

SEP 18 2020

OFFICE OF THE CLERK

No. 20-5835

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH BELARDE GARCIA — PETITIONER

VS.

DEAN BORDERS, Warden — RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI FROM
DENIAL OF HABEAS CORPUS PETITION BY THE
CALIFORNIA SUPREME COURT:

PETITION FOR WRIT OF CERTIORARI

Joseph Belarde Garcia

H-01695

P. O. Box 3466

Corcoran, California, 93212

ORIGINAL

QUESTION(S) PRESENTED

CAN A STATE PAROLE BOARD COMMIT A FATAL ERROR BY THE REFUSAL TO ENTERTAIN FAVORABLE EVIDENCE OF THE STATE PRISONER FOR HIS SUITABILITY TO BE RELEASED UPON PAROLE?

DOES THE DUE PROCESS OF LAW CLAUSE OF THE FOURTEENTH AMENDMENT MANDATE A "FAIR PROCESS" TO A STATE PRISONER IN SUITABILITY HEARING FOR RELEASE ON PAROLE?

DOES THE EQUAL PROTECTION OF LAW CLAUSE OF THE FOURTEENTH AMENDMENT MANDATE THAT ALL STATE PRISONERS' BE TREATED FAIRLY WITH EVEN-HANDED JUSTICE IN SUITABILITY HEARING FOR RELEASE ON PAROLE?

CAN A STATE SUPREME COURT DENY A PETITION FOR WRIT OF HABEAS CORPUS, WHEN A LAW ENFORCEMENT INVESTIGATOR EDITED AND FABRICATED AN "IMPACT STATEMENT" OF ALLEGED VICTIM?

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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:

California Attorney General Office
300 South Spring Street
Suite No. 1702
Los Angeles, California
90013

RELATED CASES

None To Date

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Appendix C	Mr. DeJon R. Lewis, Counsel For Petitioner At Time of Board Of Parole Hearings, Suitability For Parole Proceedings, Identifying Errors Of Constitutional Magnitude Of The Ten Year Denial For Parole Hearing.
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the California Supreme court appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

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

For cases from **state courts**:

The date on which the highest state court decided my case was 06/10/20. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment To United States
Constitution, Due Process & Equal
Protection Of Law Clauses

28 U.S.C. Section 1257 (a)

STATEMENT OF THE CASE

On September 16, 2015, petitioner, Joseph Belarde Garcia, appeared before Board of Parole Hearings. 1/

Appearance was based upon the new created "Elderly Release," for elderly state prisoners. Petitioner had retained for the purpose of possible early parole, counsel, Mr. DeJon R. Lewis, Esq., Attorney At Law, 674 County Square Drive, Suite No. 204, Ventura, California, 93003.

Commissioners presiding over the hearing on behalf of the B.P.H., were Commissioner Mr. Brian Roberts and Deputy Commissioner, Mr. Nga Lam. Early parole for "elderly state prisoners" came about from the "Three Judge Panel" in Plata vs. Davis, Northern District of California, United States District Court, order dated February 10, 2014.

Commissioners, Roberts & Lam, denied parole consideration for ten (10) years based upon petitioner's assertion that he was "factually" innocent of the crime of which he was convicted. Claiming that he lacked "insight" and remorse for his conduct. Further, an expert appointed by the State of California, wrote an adverse opinion/analysis of petitioner based upon the same fact, he claimed innocence.

However, another expert had interviewed petitioner numerous times and wrote a highly favorable report and/or opinion/analysis of the petitioner's mental state of mind and his risk to society. B.P.H., commissioner's refused to entertain anything regarding factual innocence to the petitioner's criminal culpability. At this time petitioner had provided the published book entitled "Framed" written by Miss Lori

FOOTNOTE #1

Petitioner began the statement of the case from the denial of early parole. Board of Parole Hearings will hereafter be referred to as B.P.H.

Carangelo, which amplify "Factual Claim of Innocence." Petitioner's counsel filed a letter for review of B.P.H.'s decision denying a parole hearing for ten (10) years, see Appendix C . Even counsel, has articulated the fact that petitioner made numerous proclamations to his innocence and was unjustly and unconstitutionally assessed in a punitive nature, i.e., denial for ten years, contrary to rights secured by Fourteenth Amendment to United States Constitution. (See: Appendix C , second paragraph.)

Counsel additionally asserted violations of recently enacted Penal Statute (California's), § 3043 (3)(b)(1), i.e., "Marcy's Law." All of counsel objections were denied. Even counsel has never heard of a ten (10) year denial. The renown, "Charles Manson" was only denied to return to B.P.H. for three (3) years.

Lower state appellate court rendered an unreasonable decision in light of the evidence articulated in state petition for writ of habeas corpus. In San Luis Obispo County there were a rash of unsolved rapes and burlaries which terrorized the communities of San Luis Obispo County. Three (3) females victims' positively identified a male suspect, however, DNA evidence cleared that suspect. A composite police sketch of suspect demonstrates that an "African-American" male committed the criminal acts. This composite drawing has no resemblance of petitioner whatsoever. (See: Framed, at pg. 24.)

A brief explanation regarding petitioner's factual innocence is articulated in order for this Honorable Court to ascertain why such innocence was relavant and constitutional to be submitted with out being assessed punitive punishment.

Beverly Joan Brian

As duly noted from official police reports/records, reporting police officer stated emphatically that no criminal act occurred. And that Brian was not mentally competent, i.e., mentally ill. (See: Framed, at pg. 25, fourth paragraph.) Petitioner was convicted of criminal acts committed to Beverly Brian.

Gloria Johnson

Criminal charges were dismissed based upon a failure to identify petitioner. M.O. was identical to other criminal acts committed to other victims. (Framed, at pg. 25, last paragraph.)

Stacia Michele Deane

Deane described the perpetrator as a white male, approximate twenty-eight (28) years-old. Five (5') foot tall and weighed one-hundred-fourty (140Lbs.) pounds. Ironically petitioner presented proof that he was in the San Luis County Jail at the time of this criminal act was committed. Additionally, petitioner is a "Native-American" and is six foot & one inch (6'1") tall. 2/

Carrie Dorgan

At approximately 3:00pm in Los Osos, California, a male wearing a ski mask forced his way into her residence, pushed her into her bedroom, but did not rape her. This crime occurred on September 9, 1989. Dorgan identified a man "Terry" as her attacker.

On September 6, 1989, petitioner was admitted to Twin cities in Atascadero with an ankle injury and petitioner was on crutches at time of alleged incident. Phone records provided proof that petitioner was at his work place at exact time criminal act was committed. (See: Framed, at pgs. 26-27.)

FOOTNOTE #2

Defense counsel(s) are to blame for many of the petitioner's convictions due to failure to investigate.

Tyra Dawn Wittmeyer

On September 17, 1989, Wittmeyer was raped by a white male, but was dark complected, was seventeen to twenty (17 to 20) years-old.

Petitioner was fourty-one (41) years-old at time of this alleged criminal act.

Tyra's mother inform the police it was Steve who had raped her daughter. Tyra testified that man who raped her was not the petitioner. Police withheld this police report which this information was documented upon. (Framed, at pgs. 27-28.)

Jacqueline Brooks

On October 11, 1989, at approximately 4:00pm Brooks was attacked by a male, light skinned "African-American" who had a southern accent. The man was approximately thirty to fourty (30 to 40) years-old. A composite drawing by police artist depicted a black male.

Brook's mother, Jan Brooks identified a police officer as the man who sexually assaulted her daughter. Semen sample, hair & blood samples were all negative in regards to petitioner. The control sample for ethnicity was tainted. (Framed, at pg. 29.)

Tracey Denise Archer

On October 12, 1989, at approximately 3:20pm in San Luis Obispo, a hispanic male walked into her residence. Hispanic male was about twenty (20) years-old, having no tattoos and was wearing a ski mask.

Archer originally identified another suspect from a photo lineup (six-pack), however, pointed to petitioner's picture and stated "that he was chubby in the fact like him, but perpetrator was much younger than petitioner. Again, defense counsel missed a critical statement by victim, i.e., "A young Mexican guy." (Documented in police report.)

Petitioner was meeting with a client at the time of this criminal activity. (Framed, at pgs. 29-30.)

The list goes on and on, i.e., Cheryl Ann Picco; Mickle J. Alleman; Chatherine T. Pinard. (Framed, at pgs. 30-33.) There can be no doubt whatsoever, that no "one person" committed these criminal acts, identifications are far too diverse. And for the B.P.H. to hold petitioner for another ten (10) years because his claims of innocence violated Due Process and Equal Protection of the Law. (See: Fourteenth Amendment to United States Constitution.)

DNA EVIDENCE DESTROYED BY SAN LUIS OBISPO COUNTY DISTRICT

ATTORNEY OFFICE:

As soon as counsel was appointed to represent petitioner for purpose of having DNA tested, what was once there when motion was filed has now disappeared and/or been destroyed maliciously and thus intentionally. (Framed, at pg. 70, fifth paragraph to pg. 71, third paragraph..)

The population statistics that the alleged expert for the State testified too, were erroneous and mislead the jurors also. Because of the length of time since the time of Direct Review, all trial transcripts were accidentally lost when a computer crashed. They had been scanned and up loaded. Once DNA was re-tested under the modern day methods, petitioner would sought an expert to verify that DNA was not his as alleged by prosecution.

B.P.H.'S REFUSAL TO ENTERTAIN ANY FAVORABLE OPINIONS/ANALYSIS

OF EXPERT ON PETITIONER'S BEHALF:

Dr Larmer, a female clinician, wrote bias report based upon petitioner's "factual claim of innocence." This was clinician who

was appointed just recently before the parole hearing itself. The other clinician had interviewed petitioner over a period of months and opined that he posed little if no risk if released back into society, categorized as No. "1" i.e., very little chance of failure to abide by mandates of parole.

The B.P.H.'s commissioners only would utilize adverse facts, and ignored favorable reports, opinions/analysis, etc. This type of conduct is contrary to petitioner's rights secured by Due Process and Equal Protection Clauses of the Fourteenth Amendment to United States Constitution. Additionally, this conduct is contrary to the clearly established Federal Law, announced by opinion by this Honorable Court, as will be developed infra herein.

ALLEGED VICTIM'S IMPACT STATEMENTS HAVE BEEN EDITED AND PLAIN FABRICATED:

Presiding Commissioner, Roberts, requests victim's impact statements. (Appendix D , at pgs. 133, ln. 11 to pg. 134, ln. 21.) Mr. J. Miller, retired San Luis County District Office Investigator, openly admitted that he edited some of the victim's statements. No objection by defense counsel.

Mr. Miller claims to have spoken to victims' Tyra, Jackie, Cathy, and Peg Stacie. As previously documented and evidence adduced from jury trial, each one of these alleged victims stated that petitioner was not person who committed the criminal acts to them. Why would any of them be afraid of petitioner? Entire statements by these particular victims' were fabricated by the investigator.

The entire proceeding for consideration for parole was so tainted that it was impossible for the petitioner to receive a fair

and impartial hearing for consideration of release on parole. The California Supreme Court's opinion denying habeas corpus relief is unreasonable in light of the evidence and factual predicate alleged in the petition for writ of habeas corpus. Further, the manner of which the B.P.H. conducted the proceeding for suitability for release on parole conflicts with the Constitution of the United States and established Federal Law. (Harrington vs. Richter, (2011) 562 U.S. 86, 97-98.)

No reasonable jurist of reason would have decided the habeas corpus petition as the California Supreme Court has rendered. (See: Appendix A.) No jurist of reason would have summarily rejected such serious contentions and violations of Due Process and Equal Protection of the Law as the California Court of Appeal, Second Appellate District, Division Six. Petitioner complied with all the procedural requirements of habeas corpus law and rules through the state court process. (Appendix B.)

Even counsel, Mr. Lewis was appalled at the ten year denial for return for parole consideration. (Appendix C, at pg. 2, fourth paragraph.)

No "Fair Process" can be entertained in any hearing where all favorable evidence is rejected and only adverse evidence admitted. This type of conduct offends notions of fundamental fairness and right to a fair hearing.

This Honorable Court must ask itself if a liberty interest existed at time of B.P.H. proceeding and if so, whether or not the procedure employed by B.P.H. was constitutionally sufficient. And if petitioner's constitutional rights to Due Process and Equal Protection of Law were so restricted that the result of the B.P.H.

can not be deemed reliable in light of the evidence that was clearly suppressed by the B.P.H. (Brecht vs. Abrahamson, (1993) 507 U.S. 619, 622-628.)

Although there is no constitutional right and/or absolute right to be released on parole. The right to parole is a state created right and accordingly the state created right must be fair and not caprice and arbitrary in its decision making process. The B.P.H. can not run afoul of the Equal Protection and Due Process of Law Clauses to do so. (Fourteenth Amendment to United States Constitution.) [Cf: Estelle vs. McGuire, (1991) 502 U.S. 62.]

The State of California Courts' have ruled that the B.P.H., can not punatively assess a potential parolee for his claims of factual innocence. (E.g., In re Cornel, (2012) 210 Cal.App.4th 1218, i.e., accord, In re McDonald, *supra*, 189 Cal.App.4th at pg. 1023; In re Jackson, (2011) 193 Cal.App.4th 1376, 1391.)

Morrissey vs. Brewer, (1972) 408 U.S. 471, opinion has defined the minimum constitutional due process of law rights for state prisoners' regarding "procedural protections."

Again, the mandate not to be punitively assessed for proclaiming one's innocence, is another state created right, that was capricely and arbitrarily deprived to petitioner. Morrissey vs. Brewer, 408 U.S. 471, and its prodigy has condemned such unconstitutional actions.

When state actors' violate their own rules & procedures, that type of conduct can give rise to a Federal Constitutional dimension. (Rose vs. Clark, (1986) 478 U.S. 570.)

A potential parolee has a constitutional right to impartial arbiter, thus due process of law entitled petitioner to a neutral

and detached arbiter. (Morrissey vs. Brewer, *supra*, 408 U.S. at pg. 488, i.e., accord, Withrow vs. Larkin, (1975) 421 U. S. 35, 47; In re Murchison, (1955) 349 U.S. 133, 136.)

Petitioner had a constitutional right to present evidence of the other female clinician who have conducted interviews with him over a period of months consisting of hundred of hours, and the B.P.H. commissioners' refused to even consider the opinion/analysis of that expert who placed at lowest point for committing another criminal act on parole and deemed him no danger to society.

Additionally, petitioner nor his counsel was able to question and/or cross-examine the adverse writer of the unfavorable opinion/analysis. (United States vs. Comito, (9th Cir. 1999) 177 F.3d 1161, 1170, i.e., accord, United States vs. Hall, (9th Cir. 2005) 419 F.3d 980, 987; United States vs. Martin, (9th Cir. 1993) 984 F.2d 308, 313.) Meaningful evidence of other female clinician was completely ignored, and only bias opinion/analysis was relied upon based on petitioner's factual claim of innocence. Both Commissioner's were equally bias because of proclamation of innocence.

B.P.H.'s actions are contrary to clearly established Federal Law announced by opinion by this Honorable Court, i.e., Greenholtz vs. Inmates' of Neb. Penal & Corrections Complex, (1979) 442 U.S. 1; Dickerson vs. United States, (2000) 530 U.S. 428, 439, n.3; Withrow vs. Williams, (1993) 507 U.S. 680, 715.)

Due Process and Equal Protection of the Law demand "fair process" in parole proceedings. Further, the California Department of Corrections & Rehabilitation and B.P.H., have retaliated against some prisoners because of the order to release prisoners, and have

deprived many prisoners' release as "Three Judge Panel" has ordered. Many new release standards and new laws themselves have accomplished little if not nothing to reduce prison population. "Proposition 57" is a prime example, approved by the electorate in 2016, C.D.C. & R., is still fighting over releases and have lost at virtually every state court level. The California Court of Appeal, Third Appellate District, Sacramento, California, has awarded attorney fees to counsel representing prisoners for wasting the Court's time and resources.

B.P.H's message to Federal Courts' regarding "elderly prisoners release" is by imposing outrageous ten (10) year denials. 3/

Petitioner's parole proceeding was so fatally infected with error that even the "some evidence" standard relied upon by Courts' to uphold a denial of release on parole, can not be supported herein.

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FOOTNOTE #3

All above-mentioned documents, transcripts will be provided upon request. The numerous court (state) opinions mentioned in regards to Proposition 57, will be provided upon request that were opined adversely to California Department of Corrections & Rehabilitation, i.e., their erroneous interpretation of what the "Voters'" approved by their vote of approval in the election of 2016.

REASONS FOR GRANTING THE PETITION

Since the creation of the "Three Judge Panel" from the Plata vs. Davis, United States District Court, Northern District of California. California Department of Corrections & Rehabilitation, and California's Peace Officers Association, i.e., Correctional Officers, have done everything in their power to thwart the Federal Court's mandates and orders. A few examples will suffice below. 4/

At Centinela State Prison, all state prisoners' were moved from "C" section on all facilities, and this was accomplished in order to reduce the prison population and provide constitutional housing, affording each prisoner with adequate space for living in each cell. However, all prisoners' are still double celled, completely defeating purpose of prisoner reduction. All "C" sections are remaing empty, with no prisoners' in the cells instead of single celling for the prisoners.' This type of conduct completely defeats the "Three Judge Panel" mandates and orders.

Honorable Judge of the District Court, Theodore Henderson, even openly stated himself that he allowed State of California, C.D.C. & R. and CPOA, far too much leadway and time to correct the over-crowded and unconstitutional housing of state prisoners. Even today San Quentin State Prison, along with the Governor, Mr. Gavin Newsom, told newspaper reporters' and television personnel that 1,000 state prisoners would be released from San Quentin due to COVID-19 Pandemic and the outbreak, to date only approximate 300-400 have actually been released.

FOOTNOTE #4

Hereafter, California Department of Corrections & Rehabilitation will be referred to as C.D.C. & R., and California Peace Officers

CONTINUED ON NEXT PAGE

In 2011, when C.D.C. & R., was denied review by virtue of a petition for writ of certiorari, by this Honorable Court, they came up with a four (4)year plan to reduce the prison population and to return all out-of-state California Prisoners. To date "2020" not all out-of-state prisoners' have been returned to California and most state prisons have required double celling in cells originally built for one prisoner.

At one prison, when Federal personnel were present to inspect the housing of prisoners, C.D.C & R., and CPOA, hid over one-hundred (100+) prisoners behind the wall during the inspection. By placing them in Vocational area, it appeared that there were a 100+ prisoners' less on that facility.

Petitioner is asking this Honorable Court to do the right thing and not to ignore the unlawful and unconstitutional method of denying parole to petitioner. It is time to send a firm message to C.D.C. & R. and CPOA, that Federal Court mandates are going to be enforced and adhered to.

Normally, state laws are state concerns, however, when a state administrative tribunal, i.e., B.P.H. violates the Federal Constitution as herein, it is time for this Honorable Court to take action and grant review of the ten (10) year denial of return to B.P.H.

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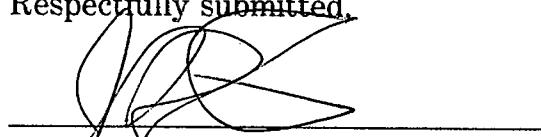
Footnote #4 CONTINUED

Association, will be referred to as CPOA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. R. K.", is written over a horizontal line.

Date: September 3, 2020