

ORIGINAL

No. 23-5980

FILED

OCT 26 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

EDGAR ARELLANO (PRO-SE) — PETITIONER  
(Your Name)

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EDGAR, ARELLANO Bc-1264  
(Your Name)

CRC P.O. Box 3535  
(Address)

NORCO, CA. 92860  
(City, State, Zip Code)

626-358-8089  
(Phone Number)

QUESTION(S) PRESENTED

I. THIS COURT SHOULD GRANT A REVIEW TO SETTLE THE QUESTION WHETHER THE CALIFORNIA COURTS WERE CORRECT IN STATING THAT THE PETITIONERS CASE WAS FINAL, BECAUSE HIS CALIFORNIA SENATE BILL - 1393 RE-SENTENCING DISPOSITION ONLY STATED THAT HIS SENTENCE WAS REMANDED BACK TO SUPERIOR COURT AND NOT VACATED BACK TO SUPERIOR COURT FOR RE-SENTENCING, WHEN THE CRIMINAL PROCEEDINGS AS A WHOLE HAD NOT ENDED. RESULTING IN THE PETITIONER BEING BARRED FROM RECEIVING BENEFITS FROM A NEWLY ENACTED CALIFORNIA LAW, SENATE BILL - 567, VIOLATING THE PETITIONERS FOURTEENTH AMENDMENT, EQUAL CLAUSE RIGHT.

II. THIS COURT SHOULD GRANT A REVIEW TO SETTLE THE IMPORTANT AND RECURRING QUESTION OF, DO THE THE CALIFORNIA SENTENCING COURTS HAVE THE RIGHT TO VIOLATE A DEFENDANTS SIXTH AMENDMENT CONSTITUTIONAL RIGHT, TO HAVE A JURY AND NOT A JUDGE DETERMINE BEYOND A REASONABLE DOUBT, THE FACTS SUPPORTING AN UPPER TERM SENTENCE.

## 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:

1. THE PEOPLE OF THE STATE OF CALIFORNIA V. EDGAR, ARELLANO  
No. S280664, THE SUPREME COURT OF CALIFORNIA  
DENIED DISCRETIONARY REVIEW ON JULY 26, 2023
2. THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
CASE NO. KAI12598

## RELATED CASES

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CASES	PAGE NUMBER
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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**

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

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 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 the COURT OF APPEALS OF THE STATE OF CALIFORNIA court appears at Appendix A 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 \_\_\_\_\_.

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 JULY 26, 2023.  
A copy of that decision appears at Appendix C.

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

I. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION READS AS FOLLOWS

- A PERSON ACCUSED OF A CRIME HAS THE RIGHT TO A SPEEDY TRIAL BY A JURY, AND TO A LAWYER WHO WILL PRESENT HIS CASE AND CALL WITNESSES TO HIS DEFENCE.

II. THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION READS AS FOLLOWS

- ALL CITIZENS ARE GUARANTEED EQUAL PROTECTION UNDER THE LAW. (1868)

STATEMENT OF THE CASE

ON JANUARY 13, 2017 IN CASE NUMBER KAI12598 DEFENDANT ARELLANO WAS SENTENCED TO THE UPPER TERM OF THE THREE TERMS PROVIDED BY THE CALIFORNIA LEGISLATURE, WITHOUT ANY SUPPORTING JURY FINDINGS OR STIPULATIONS MADE BY THE DEFENDANT TO JUSTIFY THE UPPER TERM. THIS VIOLATED PETITIONERS RIGHT TO HAVE A JURY NOT A JUDGE, DETERMINE THE FACTS SUPPORTING AN UPPER TERM SENTENCE, AS GUARANTEED BY THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION. SEE: CUNNINGHAM V. CALIFORNIA (2007) 549 U.S. 270 BIAKELY V. WHASHINGTON (2004) 542 U.S. 296,303 AND APPRENDI V. NEW JERSEY (2000) 530 U.S. 466 (SEE APPENDIX - B).

WHILE DEFENDANT ARELLANO'S CASE # KAI12598 WAS STILL ON DIRECT APPEAL AND NOT FINAL A NEW LAW WAS ENACTED SENATE BILL - 1393 AND BECAME AFFECTIVE ON JANUARY 1, 2019. THIS GAVE THE SENTENCING COURTS A NEW FOUND DISCRETION TO DISMISS A SERIOUS FELONY ENHANCEMENT WHICH WHERE PART OF DEFENDANT ARELLANO'S UPER TERM 22 YEAR SENTENCE. AT THE TIME OF THE DEFENDANTS JANUARY, 2017 SENTENCING HEARING, THE CALIFORNIA COURTS WHERE MANDATED TO ADD AN EXTRA FIVE YEARS TO A DEFENDANTS SENTENCE FOR EACH PRIOR SERIOUS FELONY CONVICTION, WITH NO DISCRETION TO DISMISS THE FIVE YEAR EN HANCEMENTS. SINCE DEFENDANT ARELLANO CASE WAS STILL ON DIRECT APPEAL AND NOT FINAL AS OF THE JANUARY 1, 2019 EFFECTIVE DATE OF SENATE BILL - 1393, THE CALIFORNIA COURT OF APPEAL REVERSED THE TRIAL COURTS ORDER DENYING DEFENDANTS ARELLANOS POST-JUDGMENT

## STATEMENT OF THE CASE

MOTION FOR RESENTENCING UNDER SENATE BILL - 1393, AND REMANDED THE MATTER BACK TO THE SENTENCING COURT TO ALLOW THE COURT TO EXERCISE ITS NEW FOUND DISCRETION TO DISMISS THE FIVE YEAR SERIOUS FELONY ENHANCEMENTS (SEE APPENDIX - A)

IT IS THROUGH THIS NEW FOUND DISCRETION THE COURTS NOW HAVE THAT SETS THE DEFENDANTS CASE A - NEW AND GIVES THE DEFENDANT A NEW JUDGMENT FROM WHICH HE CAN APPEAL, BECAUSE AT THE TIME OF THE DEFENDANTS 2017 SENTENCING THE COURT WAS NOT EMPOWERED TO EXERCISE ANY DISCRETION TO DISMISS THE DEFENDANTS SERIOUS FELONY ENHANCEMENTS, AND WAS FORCED TO ADD AN EXTRA TEN YEARS TO THE DEFENDANTS SENTENCE. BUT NOW THAT THE DEFENDANTS CASE WAS REMANDED TO THE SENTENCING COURT UNDER SENATE BILL - 1393 THIS PUT THE DEFENDANT UNDER THE SAME FOOTING AS DEFENDANTS BEING SENTENCED TODAY, AND PUTS THE DEFENDANT BACK TO SQUARE ONE ON THE SENTENCING PROCESS AFFORDING THE DEFENDANT THE OPPORTUNITY TO PRESENT ARGUMENTS SUPPORTING A FAVORABLE EXERCISE OF DISCRETION, AND GIVING HIM A NEW JUDGMENT FROM WHICH HE CAN APPEAL!

FOR THE FORGOING REASONS, THE APPELLANT REQUEST THE COURT TO GRANT CERTIORARI.

## REASONS FOR GRANTING THE PETITION

A DEFENDANT HAS A SIXTH AMENDMENT CONSTITUTIONAL RIGHT TO HAVE A JURY AND NOT A JUDGE DETERMINE BEYOND A REASONABLE DOUBT, THE FACTS SUPPORTING AN UPPER TERM SENTENCE. THIS RIGHT WAS VIOLATED WHEN THE CALIFORNIA SENTENCING COURT SENTENCED THE DEFENDANT TO THE HIGH TERM FOR BURGLARY OF (SIX YEARS) DOUBLED UNDER PEN. CODE, 1170.1a, SUB. (C) (1), PLUS TEN YEARS FOR THE SERIOUS FELONY ENHANCEMENTS FOR A TOTAL OF 22 YEARS (SEE APPENDIX - B CASE # KA112598). THIS WAS IN DIRECT CONFLICT WITH (SEVERAL) DECISIONS MADE BY THIS COURT, WHICH INCLUDE CUNNINGHAM V. CALIFORNIA (2007) 549 U.S. 270, BIAKELY V. WHASHINGTON (2004) 542 U.S. 296, 303 AND APPRENDY V. NEW JERSEY (2000) 530 U.S. 466, 481. IN CUNNINGHAM V. CALIFORNIA (2007) 549 U.S. 270 THIS COURT CONCLUDED THAT UNDER CALIFORNIA'S DETERMINATE SENTENCING SCHEME (1170) A DEFENDANT HAS A SIXTH AMENDMENT RIGHT TO HAVE A JURY, NOT A JUDGE DETERMINE THE FACTS SUPPORTING AN UPPER TERM SENTENCE (CUNNINGHAM AT PP. 288 - 294) AND SEE PEOPLE V. FRENCH (2008) 43 CAL 4TH IN ADDITION FOR THE SAME CASE THE CALIFORNIA COURT OF APPEAL CONCLUDED THAT PETITIONER WAS NOT ENTITLED TO THE BENEFITS OF A NEW LAW, SENATE BILL NO. 567 (SEE APPENDIX - A) WHICH ALSO PROHIBITS A SENTENCING JUDGE FROM DETERMINING THE FACTS SUPPORTING A UPPER TERM SENTENCE AND WHICH WOULD HAVE CORRECTED THE SENTENCING COURT SIXTH AMENDMENT VIOLATION OF HAVING THE JUDGE AND NOT A JURY DETERMINE THE FACTS SUPPORTING DEFENDANT'S ARELLANO'S UPPER TERM SENTENCE IN THE FIRST PLACE.

## REASONS FOR GRANTING THE PETITION

THE CALIFORNIA'S COURT OF APPEALS REASONING FOR CONCLUDING THAT PETITIONER ARELLANO WAS NOT ENTITLED TO THE BENEFITS OF SENATE BILL NO. 567 WAS THAT HIS CASE WAS FINAL SINCE WHEN THE SAME COURT OF APPEAL IN ITS PRIOR OPINION REMANDED THE SENATE BILL-1393 CASE FOR RESENTENCING AND IT DID NOT VACATE IT.

ACCORDING TO THE COURT OF APPEALS OPINION, A CASE ONLY BECOMES NON-FINAL, WHEN THE SENTENCE IS VACATED AND REMANDED FOR RESENTENCING.

"PETITIONER SUBMITS THAT THIS DECISION IS INCORRECT" AND IS IN VIOLATION OF THE DEFENDANTS EQUAL CLAUSE FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHT.

FOR THIS REASON THIS COURT NEEDS TO SETTLE IMPORTANT ISSUES OF LAW WHICH AFFECT THE STATE AND FEDERAL CONSTITUTIONAL RIGHTS OF DEFENDANTS, TO SECURE UNIFORMITY OF DECISIONS WITHIN THE STATES COURTS AND TO ENSURE THAT THE STATE COURTS ARE UNIFORMLY PROTECTING DEFENDANTS CONSTITUTIONAL RIGHTS, ESPECIALLY NOW THAT IN RECENT YEARS THERE HAVE BEEN MANY STATUTES PASSED BY THIS COUNTRY'S STATE LEGISLATURES SIMILAR TO SENATE BILL-1393 AND SENATE BILL - 567 THAT HAVE AMELIORATED PUNISHMENT IN MANY STATES THROUGHOUT THE NATION.

FOR THE FORGOING REASONS, THE APPELLANT REQUEST THE COURT TO GRANT CERTIORARI.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ed Orellano

Date: OCTOBER 24, 2023