No. 20-5764

IN THE
SUPREME COURT OF THE UNITED STATES

In re RODNEY BERRYMAN Sr., -PETITIONER,

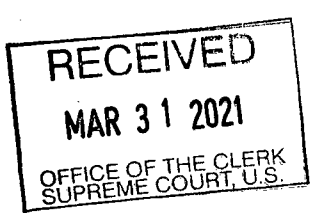
V.

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 REHEARING

RODNEY BERRYMAN, Sr.
CDCR# E-03500
San Qentin State Prison
San Quentin, Ca 94974
In Pro Per



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CAPITAL CASE
QUESTION PRESENTED

Petitioner Rodney Berryman Sr., present five questions as follows:

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 motion - 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 March 27, 2020, affirming the District Court's denial of habeas corpus. When knowing before filed Opening Brief petitioner repeatedly objected to present counsel admitting guilt.

DIRECTLY RELATED PROCEEDINGS

Superior Court of the State of California, County of Kern:

People v. Rodney Berryman, No. 34841 (Nov. 28, 1988).

California Supreme Court:

People v. Rodney Berryman, No. S008182 (Dec. 27, 1993) (on automatic appeal, convictions and death sentence affirmed).
In re Rodney Berryman, No. S034862 (Dec. 27, 1993) (petition for writ of habeas corpus denied).
In re Rodney Berryman, No S068933 (Apr. 29, 1998) (petition for writ of habeas corpus denied).
In re Rodney Berryman, No. S077805 (Apr. 21, 1999) (petition for writ of habeas corpus denied).
Rodney Berryman v. Davis, No. S226259 (May 4, 2015) (petition for writ of habeas corpus filed).

United States District Court for the Eastern District of California:
Rodney Berryman v. Ayers, No. 1:95-CV-05309-AWI (July 10, 2007) (petition for writ of habeas corpus denied).

United States Court of Appeals for the Ninth Circuit:

Rodney Berryman v. Wong, No. 10-99004 (Mar. 27, 2020) (affirming denial of habeas corpus relief).
Rodney Berryman v. Woodford, No. 02-80106 (Dec. 17, 2002) (denying interlocutory appeal).

Supreme Court of the United States:

Rodney Berryman v. State of California, No. 93-7680 (Jan. 9, 1995) (certiorari denied).
Rodney Berryman, Sr. v. Chappell, Warden. No. 12-9604 (Jun. 3, 2013) (certiorari denied).
Rodney Berryman, Sr. v. Wong. Warden. No. 20-5764 (Feb. 22, 2021) (certiorari denied).

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STATEMENT

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 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 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 counsel 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 the 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 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 motion - 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 for requesting 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 3/27/2020, affirming the denial of habeas corpus. When knowing before filed Opening Brief that petitioner repeatedly objected to present counsel admitting guilt. On February 22, 2021, This Court issued an Order denying pro se petition for certiorari. Case No. 20-5764.

REASON PETITION SHOULD BE GRANTED

Petitioner pray that a rehearing be granted due to the "Questions Presented in the Petition Under, Three (3), Four (4), and Five (5), which shows petitioner believe that the Court of Appeals erred for overlooking this Honorable Court's Opinion in McCoy v. Louisiana 584 U.S. (2018), and for overlooking in McCoy as applied by the state court in People v. Eddy 33 Cal. App. 5th 472 (2019), when the Court of Appeals issued their

Opinion on March 27, 2020, (at DKtEntry. 349) regarding present counsel's Appellant Opening Brief (AOB), at DKtEntry. 200...,Which is based off of admitting guilt, which was over petitioner's objection." See Appellant Opening Brief of petitioner not cooperating with present counsel's strategy of admitting guilt, on pages 117-122, at DKtEntry.200.

The Appellant's Opening Brief based view is that confessing guilt offers; "The best chance to avoid the death penalty under claims 15 and 16, mental state defense and lack of intent." (See AOB, pages 76-80, at DKtEntry. 200)

The petition for writ of certiorari respectfully should not have been denied on February 22, 2021, on the issue of the McCoy and Eddy violation, under Questions Present (3), (4), and (5), Due to the evidence on record before trial of counsel stating; "Petitioner does not wish at all to ever concede that he possibly have been there." (See Marsden Hearing, 5-5-88. 4. 5-6)

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 guilt in face of over whelming evidence against her, or reject the assistance of legal counsel despite the defen-

dant'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 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. Know his own best interests and does not need them dictated by the state.")." (Pages 6-7 in the Opinion) Pet. 29

On March 27, 2020, the Court of Appeals Opinion (on page 5) pointed out that trial counsel had admitted guilt, when the Court explained that; "Trial counsel briefly argued in the alternative that Berryman might have lost his temper after consensual sex and was guilty only of voluntary manslaughter." Pet. 24

Petitioner believe that trial counsel should not have briefly admitted guilt over petitioner's objection - When 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

And, petitioner believe that trial counsel's admitting guilt was far more then briefly - when trial counsel and his criminalist conceded to the prosecutor's chain link evidences against petitioner. Pet. 24

Petitioner believe that the Court of Appeals Opinion filed March 27, 2020, is stating that present counsel's argument is that trial counsel should have adopted admitting guilt more vigorously during the guilt phase. Which, the Court explained is a far fetched theory, this is what the Panel stated:

"By adopting this far-fetched theory, Berryman's lawyers would have lost the ability to argue the more straightforward theory that the police had arrested the wrong person. The circumstantial evidence tying Berryman to the scene was not insurmountable. The strongest piece of evidence was the drop of blood on Berryman's shoe, consistent with only 1 in 1,470 unrelated African Americans. Berryman, 864 P. 2d at 49. But Berryman had a ready reply. The blood could have come from any of Hildreth's relatives with whom he frequently had contact. As for the Fingerprint in his truck, his lawyers also had a response prepared. Even though Hildreth had never ridden in his truck, she still could have left a print by leaning against the car while talking. The straightforward innocence argument that Berryman's lawyers pursued was not a lost cause." (See Panel's Opinion on page 16, at DKtEntry. 349-1)

The Court of Appeals pointed-out that the strongest piece of evidences against petitioner was the "drop of blood on Berryman's shoe, and the fingerprint of Ms. Hildreth in petitioner's truck." It must be noted that the Brooks shoe with the bloodstain on them is not petitioner's shoe. Petitioner have requested for this Honorable Court to grant Touch-DNA on the Brooks shoes in evidence. Pet.16(Third Question Presented)

And, it must be noted that there "was no fingerprint comparison test result that showed there was a match," of Ms. Hildreth's thumb print found on petitioner's truck. The trial record shows that the "jury" may have mistook one of these trial exhibits "41, 42, 43, and 44," for Mrs. Chappell's comparison test results "which they was not," from the trial testimony shown in the Exhibits, herein below starting with trial;

"Exhibit 44, the photograph of petitioner's truck. (RT 2417) Exhibit 43, the rolled right thumb print of Ms. Hildreth. (RT 2418) And Exhibit 42, the "latent #18 that became trial Exhibit 41." (RT 2420)

Trial counsel's ineffectiveness falls under Strickland v. Washington, 466 U.S. 668 (1984) , For not having a fingerprint expert to testify that there was no comparison test results showing that Ms. Hildreth's thumb print was found in petitioner's truck.

The Court of Appeals explained that the straight forward innocence argument that Berryman's lawyers pursued was not a lost cause. (Page 16) Petitioner respectfully would like to point out "how can there be in this case a straight forward innocence argument - If the defense expert had not examined the physical evidences, which, allowed the prosecutor to discredit the defense expert (Schliebe) through the physical evidences." (RT 3342-3343)

Here, trial counsel's alternative argument of "admitting guilt." (RT 3402, 3415, 3417) Then, nearly within the same breath Mr. Soria conceded to the prosecutor's chain link evidence when he stated; "he and Mr. Schliebe agree is correct by stating we're not saying what Mr. Laskowski is saying he saw is incorrect." (RT 3408)

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

Mr. Soria conceded that petitioner was at the crime scene through the the prosecutor's chain link evidences. The jury was not concerned about out of focus photographs - the jury was concerned about how did that chain link from petitioner's truck find its way onto the crime scene next to the victim's body.

The prosecutor wasted no time to show the jury how that one horseshoe shaped chain link (exhibit 76-79), found its way onto the crime scene. This, is how important the chain link evidence was to the prosecutor.

The prosecutor's closing argument have placed Ms. Hildreth inside petitioner's truck at the crime scene - being drugged out of the truck while she's grabbing the chains around the rear view mirror, taking with her, one of the chain links on to the crime scene. (Reply Brief 5.) (RT 3363)

The prosecutor went on to state; "Thank goodness at least that one was found." (RT 3363) The problem here is that that "one crime scene chain link, is not a horseshoe shaped chain link, like those recovered in petitioner's truck. The actual crime scene chain link is a complete round circle in trial (exhibit 34)."

The crime scene chain link could "not" have come from petitioner's truck. And, here the prosecutor used Mr. Soria's ineffectiveness when stated;
"The defense has had the (chain link) longer than the People have had it. No one can come in here and say that link was likely to have come from another chain. Its perfectly consistent, in the tool marks, physical makeup and how it appears, its tool marks and its metallic composition that chain link was from the defendant."(Reply Brief. 5. RT 3363-3364)

Mr. Soria's ineffectiveness falls under Strickland v. Washington, 466 U.S. 668 (1984). Due to Soria did not call to testify the defense expert Charles Morton who actually had examined the chain link evidences. And, who could have testified that link came from another chain. But, what was even more important was to show the jury that Mr. Morton had "examined

the physical chain link. (RT 3104) In which the jury would have learned through Morton's testimony that it is "physically impossible" for the crime scene round chain link (exhibit 34) to have the same tool marks and physical makeup with the horseshoe shaped chain links, recovered from petitioner's truck.

Petitioner believe due to the defense expert (Schliebe) conceded to the chain link evidence without examining the physical chain links, had prejudiced petitioner, when Mr. Schliebe stated; "The crime scene chain link and the link from petitioner's truck, left the same tool marks." (RT 3105 1-10)

Petitioner respectfully believe that the Court of Appeals should not have filed their Opinion on March 27, 2020, based off present counsel's strategy of "admitting guilt." The Court, could have instead Ordered counsel to "review petitioner's wishes to insist that counsels refrain from admitting guilt." Because it could lead to a Constitutional Sixth Amendment violation. Due to this Honorable Court's Opinion in McCoy v. Louisiana, 584 U.S. (2018)., Pet. 13-15 (Third Question Presented); See C.A. DKt. 330 (Motion). And in People v. Eddy, 33 Cal. App. 5th 472 (2019)., Pet. 17-18 (Fourth Question Presented); See C.A. DKtEntry. 348. (Motion).

The Honorable Peter A. Krause Opinion in People v. Eddy 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." (Pet. 17-18)

Mr. Soria stated before trial at 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

Mr. Soria violated McCoy as applied in People v. Eddy, when Soria admitted guilt by stating; "Despite what we say, Rodney was out there, there, was an explosion of emotion, Id., at 294: 2-5. The victim's shoe being off indicated consent, not rape. DKtEntry. 201-8 at 9."(See Present Counsel's Petition For Panel Rehearing, On Page 14, at DKtEntry. 362)

CONCLUSION

Petitioner pray that this Honorable Court grant rehearing for all the reasons mention herein above and below. Respectfully Submitted, Rodney Berryman Sr., Dated on March 22, 2021. Rodney Berryman Sr