

No. 22-5997

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
OCT 03 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Tarence Kirkland — PETITIONER
(Your Name)

vs.

People OF The State of New York RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court Appellate Division Second Department New York State
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tarence Kirkland
(Your Name)

71 Caryl Ave APT 3A
(Address)

Yonkers, New York 10705-4118
(City, State, Zip Code)

(914) 843-1193
(Phone Number)

QUESTION(S) PRESENTED

1. Did Court's pretrial Decision on Rodriguez (Identification) And Sandoval (use of prior crimes and bad acts on cross-examination) Result in the failure of Defendant to receive a fair trial?
2. Was the jury Verdict both against the weight of the Admissible evidence and legally insufficient?
3. Did the People fail to prove beyond a Reasonable Doubt that the Appellant should be sentenced as a second felony offender?

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

None

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	6
STATEMENT OF THE CASE	7
REASONS FOR GRANTING THE WRIT	8
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A Appellate Division: Second Judicial Department - 2017-10699

APPENDIX B Trial Court: County of Westchester 15-0868

APPENDIX C Court of Appeals: State of New York - 2022-00415

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
United States v.s. Owens, 672 F.3D 966 (11 th Cir. 2012)	People v. Ortiz, 188 AD 2nd 292 (First Department 1992)
People v. Allweiss, 48 NY 2nd 40 (1979)	People v. Tatta 177 AD 2nd 674 (Second Department 1991)
People v. Molineux, 168 NY 264 (1901)	People v. Bush, 74 AD 2nd 927 (Second Department 1980)
People v. Vails, 43 NY 2nd 364, 368 (1977)	People v. Balfour, 95 AD 2nd 812 (2nd Department 1980)
People v. McKinney 24 NY 2nd 180 (1969)	People v. Aiello, 93 AD 2nd 864 (1983)
People v. Ventimiglia, 52 NY 2nd 350 (1981)	(NY. APP. DIV. 1983)
People v. Sudler, 100 AD 2nd 915 (2nd Dept. 1984)	
People v. Sandoval, 34 NY 2nd 371, 314 N.E. 2nd 413, 357 NYS 2nd 849 (1974)	
People v. Gordon, 23 NY 3rd 643, 649 (2014)	
People v. Danielson, 9 NY 3rd 342, 349 (2007)	
People v. Delamata, 18 NY 3rd 167, 113 (2011)	
People v. Sanchez, 32 NY 3rd 1021, 1023 (2018)	
People v. Duzier, 78 NY 2nd 242, 290-250 (1991)	
People v. Small, 26 NY 3rd 253 (2015)	

STATUTES AND RULES

Penal Law 220.39 (01)
Penal Law 220.39 (1)
Penal Law 220.16
Penal Law 220.03
Penal Law 70.06
Penal Law 60.06 (B) (IV)
Penal Law 70.06 (B) (V)
Criminal Procedure Law 400.21 (7) (A)
Penal Law 70.06 (B) (V)
Criminal Procedure Law 400.21
Penal Law 70.04 (1) (B)

OTHER

No Parole Final Hearing on 16/4/2006

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 A to the petition and is

reported at 2022, NY S/10 1808; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

July 29 2022

The opinion of the State of New York Court of Appeals ~~Deny~~^{review} ~~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 _____.

[] 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 3-16-2022. 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Federal Constitution (Article I, Sec. 9+10)

STATEMENT OF THE CASE

2017-10699-3-16-2022

The Appellate Division of Second Department Affirming the Conviction and the New York Court of Appeals denied ^{my} Application for Certiorari - 2022-00415 - July 29 2022.

This is an appeal from judgement of the County, Westchester County, rendered on July 13 2016 convicting the Appellant TERENCE KIRKLAND, after trial, of two (2) counts of criminal sale of a controlled substance 3rd in violation of the Penal Law 220.39(01). Appellant was sentenced as a second felony offender to concurrent terms of incarceration of six (6) years with one and a half year of Post release supervision. A mandatory surcharge (\$300.00) crime victim's fee (\$25.00) and DNA fee (\$50.00) were also charged.

Appellant filed a notice of appeal on December 11 2018 and by order of this Court dated April 30 2020, Appellant was granted leave to proceed with the appeal as a poor person. In that same order, the court assigned ADAM SEIDEN as counsel for the appellant. Appellant has been released from incarceration and is currently in Post-release Supervision.

REASONS FOR GRANTING THE PETITION

1. The Eleventh Circuit in United States v. S. Owens, 672 F.3d 966 (11th Cir. 2012) determined that statutory rape (our Rape) is not a violent crime for the purposes of the Armed Career Criminal Act. The court stated that the definition of a violent crime mandates violent physical force being used the acts required for statutory rape (our Rape) do not require such force or violent. Decision & order on March 16 2022 Page 2 line 41 there is no merit to the defendant's contention that penal Law § 70.06 is an ex post facto law as applied to him because his prior crime of Rape in the second which served as a predicated crime for his predicate felony sentence was committed before the enactment of said statute never over sentence 2003 to ten years probation non violent Rape till September 1 2016 and was turn to violent crime four years after case of Owens was decided on 2012 so this case does apply to me TERENCE KIRKLAND 100%
2. Appellate TERENCE KIRKLAND did not receive a fair trial in violation of the United States constitution because the court allowed uncharged crimes to be presented to the jury. The result was served and prejudice to the appellant TERENCE KIRKLAND the said evidence was of limited probative value, People v. Allweiss, 48 NY 2d 40 (1979) People v. Molineux.
3. Appellant TERENCE KIRKLAND was wrongfully sentence as a second felony offender and never had a final Parole Hearing on 10-4-06 People v. Smalls 26 NY 3d 253 (2015) People v. Dorier 78 NY 2d 242, 248-250 (1991)
4. NY. S. Penal Law 380.30
Time for pronouncing without unreasonable delay. I TERENCE KIRKLAND was found guilty on July 13 2016 and was not sentence till 14 month later on September 1 2017 deprive me of my appeal after conviction and having my appeal 20 months earlier
5. The New York prosecutor has six months to indict and my indictment was 8 months out of time.
6. Bill of particular date had March 18 instead of February 18 2015

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tome Kunkel

Date: 10-27-22

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Tarence Kirkland — PETITIONER
(Your Name)

VS.

People Of The State of New York RESPONDENT(S)

PROOF OF SERVICE

I, Tarence Kirkland, do swear or declare that on this date, October 27 2022, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Miriam Roach District Attorney of Westchester
Westchester County Courthouse

111 Dr. Martin Luther King Jr. Blvd White Plains, New York 10601

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

Executed on October 27, 2022

Tarence Kirkland
(Signature)