

No. **20-6171**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Kenneth E. Baptiste — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED

OCT 19 2020

OFFICE OF THE CLERK

vs.

S. Hatton (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kenneth E. Baptiste

(Your Name)

California Training Facility-Central
P.O. Box 689 Xw208

(Address)

Soledad, Ca. 93960-0689

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I

Was instructing the Jury with CALJIC No. 2.15 in error, and denied the Petitioner "Due Process" of Federal Constitutional Dimensions. Because he was being charged a Capitol Murder offense. And his actual possession of stolen property was in conflict. And permitted the jury to infer guilt of the Capitol Murder, on findings which furnished no rational inference of guilt. And to do so, was Constitutionally impermissible. Pursuant to the recent ruling in *Hall v. Haws*, 861 F.3d 977 (9th cir. 2017). And did Trial Court denial of the pretrial motion for Severance of the Capitol murder case. Only serve to compound the denial of the Petitioner's right to a fair trial, pursuant to the Recent California Supreme Court case in *People v. Anderson*, 5 Cal.5th 372, 235 Cal.Rptr.3d 1.

II

Did the District Court err by dismissing Petitioners F.R.C.P. section 60 (b)(6) motion for reconsideration, on the grounds it was a "successive Petition". In which said Motion was based on the recent Ninth Circuit Court of Appeals decision in *Hals v. Haws*, supra. In which changed the decisional law used to deny the claim in Petitioners Original Federal Habeas Petition. Contrary to the holdings in *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005) and *Phelps v. Alameida*, 569 F.3d 1120 (9th cir. 2009).

III

Did the Petitioner meet the requirements set forth in this Courts decisions in *Miller-el v. Cockrell*, 537 U.S. 322, 122 S.ct. 1028 (2003). By his demonstration that Jurist of reason could disagree and conclude the issue deserve encouragement to proceed further.

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:

RELATED CASES

Halls v. Haws, 861 F.3d 977 (9th cir.2017)

People v. Anderson,(2018) 5 Cal.372,235 CalRptr. 3d 1.

Gonzalez v. Crosby,545 U.S. 524 (2005)

Phelps v. Alameida, 569 F.3d 1120 (9th cir.2009)

Waddington v. Sarausau,555 U.S. 179,191 S.Ct. 823 (2009).

Francis v. Franklin,471 U.S. 307,105 S.Ct. 1965 (1985)

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STATUTES AND RULES

28 USC 2254
Federal Rules of Civil Procedure, section 60||b)(6)

OTHER

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 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 United States district court appears at Appendix B. 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 C. 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 Calif. Superior Court & Calif. Court of Appeals court appears at Appendix D & E 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 AUGUST 6, 2020.

☐ 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: September 15, 2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 OCT. 30, 2019.
A copy of that decision appears at Appendix C.

☐ 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

Amendments 6th and 14th of the United States Constitution.

California Jury Instruction No.2.15

STATEMENT OF THE CASE

CASE HISTORY:

1. After his conviction was affirmed on Direct Appeal in the State Court Tribunals. Mr. Baptiste on the date of March 6, 2006, filed a writ of Habeas Corpus by a person in state custody, pursuant to 28 USC section 2254. Presenting nine claims for relief. The Petition was assigned to United States District Judge R. Gary Klausner; and referred to Magistrate Judge, A. Nakazato. Who recommended that the Petition be denied with Prejudice.
2. Ultimately, a Report and Recommendation was issued on May 22, 2007. And adopted by U.S. District Judge, R. Gary Klausner on June 22, 2007; dismissing the habeas petition with prejudice. And Order was also issued denying an application for a Certificate of Appealability on August 16, 2007.
3. An Application for a COA before the United States Court of Appeals for the Ninth Circuit, was also denied on September 2, 2007.

SUPPORTING FACTS FOR RELIEF:

It was alleged in the Original Federal habeas Petition. That instructing the Jury with CALJIC no. 2.15 was unconstitutional. Because it lessened the government's burden of proof, and relieved the prosecution from proving each element of the charges beyond a reasonable doubt. And claim nine alleged the denial of the Trial Court, of the Defense Motion for Severance of counts 1-3, from the others, that involved a Capitol Murder offense. Abridged the Due Process and Equal Protection Clause, and denied Mr. Baptiste the right to a fair Trial.

5. It was recently held in *Hall v. Haws*, 861 F.3d 977 (9th cir. 2017). That a Trial court use of California Jury Instruction No. 2.15. Which allowed the jury to infer guilt of murder from evidence that the defendants were in possession of recently stolen property, plus slight corroborating evidence, was error of Constitutional magnitude. And that the California Court Tribunnals determination otherwise was an unreasonable application of federal law. The identical thing

done in the case at bar.

6. Based on the ruling in Hall v. Haws, supra. Mr. Baptiste submitted Petitions in the state court tribunals, for a writ of Habeas Corpus. Alleging that it was instructional error in giving of CALJIC No. 2.15; and compounded by the Trial Court denial of the pre-trial motion by the defense, for Severance of counts 1-3 that involved the Capitol murder charge. On the date of August 14, 2019 Mr. Baptiste filed a writ of Habeas Corpus in the California Supreme Court on said contention.

7. On the date of October 30, 2019; the California Supreme Court issued an order denying said Petition, without Opinion. (Copies of the State Court Tribunals opinions is attached and labeled in Appendix C, D, and E.)

8. On or about January 29, 2020; Mr. Baptiste submitted a F.R.C.P section 60 (b) (6) Motion in the U.S District Court for the Central District of California. Based on the Ninth Circuit court of Appeals decision in Hall v. Haws, supra, and cases cited. A case on point, as that of Mr. Baptiste. In which the Court of Appeals affirmed the District Court's granting of Halls motion under rule 60 (b) (6). And concluded habeas relief was warranted based on the erroneous instruction of CALJIC No. 2.15.

9. Said rule 60 (b) (6) Motion was denied by the District court, and application for a COA as well.

10. An Application for Certificate of Appealability was filed in the United States Court of Appeals for the Ninth Circuit on April 15, 2020. And was denied on August 6, 2020. Along with a Petition for rehearing on September 15, 2020.

Dated; October 15, 2020.

Kenneth Baptiste

REASONS FOR GRANTING THE PETITION

With the Instructional Error being established, and though the Count of murder was ultimately dismissed, after a hung jury was declared on said count. Said error was not harmless. For the jury instruction itself infected the entire trial resulting in convictions that violated "due process". See. *Waddington v. Sarausau*, 555 U.S. 179, 191 S.Ct. 823 (2009). And violated the right to a fair trial, and the right to be found guilty beyond a reasonable doubt. Pursuant to *Francis v. Franklin*, 471 U.S. 307, 313, 105 S.Ct. 1965 (1985).

And I think this claim presents an issue of importance to the Federal Judicial system and the Nation. Based on the material facts and applicable law, overlooked in the decisions of the lower Courts. In which a full consideration by this U.S. Supreme Court is requested. To secure and maintain uniformity of recent decisions by this Court.

And though this Court is not in the business of correcting every mistake that lower courts make. The issue presented is one of importance, in the realm of criminal law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth Baptiste

Date: October 15, 2020