

21-8081

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAY 31 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

MOSES CLARK

— PETITIONER

(Your Name)

VS.

PEOPLE STATE OF CALIFORNIA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF CALIFORNIA Re: S273482

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

PETITION FOR WRIT OF CERTIORARI

Moses Clark

(Your Name)

P.O. Box 3535 C-304-7^{LOW}

(Address)

Norco, California 92860

(City, State, Zip Code)

BP1401

(Filing Number)

C.D.C.R.

QUESTION(S) PRESENTED

1. Review should be granted, because the state court failed to bring the defendant before the magistrate within 48-hours after arrest, violating The Fourth Amendment Right's To The United States Constitution.
2. Review should be granted, because state court erred by a second prosecution for the same offense after a conviction; violating The Double Jeopardy Clause of The Fifth Amendment Right's of The United States Constitution.
3. Review should be granted, because Judge Richard S. Kemalyan of the Superior Court of Los Angeles County, denied the Petitioner's motion erroneously pursuant to Code of Civil Procedure section 170.1 and 170.3; violating Petitioner's Due Process of the United State Fourteenth Amendment of The Constitution.
4. Review should be granted, because the State court denied the Petitioner's right's to view the body worn vide before the Preliminary hearing, violating The United States Fourth Amendments Constitutional Right's.
5. Review should be granted, because the state court erred by delayed Defendant's right's to a Preliminary hearing within ten days after his arraignment, violating Petitioner's right's to The United States Fourth Amendment of the Constitution.
6. Review should be granted, because State Court breach their contract the Petitioner's Plea agreement by sentencing the Petitioner to the high term and then refused to Recall of Sentence pursuant to Penal Code Section 1170, subdivision (d)(1); Penal Code Section 1171.1, subdivision (a)-(e), and George Gascon Special Directive 20-08.
7. Review should be granted, because State Court admitting hearsay evidence to determine the truth, violating Petitioner's Confrontation Clause of The United State Sixth Amendment of the Constitution.
8. Review should be granted, because State Court Prosecutor Chelsea K. Blatt Vindictively prosecuted the defendant, violating his Due Process Clause of The United States Constitution of the Fourteenth Amendment.

For The reason above the petition for a writ of certiorari should be granted.

Respectfully submitted, In re Moses Clark

Dated: May 22, 2022

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:

SUPREME COURT OF CALIFORNIA
PEOPLE OF THE STATE OF CALIFORNIA

CASE NO.: S273482

COURT OF APPEAL CASE NO.: B309944
SECOND APPELLATE DISTRICT, DIVISION 3
300 SOUTH SPRING STREET, SUITE 2217
LOS ANGELES, CA 90013

OFFICE OF THE ATTORNEY GENERAL
300 SOUTH SPRING STREET
LOS ANGELES, CA. 90013-1230

HONORABLE CURTIS B. RAPPE, DEPARTMENT # 103
SUPERIOR COURT OF LOS ANGELES COUNTY
210 WEST TEMPLE STREET
LOS ANGELES, CA. 90012-3210

CASE NO.: BA487329

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- APPENDIX D GEORGE GASCON LOS ANGELES COUNTY DISTRICT ATTORNEY MARCH 01, 2021.
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- APPENDIX F SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES AMENDED INFORMATION NOV. 2, 2020.
- APPENDIX G MINTUE ORDER SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES DATED: 9/18/2020.
- APPENDIX H SUPERIOR COURT OF STATE OF CALIFORNIA FOR COUNTY OF LOS ANGELES, Dept 33 HONORABLE TERESA T. SULLIVAN, JUDGE JULY 13, 2020.
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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 _____ 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 Supreme Court of California 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 May 9, 2022.
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).

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

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People V. Lee (1970) 3 CA 3d 514	<u>4</u>
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STATUTES AND RULES

California Constitution article I	<u>4</u>
Federal Rule of the Criminal Procedure, Rule 5.1(a)	<u>5</u>
California Rule of the Court Rule 4.420.(e)	<u>6</u>

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Penal Code Section 825	<u>4</u>
Penal Code Section 849	<u>4</u>
Penal Code Section 273.5(a)	<u>4</u>
Penal Code Section 12022.7(e)	<u>5</u>
Penal Code Section 871.6	<u>5</u>
Penal Code Section 1170(d)(1)	<u>5</u>
Penal Code Section 1171.1(a)-(e)	<u>6</u>
Penal Code Section 273.5(a)	<u>6</u>
Penal Code Section 1170(b)	<u>6</u>

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
County of Riverside v. McLaughlin (1991) 500 U.S. 44, 57, 111 S.Ct. 1661.	<u>9</u>
People v. Lee (1970) 3 CA 3d 514.	<u>9</u>
Blackledge v. Perry, 417 U.S. 21, 30-31 (1974).	<u>9</u>
Brady v. Maryland, (1963) 473 U.S. 667, 87 Fed. 2d 481, 105 S.Ct. 3375	<u>9</u>
Cunningham v. California (2007) 549 U.S. 270, 127 S.Ct. 856	<u>9</u>
Crawford v. Washington, 541 U.S. 36, 68 (2004)	<u>9</u>
Blackledge v. Perry, 471 U.S. 21, 28-29 (1974)	<u>10</u>

STATUTES AND RULES

California Constitution article I	<u>9</u>
Federal Rule of Criminal Procedure 5.1(a)(e)-(f)	<u>9</u>

OTHER

Senate Bill Number 483.	<u>6</u>
Penal Code section 1170 (d) (1)	<u>7</u>
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Penal Code Section 1170 (d) (1)	<u>9</u>

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The State Court denied the Petitioner's rights to be brought before the magistrate within 48- hours violation of the United States Constitution Fourth Amendment Right's.
2. The State Court erred by a second prosecution for the same offenses after a conviction, violation of The Double Jeopardy Clause of the United States Fifth Amendment Right's.
3. Judge Richard S. Kemalyan of the Los Angeles Superior Court [#]Sept. 130 erroneously denied a motion pursuant to Code of Civil Procedure 170.1... and 170.3; violation of the United State Constitution Fourteenth Amendment.
4. The state court erred by denying Petitioner's rights to view the body worn video before the Preliminary Examination, violation of the United States Fourth Amendment.
5. The State Court erred by the unreasonable delay Petitioner's Preliminary Examination within 10 days after the arraignment, violation of the United States Fourth Amendment Constitutional Right's.
6. The State Court erred by admitting hearsay evidence to determine the truth, which violated Petitioner's Confrontation Clause of the United States Constitution Sixth Amendment Right's.
7. The State Court vindictively prosecuted the Petitioner's by charging the Petitioner with more serious offense because the Petitioner exercise his Constitutional or Statutory Right's violation Petitioner Due Process Clause of the United States Constitution Fourteenth Amendment Right's.

STATEMENT OF THE CASE

Petitioner Moses Clark hereby ~~doesn't~~ adopts the Statement of Fact set forth in the decision of the Court of Appeal or the denial from The Supreme Court of California on May 9, 2022.

(1) Petitioner not brought before the magistrate within 48-hours of arrest, County of Riverside v. McLaughlin, the Supreme Court held that jurisdictions with procedures providing a probable cause determination within 48-hours of arrest generally immune from systemic challenges of undue delay. Weekends and holidays may not be excluded from the 48 hours. Cal. Const art 1; Penal Code section 825, 849; People v. Lee (1970) 3 CA 3d 514. See attached (PCO) Probable Cause Determination (Declaration) e-signed by Judicial Officer's Wallenstein J. Dated: May 15, 2020; 9:00 am hours. Superior Court of California County of Los Angeles, Minute Order dated: September 18, 2020, hearing date of arraignment and Plea in (LAC) Dept. 30 May 20, 2020. (1/13/20 R.T. Pg. 5, 24-28, Pg. 6, 1-10). For reason above writ of certiorari should be granted.

(2) On November 10, 2020, Petitioner argued a motion filed for Double Jeopardy see the reporter's transcript dated: November 19, 2020, (Pg. 45, 9-28). On August 26, 2019, defendant was convicted to a misdemeanor Protective Order pursuant to Penal Code section 166, subdivision (C)(1), Case No: 9AR01676; (SAME) see information filed on November 2, 2020, by the Los Angeles Superior Court, charged Petitioner a felony Protective Order pursuant to Penal Code section 166, subdivision (C)(4); Case No: BA487329. Double Jeopardy Clause violation promotes society's interest in protecting the integrity of final judgments. See Crist, 437 U.S. at 33. Due Process Double Jeopardy Clause bars a second prosecution for the same offense only if jeopardy attached in the original proceeding. Blackledge v. Perry, 417 U.S. 21, 30-31 (1974); The Supreme Court held that the Due Process Clause was violated when a prosecutor brought a more serious charge against a defendant had a conviction or a lesser charge for the same offense. So for the reason above a writ of certiorari should be granted.

(3) On September 21, 2020, Superior Court judge, Richard S. Kemalyan, stated in a bias and prejudice manner while ruling on the Petitioner's motions, "He didn't take it lightly that a man hit a woman than knock-out her teeth." Petitioner was charged with Domestic Violence P.C. section 273.5, subdivision (a), and Pen. Code section 12022.7, subdivision (e), great bodily injury. Speaking on the merits of the charges while making an Order is prejudice and bias toward the Petitioner. The context of Code of Civil Procedure section 170.1, motion is sufficient if it states merely that the person making it believes that prejudice exist (even though it may not in fact exist. Making a fair trial impossible. People v. Rodgers (1975), 47 CA 3d 992, 121 CR 346; Mandatory Disqualification or Recusal, if actual or apparent judicial bias exists, 28 U.S.C. section 144 and 455 provide mechanisms for a judge's recusal. For the reason above a writ of certiorari should be granted.

STATEMENT OF THE CASE

(4.) Trial Court erred denying Petitioner's rights, unreasonable delay within ten days after arraignment to a Preliminary Examination. A criminal defendant may encounter at least three types of pretrial proceedings: (1) a Gerstein hearing; (2) an initial appearance hearing; and (3) a preliminary hearing. The term "preliminary hearing" in this context refers to the proceeding formerly called a "preliminary examination" described in Rule 5.1(a) of the Federal Rules of Criminal Procedure.

People v. Pickens, (1981) 124 CA 3d 800. Preliminary hearing continue without good cause violated Penal Code section 871, subdivision b. (1) Pursuant to Federal Rule of Criminal Procedure 5.1 (a), (e)-(f); "420 U.S. at 114, this probable cause determinations is required only for those suspects who suffer restraints on liberty other than the condition that they appear for trial." Id. at 125 n. 26; see eg., U.S. v. Yellow Freight Sys. Inc. So for the reason above the petition for writ of certiorari should be granted.

(5.) State Court committed error by denying Petitioner To Recall of Sentence Pursuant Penal Code section 1170, subdivision (d) (1), Penal Code section 1171.1, subdivision (a)-(e), and George Gascon Special Directive 20-08, within 120 days of sentence.

On March 05, 2021, Petitioner received a letter from George Gascon Office, dated March 1, 2021, stating the Petitioner was eligible for resentencing. On November 12, 2021, judge Curtis B. Rappé schedule a hearing to recall of sentence in case number BA487329, the hearing was held without defense counsel are the defendant present at the hearing, violated the Petitioner's due process to be resentence.

STATEMENT OF THE CASE

The Petitioner was convicted of Penal Code section 273.5, sub. (a), to four years high term in State Prison for Domestic Violence. State Court breached Plea agreement when prosecutor mistakenly recommended sentence at top of guideline range and did not unequivocally retract recommendation; U.S. v. Lovelace, 565 F.3d 1080, 1087-88 (8th Cir. 2009).

The Supreme Court held that the California Determinate Sentencing Law (DSL) violated a defendant's Sixth Amendment right's to trial by jury insofar as it permitted the imposition of sentences above the statutorily prescribed maximum (midterm) based on facts found by the sentencing judge by a preponderance of evidence, rather than facts found by the jury beyond a reasonable doubt.

Cunningham v. California, (2007) 549 U.S. 270, 127 S.Ct. 856. See also Hurst v. Florida, (2016) U.S. 136 S.Ct. 66;

Cal. Rule 4.420.(e), selection of term of imprisonment requires the judge to state on the record the reason for selecting the upper or lower term, including a concise statement of the ultimate facts which the court deemed to constitute aggravation or mitigation justifying the term selected. People v. Black, 35 Cal. 4th 1238; Supreme Court (June 20, 2005). (no justification orally in the record see R.T. 11/19/2020; pg. 156, 8, 6-15).

Cal. Rule of the Court, rule 4.420, sub. (e); The reason for selecting one of the three authorized terms of imprisonment referred to in section 1170, sub. (b), must be stated orally on the record. Also Senate bill no.: 483; Section 1171.1, subdivision (4); Unless the Court justify circumstances in aggravation it must be stipulated, if not a term of imprisonment may not exceed the middle term.

STATEMENT OF THE CASE

State Court breached Plea agreement, on grounds, Penal Code section 1170, subdivision (d)(1), permits a trial court within 120 calendar days after the date of commitment on its own motion to Recall of Sentence. *Hurst v. Florida*, (2016) U.S. 136 S.Ct. 616.

(6.)

Petitioner's Confrontation Clause of The United States Constitution Sixth Amendment right's was violated. On April 26, 2020, the Los Angeles Police officer Meraz, No. 41745, and his/her partner officer Aquino, No. 41631, provide a police report for the alleged incident, stating Petitioner Moses Clark punched complaining witness Ashley S. several times in her face and knock-out her tooth.

The Los Angeles Police officer's Meraz and Aquino, and complaining witness Ashley S. never testified in court to the statement that they provide as evidence for the incident in Court; of the information. (See R.T. 7/13/2020, pg. 30, 11-20). Also there was never a Probable Cause Determination (Declaration) (PCD) filed to justify probable cause in count: 04; filed on April 26, 2020.

Petitioner only have a (PCD) in Count: 01; of the information. (See also R.T. 7/13/20, pg. 11, 27-28; and pg. 12, 1) (R.T. pg. 13, 22-23). The Confrontation Clause of the Sixth Amendment right's may prohibit the admission of hearsay against a criminal defendant, when the defendant lacks the opportunity to cross-examine the out of court declarant. See *Crawford v. Washington*, the Supreme Court stated a new standard to govern the admissibility of hearsay statements against criminals under the Confrontation Clause. The Court distinguished between "testimonial" and "nontestimonial" hearsay evidence holding the admission of testimonial hearsay violates the Confrontation Clause unless the declarant is unavailable and defendant had a prior opportunity to cross-examine the declarant. (*Crawford v. Washington*, 541 U.S. 36, 68 (2004)).



STATEMENT OF THE CASE

(7.) Prosecution Vindictively violated Petitioner's Due Process Clause. In *Blackledge v. Perry*, for instance, the Supreme Court held that the Due Process Clause was violated when a prosecutor brought a more serious charge against a defendant who had pursued a statutory right of appeal from a conviction on a lesser charge for the same offense. 417 U.S. at 28-29. In *Blackledge*

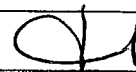
On May 20, 2020, Petitioner requested to represent himself at the arraignment, the Prosecutor filed Felony Protective Order against the Petitioner in case number ^{##}BA487329; pursuant to Penal Code section 166, subdivision (C)(4), after being convicted to a misdemeanor Protective Order pursuant to Penal Code section 166, subdivision (C)(1); on August 26, 2019; in case number 9AR01676.

The Due Process Clause prohibits a prosecutor from using criminal charges in an attempt to penalize a defendant's valid exercise of constitutional or statutory rights ("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort"); *Blackledge v. Perry*, 417 U.S. 21, 28-29 (1974). (See information attached for Appendix F, filed November 2, 2020). For the reason above the Petition For a Writ of Certiorari should be granted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28, 2022

BY:



Moses Clark

REASONS FOR GRANTING THE PETITION

- (1) Because the State Court unreasonable delayed the Petitioner's rights to be arraigned within 48-hours, violated the McLaughlin Rule, Cal. Const. art. I; Penal Code section 825, 849; People v. Lee (1970) 3 CA 3d 514; County of Riverside v. McLaughlin (1991), 500 U.S. 44, 57, 111 S.Ct. 1661. Reasons for granting the Petition denying United States Constitution Fourth Amendment Rights, to be brought before a magistrate within 48-hours.
- (2) Because State Court erroneously charged the Petitioner with a felony Protective Order after the Petitioner was convicted of a misdemeanor violation of Double Jeopardy Clause which bars a prosecution for the same offense. Blackledge v. Perry, 417 U.S. 21, 30-31 (1974); violated Petitioner's United States Constitution Fifth Amendment Rights.
- (3) Because Judge Richard S. Kemalyan erroneously denied Petitioner's motion for Disqualification/Recusal for being bias and prejudice to the merits of Superior Court case Number BA487329. violation of Petitioner's Due Process of the United States Constitution to disqualify himself sua sponte. Fourteenth Amendment.
- (4) Because State Court on July 13, 2020, denied Petitioner's rights to "view body worn" video before the Preliminary hearing. Brady v. Maryland, (1963) 473 U.S. 667, 87 2d 481, 105 S.Ct. 3375. violation Petitioner's United States Constitution Fourth Amendment Rights.
- (5) Because State Court erroneously delayed Petitioner's right to a Preliminary hearing within 10-days. Penal Code section 871, subdivision 6; Federal Rule of Criminal Procedure 5.1(a), (e)-(f), ~~denial of time limit~~ violation of Petitioner's United States Constitution Fourth Amendment Rights.
- (6) Because State Court breach Plea agreement contract violation of Los Angeles County District Attorney George Gascon Special Directive and Penal Code section 1170, subdivision (a)(1), to be resentenced within 120 days of commitment, Also The United States Constitution Sixth Amendment to Cunningham v. California (2007) (DSL). 549 U.S. 270, 127 S.Ct. 856.
- (7) Because State Court violated Petitioner Confrontation Clause to confront the declarant evidence that was presented to the Court in Court 04; violated Petitioner United States Constitution Sixth Amendment Rights. Crawford v. Washington hearsay evidence that was admitted for the Petitioner's conviction.

(§) Because State Court took advantage of the Petitioner's layman status and vindictively prosecuted petitioner violated his due process Clause. The Due process Clause prohibits a prosecutor from using criminal charges in an attempt to penalize a defendant's valid exercise of constitutional or statutory rights. "To punish a person because he has done what the law plain allows him to do is a due process violation of the most basic sort." see Blackledge v. Perry, 417 U.S. 21, 28-29 (1974); For instance, the Supreme Court held that the Due Process Clause was violated when a prosecutor brought a more serious charge against a defendant who had pursued a statutory right of appeal from a conviction on a lesser charge for the same offense.

CONCLUSION

So with all due respect for the Court the Petitioner's Moses Clark request that the Court grant this Petition.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

In re Moses Clark

Date: May 28, 2022