

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAVION SMITH, Petitioner

VS.

CALIFORNIA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SIXTH APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Does a state violate the Due Process Clause of the Fourteenth Amendment when it denies the right to a jury trial to a juvenile delinquent on the grounds that the juvenile system is not designed to punish the juvenile, then uses the juvenile adjudication to enhance an adult criminal sentence?

- II. Does a state violate the Sixth and Fourteenth Amendments when it allows the use of a juvenile adjudication to enhance an adult sentence even though the adjudication was obtained in a proceeding where the juvenile had no right to a jury trial?

List of Parties

All parties appear in the caption of the case on the cover page.

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The unpublished opinion of the California Court of Appeal, Sixth Appellate District, affirming the judgment on appeal in *People v. Smith*, No. H048422, appears as Appendix A. The unreported order of the California Supreme Court denying a petition for review appears as Appendix B.

JURISDICTION

The judgment of the California Court of Appeal, Sixth Appellate District, was entered on September 28, 2022. The California Supreme Court denied petitioner's timely petition for review on December 14, 2022. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Section 1 of the Fourteenth Amendment to the United States

Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Penal Code, section 1170.12 (in relevant part):

(b) Notwithstanding any other law and for the purposes of this section, a prior serious or violent conviction of a

felony is defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior serious or violent felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor.

(3) *A prior juvenile adjudication constitutes a prior serious or violent felony conviction for the purposes of sentence enhancement if it meets all of the following criteria:*

(A) *The juvenile was 16 years of age or older at the time the juvenile committed the prior offense.*

(B) *The prior offense is either of the following:*

(i) *Listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.*

(ii) *Listed in this subdivision as a serious or violent felony.*

(C) *The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.*

(D) *The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.*

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions that may apply, the following apply if a defendant has one or more prior serious or violent felony convictions:

(1) If a defendant has one prior serious or violent felony conviction as defined in subdivision (b) that has been pled and proved, the determinate term or minimum

term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2)(A) Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions, as defined in subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of any of the following:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions.

(ii) Twenty-five years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to an indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a felony described in paragraph (1) of subdivision

(b), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (c), unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 287, Section 314, and Section 311.11.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined in subdivision (b), for any of the following serious or violent felonies:

(I) A “sexually violent offense” as defined by subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and more than 10 years younger than the defendant as defined by Section 287 or former Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by Section 286, or sexual penetration with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machinegun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

(d)(1) Notwithstanding any other law, this section shall be applied in every case in which a defendant has one or more prior serious or violent felony convictions as defined in this section. The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious or violent conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious or violent felony conviction, the court may dismiss or strike the allegation. This section does not alter a court's authority under Section 1385.

(e) Prior serious or violent felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove

all known prior serious or violent felony convictions
and shall not enter into any agreement to strike or seek
the dismissal of any prior serious or violent felony
conviction allegation except as provided in paragraph
(2) of subdivision (d)....

STATEMENT OF THE CASE

Petitioner was initially convicted of involuntary manslaughter, battery with serious bodily injury, assault by means likely to produce great bodily injury, and intimidating a witness. The jury found true allegations that he personally inflicted great bodily injury, had suffered a prior serious or violent felony juvenile adjudication, and had served a prior prison term. Appendix A at p. 1. On February 20, 2018, the trial court applied the juvenile adjudication to double petitioner's sentence to eighteen years in state prison. Appendix A at p. 1.

On appeal, the Sixth District Court of Appeal held the prosecution had failed to prove a required element of the juvenile strike prior – that petitioner was 16 years old or older when he committed the juvenile offense – and remanded the matter for dismissal or retrial of the prior strike allegation. Appendix A at p. 2.

On remand, on August 28, 2020, the court denied petitioner's request for jury trial on the prior juvenile adjudication. (CT 107-108.)

On September 2, 2020, after retrial, the court held the prosecution had proved beyond a reasonable doubt that petitioner was 16 or older when he committed the juvenile offense. RT 8-9. The court struck an invalidated one-year prison prior but otherwise imposed the same sentence. Appendix A at p. 2.

Petitioner had filed a trial brief arguing, among other things, that the state violated the Due Process Clause of the Fourteenth Amendment when it denied him the right to a jury trial as a juvenile delinquent on the grounds that the juvenile system is not designed to punish the juvenile and then subsequently employed a juvenile adjudication to enhance an adult criminal sentence, and by using his juvenile adjudication to enhance an adult sentence even though the adjudication was obtained in a proceeding where he had no right to a jury trial. The trial court did not address petitioner's arguments. 2 RT 13.

Petitioner filed a timely notice of appeal on September 9, 2020. CT 122.

On his appeal to the California Court of Appeal, Sixth Appellate District, petitioner contended, in pertinent part, that using his prior juvenile adjudication to enhance his present adult sentence violated the Due Process Clause of the Fourteenth Amendment and the right to a jury trial guaranteed by the Sixth and Fourteenth Amendments. AOB at pps. 63-71.

The Court of Appeal rejected these contentions, although Justice Danner filed a concurrence noting:

Regarding Smith's challenge to the use of his juvenile adjudication as a strike prior on constitutional grounds (maj. opn., *ante*, at pp. 25–26), I believe it is far less clear than this court apparently did in *People v. Smith* (Apr. 14, 2020, H045505) (nonpub. opn.), at p. 14 (*Smith I*), that Smith did not have a right under the Sixth and Fourteenth Amendments to a jury determination of whether he was 16 years or older when he committed the offense reflected in the strike allegation. (See *People v. Gallardo* (2017) 4 Cal.5th 120, 136; see also *Descamps v. United States* (2013) 570 U.S. 254, 269–270.) Nevertheless, I agree that law of the case principles preclude relitigation of that issue in this appeal. (See *People v. Alexander* (2010) 49 Cal.4th 846, 870–871; *People v. Boyer* (2006) 38 Cal.4th 412, 441–442.) With the understanding that the disposition does not entail endorsement of the analysis in *Smith I*, at p. 14 on this point, I join the majority opin-

ion. Appendix A, pps. 35-36.

On November 7, 2022, petitioner renewed the same claims in a petition for review to the California Supreme Court. Petition for Review. On December 14, 2022, the California Supreme Court denied the petition. Appendix B.

STATEMENT OF FACTS

After petitioner punched a man who fell down, hit his head on a concrete curb, and died, he was convicted of involuntary manslaughter and related offenses. Appendix A at p. 3. The court used a juvenile adjudication to double his sentence to 18 years in prison pursuant to the California Penal Code section 1170.12. Appendix A at p. 4.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT REVIEW TO PROVIDE DEFINITIVE GUIDANCE AS TO WHETHER A PRIOR JUVENILE ADJUDICATION MAY CONSTITUTIONALLY BE EMPLOYED TO ENHANCE A PRESENT ADULT SENTENCE.

This Court has held that a juvenile offender has no constitutional right to a jury trial. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971). The Court's rationale was that a jury trial is not required because the purpose of juvenile proceedings is to protect the minor rather than to punish him. *Id.* at 541.

Notwithstanding that aspirational purpose, many states have promulgated recidivist punishment schemes under which prior juvenile adjudications may be used to enhance present adult sentences. In pertinent part, California's Three Strikes law provides that a sentencing court may use a single prior juvenile adjudication involving a "serious" or "violent" felony to double the usual adult sentence and use two or more prior juvenile adjudications involving "serious" or "violent" felonies to impose a sentence of 25 years to

life. Cal. Pen. Code § 1170.12(b)(3) and (c).

The system used in California and other states contains two fundamental constitutional flaws. First, it is a flagrant violation of due process to use a juvenile adjudication for a punitive purpose when the state has promised not to do so. In the words of the Louisiana Supreme Court, these circumstances constitute a “hypocritical mockery” of the promise made to the minor. *State v. Brown*, 879 So.2d 1276, 1289 (La. 2004). Second, since this Court decided *McKeiver*, it has held that “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Despite the fact that California increases the penalty for adult convictions beyond the prescribed statutory maximum on the basis of previously suffered juvenile adjudications, it does not offer the right to a jury trial to minors.

As will be demonstrated below, the system used in California

and elsewhere presents important constitutional questions on which the lower courts have divided. In order to guarantee that the promises made to juvenile litigants are honored, this Court should grant review.

**A. Pursuant To The Due Process Clause Of
The Fourteenth Amendment, A Prior
Juvenile Adjudication May Not Be Used
To Enhance A Subsequent Adult
Sentence.**

There is a fundamental difference between the criminal judicial system and the juvenile court system. While the adult system exists primarily to punish the offender, the juvenile system's primary purpose is to provide "care, treatment, and guidance" consistent with the best interests of the minor. Cal. Welf. & Inst. Code § 202(b). The California Supreme Court recognizes these disparate purposes. "Significant differences between the juvenile and adult offender laws underscore their different goals. The former seeks to rehabilitate, while the latter seeks to punish." *In re Julian R.*, 47 Cal.4th 487, 496 (2009).

This Court held in *McKeiver* that there is no constitutional necessity to afford the right to a jury trial in juvenile proceedings because the juvenile court's purpose is remedial. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545. Thus *McKeiver* held that there is no federal constitutional right to a jury trial in juvenile court since the proceeding is not deemed criminal in nature. *Id.* at 541.

The present California system cannot be reconciled with *McKeiver's* analysis, as California's Three Strikes law treats juvenile proceedings as criminal in nature. This is necessarily so since this law requires that a juvenile adjudication to be employed for the punitive purpose of enhancing punishment. Cal. Pen. Code § 1170.12(b)(3) and (c). By setting up this double standard – allowing the state to obtain a juvenile adjudication without a jury trial, then requiring that the same juvenile adjudication be used to enhance adult punishment – the California scheme violates the Due Process Clause of the Fourteenth Amendment.

State v. Brown, 879 So.2d 1276, supports this conclusion. In

Louisiana, the Legislature decreed that a juvenile prior could be used to enhance a subsequent adult sentence. The Supreme Court of Louisiana concluded that these circumstances constituted a “hypocritical mockery” of the statutory promise that the juvenile system was dedicated to the protection of the juvenile. *Id.* at 1289. For this reason, the Louisiana Supreme Court held that due process would not allow a juvenile adjudication to be used to enhance adult punishment.

The determination that a jury trial was not constitutionally required in juvenile adjudications was predicated upon the non-criminal treatment of the adjudicated juvenile delinquent. [Citation.] It would be incongruous and illogical to allow the non-criminal adjudication of a juvenile delinquent to serve as a criminal sentencing enhancer. To equate this adjudication with a conviction as a predicate offense for purposes of the Habitual Offender Law would subvert the civil trappings of the juvenile adjudication to an extent to make it fundamentally unfair and thus, violative of due process. In order to continue holding a trial by jury is not constitutionally required, we cannot allow these adjudications, with their civil trappings, to be treated as predicate offenses the

same as felony convictions. It seems contradictory and fundamentally unfair to provide youths with fewer procedural safeguards in the name of rehabilitation and then to use adjudications obtained for treatment purposes to punish them more severely as adults. [Citation.] It is inconsistent to consider juvenile adjudications civil for one purpose and therefore not constitutionally entitled to a jury trial, but then to consider them criminal for the purpose of classifying them as ‘prior convictions,’ which can be counted as predicate offenses for purposes of the Habitual Offender Law.” *Brown*, 879 So.2d at 1289, n. omitted.

Brown’s analysis corresponds with this Court’s long held view concerning the meaning of the Due Process Clause of the Fourteenth Amendment. For example, in *Santobello v. New York*, 404 U.S. 257 (1971), the prosecutor entered a plea bargain with the defendant and promised that he would make no recommendation regarding the sentence. He then breached the promise and recommended a one year sentence. This Court concluded that the defendant had established a violation of due process since the government had failed to honor the “promise” it had made to the defendant. *Id.* at 262.

The *Santobello* principle is directly applicable to the promise the State of California made to petitioner. When California obtained a juvenile adjudication against petitioner, it made the promise that it was not seeking to punish him. This promise made it constitutional to proceed without a jury trial. But California has now reneged on its promise and has used the juvenile adjudication for a punitive purpose. Such double dealing cannot be tolerated since the government must be held to the promises that it has made.

Santobello v. New York, 404 U.S. 257, 262.

In positing this conclusion, petitioner recognizes that at least four state courts have declined to follow *State v. Brown*, 879 So.2d 1276. See *People v. Nguyen*, 46 Cal.4th 1007, 1021, n. 10, (Ca. 2009), *People v. Mazzoni*, 165 P.3d 719, 723 (Colo. Ct. App. 2006), *State v. McFee*, 721 N.W.2d 607, 616 (Minn. 2006), and *State v. Weber*, 159 Wn.2d 252, 261 (Wash. 2006). However, these cases have uniformly failed to come to grips with the irrefutable conclusion in *Brown* that the government

has said one thing and done another. The dissenting Minnesota justices in *McFee* made this point:

If what the majority suggests is true, that juvenile court is now more focused on punishment than rehabilitation and juvenile adjudications are more akin to convictions than they used to be, then it brings into serious question the vitality of *McKeiver's* fundamental principle that the rehabilitation model for juvenile court justifies the denial of the right to a trial by jury. If juvenile adjudications are akin to convictions, then it follows that they are entitled to *all* of the procedural protections that accompany such a classification. As the Louisiana Supreme Court wrote: 'If a juvenile adjudication, with its lack of a right to a jury trial which is afforded adult criminals, can then be [used to enhance an adult sentence] the same as a felony conviction then "the entire claim of parens patriae becomes a hypocritical mockery.' *State v. Brown*, 879 So.2d 1276, 1289 (La. 2004) (citation omitted). *State v. McFee*, 721 N.W.2d at p. 616, dis. opn. of Meyer, J., emphasis in original; dis. opn. joined by Anderson, J.

Thus the Minnesota justice recognized the current constitutional dilemma:

Either we install jury trials in juvenile courts if

the disposition is primarily punitive rather than rehabilitative, or we reaffirm the principles of rehabilitation in juvenile court and continue the distinction between juvenile adjudications and adult criminal convictions.” *State v. McFee*, 721 N.W.2d at pps. 620-621, dis. opn. of Meyer, J., joined by Anderson, J.

The central rule of the Due Process Clause is that the government must keep its word. The State of California, unlike the State of Louisiana, has declined to honor the promises made to its juvenile offenders. This Court should grant review in order to sustain the well reasoned view of the Louisiana Supreme Court in *Brown*, and to overrule the erroneous holding of the California Supreme Court in *Nguyen*.

**B. Pursuant to the Jury Trial Guarantee Of
The Sixth Amendment, A Prior Juvenile
Adjudication May Not Be Used To
Enhance An Adult Conviction.**

It is a fundamental principle of our constitutional system that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must

be submitted to a jury, and proved beyond a reasonable doubt.”

Apprendi v. New Jersey, 530 U.S. 466, 490. This rule rests on the very essence of American democracy. Before the government may seek to punish an adult, it must allow the jury (i.e. the People) to pass judgment. The existence of the jury serves to guard against the “spirit of oppression and tyranny” which is so common to unfettered governmental power. *Apprendi*, 530 U.S. at 477.

Given the right to a jury trial, it follows that a juvenile adjudication may not be employed to increase the “statutory maximum” for an adult conviction. *Apprendi*, 530 U.S. 466, 490. This is so for the simple reason that a jury has never been asked to determine the defendant’s guilt or innocence for the juvenile offense.

An obvious objection to the foregoing analysis is that a prior juvenile adjudication should be deemed to be the legal equivalent of a “prior conviction.” If such an assumption is upheld, there will be no constitutional violation since there is no right to a jury trial with

regard to proof of a prior conviction. *Apprendi*, 530 U.S. at 490. There is a simple answer to this contention.

The essential premise of the “prior conviction” exception to the *Apprendi* rule is that the conviction has been obtained by affording the right to a jury trial to the defendant. *Jones v. United States*, 526 U.S. 227, 249 (1999). But in the juvenile justice context, the minor has had no right to a jury trial. The Ninth Circuit Court of Appeals has cogently recognized this reality.

[A]s we read *Jones* and *Apprendi*, the ‘prior conviction’ exception to *Apprendi*’s general rule must be limited to prior convictions that were themselves obtained through proceedings that included the right to a jury trial and proof beyond a reasonable doubt. Juvenile adjudications that do not afford the right to a jury trial and a beyond-a-reasonable doubt burden of proof, therefore, do not fall within *Apprendi*’s ‘prior conviction’ exception. *United States v. Tighe*, 266 F.3d 1187, 1194 (9th Cir. 2001), n. omitted.

Petitioner recognizes that the holding in *Tighe* constitutes a minority view. To date, the majority of courts have held that the *Apprendi* rule is not violated by the use of a prior juvenile

adjudication for the purpose of enhancing an adult sentence. See cases cited in *People v. Nguyen*, 46 Cal.4th at p. 1021, n. 10. However, the analysis found in the majority line of cases cannot withstand scrutiny.

The analysis of the California Supreme Court in *People v. Nguyen*, 46 Cal.4th 1007 is representative of the view that the use of prior juvenile adjudications does not violate *Apprendi*. Stripped to its essence, the analysis of the *Nguyen* majority is that prior juvenile adjudications are usable because, under *McKeiver*, they are considered to be “fair and reliable” results. *Id.* at 1024. There is a fundamental problem with this conclusion.

For purposes of *Apprendi* analysis, it is beside the point that the results of juvenile proceedings are “fair and reliable.” *Apprendi* holds that a jury trial is a prerequisite before punishment beyond the statutory maximum may be imposed. It is the existence of the right to a jury trial, not the fairness of the proceeding, that controls. The

dissenting justice in *Nguyen* focused on this contradiction:

The majority's reasoning here — that prior juvenile court adjudications may constitutionally be used because they have been 'reliably adjudicated in proceedings that included . . . every substantial safeguard' *except* the right to jury trial [citation] — misses the point. 'The Sixth Amendment jury trial right . . . does not turn on the relative rationality, fairness, or efficiency of potential factfinders.' [Citation.] The problem here is not that prior juvenile court adjudications are unreliable. The problem is that the facts underlying a juvenile court adjudication were determined by 'a single employee of the State,' namely, the judge [citation], which is contrary to 'the system envisioned by a Constitution that guarantees *trial by jury*' [citation]. *Nguyen*, 46 Cal.4th at p. 1033 (dis. opn. of Kennard, J.), emphasis in original.

Determining whether a state may use a prior juvenile adjudication to enhance an adult sentence while denying the juvenile offender a jury trial presents a significant constitutional question on which the lower courts are split. The Court should grant review in order to resolve this important issue.

CONCLUSION

For the reasons expressed above, petitioner respectfully requests that this court issue a writ of certiorari to review the judgment of the California Court of Appeal, Sixth Appellate District.

Dated: March 10, 2023

Respectfully submitted,

/s _____
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