

FILED

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SUPREME COURT, U.S.

22 - 7469

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ANGEL HERNAN HERNANDEZ, *pro se* — PETITIONER
(Your Name)

vs.

RON GODWIN, WARDEN *et al.* — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

ANGEL HERNAN HERNANDEZ #BA-7338

FAC: E-4-A #140 u
PO BOX-213040

(Address)

Stockton CA 95213

(City, State, Zip Code)

N/A

(Phone Number)

LIST OF PARTIES

☐ All parties appear in the caption of 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:

. KINGS COUNTY DISTRICT ATTORNEY'S OFFICE

TABLE OF AUTHORITIES CITED

CASES

STRICKLAND V. WASHINGTON (1984) 466 U.S.284,302	1
WIGGINS V. SMITH (2003) 539 U.S. 510,525	1
STERMER V. WARREN (6th.2020) 959 F.3d 704	2
People V. Watson (1956) 46 Cal. 2d 818 (watson)	3
BRADY V. MARYLAND(1963) 373 U.S.	3
STRICKER V. GREENE (1999) 527 U.S. 263,281-82	3
People V. Williams (2013) 58 Cal. 4th 197,256	3
People V. Uribe (2008) 162 Cal. APP.4th 1457,1471-72	3
SLACK V. McDaniel(2000) 529 U.S.437,484,120 S.ct	
595,146 L.Ed. 2d	7
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STATE Law: Evid. Code, §1200, Subd (a)	
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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 appear at Appendix A 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☒ is unpublished.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 B 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☒ is unpublished.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 C to the petition and is

☐ reported at _____: or,
☐ has been designated for publication but is not yet reported: or,
☐ is unpublished.

The opinion of _____ court

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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JAN. 25, 2023.

☒ 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 _____.
A copy of that decision appears at Appendix _____.

[] 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

THE 6TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE 14th AMENDMENT OF THE UNITED STATES CONSTITUTION GIVES A CITIZEN OF THE UNITED STATES , TO BE REPRESENTED BY COUNSEL IN ALL STAGES ,THAT INCLUDE IEEFFECTIVE ASSISTANCE, SO THAT A DEFENDANT MAVE HAVE A RIGHT TO A FAIR TRIAL AND FAIR PROCESS, AS PART OF THE DUE PROCESS TO EQUAL PROTECTION IN THE COURT OF LAW.

STATEMENT OF THE CASE

ANGEL HERNANDEZ (DEFENDANT) was convicted of conspiracy to commit assault with a deadly weapon upon a custodial officer, senior deputy luis TORRES (Deputy Torres) (pen. code §§ 182(a)(1), 245.3) The jury found true that defendant committed the offense to benefit a criminal street gang and that he had suffer 3 prior felony convictions within the meaning of the "three strike law". (pen. code §§ (b)(1-5), 667(a)(1), 667(b)-(i), 1170.12(a)-(d)(1). Defendant was sentenced to 40 years to life (25 years to life + 5 years for the gang enhancement, plus 10 years for 2 prior serious felony conviction). On direct appeal petitioner's sentence was modified to 35 years to life when the five-year gang enhancement was stricken and replaced with a minimum 15 year parole eligibility.

Defendant then filed a petition for writ of Habeas corpus on June 25, 2019 in the superior court of the state of California, county of Kings, petition No. 19W0111A, for ineffective assistance of counsel (see Attachment: F), all five claims Trial Judge denied without a evidentiary hearing.

Prosecution Case:

The testimony presented by prosecution was as follows: The prosecution called (12) witness to support their theory that defendant was the gang leader, identified as a Norteno with the gang moniker "Dragon", has a dragon tattoo and was a validated gang member, (prison). Upon defendant entering the Kings County Jail in Dec. 2013, defendant became the leader and ORNELAS became 2nd in command, therefore only defendant can make the call to assault Deputy Torres. The evidence also included a tape statement by James Varela, a wiretap between R.O (ORNELAS) and defendant, letters between defendant and mesa, a 30 minute riot video, R.O's informant agreement, a shank, defendant's tattoos, gang photos, admission to officers Deeds, Tolbert, Thomas, Ulrey, Henderson, Buhl, Barstecanu, and Torres, incriminating kites implicating defendant and a CDCR gang validation packet.

REASON FOR GRANTING THE PETITION

I defendant am asking this court to grant Certiorari: Trial counsel (PEREZ) was hired two years prior to trial, defendant had made it clear that a investigation was needed to obtain all evidence within the jail (documents, records, videos...etc.) which are part of my defense. I had to post-pond trial for a month due to me not recieving the documents mention above through a investigation or through the district attorney . On the 1/26/2016 over 250 pages of discovery was provided to trial counsel therefore no investigation could have been regarding the most recent partial discovery. Further on the day of trial videos and other documents were provided to counsel and through out the trial (trial ex.14(5 R/T p. 641 line 11-15 and 5 R/T p.680 line 5-9).) Trial counsel admits on his statement: "that he believes the district attorney gave him all documents related to case". But never states "he" investigated or look into such or spoke to defendant about such evidence. SEE ATTCHMENT A DECLARATION OF TRIAL COUNSEL:PEREZ

Trial counsel did not utilize the service of an investigator to investigate the case, nor interview any witness prior to trial, Strickland obligates defense attorneys to make reasonable investigations before settling on a trial stragety or atleast to conduct sufficient inquiries to make an informed decision about whether further investigation is needed: see Wiggins V. Smith (2003) 539 U.S.510,525 "[A] Lawyer who fails adequately to investigate and introduce evidence that demonstrates his clients factual innocence, or that raises sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance". Here trial counsel failed to make reasonable investigation prior to deciding on trial strategy. Counsel failed to utilize an investigator to interview

testifying witnesses, collect pivotal reports/documentation within the Kings County jail, that would have challenge the credibility of the states case and evidence. As a result trial counsel could not effectively impeach witnesses at trial, present evidence to the hearsay statements that served as the linchpin in connecting defendant to the fruits of the conspiracy, that bolstered the prosecutors arguments at closing by vouching for the witnesses credibility, which had a probable impact on the jury's finding to find defendant guilty see: Stermer V. Warren 959 F.3d 704(6th.2020)"In closing arguments the prosecutor repeatedly branded Stermer a liar, misrepresented her testimony and disparaged her while bolstering other witnesses "when prosecutor makes comments effectively directing a verdict on controversial issues, such here in a conspiracy case, defendant no longer is afforded a due process to a fair trial." The mishandling of trial counsel was not able to challenge any evidence presented, or was he able to object to testimonies, or evidence introduce for lack of investigation:"to provide testimony by witnesses or evidence to establish foundation of Deputy Torres entering and reentering the Nortenos pods Prior to the Riot, made contact with Inmate Spalding a few times Prior to the Sert-team entering the jury could have asses if a plan to assault deputy Torres on 4/20/2014. Had the jury read that defendant had cooperated with law enforcement the jury could have made a decision if defendant was a gang leader and counsel could have challenge the credibility of the gang evidence and witnesses as well as the gang expert opinion. At trial upon defendant taking the stand as a constitutional right to challenge testimonies or gang evidence, trial counsel was not able to verify defendants testimony, and

prosecutor was able to label defendants testimony "self-serve" and gang benefit, this was prejudice to defendant(SEE ATTACH.B KINGS.CO.INCIDENT) The mishandling of the jury instructions:"to pencile in atleast (6) times during jury instructions being read "assault ~~WI~~TH A DEADLY WEAPON", and trail counsel to abandon defendant during jury deliberations when the jury was confuse in regards to count 2 of the lesser charge: for there was a difference between "Assault with a deadly weapon",and "to commit a simple assault".[E]rror in failing sua sponte to instruct.... on all lesser included offense and theories thereof which are supported by the evidence must be reviewed for prejudice exclusively under(people V. Watson(1956) 46 Cal.2d 818(watson)).

Trial counsel violated defendants 6th and 14th Amendments of the UNITED STATES CONSTITUTION rights to iffective assistance of counsel, Confrontation clause and fair trial by denying a investigation to secure all relevant evidence, records, documents, videos, and statements in respect to [STRICKLAND],[WIGGINS] to Brady V. Maryland(1963) 373 U.S. as a due process of discovery to challenge key aspects of state's case that is favorable evidence:(Stricker V. Greene,527 U.S. 263,281-82(1999)"the evidence at issue must be favorable to the accused, either because it is EXCULPATORY, or because it is impeaching: People V. Williams,58 Cal.4th,197,256(2013):People V. Uribe 162 Cal.App.4th 1457,1471-72(2008).

This court should not find this important evidence, "irrelevant",some evidence was relevant to defendants defense, the confrontation clause is violated if such interest outweigh[ed] the defendants interest in presenting the evidence,and the jury received sufficient information to asses the witnesses credibility. Such restriction was arbitrary because such evidence would establish a very different picture that the jury

could debate.

For trial counsel to say "he" don't know why he didn't investigate James Varela and makes no mention of Matthew Barrera, Senior Deputy Torres daily work schedule , introduce his own tape recording in regards to the riot, correct James Varela incorrect audio recording played to the jury, to bring awareness that MR. TORESS continued to work within the norteno pods, to call HUMBERTO HERNANDEZ Classification officer to provide proof that days later (after riot) Deputy Toress inform him of the request made by James Varela and Matthew Barrera to be removed from pod B-3 therefor would establish "he" continued to work within the pods, was prejudice to a due process to defendant and undermines the right to a fair trial and the right to effective assistance of counsel. A jury could determine that counsel did err on multiple stages.

1. The introduction of witnesses and evidence at trial through the testimony of officer Torres violates the "Sixth Amendment Confrontation clause" the line of questioning by the people of deputy Torres (5 R/T p.653-660) misstated and was misleading testimony. Testimony was created for the primary purpose of proving a theory to a conspiracy at trial and was testimonial. The non-disclosure of investigation by trial counsel of these reports prejudice defendants ability to combat witnesses testimony at trial. Evidence would provide insight to a 12hr shift on the hour. On three-occasions Deputy Torres denied on direct and cross examination that he did not enter or reentered pods B-3 & B-4(5 R/T p.659 line 8"I did not enter the norteno gang pods (5 R/T p.693 line 5"no I was reassigned), and (5 R/T p.723"no at the time I was reassigned to A-pod"). It should be further stated that even when Deputy Torres was reassigned to A-pod, "alleged Nortenos" that had been housed in pod B-3 on April 30,2014, were moved to A-pod "A-6", therefore continued to work within allege Norteno pods. Evidence of a persons habit or an organization routine practice could have been admitted to prove that a particular occasion the person or organization acted in accordance with the habit or routine practice. "Fed R. Evid. 406". (EVID. CODE,§1200,SUDB.(a).),"FED.R.EVID.801(c)

. Officer Torres movements within the Jail are essential to show how he would enter on the hour to do [s]afety checks between 1600-0300 (5 R/T p.663)"confronting Spalding regarding his jumpsuite, prior and after reporting to Sgt. Narcisse (5 R/T p.632) continued to enter the pods during bed moves after riot(5 R/T p.690), and safety checks up until the end of shift 0300 hours. And on a later date received a written inmate request slip from James Varela and Matthew Barrera (5 R/T p.652 and 5 R/T p.653) during a safety check in pod-3 who then contacted classification officer Humberto Hernandez (5 R/T p.655) to have them removed.

2. Had trial counsel "investigated" Ronald Ornelas written statements, and gang expert investigator Meyers testimony during preliminary hearing:

.He could have shown the conflict between Ronald Orneals version of conspiracy, James Varela and hearsay of Matthew Barrera, and opinion given by gang expert at trial.(Evid. Code.§1200,subd.(a).)

. R. Ornelas Claimed: 1. He seen defendant write two kites. (one) to sharky in B-4 pod and one to Rebel in B-3 pod. 2. The kites were sign by "Sinner". 3. Hearsay as to what the kites said: (No kites exist regarding this claim, nor contents, counsel failed to address these claims with proof, which was within the contends of Officer Torres testimony, and conflicting audio recording and testimony of James Varela.

.James Varela claimed: 1. He recived a kite from la casa that came directly from "Dragon". 2. That he read the kite to Matthew Barrera because "matthew" cannot read, 3. That he sign it sent it back and at that moment he and and matthew put in a request to be removed from pod B-3 because he did not want to be part of a hit, 4. Audio recording (trial ex.29,29A,29B are all exhibits regarding the interview (7 R/T p.1392-1393)and the Jury only heard exhibit 29 (7 R/T p.1400) which was a

redacted version and the trial Judge further mislead the Jury (7 R/T p.1397) by stating:"the transcript there is actually [j]ust an aid the actual evidence is 29, this redacted version only had "who wrote the Kite"? "Dragon" the original transcript and audio says: R.B and gang expert Meyers says Dragon. see:ex.29B transcript of audio recording

3. Matthew Barrera was found in possession of a kite one year later during a booking intake process claiming that "a sgt. Torres was to be assaulted sing by la casa", counsel failed to show how this theory in respects to kites was in conflict to what Ornelas and James Varela was claiming, had the jury been able to asses the confliction I believe they would have came to a different conclusion and able to evaluate the evidence presented by the people. further at closing by the people the prosecutor mention "matthew not being a participant of the conspiracy because as soon as he heard "that" he reach out to the officers to be removed from pod B-3 as had James claimed he did for not wanting to participate in a hunger strike that is why James Varela Declaration and Matthew Barrera Declaration are vital because it show why the statements and hearsay evidence used at trial was in conflict, had the jury been able to hear this evidence they could have determine if a hit or assault on Officer Torres was a on going or truth at all. see: Attachment A-2 Declarations of Matthew Joseph Barrera and James Varela.

4. Defendant corporate with law enforcement: Had trial counsel investigated defendants prior convictions he could have used as evidence 1997 prior conviction see: attachment in regards to case No.97CM8973. Kings County Sheriff's Office Incident Report for 397005659 and probation report, had trial counsel utilize and investigated such documents he could have challenge the peoples case on defendant being the gang leader and the gang evidence and the jury could have view the gang evidence with

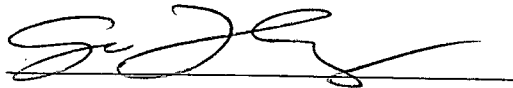
suspicious or the trial counsel could have object to all the gang evidence. Hearsay is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.(Evide.code,§1200,subd.(a).) Hearsay is inadmissible unless some exception to the hearsay rule is satisfied. A ruling needs to be made regarding the admissibility of the evidence for abuse of discretion. The federal rules evidence provide that hearsay is not admissible evidence and define hearsay as "A statement that... declarant does not make while testifying at the current trial...and [that] a party review the admission of evidence for abuse of discretion offers in evidence to prove the truth of the matter asserted in the statement. Fed. R. Evid.801(c). Further post-trial legislature made changes to P.C. section186.22 per Assembly Bill NO.333 and to section 1109, my case was base on gang evidence and that such crime was for the purpose of the gang, the peoples gang expert opinion (8 R/T p. 1613) "Kites, Authority in charge, it promotes, was done in the furtherance or because the weapon is provided, and furtherance because the riot was set-up, he further opinion defendant was a gang member, and the gang contacts were (8 R/T p.1626) "Ronald Ornelas and all the other Nortenos in the Jail".

Defendant can demonstrate that reasonable Jurist would find the District courts assessment and the 9th cir. of the constitutional claims debatable or wrong, this would have allowed a jury under :Slack V. McDaniel, 529 U.S. 437,484,120 S.ct 1595, 146 U.Ed.2d 542(2000), to debate the denial of a constitutional right of effective assistance of counsel, to a fair trial, for the lack of investigation to challenge the states conspiracy theory. Counsel performance failed to conform to the degree of skill, care and deligence of a reasonable competent attorney and that he was thereby prejudice:(William V. State, 168 S.W.3d 433,439). See Attachment B "Kings Co. Sherrif Incident report 397005659 and probation report In Re to case No.97CM8973, which is defendant prior conviction that was used at trial as a strikable offense therefore trial counsel should have used this information to counter attack the gang evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Se J R", written over a horizontal line.

Date: 4/16/2023