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No. 22-7496

FILED

JAN 06 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Washington, D.C. 20543

PRO. SE — PETITIONER
(Your Name)

vs.

_____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO OFFICE OF
The CLERK SUPREME COURT OF THE UNITED STATES
Washington, D.C. 20543

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

PETITION FOR WRIT OF CERTIORARI

RECEIVED

JAN 11 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

AKKeli Frederick #colc.BP0748
(Your Name)

High Desert State Prison P.O. Box 3030
(Address)

Susanville, CA 96127
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) In Pro se' counsel - Petitioner asks this Court to revisit (Evidence Code Section 1230.) where the lower Court misappropriated out-of-court statements that not only fall short of possessing probative value, but are inadmissible in nature, and clearly violates the Constitutional Right of the accused. (2) Petitioner request respectfully where an agent of the Prosecution interrogated alleged co defendant while "incarcerated" to make an involuntary confession implementing Petitioner in Pro se' when he neither were in custody at the time the statements was given, nor was he a person of interest to none of the offenses he was found of. This resulted in a violation of the United States Constitution 5th 6th & 14th Amend. where holding admission of involuntary confession deprived the Pro se - Petitioner due to ~~error~~ constitutional error infringe on his Sixth Amendment Right to Cross examine your accusers, and 14th Amendment at Due Process People v. Badgett (1995) 40 Cal. 4th 330, 343-345.) Pro se' petitioner was deprived standing to challenge the voluntariness of co defendant's statement. For the reasons ask to this Court (3) Pro se' Petitioner directs this Court To Respectfully reconsider The two imperative cases entailed throughout Petitioner's Contention to the lower Courts Perkins Operations (Rule 8.500(b)(4).) People v. Grimes (2016) 1 Cal. 5th 698, and Williamson v. U.S., 512 U.S. 594 (1994) Petitioner ask this Court to thoroughly analyze the above cases mention incorporated with Petitioner's Case to determine if the inherent unreliable statements used to sustain an conviction where actually the product of "substantially material" evidence. As the Court will conclude Nothing else beyond a reasonable doubt absence of the error validates petitioner's conviction.
Thank you for time
Sincerely in this matter.

LIST OF PARTIES

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

[X] 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: Michael Katz, Deputy A.G. of Los Angeles Superior Court. Pursuant to California Rules of the Court, 8.520 votes: Cantil-Sakauye, C.J. Corrigan, Liu, Kruger, Groban, Jenkins, Guerrero

RELATED CASES

(Lee v. Illinois (1986) 476 U.S. 530, 541.)

People v. Badgett (1995) 40 Cal. 4th 330

People v. Belton, supra, 23 Cal. 3d at p 526;

Paulin v. Castro, 371 F.3d 4083, 4092-93 (9th Cir. 2004)

People v. Grimes (2016) 4 Cal. 5th 698

People v. Gould

in re Johnny G. (1979) 25 Cal. 3d 543 (in re Miguel, supra, pp. 109-110)

People v. Leach (1975) 45 Cal. 3d 419

People v. Le (2016) 64 Cal. 4th 446

People v. Rodriguez (2009) 47 Cal. 4th 504

People v. Tewksbury (1976) 45 Cal. 3d 953, 967

People v. Tran (2022) S465998

People v. Wallin (1948) 32 Cal. 2d 803, 808

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he supra, 2+ 429 P. # 40

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JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 12, 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 June 2022.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: November 12, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ 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).

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:** *Have Not Filed in U.S. District Court.*

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 B to the petition and is

- ☒ reported at California Supreme Court Decision 10-12, 22; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the ^{Denied} California Court of Appeal Appellate Div II court appears at Appendix A to the petition and is

- ☐ reported at California Appellate Court Nov. 8, 2021; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SIXTH Amendment

✓

STATEMENT OF THE CASE

Pro se Petitioner Akkeli Frederick and alleged co-defendant Jesse Spicer was charged by amended information with first degree Murder of Denzel Gordon (Count 1); the attempted murder of Isaiah Gordon (Count 2); and shooting from a motor vehicle causing death (Count 5); (Pen. Code § 187; 661/187; Veh. Code § 26100, subd. (C).) alleged co-defendant was charged with two additional Counts of attempted murder (Counts 3, 4) and shooting at an occupied vehicle (Count 6). (Pen. Code § 246.)

All counts carried gang allegations and firearm enhancements. (1 Ct 190-194.) The information also alleged pro se petitioner had a prior "strike". (1 Ct 195.)

Following a joint jury trial, pro se petitioner was convicted as charged and the special allegations found true. (2 Ct 419-421.) In a bifurcated proceeding, the trial court found the prior conviction allegation true. (2 Ct 407.) alleged co-defendant was also convicted on Counts 1, 2 and 5, the jury finding all allegations true, but the jury found him not guilty on Count 3, 4 and 6. (2 Ct 407-412.)

Sentencing occurred on November 2, 2020, pro se petitioner was sentenced to an indeterminate prison term of 75 years to life on Count 1; 2 consecutive 44 years to life plus 20 years on Count 2; and 25 years to life plus seven years on Count 5, stayed. Pursuant to section 654. The court imposed the usual fines and fees and awarded 493 days of credits. (2 Ct 424-427, 488-491.) Pro se petitioner notice of appeal that same day Pursuant to Pen. Code 4237.) (2 Ct 493.)

REASONS FOR GRANTING THE PETITION

The evidence presented by the People was suspect at best. There ~~was~~ now witnesses that possess probative value that placed prose Petitioner in the Nissan with alleged co-defendant. Petitioner's whereabouts at the time of both shootings according to the People's evidence did not place prose Petitioner in the vicinity where neither shooting had taken place with respects to cell phone towers. There was no real fact finding evidence to substantiate Petitioner's conviction other than the alleged co-defendant's in voluntary statements that were the product of a "ruse" operation³⁴ the prosecution's agents.

Spicer stated the Petitioner's name to informant as the informant interrogated Spicer asking him repeatedly "who was with you"? Portraying as to be an in custody inmate in a state detention holding center. This case was in whole regards to the Petitioner; was promulgated on "hearsay"

substantial material evidence gathered by law enforcement through means of intimidation and coercion. Predicated by means of entrapment. Petitioner was giving two life sentences in two different offenses during the same course of conduct all because his name was ~~sub~~sequently mentioned in an Pekkins operation. Petitioner was never charged with provocation, aiding and abetting nor was he charged with causation. This case lack substantive value to support Petitioner's conviction.

Pro se' Petitioner Claims that exclusion of this evidence violated his due Process right to present a defense.

Herein, in the matter Petitioned to this Court were Pro se' Petitioner was jointly tried by the same jury as his alleged co defendant Jesse Spicer and thereon, found of murder in the first degree and attempted murder Provocated on Criminal Gang activity on the reported date of the incident. The Prosecutor provided an informant in a Perkins Operation Protrating as an older Gang member to obtain information through means of intimidation from Spicer, while Spicer was under detainment. Being (1) the Prosecution's agent was way beyond the years of his subject intimidation was a key factor in the statements made. (2) The Threat was imposed when the Prosecutor's agent profest to be an associated gang member from a notable gang to his subject, Spicer. Co defendant's Statement made under at time of duress are unreliable and far to uncertain to be sufficiency to establish certainty in sole respect to Probative Value. Therefore, Spicer's statements are "substantially material" in value and insufficient to support the Judgment rendered by the trial court to support Pro se' Petitioner's Conviction. The exclusion of evidence was the Prosecutor's agent's testimony under ~~conviction~~ couple with the the Fundamental Right to guaranteed fair trial by due process. Pro se' Petitioner was never Constitutionally afford under federal law, the right to cross examine his accusers. This act of infringement deprived the defendant of the fundamental fair trial guaranteed by due process. Pullet v. Harris, 465 U.S. 37, 44, (1984); The exclusion of critical evidence may violate a defendants right at due process if it deprives the defendant of "a fair opportunity to defend against a state's accusations". Chambers v. Mississippi, 410 U.S. 284, 294 (1973)... However, a charged party must "comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." United States v. Waters, 627 F.3d 345, (9th Cir. 2010).

Pro se' Petitioner claims that the trial Court prevented him from asserting his defense that the Police coerced witness in Perkins Operation into testifying against him. But the court finds that the questioning of the witness Comported with due process, and that the Pro se Petitioner was able to adequately explore the issue. The trial Court is mistaken. He also claims that the detective improperly testified about Prose Petitioner's criminal history while on cross-examination. On cross-examination, defense counsel pointed out to the court that the detective never really met Petitioner in his work as a anti-gang Policeman. This was to illustrate that Petitioner's activity were not related to gang activities. The trial court instructed the Jury to disregard the detective's "gratuitous comment". The trial Court went on to surmise that the impact of the admission on the Jury did not prevent "fair trial" as such as not inflammatory. Petitioner felt the violation introduced by the Prosecutor's agent prejudiced the Jury overall decision in respect to evidence presented. Pro se' Petitioner's alleged co-defendant illicit confession by means of intimidation had a "substantial and injurious effect or influence in determining the Jury's verdict."

Brecht, 507 U.S. at 637,

Petitioner does not 'contend' as stated by the lower Court rather he is positive that this Court will find that his rights to due process were violated when the trial court refused to sever his trial from his alleged co-defendant and by refused to sever the 'felon in possession' charge from the murder and attempted murder charges. The (Cal. Pen. Code § 4098.) states that the trial court may, order separate trials in its discretion after considering various codified factors.

Pro se' Petitioner sees clearly that this Court is in a position to do what the State Court did not do in its appeal rulings, determine the injurious and prejudicial nature of this error, Certiorari Petition is in order and an Considerations Governing Review is necessary. The lower court goes on to state that "... However, the State found no Prejudice from the statements because, as explained above, evidence on all of the points mentioned in the tape was independently presented to the Jury, and the trial Judge gave a curative instruction" Pro se' Petitioner disagree.

Although no evidence as to the Detective assertion was introduced that (Frederick), Prose Petitioner was on Parole at the time of the charged offenses, the Jury received Frederick's stipulation that he had been convicted of a felony. From the Jury's perspective, hearing that Frederick may have been on Parole was not reasonably likely to have been more prejudicial than learning that he had a prior felony conviction. Given the very strong case against alleged co-defendant Spicer, including evidence of the rivalry between Bounty Hunters and Grape Street Crips Gangs, the dispute arising from the confrontation prior before the shooting, advocated desire to retaliate, and the shooting itself. Spicer's statements identifying Frederick in the car prior to the shooting. It is reasonably probable Frederick would have obtained a more favorable result if the Jury had not heard Spicer's statement about Frederick being present at the time of the shooting to the prosecutor's Agent Jailhouse informant. (Supreme Court held that the failure to object at trial to the admission of an inculpatory statement precluded a federal court from entertaining in a habeas proceeding the claim that the statement was involuntary); *Paulino v. Castro*, 374 F.3d 1083, 1092-93 (9th Cir. 2004) (finding Petitioner's Sixth Amendment right to confrontation claim was procedurally barred because, "[b]y stating only that he 'objected' for the record, [Petitioner] failed to raise a timely and specific objection as required by (California law)"). Prose Petitioner has made it known throughout his right to challenge his conviction now the courts were in constitutional violation as for depriving him the right to confront his accuser. No where recorded in the record or out side the record reported were Prose Petitioner had a conversation by way of recording, self incriminated himself, with respects to the charged offenses in the case at bar. Because the Confidential informant was primarily motivated by his desire to benefit from his recorded statements to McCoy, and because he had credibility, he prior extrajudicial statements had reliability. "There is a basic understanding that when one person accuses another of a crime under

Circumstances in which the declarant stands to gain by inculcating another, the accusation is presumptively suspect." (Lee v. Illinois (1986) 476 U.S. 530, 541) The circumstances of the present case suggest that Spicer's extrajudicial statements were motivated by factors that rendered his prior statement untrustworthy. Spicer did not benefit from giving testimony to the confidential informant. Applying the substantial evidence standard to the facts of this case, petitioner ask this court in a conclusion did the prior extra-judicial statements by Spicer and reliable informant, repudiated at trial, did they have the reliability necessary to support the verdicts. The reliable informant was able to use intimidation by ~~was~~ means of coercion to gather an extrajudicial statements that was neither reliable nor credible evidence in establishing the out-of-identity. Therefore, the out-of-court identification by itself was insufficient to sustain a conviction. Instead, the sufficiency of an out-of-court identification to support a conviction should be determined under the substantial evidence test of People v. Johnson, (1980) 26 Cal. 3d 557, 578, that is used to determine the sufficiency of forms of evidence to support a conviction. The reliable informant was able to tell lies to Spicer because he was coerced by law enforcement and the case prosecutor, about the shooting on the street prior to Spicer's arrest. Contrary to what Spicer conveyed by means of intimidation to the prosecutor's informant, petitioner was not in the car at the time of neither shooting. What Spicer told the prosecutor's agent was not supported by Isaiah's first hand account of the shooting. Similarly, the prior extra-judicial statements by Spicer, once repudiated at trial, should have not retain any reliability at trial.

The Pro se Petitioner had been arrested in connection with the shooting and accused of being an accessory after the fact. It was apparent throughout his interrogation that Petitioner was primarily worried about the consequences to him. He reacted in "shock" but not how as most accused men would. He didn't give McCoy what he wanted; statements incriminating Spicer in the shooting. Petitioner's testimony to Detectives reflect the transcripts of his interrogation confirm that Petitioner had little understanding of what was going on in relation to the questions with respect to both shootings.

As noted in Miguel L. Supra, accomplice statements which incriminate a defendant, are inherently unreliable. In that case, a young man had been arrested when found in possession of a weapon. During his interrogation, the youth admitted that he had committed several burglaries, and told the officer that Miguel had assisted him in the burglaries. At trial, the youth refused to testify against Miguel, and the Juvenile Court allowed the prosecution to introduce the youth's prior statements to the police. The high court reversed the adjudication on the basis that no sufficient evidence supported the verdict because the refuted extra-judicial statements of the accomplice had no credibility. "No evidence other than Arnaldo's prior unsworn statements, which were refuted at trial, tends to connect appellant to the Ross burglary. These statements do not satisfy the requirements of the Gould rule since they lack the traditional indicia of reliability possessed by sworn testimony which has been subjected to cross-examination in a formal judicial proceeding. Such formal procedures are necessary in order to test the veracity, recollection, and possible bias of the witness, as well as the effect of official conduct toward the witness.

Additionally, as in Could ... there are other circumstances present which tend to discredit the witness' extrajudicial statements. Arnaldo is an admitted accomplice in the burglary of the Ross home. "[E]xperience has shown that the evidence of an accomplice should be viewed with care, caution and suspicion because it comes from a tainted source..." People v. Walker (1948) 32 Cal. 2d 803, 808; see also People v. Belton, (1970) 23 Cal. 3d 516, 526.)

Here in the case of the petitioner Spicer confided in a agent of the prosecutor implicating petitioner only by way of name to the jail house informant. Confidential Informant: Because they asking him names and he up in there saying these different fuckin' names. A motherfucker's in your family. They got to be your family if they asking him these names. You feel me?

Jesse Spicer: Uh-huh

Confidential Informant: That's why I'm, like, hold on. why is they questioning this little guy? He look like -- he look a little older, but -- he look a little older than you, you feel me, but he saying some other names. And I don't know what your cousin name that went with you.

Jesse Spicer: Red.

Confidential Informant: Uh-huh. I didn't hear him say nothing about no Red. He probably said the nigga -- he probably -- they probably mentioned -- they were just saying real names. They ain't saying no nicknames.

Jesse Spicer: AKKeli

Confidential Informant: Huh?

Jesse Spicer: His real name, AKKeli.

Confidential Informant: AKKeli? that was the nigga that with you?

Confidential Informant: Did I hear that right? You said AKKeli.

Even the sworn testimony of an accomplice in a formal judicial proceeding is considered suspect. (People v. Belton, supra, 23 Cal. 3d at p. 526; People v. Tewksbury (1976) 15 Cal. 3d 953 (1967).) Thus, when accomplice statements are not made under oath and in the presence of the fact finder, they "must be deemed even more suspect, untrustworthy and unreliable." People v. Belton, supra, 23 Cal. 3d at p. 526.)

Evidence from an accomplice is regarded as untrustworthy because it is likely to have been influenced by the self-serving motives of the witness. (Ibid.) Accomplice testimony is "often given in the hopes or expectation of leniency or immunity." (People v. Wallin, supra, 32 Cal. 2d at p. 808; see also Comment, Accomplice Corroboration -- Its Status in California (1962) 9 UCLA L. Rev. 190, 192.) As a result, an accomplice has a strong motive to fabricate testimony which incriminates innocent persons or minimizes his participation in the offense and transfers responsibility for the crime to others. (Heydon, The Corroboration of Accomplices (Eng. ed.) 1973. Crim. L. Rev. 264, 265.)

The self-serving nature of Arnaldo's confession further suggests the possible untrustworthiness of the evidence. In his version of the Ross burglary, Arnaldo places almost total blame for the crime on appellant, while portraying himself as virtually a passive observer of the incident. Thus, the principles enunciated in Gould and Johnny G. (In re Johnny G. (1979) 25 Cal. 3d 543) mandate that Arnaldo's extra-judicial statements identifying appellant as a participant in the charged burglary be held insufficient as a matter of law to sustain the petition against appellant. Not only do the statements lack the traditional indicia of trustworthiness characteristic of sworn testimony made in a formal judicial proceeding, but as accomplice evidence, they also come from a tainted source." (People v. Wallin, supra, 32 Cal. 2d at p. 808.) (In re Miguel, supra, pp. 109-110.)

Although Confidential Informant did not fit exactly the accomplice mold, he was as close as one could get to the same Criminal Responsibility of an accomplice. Herein the Petitioner was Accused of being an Aider and Abettor after the fact by assisting the defendant Spicer to commit Murder, and Attempted Murder.

As such, Petitioner's Prior statements obtained during an accusatory interrogation by McCoy, was not a statement which had any reliability as to his involvement. The statement was not given as sworn testimony made in a formal Judicial Proceeding, subject to the vigorous test of cross-examination. Petitioner gave his Statement with evident self-serving motives. On the contrary of an elicitation of Guilt. The court non disclosed the identity of the informant not allowing the informant to testify, when the information elicited to the informant involuntarily by way of intimidation made the informant a material witness. This deprived the Pro se Petitioner of a fair trial. (Case reversed for failure to reveal informant's identity, in part because of "fundamental requirements of fairness"; dismissal of case is appropriate remedy in trial Court); U.S. Raddatz (1980) 447 US 667, 679, 65 L.Ed 2d 639, ^{124, 435} ~~645, 173~~ ¹⁰⁰³ ~~et 623~~ 62 2406, 2414 (due process is basis for requiring Government to disclose identity of informant at trial, when identity shown to relevant and helpful to defense); Brady v. Maryland (1963) 373 US 83, 87, 10 L.Ed 2d 215, 218, 83 S.Ct 1494, 1496. Pro se Petitioner Never was afforded his Federal Constitutional Right to Cross-Examine and Confront his accuser. The Informant Never testified in Pre-trial nor trial as to the extra-judicial Statement made by Spicer, for the purpose of raising an affirmative defense to not only Negate an element of the charged act but impeach the witness when the accuse is only on trial due to the purposes of entrapment

Petitioner is entitled To Sentence Modification Pursuant to Penal Code 1170.1(f) 1109 SB333 Prohibition of Both Fire Arm And Gang Enhancement were Petitioner Benefit under new N-Enacted Section 1170. Subdivision(b)(b).

On May 31, 2022, Petitioner filed his first state writ of habeas Corpus at the Appellate level raising numerous issues, including alleged errors insufficient evidence of enhancement, and abuse of discretion in sentencing an additional claim pertaining "Ruse" Perkins Operation. The petition on the grounds that "the claims raised in the petition were raised and granted pending consideration and disposition of a related issue in People v. Tran, 8465998 (See Cal. Rules of Court, rule 8.512(d)(2), and later rejected due to above case mention during petition of review in California Supreme Court of Petitioner's sentence". In his current petition for writ of Certiorari pro se petitioner argues that he is entitled to resentencing based on People v. Rodriguez, 47 Cal. 4th 504 (2009) and People v. Le, 64 Cal. 4th 446 (2016) because the trial court improperly "stacked" imposed sentences on both the gang and fire arm allegations. This is pro se petitioner first writ for Certiorari consideration to this court. The September 29, 2024, petition to second Appellate District was filed by appointed by counsel, not petitioner, is primarily the reason as to why and how petitioner's self determination for relief lead him to Le, and Rodriguez, petitioner has offered adequate justification for his failure to present claim in his prior petition. more importantly, pro se petitioner's reliance on Rodriguez, and Le, is well established. In Rodriguez, the California Supreme Court held "that a defendant's single act of personally using a gun during the commission of a felony (assault with a firearm) could not be used to support both

a sentence enhancement for personal use of fire arm under Penal Code § 12022.5, former Subd. (a)(1), and to elevate the punishment for a criminal street gang allegation to a "violent felony" under Penal Code Section § 186.22, subd. (b)(1)(A). Lee, Supra, at 419 (citation omitted.)

In Lee, the Court expanded on Rodriguez, holding that a trial Court is precluded from imposing both a fire arm enhancement under Section § 12022.5, subd. (a)(1) and serious felony gang enhancement under section § 186.22, subd. (b)(1)(A). When the crime qualifies as a felony solely because it involves fire arm use. Because both enhancements in the present case were based solely on defendant Yang's use of a fire arm in the commission of a single offense, section 1170.4 (f) requires that only the greater of the two enhancements may be imposed as a matter of law. This conclusion is a logical extension of the holding in Rodriguez, Supra, 47 Cal. 4th 504. Lee, Supra, at 429.

Petitioner was convicted of shooting at an occupied Motor Vehicle with gang enhancements. As both offenses, the jury found true gun allegations under P.C. 12022.53 (b)(c) and (d) and gang allegations under P.C. 186.22(b)(1)(C). Therefore, the limitations set forth in Lee and Rodriguez, do apply as such. The prosecutors case stated that while the deceased walked down the street to retrieve some jumper cables while his brother remained near by in front of his aunt's house a Burgandy SUV headed eastbound while hanging out the driverside of the SUV, fired (4) shots shooting the bystander, as the car accelerated further eastbound 2 additional shots were fired alleging from the same SUV. The brother of the bystander noticed that he his brother had been shot multiple times. The bystander the deceased in this case was transported to a local hospital where he later succumb his injuries and died. At no time was Prosec Petitioner said as being the shooter.

Pro se Petitioner argues that the amendments made to the elements of Section 186.22 gang enhancement requires reversal of his gang enhancement finding. Petitioner also argues that the failure to bifurcate the adjudication of his gang enhancement charge and the fact that the gang enhancement was used to aggregate the Attempted Murder to Premeditated under Proposition (21) to a 15 to life imposition. Here the stated gang enhancement charge is required for reversal. Starting with elements of Section 186.22 gang enhancement, herein the rule of In re Estrada (1965) 63 Cal. 2d 740 (Estrada) applies. Estrada "Stand[s] for the proposition that (i) in the absence of a contrary indication of legislative intent, (ii) been committed; (2) the offenses were committed by two or more gang "members" as opposed to just "persons" (3) the offenses establishing a pattern of gang activity must be one other than the currently charged offense. (4) the offenses commonly benefitted a criminal street gang; (§186.22, subd. (e) (1), (2).) Fourth, Assembly Bill 333 narrowed what it means for an offense to have commonly benefitted a street gang, requiring that any "commonly benefit" be "more than reputational." (§186.22, subd. (g).) Legislation that ameliorates punishment (iii) applies to all cases that are not yet final as of the legislation's effective date". (People v. Esquivel, (2024) 14 Cal. 5th 671, 675.) Estrada applies to statutory amendments "which redefines the benefit of defendants conduct subject to criminal sanctions". (Tapia v. Superior Court, (1991) 53 Cal. 3d 282, 301.) Here Assembly Bill 333 essentially adds new elements to the substantive offense and enhancements in Section 186.22. These changes have the effect of "increasing the threshold for conviction of the Section 186.22 offense and the imposition of the enhancement as argued by Pro se Petitioner's Counsel in Petition for review to California Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date:
