

22-5030

No. _____

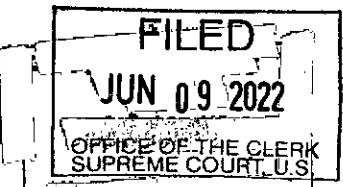
ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Paul John Denham — PETITIONER
(Your Name)

vs.



Superior Court — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

California Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Paul John Denham

(Your Name)

#P16644 (4B-4R-26) POBox 3481

(Address)

Corcoran, CA 93212

(City, State, Zip Code)

n/a

(Phone Number)

QUESTION(S) PRESENTED

Where a criminal defendant has a post-conviction habeas petition alleging the district attorney's office engaged in multiple intentional Brady/Napue violations during defendant's prosecution would it be difficult for a habeas judge to appear impartial when judge, a former prosecutor, worked for same district attorney's office and employed same culpable law enforcement witnesses to prosecute her prior cases?

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:

Petitioner: Paul John Denham

Respondent: Superior Court

Real Party in Interest: People of California

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A	Petitioner's Statement of disqualification	11-17
APPENDIX B	Habeas Judge's Order + declaration	18-21
APPENDIX C	California Court of Appeal Order	22
APPENDIX D	California Supreme Court Order	23

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

In re Murchison (1955) 349 U.S. 133	9.
Liteky v. United States (1994) 510 U.S. 540	9.
Mayberry v. Pennsylvania (1971) 400 U.S. 455	6.
Marshall v. Jernico (1980) 446 U.S. 238	3.
Williams v. Pennsylvania (2016) 579 U.S. 1	3,8.
Withrow v. Larkin (1975) 421 U.S. 35	9.

STATUTES AND RULES

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 _____ 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 D 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 California Court of Appeal 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.

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 3/16/22.
A copy of that decision appears at Appendix D.

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

Due process of law entitling petitioner to "a proceeding in which he may present his case with assurance" that no member of the court is "predisposed to find against him." (Marshall v. Jerrico, Inc., (1980) 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed 2d. 182.)

Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself. (Williams v. Pennsylvania (2016) 579 U.S. 1/2, 136 S.Ct. 1909-1910, 195 L.Ed 2d 145.)

STATEMENT OF THE CASE

On March 17, 2021, Petitioner had a habeas petition pending in the Los Angeles County Superior court challenging his criminal conviction on the grounds that, *inter alia*, the district attorney's office engaged in multiple intentional acts of suppressing favorable evidence and introducing knowingly false testimony. Suppressed documents reveal:

- a) State's criminalist altered crime scene evidence using evidence seized from petitioner to manufacture a match that otherwise would not exist, then testified to such false positive match;
- b) State's criminalist generated handwritten examination notes which were suppressed and reveal that criminalist did not find positive ballistic matches linking petitioner with crime scene ballistics. However, during petitioner's criminal trial criminalist testified to matches existing.

On March 17, 2021, Petitioner's habeas petition

was assigned to the Honorable Laura L. Laescke, a former prosecutor for the same district attorney's office that prosecuted petitioner.

On March 24, 2021, Petitioner filed a statement of disqualification requesting reassignment of his habeas petition on the grounds that the habeas judge, when a former prosecutor, used same state criminalists, that are the subject of his habeas claims, in her former prosecutions. Petitioner alleged that "a person aware of the facts would reasonably entertain a doubt that [habeas judge] would be able to be impartial presiding over [petitioner's] case." Because "a conflict of interest exists, and/or appears to exist, and that such appears to affect the ability of [habeas judge] in her ability to impartially preside over [petitioner's] habeas proceedings. Such that there is good cause for an order reassigning the petition." (Exhibit A, p.13, §§ 8,9.)

On June 2, 2021, the habeas judge struck

Petitioner's statement of disqualification

Supported by the habeas judge's declaration
noting solely her personal view of her
impartiality. (Exhibit B, p. 21.)

The habeas judge did not consider how a
person aware of the facts might reasonably
entertain a doubt regarding the habeas judge's
impartiality.

On August 1, 2021, petitioner petitioned the
California Court of Appeal, Second Appellate
District. Petitioner explained the above and
noted that "the objective inquiry is not whether
the judge is actually biased, but whether the
average judge in his position is likely to be
neutral or there is an unconstitutional
potential for bias." (Mayberry v. Pennsylvania
(1971) 400 U.S. 455, 91 S.Ct. 499, 27 L.Ed 2d. 532.)

On August 24, 2021, the California Court of
Appeal, Second Appellate District denied the
petition. (Exhibit C.)

On December 16, 2021, Petitioner submitted a petition to the California Supreme Court regarding this matter.

On March 16, 2022, the California Supreme Court issued a postcard denial - (Exhibit D.)

Today, Petitioner petitions to this Court.

Reasons for Granting the Petition

Firstly, the California Supreme Court did not ask the question that this Court's precedents require: whether considering all of the circumstances alleged, the risk of bias was too high to be constitutionally tolerable.

Instead, the California Supreme Court's denial approved the erroneous habeas judge's denial of recusal based on her personal opinion.

Secondly, this Court should clarify recusal where a judge was a former prosecutor as existing Supreme Court precedent needs explaining:

This Court has "not set forth a specific test" or required recusal as a matter of course when a judge has had prior involvement with a defendant in his role as a prosecutor. (Williams v. Pennsylvania (2016) 579 U.S. 1, 2, 136 S.Ct. 1899, 195 L.Ed 2d 132, 136.) Nor has it found that "opinions formed by the judge on the basis of facts or events occurring in the course of ... prior proceedings" constitute a basis

for recusal in the ordinary case. (Liteky v. United States (1994) 510 U.S. 540, 555, 114 S.Ct. 1147, 127 L.Ed 2d. 474.)

Yet in contrast this Court has also acknowledged that "[a]llowing a decisionmaker to review and evaluate his own prior decisions raises problems." (Withrow v. Larkin (1975) 421 U.S. 35, 58, n. 25.) And this Court has warned that a judge's "personal knowledge and impression" of a case may sometimes outweigh the parties' arguments. (In re Murchison (1955) 349 U.S. 133, 138, 75 S.Ct. 623, 99 L.Ed 942.)

Here, the circumstances of this case, where the judge's established working relationship with state's criminalists who are at the focus of the *habeas* proceedings, have not been addressed by this Court for recusal purposes. Review of this case enables this Court to clarify which specific set of facts can affect a judge's "personal knowledge and impression" of a case that may outweigh the parties' arguments. (Id.)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PDDenham

Date: June 9, 2022