

21-5267

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUN 07 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT DRAWN IV — PETITIONER
(Your Name)

vs.

ROBERT NEUSCHMID, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. DISTRICT COURT-CALIFORNIA NORTHERN DISTRICT (SAN FRANCISCO)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Drawn IV, CDCR#AY7255

(Your Name)

California Substance Abuse Treatment Facility
And State Prison At Corcoran:

(Address)

900 Quebec Ave., Corcoran, California 93212

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

**DID PETITIONER DEMONSTRATE THAT REASONABLE JURISTS WOULD FIND
THE DISTRICT COURT'S ASSESSMENT OF THE CONSTITUTIONAL CLAIMS
DEBATABALE OR WRONG...**

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:

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
SLACK V. McDANIEL, 529 U.S. 473, 483-84 (2000)	_____
MILLER-EL V. COCKRELL, 537 U.S. 322, 338 (2000)	_____
LAMBRIGHT, 220 F.3d 1022, 1025 (2000)	_____
BAREFOOT V. ESTELLE, 463 U.S. 880, 893 n.4 (1983)	_____
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CRAWFORD V. WASHINGTON, 541 U.S. 36, 51 (2004)	_____
POINTER V. TEXAS, 380 U.S. 400, 403 (1965)	_____
DAVIS V. WASHINGTON, 547 U.S. 813 (2006)	_____
WHORTON V. BOCKTING, 549 U.S. 406 (2007)	_____
SAWYER V. SMITH, 497 U.S. 227, 242 (1990)	_____
STATUTES AND RULES	_____
28 U.S.C. § 2253 (c)(2)	_____
<u>THE TEXT OF THE PROVISIONS APPEARS IN APPENDIX "E" PAGES</u>	1-22
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<u>CONTAINED THEREIN APPENDIX "E" PAGES: >>>>>>></u>	1-22
OTHER	
U.S. CONSTITUTION SIX AMENDMENT	_____
U.S. CONSTITUTION FOURTEENTH AMENDMENT	_____

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

[X] 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 is unpublished.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.

[X] 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 STATE APPELLATE DISTRICT court appears at Appendix D 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 March 5, 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: April 20, 2021, 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 08/09/2017.
A copy of that decision appears at Appendix C/D 04/10/2019.

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

SIX AMENDMENT RIGHT TO CONFRONT ACCUSER; APPLIES TO THE STATES UNDER THE FOURTEENTH AMENDMENT... CRAWFORD V. WASHINGTON, 541 U.S. 36, 51 (2004); POINTER V. TEXAS, 380 U.S. 400, 403 (1965); DAVIS V. WASHINGTON, 547 U.S. 813 (2006); WHORTON V. BOCKTING, 549 U.S. 406 (2007) (CITING SAWYER V. SMITH, 497 U.S. 227, 242 (1990)); DAVIS V. ALASKA, 415 U.S. 308, 316 (1974); 3A WIGMORE, EVIDENCE 940, p. 775 (CHADBOURN REV. 1970); GREENE V. McELROY, 360 U.S. 474, 496 (1959); DAVIS V. WOODFORD, 333 F.3d 982, 997 (9th CIR. 2002) (CITING GREEN V. MILLER, 483 U.S. 756, 766 n.8); OCAMPO V. VAIL, 649 F.3d 1098, 1114 (9th CIR. 2010) (CITING HUTCHINS V. WAINWRIGHT, 715 F.2d 512, 516 (1993)); BARAJAS V. WISE, 481 F.3d 734, 740 (9th CIR. 2006) (CITING COY V. IOWA, 487 U.S. 1012, 108 S. CT. 2798 (1988)); UNITED STATES V. KOJAYAN, 8 F.3d 1315, 1318 (9th CIR. 1993).

28 U.S.C. 2253(c)(2); SLACK V. McDANIEL, 529 U.S. 473, 483-84 (2000); MILLER-EL V. COCKRELL, 537 U.S. 322, 338 (2003); LAMBRIGHT, 220 F.3d 1022, 1025 (2000); (QUOTING BAREFOOT V. ESTELLE, 463 U.S. 880, 893 N.4 (1983)); SILVA V. WOODFORD, 279 F.3d 825, 832 (9th CIR. 2002).

THE TEXT OF THE PROVISIONS APPEARS IN APPENDIX E, TO THE PETITION... AT PAGE 4-15

(3.)

STATEMENT OF THE CASE

Robert Drawn IV, was convicted of first degree murder of Waleed Weatfall, the attempted murder of Kenneth Robinson and related firearms charges. Petitioner's defense at trial was that he was not the shooter.

Timely notice of appeal was filed and the case was remanded for a determination of whether appellant is entitled to good conduct credits not reflected on the abstract of judgment. The sentence was modified to stay the two-year concurrent term imposed on Count Four and imposed the two-year concurrent term imposed and stayed on count five. The judgment was affirmed in all other respects. Petition For Review was denied in the California Supreme Court.

Petitioner twice filed unsuccessful habeas petition in the California Court of appeal and twice filed unsuccessful habeas petitions in the California Supreme Court.

On April 22, 2019, petitioner filed a habeas petition in the U.S. District Court Northern District of California; and an order to show cause issued for Respondent to say why the petition should not be granted. Respondent filed an answer. The U.S. District Judge did conceded that the evidence of the anonymous 911 phone call about the direction he saw the shooter running was testimonial as the confrontation clause applies to testimonial statements. That evidence was allowed to come in at trial via an investigator's testimony about what the person said over the phone. That person was never called to testify in court, and to identify Mr. Drawn IV as the shooter. The petition for writ of habeas corpus was denied. Same time a certificate of appealability was denied.

Timely notice of appeal was filed and the Ninth Circuit Court of Appeal denied the request for a ("COA"). An extension of time was granted to file a Motion For Reconsideration, and it was denied too.

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REASONS FOR GRANTING THE PETITION

Because there was no evidence in support of the prosecutor's theory that Mr. Robert Drawn IV was the shooter. None of the prosecutor's witnesses were able to say that Mr. Drawn IV was the actual shooter. The prosecutor told the jury prior to their testimonies that "when you hear from the witnesses, and I don't know what all the witnesses are going to say, but witnesses have never been able to identify who the shooter was. (R.T. at pgs 131-135)

The prosecutor vouched for the witnesses truthfulness in the same way he did for witness Milton: "He told the jury that Milton admitted he lied at the preliminary hearing under oath. When he walked into that courtroom and saw between 30 and 40 people there, he freaked out. When the clerk said to him, "raise your right hand and say your name," he was freaking out, and so he LIED. "You're going to learn that he's in custody now on a separate case, in a different County. And that despite all that, I expect him to come to court and testify truthfully and explain why he LIED."

Here the prosecutor was clearly attesting witnesses competence and their credibility.

"There's no dispute that two people were shot that day, that Waleed Wheatfall and Kenneth Robinson were shot; however, in watching the video, you'll see that you cannot see who the shooter was. After the shooting, Chaos ensued. Anthony Williams ran away. He left Roberta Lee behind. Roberta Lee was in her vehicle when she ran over the body of Waleed Wheatfall. People ran everywhere. There was CHAOS.

You heard the 911 call that Kenneth Robinson made. And in that call, Kenneth Robinson did not name who the shooter was.. In that call, Kenneth Robinson did not give a physical description of a shooter, and it was because Kenneth Robinson did not know who the shooter was." "[T]he prosecutor's opinion carries with it the [weight] of the Government and may induce the jury to trust the Government's judgment rather than it's own of the evidence. Because of the probability that a prosecutor will unduly influence the jury in evaluating witness' credibility, it is improper for prosecutors to vouch for the truthfulness of a witness."

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert Drawn IV CDCR#AY-7255

Date: JULY 13, 2021