

No. 20-6059

IN THE SUPREME COURT OF THE
UNITED STATES

PAUL EDWARD DURAN,
Petitioner

V.

KATHLEEN ALLISON, Sec of Corr,
Respondent,

PETITION FOR REHEARING,
"EN BANCA"

Petitioner hereby moves the court
by way of Petition for Rehearing En Banca
Persuant to U.S.S.C Rule #44, in regards
to the Courts order given on October 7 2020
denying writ of Certiorari Case # 20-6059.

PAUL EDWARD DURAN

C.D.C # AT6464

Corcoran State Prison

P.O Box 3461

Corcoran California 93212

Petitioner Pro se

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Appendix and Exhibits

Order Denying Certiorari

Exhibits

Exhibit - A - Reporter Transcripts . . .	<u>1 of 21 p</u>
Exhibit - B - Reporter Transcripts	<u>653 p 654</u>
Exhibit - C - Reporter Transcripts	<u>693 p</u>

Cant provide see Declaration.

TABLE OF AUTHORITIES

United States V. Bagley, 473 U.S. 667, 87 L. Ed 2d 481, 105 S. ct 3375 (1985)	p 2 ^{RMR}
Brady v. Maryland, 373 U.S. 83, 10 L Ed 2d 215, 83 S ct 1194 (1963)	p. 2 ^{RMR}
Strickland v. Washington, 466 U.S. 668 (1984)	p 5 ^{RMR}
Illinois v. Krull, 480 U.S. 349, 107 S. ct. 1160 (1987) . .	p 6 ^{in R.M.R}
Malay v. Fleck and Boykin v. Alabama (1963)	p. 4 ^{R.M.R}
Townsend v. Sain 372 U.S. 293, 9 L Ed 2d 770 (1963)	7 ^{RMR}

Rules and Statutes

Supreme Court Rule 44	p 1
28 U.S.C. § 2254 [e] 2 (A) ; (B)	p 1 ^{and p 1 in RMR}

Petition For Rehearing with Suggestions

Comes Now Petitioner, PAUL EDWARD DURAN, In Pro Se, and prays this court to grant Rehearing pursuant to Rule 44, and there after, grant him a writ of Certiorari and or proper relief to abate a actual miscarriage of justice from being futher delivered under 28 U.S.C. § 2254[e] 2(A)ii(B). In support of petition petitioner states the following.

Statement of Facts

On March 21, 2014 Petitioner PAUL EDWARD DURAN, was convicted by a jury trial in Los Angeles California for one carjacking, one attempted carjacking and one attempted robbery, Case # BA 415427. He was sentenced to 21 years in prison and has been timely seeking appeal contesting that the criminal conviction and his imprisonment was unlawfully obtained in violation of the United States Constitution of the 5th, 6th and 14th Amendments. On July 21 2013 Petitioner was arrested in L.A. California for a carjacking by means of three out of court "Show ups cold shows" identification procedures that where orchestrated by the L.A. police

department. He was booked into the L.A. county jail, and three days post the arrest he was released from custody on a district Attorney reject, he was never arraigned by a magistrate Judge within the 48 hour requirement to establish probable cause from the means of arrest of July 21, 2013. In the months to follow on August of 2013 the L.A. police detective by the name of Robert Smith who was allowed to conduct the follow up investigation Case BA-415-427 engaged in a illegal out of Court Six pack line up identification procedure with two states complaining witnesses, one of those states complaining witnesses was an eyewitness by the name of Travis Flowers who gave a statement to police on July 21, 2013 of his eye witness account stating that the carjacker was a white male with long brown hair and who had a tattoo on his forehead. On November 19, 2013 Mr Duran was rearrested for case # BA415427 in Albuquerque New Mexico he was extradited to Los Angeles on Dec 2 2013 the next day on Dec 3 2013 Mr Duran

was arraigned for the first time on case # BA 415427. On Dec 18, 2013 he was held in a preliminary hearing and the case was bound over from magistright to district court level. In February of 2014 Petitioner Mr Duran was forced to fire his court appointed Attorney because his Attorney would not challenge the six pack line up for being constitutionally unfair and prejudicial "Suggestive". On March 21 2014 Mr Duran was found guilty in a jury trial, the following months he was sentenced to 21 years. he has been timely seeking appeal.

REASONS MARITING REHEARING

Reasons mariting rehearing are of Such a substantial importance to call upon the United States Supreme Courts Judicial discretion in the best intrest of Justice, because the grounds being raised in rehearing are consistent to substantiate a showing for the first time by Petitioner of an actual miscarriage of Justice Pursuant to 28 USC § 2254 [e] 2 (A)ii (B).

The Six pack line up identification evidence that was determined to be unduly Suggestive see [R.T Volum 2 of 3 pages 1-21] ^{Also see Exhibit -A-} had the corrupting effect of disclosing a favorable witness, through the governments bad faith exercise percluding Mr Duran the right to have compulsory process to obtain witnesses in his favor. A violation of the United States Constitution under

the Sixth Amendment, of a fair trial and also the Fifth and Fourteenth Amendments of the Due process clause, thus demonstrating a substantial showing under 28 U.S.C. § 2254 [e] 2 (A) ii (B), also Petitioner further demonstrates for the first time that the above is a error consistent to the case law of [United States V. Bagley, 473 U.S. 667, 87 L.Ed 2d 481, 105 S.Ct. 3375 (1985)] in the sense that the disclosed witness was a eyewitness favorable to petitioner and in United State V. Bagley defines live witness being disclosed by the government is reconized by the Supreme court to be an ^{ad iquit} coincidence with a Brady Violation [Brady V. Maryland, 373 U.S. 83, 10 L Ed 2d 215, 83 S Ct 1194 (1963)]. Petitioner also

demonstrates that the magnitude of the Constitutional error is so grave and or so corruptive that it substantiates all reasonable requirements set in 28 USC § 2254[e] 2(B) because the circumstances revolved around the suggestiveness in the police identification practice and or procedure consist of fraud by the police which has rendered the whole trial process to be fundamentally unfair, also because the "facts underlying the Claim are sufficient to establish by clear and convincing evidence that but for the Constitutional Violation, no reasonable fact finder would have found the applicant guilty of the underlying offence" because the fact underlying the claim revolves around the prosecutions, the governments bad faith engagement through suggestive means in a identification procedure connected to a eyewitnesses account of the carjacker's factual identity, which

inevitably precluded the defence Mr. Duran to establish the fable witness through a fair compulsory process, which turns the tides ~~to~~ and or tips the scales to, what evidence in light most favorable to the aggrieved from the governments ^{→ bad faith} must be considered to be sufficient to establish fact." I can only try and demonstrate in persuasive case law of [Boykin v. Alamba (1963)] to show the constitutionality, that when a record remains silent the U S Supreme Court will not establish facts on a silent record and therefore the doubt must be resolved in favor of the aggrieved, this situation falls right in that category. There were three complaining witness that testified for the state in my jury trial "one" was a Malinda McCloud who was said to have been carjacked "second" was a Glenda Gutero who was said to have been in the attempted carjacking she was have said that she

Seen the person getting out of the carjacked vehicle on the day of the carjacking, and "threeed" was a Mr Ramon Ozosco who said that he got in to a fight with a man that was running from the police helicopter that was chasing the carjacker see [exhibits (B) and (C)] also see [RT vol 2 of 3 p. 653, 654 and p 693] Ramon Ozoco was the attempted robbery. All of which shows a direct nexus that the disclosed evidence would of been favorable to all three underlying offences that Mr Duran was convicted for in his jury trial. Petitioner further demonstrates in this petition for rehearing that his Appellate Attorney was ineffective by not addressing the loss of a favorable witness in connection with the suggestive six pack line up and the prejudice prong in [Strickland v Washington 466 U.S. 668 (1984)] dose not have to be meet due to

the fact that his Attorney in direct Appeal only filed a no marrit Wendy Brief on his behalf.

Petitioner also demonstrates that the Governments and or Prosecutions bad faith engagement in the suggestive Six pack line up identification is also a direct bad faith invoking of the Fourth Amendment Exclusionary Rule § 20.08 [3] [b] # 68 being that the detective invoked in the Rule to attempt to purge the primary illegalities the "Show up cold shows" that where conducted by law enforcement on July 21, 2013 with yet another suggestive identification procedure the six pack line up all of which percluded the introduction of evidence in my jury trial thus substantiating the Fourth Amendment Exclusionary rules is in fact Unconstitutional and that this controversy is now rip for the U S Supreme courts pickings pursuant to [Illinois V. Krull 480 U.S. 349, 107 S.Ct. 1160 (1987)] being that the circumstances involved with Petitioners case consist of the

needed empirical data to adjust the courts empirical judgements in [Krull and Leon], Petitioner also demonstrates that since the Prosecutions bad faith engagement and or invoking of the exclusionary rule with suggestive identification procedures in the manner that exists in his case also substantiates a reasonable showing pursuant to 28 U.S.C § 2254 [e] 2 (A)i, (A)ii and (B) being that the Sixth Amendment Violation of the U.S. Constitution involved with his case was derived from a Fourth Amendment Violation. All of which falls within this courts jurisdiction.

Also Petitioner demonstrates that he has never been afforded a evidentiary hearing in State Court appellate proceedings nor in the Federal level a direct Violation within the standards set in [Townsend V Sain, 372 U.S. 293, 9 L Ed 2d 770 (1963)] Petitioner is also demonstrating that extraordinary circumstances

exist in regard to the circumstances that
involved with the case at hand due to the
fact that in order for the court to ensure that
society and or more people won't get hurt in
the same manner with suggestive, illegal police
practice in identification procedures being enter-
twined with bad faith invokings of the Fourth
Amendment exclusionary Rule which thus preclud-
es the introduction of evidence in jury trials,
the court would have to make a ruling on this
case and rule in Mr Doran's favor, also
it's necessary to secure or maintain uniformity of
the courts decisions in [Illinois v. Krull and U.S.
v. Leon]. Petitioner needs to bring to the Courts
attention that the prosecution also keep disclosing
the fact of the District Attorney's Reject of July
24 2013 through pretrial, trial, and post trial
proceedings and that this issue regarding these
disclosures are in relationship to the bad faith
suggestive six pack issue by the government all revolv-
ed around preaccusatory delay with prejudice, also

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Petitioner demonstrates that extraordinary circumstances exist in his case being that he has not been given any Law Library access in the preparation of this instant Petition for Rehearing also in the preparation for writ of certiorari case # 20-~~60~~ 59, Petitioner has been in 23 hour lock down due to the Covid 19 pandemic From February of, 2020 till, 2021. Petitioner demonstrates that he is not a lawyer, and is in special education because of a learning disability, also petitioner is requesting that counsel be appointed to him in the case that this court may remand the case to the Ninth circuit court of Appeals to issue and or afford petitioner A "COA" certificate of Appealability, ^{due to Covid 19 and all above.} for all the reason above petitioner asks the court to grant him the proper relief. In order to abate this miscarriage of Justice,

from being further delivered pursuant to
28 U.S.C. § 2254 [e] #2 (A); ii (B).

CONCLUSION

For the reasons stated the Court must grant Rehearing due to the fact that the Court has jurisdiction over controversies involving 28 U.S.C. § 2254 [e] #2 (A) (B) which result in miscarriage of justice of a actually innocent person.

The foregoing is true and correct to the best of my knowledge and is made under penalty of perjury to be true and correct.

Date: December 29, 2020

In pro-se

Respectfully Submitted

Paul Edward Dummer

C.D.C # AT6464

Corcoran State Prison

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Corcoran California 93242

No. 20-6059

IN THE SUPREME COURT
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KATHLEEN ALLISON,
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CERTIFICATE OF INTREST

Comes Now Petition, PAUL EDWARD DURAN acting Attorney In Pro Se, here by makes certification that the petition for Rehearing En Banca is presented to this court in good faith pursuant to Rule 44.

Petitioner believes that he presents this Court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay. Furthermore the grounds of the petition are limited to intervening circumstances of Substantial or controlling effect pursuant under 28 USC § 2254 [e] # 2 (A) (B) and to other Substantial grounds not previously presented, which upon the Laws of this Court warrants petitioner relief under this Courts Jurisdiction.

Executed on this Date December 29 2020 Respectfully Submitted
Attorney In Pro Se Paul Edward Duran