SUPREME COURT of The UNITED STATES
OFFICE of The CLERK
WASHINGTON, DC 20543-0001

RE: DAMON B. COOK
V. Brian Cates, Warden
No. 21-411

Petition FOR REHEARING PURSUANT TO Rule 44 of This COURT

A CONVICTION based ON INSUFFICIENT EVIDENCE DEPRIVES A CRIMINAL DEFENDANT OF DUE PROCESS

See JACKSON v. Virginia 443 U.S. 307, 316 99 S.CT. 2781 (1979)

See IN RE WINSHIP 397 U.S. 358, 364 90 S.CT. 1068 (1970)

See Fiore v. White 531 U.S. 225, 229 121 S.CT. 712 (2001)

EW

See Cavazos v. Smith (2011)
565 U.S. 1
132 S.Ct. 2

See Coleman v. Johnson (2012)
566 U.S. 650
132 S.Ct. 2060

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON D.C. 20543

PURSUANT TO THIS COURT'S Order Dated OCTOBER 1, 2012 IN CASE No. 12-5021

The DOCKETING Fee of $300.00 Required by Rule 38(a) WAS Paid To The CLERK, U.S. SUPREME COURT Through A FAMILY MEMBER ON SEPTEMBER 1, 2021 FOR This CURRENT CASE.

No. 21-411

IN THE

SUPREME COURT OF THE UNITED STATES

DAMON B. COOK — PETITIONER
(Your Name) PRO-SE

vs.

George M. GALAZA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

DAMON B. COOK
(Your Name)

CCI-Ad-Seg-B8-Bed 201
(Address) P.O. Box 1906
Tehachapi, CA. 93581
(City, State, Zip Code)

(661) 822-4402
(Phone Number)

QUESTION(S) PRESENTED

1.) Whether The Petitioner DAMON COOK HAS MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT PURSUANT TO 28 USC 2253(C)(2) IN ORDER TO OBTAIN A CERTIFICATE OF APPEALABILITY ? "DENIAL OF DUE PROCESS'

See SLACK v. MCDANIEL (2000) 529 U.S. 473, 483

See NELSON v. WALKER (2ND CIR. 1997) 121 F.3d 828, 832

See MILLER-EL v. COCKRELL (2003) 537 U.S. 322

2.) Whether The Petitioner's 3rd Rule 60(b)(6) Motion WAS TIMELY FILED WITHIN A REASONABLE TIME AFTER THE 9TH CIRCUIT'S CASE OF: BYNOE v. BACA (9TH CIR. 2020) 966 F.3d 972, 980 FILED JULY 24, 2020 ?

See UNITED STATES v. HOLTZMAN (1985) 762 F.2d 720, 725 (9th Cir.)

3.) Whether The Petitioner's 3rd Rule 60(b)(6) Motion PRESENTED EXTRAORDINARY CIRCUMSTANCES WARRANTING RE-OPENING THE FINAL JUDGMENT AS ALL (6) PHELPS' FACTORS SUPPORTED RECONSIDERING THE DISTRICT COURT'S 2002 HABEAS CORPUS JUDGMENT ?

See PHELPS v. ALAMEIDA (9th Cir. 2009) 569 F.3d 1120, 1134-1140

See BYNOE v. BACA (9th Cir. 2020) 966 F.3d 972, 980 (COOK)

See DAVIS v. MORONEY (7th Cir. 2017) 857 F.3d 748, 750-753 (COOK)

4.) Whether There WAS INSUFFICIENT EVIDENCE of Force To Establish Petitioner DAMON COOK'S Guilt BEYOND A REASONABLE DOUBT ?

See PEOPLE v. GRIFFIN (2004) 33 CAL. 4th 1015, 1028-29

See JACKSON v. VIRGINIA 443 U.S. 307, 316, 99 S.CT. 2781, 2791

See IN RE WINSHIP 397 U.S. 358, 364, 90 S.CT. 1068

See Fiore v. White 531 U.S. 225, 229 121 S.CT. 712 (2001)

CONTINUE PAGE TO QUESTION PRESENTED NO. 1, 3

The 28 USC 2253(C)(2) Statute does NOT SPECIFY That A PETITIONER MUST Show That (1) Jurists OF Reason Would FIND It debatable WhetheR The DistricT COURT Abused Its discretion IN deNYING The Rule 60(b)(6) Motion AND (2) Jurists OF Reason Would FIND It debatable WhetheR The UNderlYING Section [2254 Petition] States A Valid Claim OF The DeNiaL of A CONSTITUTIONAL RIGHT

See SLacK v. McDaNieL 529 US 473, 483
See Nelson v. WalkeR 121 F.3d 828, 832

The 28 USC 2253(C)(2) Statute ONIY SpeciFies That The COURT MAY ISSue A CertiFicAte OF APPeaLAbility ONIY WheN The PetitioNeR HAS Made A SubstantiAL SHowING of The DeNiaL OF A CONSTITUTIONAL RIGHT, Which The PetitioNeR DAMONCOOK HAS Made A SubstantiAL Clear SHOWING OF INSufficieNCY of The EvideNce of Force Which AMOUNT To A DeNiaL OF DUE Process OF LAW, A CONSTITUTIONAL RIGHT, IN VIOLATION OF The 14th AMENDMENT To The UNited States CONSTITUTION. ThereFore, A CertiFicAte OF APPeaLAbility Should HAVE BeeN ISSUed IN This CASE PURSUANT To 28 USC 2253(C)(2) AND The INSufficieNCY of The EvideNce of Force IS A Meritorious CLAIM Which AMOUNT To AN EXTRAORDINARY CIRCUMSTANCE UNDER FederaL Rule 60(b)(6) PURSUANT To See DAVIS v. MORONEY (7th Cir. 2017) 857 F.3d 748, 750-753 Potentially Meritorious Claim, DiligeNT EFForts To PURSUE CASE AND Irregularities OF DistricT COURT'S HandliNG of CASE, AMOUNTed To EXTRAORDINARY CIRCUMSTANCES

CONTINUED

5.) QUESTION(S) PRESENTED

[redacted] Whether The District Court's denial of 3rd Petitioner DAMON COOK's Rule 60(b)(6) Motions Was AN Abuse of Discretion ?

See BUCK v. DAVIS (2017)
137 S.CT. 759, 778
2017 U.S. LEXIS 1429
197 L.Ed.2d 1

See BYNOE 966 F.3d AT 987 (COOK)
See BYNOE v. BACA (9thCir. 2020) 966 F.3d AT 979

See DAVIS v. MORONEY (7thCir. 2017)
857 F.3d 748, 750-753 (COOK)

See UNITED STATES v. HOLTZMAN (9thCir. 1985)
762 F.2d 720, 725 (COOK)

We Review For "Abuse of Discretion" A District Court's Decision To Deny A Rule 60(b)(6) Motion, And Review de Novo ANY Questions of LAW Underlying That decision. See LAL v. CALIFORNIA 610 F.3d 518, 523 (9thCir. 2010)
See BYNOE v. BACA (9thCir. 2020) 966 F.3d 972, 979, 980

assistance of trial counsel.

IV.

THERE IS INSUFFICIENT EVIDENCE TO SUPPORT APPELLANT'S CONVICTIONS FOR RAPE AND FORCIBLE ORAL COPULATION

There was insufficient evidence to convict appellant of forcible rape and oral copulation because there was no evidence of threats or "force" to the complaining witness, nor did she testify she feared "immediate and unlawful" bodily injury. Accordingly, appellant's convictions must be reversed.

A. STANDARD OF REVIEW.

The proper standard of review for a sufficiency of the evidence challenge is whether, on the entire record, a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. (People v. Jones (1990) 51 Cal.3d 294, 314; People v. Johnson (1980) 26 Cal.3d 557, 576-578; Jackson v. Virginia (1979) 443 U.S. 307, 318-319.) The appellate court must view the evidence in a light most favorable to the judgment and must presume in support of that judgment "the existence of a every fact a trier could reasonably deduce from the evidence." (People v. Johnson, supra, 26 Cal.3d at pp. 576-577.) Evidence of each of the essential elements of the offense must be "substantial". (People v. Johnson, supra, 26 Cal.3d at pp. 576-577.)

B. THERE WAS INSUFFICIENT EVIDENCE OF FORCE OR FEAR OF BODILY INJURY TO SUPPORT APPELLANT'S CONVICTIONS.

Appellant was convicted of violations of section 261, subdivision (a)(2), and 288a which criminalizes sexual acts "accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person . . . ."

Rape may be committed by acts causing fear of immediate bodily harm to the complaining witness and does not require the threat of imminent harm. One court has defined fear as it is used in section 261, subdivision (a)(2), as: "A feeling of alarm or disquiet caused by the expectation of danger, pain, disaster or the like; terror; dread; apprehension." (People v. Jeff (1988) 204 Cal.App.3d 309, 325.) The complaining witness's fear may even be unreasonable to satisfy this element of the offense "if the accused knowingly takes advantage of that fear in order to accomplish sexual intercourse." (Id., at p. 324, quoting People v. Young (1987) 190 Cal.App.3d 248, 259.)

In Young and Jeff, the courts concluded there was insufficient evidence to show the prosecutrix feared immediate and unlawful bodily injury, requiring reversal of the defendants' convictions. In both cases, the defendants did not say or do anything that would induce in the complaining witness fear of immediate and unlawful bodily injury, such as threats or the use of physical force. (People v. Young, supra, 190 Cal.App.3d at p. 259; People v. Jeff, supra,

204 Cal.App.3d at p. 327.)

The California Supreme Court in People v. Iniguez (1994) 7 Cal.4th 847, 856 defined the element of "fear of immediate and unlawful bodily injury" as having two components, one subjective and one objective. It must first be determined whether there is substantial evidence that the complaining witness "generally entertained a fear of immediate and unlawful bodily injury sufficient to induce her to submit to sexual intercourse against her will"; this is the subjective component. Although the "extent or seriousness of the injury feared is immaterial", there must be some evidence that the complaining witness genuinely feared injury. (Id., at pp. 856-857.) The objective component asks whether the victim's fear was reasonable under the circumstances, or, if unreasonable, whether the perpetrator knew of the victim's subjective fear and took advantage of it. (Id., at p. 857.) Both of these elements must be satisfied in a prosecution for rape. (Id., at pp. 856-857.)

Here, as in Young and Jeff, there was no testimony that the complaining witness was ever threatened by appellant, or that appellant used force in accomplishing the sexual acts. The complaining witness told appellant she did not want him to orally copulate her, but she did not testify that she feared appellant would harm her. During the sexual intercourse following the oral copulation, she testified she told appellant she did not want to do that, and tried to push appellant off her. (R.T. 63, 113) However, these statements merely

show that the acts were accomplished against her will, not that they were accomplished against her will by means of fear of immediate and unlawful bodily injury. The complaining witness never testified she was afraid. (Compare with People v. Iniguez, supra, 7 Cal.4th at p. 857 [substantial evidence that complaining witness genuinely feared immediate and unlawful bodily injury where witness testified she "froze because she was afraid," and that she "did not move because she feared defendant would do something violent."].)

Because there was insufficient evidence to support the element of force or fear of immediate and unlawful bodily injury, appellant's convictions on the forcible rape and oral copulation counts must be reversed; moreover, any further proceedings on the two counts are barred by the Double Jeopardy Clause. (People v. Green (1980) 27 Cal.3d 1, 62.)

See People v. Griffin (2004)
33 Cal. 4th 1015 (Force Element)
16 Cal. RPTR. 3d 891
94 P. 3d 1089

"Factual Finding" ([redacted] JUSTICE)

Preliminary Hearing Transcript (7-25-1991)

* Insufficient Evidence of Force

Q Did you look or examine Miss Healey to see if there were any bruises, contusions, or scratches?

A No, sir.

Q Did she complain of any injuries of any type?

A She did not complain of any pain.

MR. RENNER: May I have a moment, Your Honor?

THE COURT: Yes.

Q (By Mr. Renner) Did Miss Healey complain of any injuries she may have sustained?

A No, she did not.

Q On your examination of Miss Healey or speaking with Miss Healey did you observe or see any marks of any physical force being used against Miss Healey at any time?

A No, sir.

MR. RENNER: I have no further questions of this witness.

THE COURT: Do you have anything further?

MR. HOFELD: No re-redirect, Your Honor.

THE COURT: May this witness be excused?

MR. HOFELD: Yes, Your Honor.

THE COURT: Mr. Holmes, you may step down. You're free to remain or you may leave if you wish.

Call your next witness.

MR. HOFELD: Rest.

THE COURT: Counsel.

MR. RENNER: Your Honor, Mr. Cook is asking that I make an objection to this officer's testimony based on corpus delicti rule, and evidence was not fully submitted for the proof

See Jones v. Superior Court (1971) 4 C3d 660

§13.58 18. Sufficiency of Evidence

Due process requires every element to be proven beyond a reasonable doubt. *In re Winship* (1970) 397 US 358, 364, 90 S Ct 1068. A petition for federal habeas corpus relief may challenge the sufficiency of the evidence supporting a verdict. See, *e.g., Jackson v Virginia* (1979) 443 US 307, 99 S Ct 2781; *Vachon v New Hampshire* (1974) 414 US 478, 94 S Ct 664; *Thompson v Louisville* (1960) 362 US 199, 80 S Ct 624. The court may grant habeas relief only if "no rational trier of fact could have found proof of guilt beyond a reasonable doubt." *Jackson*, 443 US at 324, 99 S Ct at 2791. See also *Cavazos v Smith* (2011) ___ US ___, 132 S Ct 2, 6 (Ninth Circuit substituted its own opinion for that of jury and erroneously concluded that California appellate court unreasonably applied *Jackson v Virginia*). The purpose of a *Jackson* analysis is to determine whether the jury acted in a rational manner in returning a guilty verdict based on the evidence before it, not whether improper evidence violated due process. *McDaniel v Brown* (2010) 558 US 120, 130 S Ct 665, 672 (evidence sufficient despite faulty testimony regarding DNA probabilities). See also *Coleman v Johnson* (2012) ___ US ___, 132 S Ct 2060 (Court of Appeals unduly impinged on jury's role as fact finder). When alternative theories of liability are presented to a jury, a general verdict is valid as long as the evidence is sufficient to support one of those theories. *Griffin v U.S.* (1991) 502 US 46, 112 S Ct 466 (distinguishing between factual and legal sufficiency for purpose of determining whether judgment withstands attack on due process grounds).

The following Ninth Circuit cases may be instructive regarding the scope of this ground:

- *Boyer v Belleque* (9th Cir 2011) 659 F3d 957 (sufficient evidence of specific intent to kill);
- *Ngo v Giurbino* (9th Cir 2011) 651 F3d 1112 (sufficient evidence of specific intent to kill);
- *Emery v Clark* (9th Cir 2011) 643 F3d 1210 (due process challenge to sufficiency of evidence supporting gang enhancements and special circumstance findings);
- *Juan H. v Allen* (9th Cir 2005) 408 F3d 1262 (under AEDPA, state prisoner must show that state court's decision finding sufficient evidence was objectively unreasonable); and
- *Schell v Witek* (9th Cir 2000) 218 F3d 1017 (fingerprint evidence found sufficient).

- Fiore v. White (2001) 531 U.S. 225, 229
  121 S.Ct. 712, 148 L.Ed.2d 629
- Retrial Barred by Double Jeopardy
- Burks v. United States 437 U.S. 1, 18
  98 S.Ct. 2141, 2151
  57 L.Ed.2d 1, 14 (1978)

§13.58 18. Sufficiency of Evidence

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- *Schell v Witek* (9th Cir 2000) 218 F3d 1017 (fingerprint evidence found sufficient).

False Evidence, False Testimony, Perjured Testimony

Erin Healey's Trial Testimony or Trial Statements Regarding The Issue of NON-CONSENT IS NOT Consistent With The Original Police Report(s) And IS NOT Consistent with The Preliminary Hearing Transcript dated ON July 25, 1997 See Reporter's Transcript Pages 63, 113

Erin Healey's Trial Testimony or Trial Statements IS NOT IN The Original Police Report(s) And IS NOT IN The Preliminary Hearing Transcript dated ON July 25, 1997

This goes To The "Credibility" of Erin Healey That She Had Lied ON The Witness Stand About NON-CONSENT And Committed Perjury BUT The "Prosecutor" Brian SUSSMAN Had Deliberately WithHeld OR CONSealed This Fact From The Jury That Erin Healey Had "Lied" ON The Witness Stand About NON-CONSENT And Committed Perjury And

The Sexual Acts WAS Never Against Erin Healey's WILL As Stated IN The State COURT OF APPeal's OPINION That Erin Healey Had "AGREED" To go To The MOTEL For The Sexual ACTS. HOWEVER,

Erin Healey WAS INFluenced, Coerced, And Pressured by Her Mother, by The Police And BY The Prosecutor To TAKE back Her "CONSENT" "After-The-FACT" Which CONStitutes

False Evidence, False Testimony, Perjured Testimony

See NAPue v. ILLINois (1959) 360 US 264, 269

See Dow v. VirgA (9th Cir. 2013) 729 F.3d 1041, 1047

This Demonstrates That Erin Healey Actually Consented To The Sexual Acts But Took Her Consent back After-The-Fact on The Witness Stand by The Influenced, Coercement, and Pressures From Her Mother, From The Police, And From The Prosecutor Which Constitutes False Evidence, False Statements, False Testimony, And Perjured Testimony As To The Issue of Non-Consent Meaning Against Her Will.

This Means That Damon Cook Is "Actually Innocent" Of The Crimes Which He Has been Wrongfully Convicted Of.

Convictions was based Entirely upon False Evidence, False Statements, False Testimony, Perjured Testimony And Insufficient Evidence of Testimony From Erin Healey To Prove The Other Elements of The Crimes Beyond A Reasonable Doubt.

Erin Healey Never Testified That She was Afraid
Insufficient Evidence of The Fear Element

There was No Trial Testimony From Erin Healey That Damon Cook Used Force In Accomplishing The Sexual Acts.
Insufficient Evidence of The Force Element

Damon Cook Is Truly, Factually, And Actually Innocent of The Crimes Which He Has Been

Wrongfully Convicted Of.

("Not Guilty.")

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:

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

See Buck v. Davis (2017) 137 S.Ct. 759, 778
See Page (5) on 3rd Motion To REOPEN The CASE
See HALL v. Haws (9th cir. 2017) 861 F.3d 977, 987
See Page (5) on 3rd Motion To REOPEN The CASE
See BYNoe v. BACA (9th cir. 2020) 966 F.3d 972, 980 (Cook)
See Pages 1, 6, 8, on 3rd Motion To REOPEN The CASE
See JACKSON v. VIRGINIA (1979) 443 U.S. At 316, 324
99 S.Ct. At 2791 - See IN RE WINSHIP 397 U.S. 358, 364
See Pages 2, 4, 3, 1, 5, 8, on 3rd Motion To REOPEN The CASE

STATUTES AND RULES

See 28 USC 2253(C)(2)
See Page (4) on Petitioner's Timely Notice of Appeal and Request For A Certificate of Appealability

Federal Rule Civil Procedure 60(b)(6)

See 3rd Rule 60(b)(6) Motion At Pages 1, 2, 3*, 4, 5, 8 (Extraordinary Circumstances)

OTHER

See DAVIS v. MORONEY (7th cir. 2017) 857 F.3d 748, 750-753 (Cook)

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APPENDIX F

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 C 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 _____ 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 _____ 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.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was AUGUST 13, 2021

[ ] 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).

See HOHN v. UNITED STATES (1998) 524 U.S. 236, 245 118 S.CT. 1969, 1974, 141 L.Ed.2d 242, 254

[ ] For cases from **state courts**:

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

[ ] 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

14th AMENDMENT TO THE UNITED STATES CONSTITUTION

See JACKSON v. VIRGINIA (1979) 443 U.S. AT 316, 324
99 S.CT. 2781, 2791

See IN RE WINSHIP (1970) 397 U.S. 358, 364
90 S.CT. 1068, 25 L.Ed.2d 368

See Fiore v. White (2001) 531 U.S. 225, 229
121 S.CT. 712, 714

See WRIGHT v. WEST (1992) 505 U.S. 277, 295-297

See HERRERA v. COLLINS (1993) 506 U.S. 390, 401-402

See 28 U.S.C. 2253 (CY2) (COA)
INSUFFICIENT EVIDENCE OF FORCE
HAS BEEN PROVEN - **DENIAL OF FAIR DUE PROCESS OF LAW** IN VIOLATION OF THE 14th AMENDMENT
TO THE UNITED STATES CONSTITUTION

See SLACK v. MCDANIEL 529 US 473, 483
120 S.CT. 1595 (2000) (COA)

STATEMENT OF THE CASE

See The United States Magistrate Judge's Report And Recommendation On The First Federal Habeas Corpus Petition In The CASE OF: DAMON B. COOK v. George M. GALAZA IN CASE Number CV00-8569 RJK(MC) For The FACTS And StateMenT OF THE CASE.

("The State OF CALIFORNIA Failed To Prove The ElemenT of Force" / "Force")

See Kelly v. Roberts (10th Cir. 1993) 998 F.2d 802, 809-10, FN 11.

See Fiore v. White (2001) 531 U.S. 225, 229 121 S.CT. 712, 714

This COURT's Precedents Make Clear That DAMON B. COOK's CONVICTIONS And CONTINUED INCarceration ON These Charges VioLates DUE PROCess of LAW IN VioLATION Of The 14th AMENDMENT U.S. CONSTITUTION

REASONS FOR GRANTING THE PETITION

This United States Supreme Court Should Grant The Petition For WRIT OF Certiorari To Accomplish "JUSTICE" In This Case.

This United States Supreme Court Should Grant The Petition For WRIT OF Certiorari To Resolve The IMPortant Question Presented For Review To Determine Whether The Petitioner Damon Cook HAS Made A Substantial Showing OF The Denial OF A Constitutional Right Pursuant To 28 U.S.C. 2253(C)(2) IN Order To Obtain A Certificate OF APPealability? "Denial OF Due Process" See Slack v. McDaniel 529 U.S. 473, 483 120 S.CT. 1595 (2000) (COA)

This Court Should Grant Review To Determine Whether The Petitioner's 3Rd Rule 60(b)(6) Motion WAS Timely Filed Within A Reasonable Time After The 9thCircuit's CASE OF: Bynoe v. BACA (9th Cir. 2020) 966 F.3d 972, 980 (Cook) See United States v. Holtzman (9th Cir. 1985) 762 F.2d 720, 725 (Cook)

This Court Should Grant Review To Determine Whether The Petitioner's 3Rd Rule 60(b)(6) Motion Presented EXTRAORdinARY Circumstances Warranting RE-OPening The FINAL JUdgMENT, AS ALL(6) PhelPS Factors SuPPorted ReCONSidering The District COURT's 2002 HAbeas CorPUS JUdgMENT? See Davis 857 F.3d 748, 750-753

This COURT Should Grant ReVieW To DeterMINE WhetheR There WAS INSufficient Evidence of Force To Establish PetitioNER Damon Cook's Guilt BeYond A ReaSONAble DoubT?

This COURT Should GraNT ReVieW To DeterMINE WhetheR The DistricT COURT Abused Its DiscretioN DenYING PetitioNER's 3Rd Rule 60(b)(6) Motion?

NOTE: I, DAMON B. COOK HAVE WORKED HARDER THAN PHELPS AND BYNOE IN TRYING TO OBTAIN RULE 60(b)(6) RELIEF.

THIS U.S. SUPREME COURT HAVE HELD THAT THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT FORBIDS A STATE TO CONVICT A PERSON OF A CRIME WITHOUT PROVING THE ELEMENTS OF THAT CRIME BEYOND A REASONABLE DOUBT.

See JACKSON 443 U.S. AT 316

See IN RE WINSHIP 397 U.S. 358, 364

See Fiore v. White 531 U.S. 225, 229

See WRIGHT v. WEST 505 U.S. 277, 295-297

See HERRERA v. COLLINS 506 U.S. 390, 401-402

"NO TRIAL TESTIMONY ON THE ELEMENT OF FORCE."

"INSUFFICIENCY OF THE EVIDENCE OF FORCE."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Damon B. Cook

Date: SEPTEMBER 1, 2021

Additional material from this filing is available in the Clerk's Office.