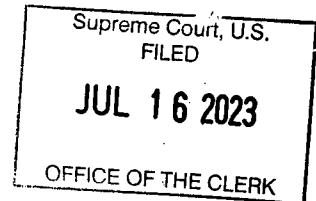


No. _____

23-5278

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Washington D.C. 20543

Earl Monroe Belcher — PETITIONER
(Your Name)

vs.

Jason Pickett — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Courts of Appeal for Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Earl Monroe Belcher
(Your Name)

H.D.S.P. P.O. Box 3030
(Address)

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

N / A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the District Courts' denial of appealability of COA was an unreasonable application of clearly established federal law?
2. Whether the District Court erred in denying whether a reasonable jurist could find this COA debatable amongst reasonable jurists; an unreasonable application of clearly established Supreme Court law?
3. Whether the District Courts justice erred in denying whether or not to issue a certificate of appealability; an unreasonable application of clearly established Supreme Court law?
4. Whether the Court violated Petitioner's Constitutional Rights by allowing the admission of DNA evidence without a proper chain of custody occurring; was an unreasonable application of facts and law?
5. Whether the Court erred by allowing contaminating evidence to be used; was an unreasonably application of clearly established Supreme Court law?
6. Whether the Court erred by allowing the prosecutor to instruct jurors to not hunt for Reasonable Doubt; an unreasonable application of clearly established Federal Supreme Court law?
7. Whether the Court erred in allowing Hearsay Evidence to be entered, and whether Defense Counsel rendered Ineffective Assistance by failing to object to such evidence.

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:

Petitioner in Pro-Per

RELATED CASES

1. *In re Winship* (1970) 397 U.S. 358.
2. *Brecht v. Abrahamson* (1993) 507 U.S. 619.
3. *Chapman v. California* (1967) 386 U.S. 18.
4. *Estelle v. McGuire* (1991) 502 U.S. 62.
5. *Crawford v. Washington* (2004) 541 U.S. 36.
6. *Hicks v. Oklahoma* (1980) 447 U.S. 343.
7. *Jackson v. Virginia* (1979) 443 U.S. 307.
8. *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 311.

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CASES	PAGE NUMBER
1. Miller EL v. Cockrell, 537 U.S. 1235 ct.	5
2. Slack v. McDaniel (2000) 529 U.S. 473	5
3. Barefoot v. Estelle, 463 U.S. 80 (1983)	5
4. Strickland v. Washington (1994) 466 U.S. 688	5

STATUTES AND RULES

U.S. Constitution Art. (1)
California Rules of Court 8.500
Federal Rules of Criminal Procedures Rule 32
Federal Rules of Evidence
Penal Code Section 2.05

OTHER

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

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

The opinion of the United States court of appeals appears at Appendix A 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 _____ to the petition and is

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

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

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

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

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

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

1.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5/25/2023.

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

This case primarily involves an unreasonable application of clearly established Supreme Court laws, by which Petitioner believes violated His State and Federal Constitutional Right to Due Process of the 6th, and 14th, Amendment; in violation of his State and Federal Constitutional Rights and its treaties to the United States Supreme Courts.

STATEMENT OF THE CASE

Petitioner's trial was filled with prejudicial errors. During trial proceedings, the trial court violated his Constitutional Rights: (1) When the Court allowed the admission of DNA evidence that was contaminated and tampered with by the Crime Lab that processed the evidence. A reasonable jurist would find this issue debatable, and that this violated Petitioner's Constitutional Rights to a fair trial. (2) The court also erred by allowing the prosecutor to tell the jurors not to hunt for doubt, and they could not hunt for doubt, and that any doubt had to be based on the evidence. (3) The Court further erred and violated Petitioner's Constitutional Rights by admitting the victim's "Hearsay Statements" into record as Spontaneous Statements. This case should have been remanded to the Appellate Court to determine whether the Court erred by admitting the victim's "Hearsay Statements." (4) Trial counsel rendered Ineffective Assistance by failing to object to these Hearsay Statements. (5) The Appellate Court agreed that the true findings on three prior strikes conviction must be stricken because they occurred after the case. The Trial Court erred, however, by failing to remand the case for resentencing because it could not be determined how the error would affect the Court's resentencing decision (See: United States v. Tucker [1972]. 404 U.S. 343). (6) There was also insufficient evidence to sustain the conviction because the prosecutor failed to prove that Petitioner was the person who committed the crime. The only evidence in this case linking Petitioner to the crime is DNA evidence, the accuracy of which is always entirely dependant on a proper chain of custody. Seven links in the chain of custody for this DNA evidence were missing. There was overwhelming evidence that someone tampered with the Sart Kit, as such. It is as likely as not that "the evidence analyzed was not the evidence originally received." Furthermore, the victim identified her assault as being a Mexican male when Petitioner is quite clearly a Black male.

(continued on 'Statement of the Case Continued' page 1)

STATEMENT OF THE CASE CONTINUED

2 There was also problems with the DNA evidence. There was no proof that Petitioner
3 committed the crime. The evidence in this case was not overwhelming: (1)
4 There was no eyewitness identification, and Petitioner did not confess. (2)
5 There as no evidence that the footprints found outside the victim's house
6 matched Petitioner. (3) Petitioner's fingerprints were not found anywhere
7 inside the victim's home or vehicle. (4) Petitioner's DNA was not found on
8 the victim's quilt or any of the victim's clothing. Furthermore, the victim
9 said the assailant was Mexican while the Petitioner is Black. The only evidence
10 connecting Petitioner to the crime was the faulty and questionable DNA evidence
11 which underwent an improper chain of custody.

12 The Court opinion in denying his (COA) was based on an unreasonable application
13 of clearly established Supreme Court law; Contrary to the State Courts opinion
14 in violation of Petitioner's Constitutional Right to Due Process of law and
15 a Fair Trial. Reasonable jurists could fine these issues debatable, thus
16 a COA should be granted. In the U.S. Supreme Court decision in Miller-EL
17 v. Cockrell, 537 U.S. 322, 123 S. ct. 1029 (2003), the Court clarified the
18 standards for issuance of a COA:

19 A prisoner seeking a COA need "only demonstrate a substantial showing of
20 the denial of a Constitutional Right. A petitioner satisfies this standard
21 by demonstrating that a jurist of reason could disagree with the District
22 Courts resolution of His Constitutional claims, or that jurist could conclude
23 the issue(s) presented are adequate to deserve encouragement to proceed further.
24 (Id. 123 S. ct. at 1034; citing Slack v. McDaniel, 529 U.S. 473, 484, 120
25 S. ct. 1595 [2000].) Reduced to its essentials, the test is met where Petitioner
26 makes a showing that "Petitioner should have been resolved in a different
27 matter or that the issue presented were adequate to deserve encouragement
28 to proceed further. (Id. at 1039; citing Barefoot v. Estelle, 463 U.S. 880

1 [1983].) This means that the Petitioner does not have to prove that the District
2 Court was necessarily "wrong," just that it's resolution of the Constitutional
3 claim is debatable.

4 We do not require Petitioner to prove, before the issuance of a COA, that
5 some jurist would grant the Petition for Habeas Corpus. Indeed, a claim can
6 be debatable even though every jurist of reason might agree, after the COA
7 has been granted and the case has received full consideration, that Petitioner
8 will not prevail. As we stated in Slack, where a District Court has rejected
9 the Constitutional claims on the merit; the showing required to satisfy
10 § 2253(c) is straight forward. The Petitioner must demonstrate that reasonable
11 jurist' would find the Discrtict Court's assessment of the Constitutional
12 claim debatable or wrong. Moreover, because the COA ruling is not an adjudication
13 of the meric of the appeal, it does not require a showing that the appeal
14 will succeed. (Miller-EL v. Cockrell, supra, 537 U.S. at 337.)

15 Finally, doubts about the propriety of a COA must be resolved in the Petitioner's
16 favor. (Lambright v. Stewart, 220 F. 3d. 102, 1025 [9th. cir. 2000] EN banc.)

17 Lastly, Petitioner asserts that the magistrate report and recommendation
18 is in error; due to the fact that reasonable jurist' could have found and
19 disagreed with the District Courts resolution of His Constitutional claims,
20 they deserve encouragement to proceed further.

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REASONS FOR GRANTING THE PETITION

This Court should grant certiorari; for several compelling reasons. The first being the Courts denial of COA was based upon an unreasonable application of clearly established Supreme Court law. Second, the Trial Court violated Petitioner's State and Federal Constitutional Rights to Due Process of Law as well as a Fair Trial. Third, the Appellate Court of Appeal, Fourth Appellate District Division Three, abused its discretion when it agreed that the true findings on three prior strike convictions must be stricken because they occurred "after" the case (opinion pp. 36-37). However, the Appellate Court abused its discretion when it failed to remand the case for resentencing because it cannot be determined how the error would affect the Courts resentencing decision. This is a conflict between the Appellate Court and an unreasonable application of facts. The Appellate Court's refusal to remand Petitioner's case for resentencing is a question for this Court to resolve whether it was in error or an abuse of decision when the Appellate Court agreed that the true findings on Petitioner's three prior strikes conviction must be stricken, yet refused to remand for resentencing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Earl M. Belcher.

Date: July 16, 2023