

No. 22-6453

ORIGINAL

Supreme Court, U.S.
FILED

DEC 27 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Mario Torres

— PETITIONER

(Your Name)

vs.

Scott Kernan

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Mario Torres

(Your Name)

4058 Treat Blvd.

(Address)

Concord, California, 94518

(City, State, Zip Code)

(925)270-6839

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether Petitioner can withdraw his plea after district attorney reneged on the plea bargain.
- 2) Whether District Attorney & Public Defender can have Petitioner resentenced to curb possible relief on habeas corpus petition after an "order to show cause" is issued by the federal court.
- 3) Whether the District Attorney/Courts must abide by the original plea-agreement. Petitioner was resentenced four times while pointing out discrepancies in his case.
- 4) Whether restitution hearings can be ~~not~~ held, forcing petitioner to pay additional restitution, the more petitioner fights his case, the more petitioner is resentenced.
- 5) Whether a Superior Court/Office of the District Attorney/Office of the Public Defender policy, depriving a criminal defendant, knowledge of the facts and evidence surrounding their arrest and incarceration, pre & post conviction, allows an inmate to be continually resentenced, ~~without~~, without the ability to defend themselves, from the possibility of an unjust system.

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:

Phyllis J Hamilton
Clifton and Vandkye, Circuit Judges
John W. Kennedy
Rebecca Hardie
Patricia Scanlon
Siggins, P.J
Cantil-Sakauye
Jorge E. Navarrete
T. Ma.

RELATED CASES

- In Re Mario Torres, No. 05-190325-1, Superior Court of Contra Costa Co. Judgement entered April 10, 2019
- In Re Mario Torres, No. 05-191083-5, Superior Court of Contra Costa Co. Judgement entered July 8th 2019
- People of the State of California v. Mario Torres, Superior Ct. of Contra Costa Co. Judgement entered 4-30-19
- The people v. Mario Torres, No. A158546, California Court of Appeals, First Appellate District, Division Three, Judgement entered 11-5-19
- In Re Mario Torres, No. S257313, Supreme Court of California. Judgement entered December 18, 2019
- In Re Mario Torres, No. S259093, Supreme Court of California. Judgement entered February 19, 2020
- Torres v. Kernan, No. 20-cv-03159-PJH, U.S. Dist. Ct., Northern Dist. of Ca. Judgement entered June 23, 2022
- Torres v. Kernan, No. 22-16080, Court of Appeals, Ninth Circuit, Judgement entered 9-29-22
- Torres v. Kernan, No. 16-cv-04332-PJH, U.S. Dist. Ct., Northern Dist. of Ca. Judgement entered December 2018 (or or about)

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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 B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] 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,
[X] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Superior court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was denied.

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 En banc, denied.
A copy of that decision appears at Appendix B.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (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

- Fifth and Fourteenth Amendments of the Federal Constitution
(Due Process of Law)
- ~~the~~ 8th Amendment of the Federal Constitution
(Cruel and unusual punishment)

STATEMENT OF THE CASE

See Page 5-9

STATEMENT OF FACTS

On 2-5-15, after approximately two years of incarceration, Petitioner who was deprived knowledge of the facts and evidence surrounding his arrest and incarceration, the cause and nature of his alleged crimes, any and all pretrial knowledge, of any and all unprivileged information/evidence, pursuant to a Contra Costa County policy that is practiced and enforced by The Office of the District Attorney, Office of the Public Defenders, and the Superior Court of Contra Costa.

Petitioner was forced to sign a guilty plea to various alleged (unknown) crimes.

On or about 10-3-18, shortly after receiving an “Order to Show Cause” in both State and Federal Courts for habeas petitions, Petitioner was resentenced without his knowledge/consent and placed on parole, for what Petitioner alleges was an attempt to curb any possible habeas relief.

On 12-17-14, Petitioner received a full reversal of a criminal conviction. See **Exhibit A**, page 1-15. Petitioner was not allowed to have any knowledge of the facts surrounding his reversal pursuant county policy.

On 2-5-15, after approximately two years incarcerated deprived of the knowledge of the facts and evidence surrounding my arrest and incarceration, under duress, Petitioner signed a plea bargain that was to include 4 case numbers. **Exhibit A**, page 16-25.

On or about 3-19-15, Petitioner was able to obtain his Legal Status Summary (LSS) from his prison counselor. **Exhibit A**, page 26-27. Petitioner noticed discrepancies in his prison file. Prison documents showed Petitioner's release date in 2020. Petitioner questioned the correctness of the documents and Petitioner's release date was corrected to May 2018 by the Superior Ct./prison

Petitioners LSS didn't match Petitioner's Plea Bargain, and Petitioner's LSS was showing a detainer (**Exhibit A**, page 27, bottom) for one of the case numbers that was promised to have been part of the plea bargain Petitioner was forced to sign, **Exhibit A**, page 19.

On 4-2-18 The United States District court allowed a lawsuit to proceed against Contra Costa County, the office of the Public Defenders and various courtroom staff (Dist. Ct. case no. 16-cv-06607-SI was severed)

1 On 4-3-18, Petitioners release date was changed from May 2018 to January 2019.

2 Petitioner claimed retaliation but was informed that the courts just corrected his transcripts

3 On 7-30-18 Petitioner received an Order to Show Cause from the U.S. Dist. Ct. case #
4 17-cv-04332-PJH (**Exhibit A**, page 28-32).

5 On 10-3-18, Petitioner's Felony Abstract of judgements was changed again. Petitioner
6 was resentenced for a fourth time. **Exhibit A**, page 33-36. Additional restitution was given. (Petitioner
7 received the documents in poor condition and is unable to provide them any better).

8 On 10-24-18, Petitioner received an Order to Show Cause in State Court, Superior Ct.
9 case # 05-181767-5 (**Exhibit A**, page 37-41).

10 On 10-31-18, the Office of the District Attorney, filed a Return to the Superior Courts
11 Order to Show Cause (case # 05-181767-5), claiming that they had amended Petitioner's Abstract of
12 Judgement, on October 3, 2018, and proclaimed all issues as moot. **Exhibit A**, page 42-43.

13 On 11-5-18, all future court dates were vacated, thus disregarding Petitioner's filings
14 concerning his State Habeas Petition (**Exhibit A**, page 44). This affected Petitioner's federal habeas as well
15 because the federal courts disregarded Petitioners habeas petition after he was resentenced.

16 On 11-9-18, Petitioner was offered parole papers to sign for an immediate release from
17 prison stemming from his resentencing. Petitioner refused to sign them. It is Petitioners understanding
18 that the signing of parole papers at that time could have been construed as a settlement. **Exhibit A**, page
19 45-48.

20 On or about 11-14-18, Petitioner was discharged from prison with out the signing of
21 parole papers, thus petitioner didn't check in with parole.

22 On or about 1-15-19, Petitioner called the FBI field office in Oakland California and
23 spoke to special agent Koh, concerning what Petitioner claimed to be, corruption in the judicial system of
24 Contra Costa County and city of Concord Police Department, as well as the disregard of Petitioners
25 rights guaranteed by State and Federal Constitutions.

1 On or about 1-17-19, unmarked vehicles arrived at Petitioners mother's home, at
2 which time many plain clothed men with assault rifles and no warrant:

- 3 1. Kicked open the front door of the home, of Petitioners mother's home.
- 4 2. Threatened to shoot the family dog, thus threatening to discharge their firearms into the home.
- 5 3. Threatened to "release the dog" (K-9 Unit) into the home.
- 6 4. Unknown to the officers, located inside Petitioners mother's home, was Petitioners five-year-
7 old daughter, his eighty-year-old aunt, and himself.
- 8 5. While the home invasion (by federal officers) was in progress, Petitioners mother, brother, and
9 sister arrived home.
- 10 6. Petitioners family asked the federal officers for a warrant.
- 11 7. The federal officers did not have a warrant and stated that they did not need a warrant.
- 12 8. The federal officers proceeded to commit assault and battery against Petitioners 70+ year old
13 mother and his 50+ year old sister.
- 14 9. Due to the stress of the situation, Petitioners brother who recently had brain surgery, started to
15 seizure.
- 16 10. Petitioner was arrested and requested a warrant.
- 17 11. The officers stated that a warrant was not needed and Petitioner not have an understanding of
18 the way things are done by the officers.
- 19 12. At no time, neither by phone or personal conversation, did anyone in Petitioners mothers
20 home, or on his mother's property, give the officers permission to be on the property, or
21 conduct any type of search, seizure, or investigation on the property. The officers destroyed
22 the doors of all buildings on the property.

23 On or about 1-28-19, Petitioner was brought into the courtroom of judge Scanlon for
24 what he later learns was a parole revocation hearing.

25 It was stated for the record, by defense counsel, Petitioner was discharged from
26 prison, without the signing of any parole papers. It was further stated for the record that that neither

1 Contra Costa Counties courts nor its Office of Probation/Parole appear to have any jurisdiction or
2 authority over Petitioner.

3 Judge Scanlon becomes noticeably agitated by what Petitioners public defender.

4 Petitioner is given a different attorney.

5 On or about 2-28-19, Petitioner is brought into the courtroom of Scanlon, for what ended
6 up being an AB-109 hearing to decide guilt for Petitioners alleged parole violations.

7 The first thing that Scanlon stated at the court hearing was that the court was going to
8 disregard the court motions filed by Petitioner. In those motions Petitioner questioned the legality of
9 being arrested and incarcerated for violating the conditions of a legally binding document (parole papers)
10 that he never signed nor agreed to the conditions of, after the officers of the court resentenced Petitioner
11 to (Petitioner claimed) curb any possible relief on habeas corpus petition.

13 Petitioner was pressured to sign the parole papers offered. Petitioner still refused.

14 Petitioner was not given any opportunity to testify on his behalf

15 Scanlon stated something about neither party having any evidence and immediately
16 sentenced Petitioner to 180 of jail time, ruling that Petitioner had violated parole.

17 Petitioner was instructed to check into parole once he was released, at which time
18 Petitioner refused.

20 Petitioners attorney failed to file any type of appeal.

21 Upon Petitioner's release, he felt that he was retaliated against by State and Federal
22 officers for trying to bring to light dishonest public officials in Contra Costa County.

23 Petitioner, still refused to check into parole, and decided that he would go to the court
24 house and start obtaining warrant checks to verify that no warrants were placed upon him. Petitioner
25 made sure that he was very thorough with the clerk of court, during Petitioners warrant checks. Petitioner
26 asked the clerk to check for probation, parole, or any other criminal warrants that may apply. The clerk
27 assured Petitioner that he had been very thorough during all of his warrant checks as requested.

1 By January 2020, Petitioner was sure that he had no warrants against him. Petitioner
2 again called the FBI to make a complaint against the dishonest county officials, officers, etc. involved in
3 his case. Petitioner again spoke with special agent Koh, of the FBI.

4 Petitioner was arrested the following day.

5 In jail Petitioner was informed by his public defender (Rivera) that a warrant had been
6 issued approximately a year prior. Petitioner questioned the honesty of Riveria and the courts for he had
7 warrant checks in his possession that showed otherwise. Petitioner made it very clear that he felt his
8 parole violations were retaliation for trying to bring to light county corruption.

9
10 Again, Petitioner was informed that he would not be allowed to have his motions filed
11 for the court record.

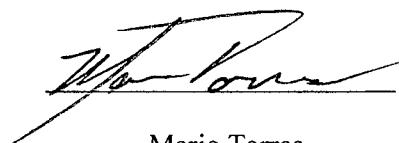
12 Petitioner had given Rivera copies of his warrant checks and Rivera stated that she did
13 not know what to do with the information. Petitioner was sentenced to 150 days of incarceration.

14 Petitioners attorney (Rivera) refused to file any type of appeal.

15 (I have attached one of the complaints I have provided to the FBI. (**Exhibit C**), as well as
16 news articles (**Exhibit D**) concerning officers of the court involved in my case being disciplined and/or
17 their credibility being questioned. The FBI complaint has many claims that cannot be proven without the
18 needed knowledge of the facts of my case and the case discovery that is being withheld by county
19 officials, pursuant to county policy.

20
21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct

23
24 Executed on 12-26-22



25 Mario Torres
26
27
28

REASONS FOR GRANTING THE PETITION

Not only was petitioner arrested and incarcerated for years deprived of the knowledge of the facts and evidence surrounding his arrest and incarceration. After petitioner signed the plea, the district attorney involved still reneged on the plea.

Petitioner requests to withdraw his plea ~~so~~ so he can prove his innocence in court.

= HN 2 26 Under Buckley, where the state has already received benefit it bargained for, a plea ~~of~~ of guilty and a conviction, specific performance is the best remedy, unless the defendant, whose choice it becomes to rescind the agreement and take his chances from there." Cuero v. Cate, 827 F. 3d 879

= Failure to abide by plea agreement is violation of Defendants due process rights U.S.C. Const Amend. 14" People v. Campbell 26 Cal Rptr. 2d 433, 21 Cal. App 4th 825

= When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such a promise must be fulfilled." Santobello v New York, 404 U.S. 257

Petitioner would like to withdraw his plea; any other relief

this court deems just.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mario Povera", is written over a horizontal line.

Date: 12-26-22