went on to explain on pages 6 and 7 that:

"The Sixth Amendment contemplat[es] a norm in which the accused, and not a lawyer, is master of his own defense. Trial management is the lawyer's province. Counsel provides his or her assistance by making decisions such as what arguments to pursue, what evidentiary objections to raise, and what agreement to conclude regarding the admission of evidence. Gonzalez v. United States, 553 U.S. 242, 248 (2008) (intornal quotation marks and citation omitted). Some decision, however, are reserved for the client notably, whether to plead guilty, waive the right to a jury trial, testify in one's own behalf, and forgo an appeal. See Jones v. Barnes, 463 U.S. 745,751(1983). Autonomy to decide that the objective of the

defense is to assert innocence belongs in this latter category. Just as a defendant may steadfastly refuse to plead guilty in the face of over whelming evidence against her, or reject the assistance of legal counsel despite the defendant's own inexperience and lack of professional qualifications, so may she insist on maintaining her innocence at the guilt phase of a capital trial. These are not strategic choices about how best to achieve a client's objectives; They are choices about what the client's objectives in fact are. See Weaver v. Massachusetts, 582 U.S. (2017) (Slip op.,at 6)(2017) (Self representation will often in crease the likelihood of an unfavorable out come but is based on the fundamental legal principle that a defendant must be allowed to make his own choice about the proper way to protect his own liberty); Martinez v. Court of

Appeal of Cal., Fourth Appellate Dist.,528 U.S. 165(2000).(Scalia J. Concurring in judgment) ("Our system of laws generally presumes that the criminal defendant, after being fully informed. Knows his own best interests and does not need them dictated by the the state").
(See Pages 6 and 7, in the Opinion)

Petitioner did make clear to counsels what's best for him, and that was to not "admit guilt." But counsels and the District Court decided to take petitioner's choice away from him. And the District Court allowed counsel to "admit guilt over petitioner's repeated objections." Petitioner wasn't able to protect his own liberty.

Even if counsel believed that the planted evidence theory did not support a total denial defense. It is not a strategy it is a choice that petitioner made for his best interest. And the Sixth Amendment protects petitioner's constitutional right to insist that counsels refrain from "admitting guilt over petitioner's repeated objections."

Here, the District Court errored for reiterating prior counsel's assessment of the evidence when the Court stated:

"To reiterate, the Court agree with the assessment of Messrs. Bonneau and Morris that evidence of malfeasance on the part of Kern County law enforcement officials (including investigators for the district attorneys office) in manipulating evidence cannot be developed due to nonexistence. The Court has studiously considered Berryman pro se claims, as presented in his pro se state habeas petition and reiterated in his pro se communications received by the Court. The contentions he advances simply cannot be sustained. The evidence present at Mr. Berryman's trial does not appear to have been, in any away, planted." (See Order, at Doc.333. Pages 13 and 14)

Petitioner respectfully will take this time here to show that the District Court errored for agreeing with prior counsel's assessment of the evidence of; "Malfeasance on the part of law enforcement officials cannot be developed due to nonexistence." (See page 13, line 16-20, at Doc. 333.)

Petitioner believe he is able to show that the District Court agreed with petitioner on two key states evidences, that ended up being "false and planted evidences. With the crime scene chain link and the Brooks shoes."

In which the District Court made the mistake of stating, "the evidence presented at Mr. Berryman's trial does not appear to have been, in any way, planted." (Page 14, line 2-3)

The first key evidence is addressed in the Court's Order on pages 3 and 9, at Doc. 333...,And in the Court Order that denied petitioner's request for COA, on pages 13 and 14, at Doc.462...,And the Second key evidence is addressed in the Court's Order on page 13, at Doc. 462....

The first key evidence is that the Brooks shoes that petitioner stated was not his shoes with the brand name Brooks on the side of the shoes. The District Court stated;

"With respect to the shoes and shoe imprints. He also argue that the shoes officers initially described as having the brand name "Books" on the side of the shoes, were not his." (Page 3, at Doc.333)

The District Court agreed with petitioner that his shoes did not have the brand name on the side of the shoes, when the Court stated;

"This cover letter asks both counsel to transmit to the Court Mr. Berryman's typed complaint concerning the evidence received during the preliminary hearing examination. In the typed complaint, Mr. Berryman complains about the identification of his shoes. Specifically, arresting officers are said to have reported that Mr. Berryman's shoes had the name "Brooks" on the side of the shoes the night of the arrest, but this fact was not borne out during testimony at the preliminary examination hearing. Furthermore, and in any event, Mr. Berryman's shoes did not have the "Brooks" brand name on the sides of his shoes. During his discussion of the brand name on the shoes, Mr. Berryman asks to have his appointed attorneys removed from the case." (See Court Order on page 9, line 3-14, at Doc.333)

The District Court agreed that petitioner's Brooks shoes did not have the Brooks brand name on the side of his shoes. Which shows that the Brooks shoes in evidences that was presented to the trial court as Exhibits 57 and 58 is planted evidences.

Petitioner submitted a pro se request for COA, at Doc. 459...,And the District Court's Order denying COA, at Doc. 462...,Addresses the shoes other visible differences between the two pairs of Brooks shoes, when the Court Ordered stated:

"The actual shoe represented to be Berryman's shoes were marked as Exhibits 57 and 58. A separate Exhibit, 68, was said to be a photograph of Berryman's right shoe. When comparing the right shoe (Exhibit 58) with the photograph of the right shoe (Exhibit 68), Berryman points out that the "fake" blood is visible on Exhibit 58, but not discernible on Exhibit 68. Berryman also discused photographs of two left shoes, one of them having a design defect (with the R and S of Brooks upside down). It was the left shoe, with the design defect, that was said by the prosecution to have made distinctive impression at the crime scene. It was the other left shoe, the one was marked Exhibit 57 that was passed around to the jurors. There is no way for the Court to assess the validity of Berryman's assertion, since the state record is with the Ninth Circuit. In the absence of substantiation, Berryman has not made a showing of the denial of a constitutional right." (See Court Order on page 13 and 14, line 23-28, and line 1-5, at Doc. 462)

The District Court could have "corrected its errors" by just requesting the Ninth Circuit Court for the state record. And by viewing petitioner's pro se photographs of the two pairs of Brooks shoes (at DKtEntry. 40) The District Court already had knowledge that petitioner's shoes did not have the Brooks brand name on the side of his shoes, from what the Court stated (at Doc.333 on page 9) so there was enough reasons for the Court to not only request the higher Court for the state record. But also should have granted petitioner's request for COA, at Doc. 459...

It must be noted that even if the District Court did not know that the Brooks shoes (in evidences room) with the Brooks brand on the side of the shoes was planted evidences. But the Court knew there's two pairs of shoes in this case, that shouldn't be. So COA should have been granted.

Also there is clearer stronger evidences that shows there is two pairs of Brooks shoes in this case that was used during the trial. See pro se request for HELP from the Ninth Circuit Court, at DKtEntry. 162...

And the Second key evidence is the crime scene chain link that the District Court stated; "While this Court no longer is in possession of the state record (the state record followed Berryman's appeal to the Ninth Circuit), based on the state Court observation of a jewelry clasp at the crime scene, Berryman's contention that the link found at the crime scene was in fact round, is credible." (See Court Order page 13, line 10-15, At Doc. 462)

This is now the second key evidences that the District Court have agreed with petitioner's pro se evidences. The crime scene chain link being round is credible! Shows clear strong evidences that the trial prosecutor presented false chain links evidences in trial Exhibits 76 through 79.

The prosecutor laid a strong (false) foundation for Mr. Laskowski's "false" testimonies (later to come) in the prosecutor's false Opening Statement, when stated:

"And examined by Laskowski under the microscope, and the tool marking of the tool that cut those things, indicated they were cut by the same machine. He'll testify to you that these links are the same size, same shape. The link that's found out at the crime scene, and the two links that are found on the floor of the car, and the links on either end of the break, you'll see there's a printout of this machine, that show's the percentages, of the chain link on the floor and the one found at the scene obviously cut by the same tool." (RT 2252 line 22-28, and RT. 2253 line 1-15)

Mr. Laskowski's "planted" horseshoe shape chain link shown in photograph with his "initial G.E.L., and the crime scene item number 1-11," became part of Mr. Laskowski's "false" chain link evidences. To which, Laskowski used to manufactured in the "false trial exhibits 76, 77, 78, and 79.

Mr. Laskowski's testimony here is "false" when he stated; "The crime scene link was a horseshoe shape by the cutting blade as it is being manufactured." (RT. 2819 line 7-9)

The prosecutor requested Mr. Laskowski to identify for the Court People's Exhibits 76 through 79. Mr. Laskowski identified that the trial exhibits depicts "a comparison of the crime scene link (as a horseshoe) with the chain links from the truck. (RT. 2892-2894)

And to support the prosecutor's "false chain link exhibits 76 through 79." Mr. Laskowski presented a false machine chart printout exhibit 80, to show (false evidence) that the crime scene chain link is a horseshoe shaped link, like those recovered from petitioner's truck. (RT 2646-2647) and (RT 2818-2819)

Petitioner believe it was an "error" for the District Court not to request the Ninth Circuit Court for the state record. After agreeing with petitioner that the crime scene chain link was in fact round!

This false chain link evidence presented to the trial court lead to petitioner's trial counsel and expert to concede that the chain links evidences was true against petitioner, (when in fact it was not).

Here we have Mr. Soria admitting guilt (RT 3402, 3415, 3417) nearly from within the same breath "conceding" that the prosecutor's chain link evidences is "true or correct, and we don't disagree." (RT 3408-3409)

It must be noted that the reasons why Mr. Schliebe was mislead was that he did not examine the physical crime scene chain link. RT.3102 line 21-28. And during the trial the prosecutor and Mr. Soria both "stipulated" that the crime scene chain link need not be produced. (RT 3660 line 13-28) And when the time came to produce the crime scene chain link (Exhibit 34) the prosecutor never produced it. (RT 2949 line 8-11)

If Mr. Schliebe would have had the chance to examine the physical crime scene chain link. Then he would have been able to "impeach" Mr. Laskowsk's testimonies. Instead of conceding to the prosecutor's "false chain links evidences" against petitioner.

Mr. Soria's trial ineffectiveness falls under Strickland v. Washington, 466 U.S. 668(1984). Due to Mr. Soria allowed his expert Mr. Schliebe to be mislead by the prosecutor's false chain link evidences - to the point of Mr. Schliebe conceding that the crime scene chain link and those (links) inside petitioner's truck left the "same tool marks." (RT 3705)

The prosecutor's misconduct here and throughout the trial that deals with the "Chain link evidences, Brooks Shoes, and the Shoes and Tire test rolled impressions, and also the fingerprint evidences." Falls under "Brady v. Maryland, 373 U.S. 83(1963), Napue v. Illinois, 360 U.S. 264, 269,(1959)," regarding prosecutorial failure to disclose material impeaching evidence and false testimony, or additional ineffective assistance of counsel, or any number of other claims. In which present counsel's pointed out those unexhausted violations claims, that maybe in this case. (See Opening Brief, FootNote "28" on page 122 At DKtEntry.200)

The District Court should have granted petitioner's request for "COA", at Doc. 459. Due to the chain link false evidences presented to the trial court. And the planted pair of Brooks shoes "with blood still on them, inside and out around the Brooks shoe in evidences room - that prejudices petitioner during the trial.

It was an error for the District Court to have "agreed" with prior counsels (without fully investigating) that the evidences of malfeasance on the part of Kern County law enforcement officials in manipulating evidence cannot be developed due to nonexstence."
(Page 13, line 16-20, At Doc. 333.)

Petitioner will argue here back to the District Court's Order, at Doc. 333...,When the Court stated; "In deference to Mr. Berryman's insistence that these federal habeas proceedings focus on guilt phase issues, However, counsel state they have bolstered evidence developed in support of a mental state defense claim advanced to vacate the conviction." (Page 5, line 14-18, At Doc.333)

Prior counsel's (and the District Court) focus was on admitting guilt, instead of focusing on the guilt phase prosecutor's misconduct for presenting into the trial court; "The false Chain link evidences, Planted Brooks Shoes in evidences, False Tire Test Rolled Impressions, The False fingerprint evidences, and False Testimonies." (See Misconduct Evidences Argued, In The Pro Se Request For "COA", At Doc. 459.)

The District Court went on to layout certain legal principles for evaluation of this issue. And also pointed out that Berryman "enjoys no constitutional right to counsel under the Sixth Amendment." Bonin v. Vasquez, 999 F.2d 425,428,429,(9th Cir. 1993) (See Pages 11, line 6-10, At Doc.333.)

And that, therefore is not entitled to effective assistance of counsel under the Sixth Amendment on "Habeas Corpus Id; Bonin v. Calderon, 77F.3d 1155, 1160(9th Cir. 1996)." (Page 11, line 10-13, At Doc.333.)

The District Court continued to explain; "As extensively explained in the August 12, 2002 Order, the attorney representing a criminal defendant is in control of defense strategies and tactics except as to a handful of fundamental personal right not relevant here. See People v. Masterson, 3 Cal. 4th 965,969(1994). (See Page 12, line 23-25, At Doc.333.)

Then the District Court stated; "Although habeas is not a criminal trial, the "ABA" standards also recite that the responsibility of a lawyer in a post conviction proceeding should be guided generally by the standards governing the conduct of lawyers in criminal cases." (See Page 13, line 8-11, At Doc.333.)

The District Court used the Sixth Amendment to give prior district court counsel "complete control" over petitioner's life. When forced petitioner to "live and die with prior counsel's strategy of admitting guilt, over petitioner's repeated objections."

The "ABA" model rule of professional conduct 1.2.(a)(a "lawyer shall abide by a client decision concerning the, objective of the represention.")

Here, petitioner will address the Second Question to be addressed in the "Addressing Question Three (3) on Page (i) and Page (13)." Which is the request for "Touch-DNA" on the Brooks shoes.

Petitioner believe that this case is extraordinary for all the reasons mention herein above and below in this petition - And for those reasons petitioner request and pray that this Honorable Court grant "Touch-DNA" on the Brooks shoes.

It must be noted that if present and prior counsels was not focussing only on "admitting guilt." Then, they could have shown through an expert the differences (without DNA) between the two pairs of Brooks shoes. Instead of petitioner having to request both lower Courts and now this Honorable Court for "DNA Testing" on the Brooks shoes in evidences room, which was passed around to each juror which was not petitioner's "shoes."

The Ninth Circuit Court and the District Court both decided not to entertain the pro se request for "DNA Testing" on the Brooks shoes. So, petitioner's only hope is with this Honorable Court to grant "Touch-DNA" on the Brooks shoes - So petitioner can show that the shoes in evidences room is not petitioner's Brooks shoes, a person would "know his or her own shoes." Petitioner pray that this Honorable Court grant this request for all the reasons mention herein above and below.

In the Ninth Circuit Court's Opinion on March 27, 2020, Under B. Claims 15 and 16, Pages 13 and 14. The Court is "mistakenly" viewing petitioner to be cooperating and agreeing with present counsel's strategy of "admitting guilt during this appeal. When in fact petitioner believe that the Court have forced petitioner to "live and die" with present counsel's strategy of admitting guilt - When the Court refuse to allow petitioner to show that he's afforded the opportunity for full review of his claims. And, the Court refusing to allow petitioner to show that the District Court prejudiced petitioner for not filing petitioner's pro se motions.

Petitioner's entire appeal have been based on present and prior counsel admitting guilt over petitioner's repeated objections. And petitioner believe that present and prior counsels have violated the Constitutional Sixth Amendment right for petitioner to insist that his counsels refrain from admitting guilt, "over petitioner's repeated objections."

Petitioner pray that this Honorable Court grant this petition, due to the Ninth Circuit Court's errors "has so far departed from the accepted and usual course of judicial proceedings;" Under Rule 10 (a).

CONCLUSION

The Ninth Circuit Court know that there is no constitutional right to counsel in post conviction proceedings. So it must be an error (I) pray for the Court to not allow petitioner the opportunity to show that he's afforded full review of his claims. (See Coleman v. Thompson, 501 U.S. 722 (1991) In the U.S. Supreme Court.)

And the Ninth Circuit Court errored for denying petitioner interlocutory appeal for rehearing and rehearing en banc - When the Court knew that petitioner's pro se motions was addressing the "planted and false evidences, and the false testimonies that the prosecutor used to get a death penalty conviction against petitioner." Because, this is a death penalty case and the pro se motions addresses "planted and false evidence." A immediately appeal should have been available for petitioner, due to, petitioner could be executed because of the states false evidences. (See Berryman v. Woodford, Ninth Circuit Court, no. 02-80106)

In the denial of the pro se interlocutory appeal on December 17, 2002, the Ninth Circuit Court Stated: "Because Berryman will be able to raise on appeal from a final judgment the issue of whether he was prejudiced by the District Court's refusal to file his pro se motion, immediate appeal is not available under either the collateral Order doctrine or 28 U.S.C. §129 (a) (1). (See Berryman v. Woodford, Ninth Circuit, No. 02-80106.)

It's been over 18 years now and petitioner still continued during that time (now after final judgment) requesting that the Ninth Circuit Court allow petitioner to show that the District Court prejudiced petitioner.

But, the Ninth Circuit Court continued refusing to allow petitioner to show that the District Court prejudiced petitioner. These errors by the Ninth Circuit Court shown herein on this page and above have placed petitioner at a unfair disadvantage - Due to the Attorney General did not have to respond to the "planted and false evidences, and false testimony in this rare death penalty case."

It must be noted that because of present and prior counsel's strategies of admitting guilt over petitioner's repeated objections, and refusing to submit petitioner's pro se pleadings and arguments - Helped, the Attorney General to have a big advantage over petitioner, even if counsel did not mean to, it still denied petitioner a fair appeal.

Petitioner pray that this Honorable Court grant this Writ of Certiorari for all the reasons mention herein above and below.

Respectfully submitting by Rodney Berryman, Sr. Dated on: 9/9/2020

Rodney Berryman Sr.