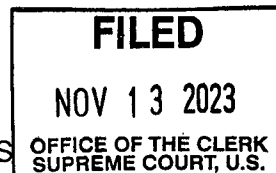


23-6114

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



ANDRE JACKSON — PETITIONER
(Your Name)

vs.

CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

CALIFORNIA SUPERIOR COURT, RIVERSIDE COUNTY
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDRE JACKSON
(Your Name)

P.O. BOX 290066-CSP-SAC
(Address)

REDRESA, CA 95671
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER APPELLATE COUNSEL'S PERFORMANCE WAS DEFICIENT UNDER STRICKLAND.
2. WHETHER THE ISSUE OF INSUFFICIENT EVIDENCE WAS A SIGNIFICANT AND OBVIOUS AND CLEARLY, PLAINLY STRONGER ISSUE THAN THOSE THAT WERE PRESENTED ON APPEAL.
3. WHETHER THE TRIAL RECORD WAS SUBSTANTIALLY DEVELOPED FOR THE ISSUE OF INSUFFICIENT EVIDENCE AND THE ISSUE PRESERVED FOR APPEAL.
4. WHETHER THE CAUSE-AND-PREJUDICE TEST IS SATISFIED BY APPELLATE COUNSEL'S DEFICIENT PERFORMANCE.
5. WHETHER I AM ENTITLED TO RELIEF DUE TO APPELLATE COUNSEL'S DEFICIENT PERFORMANCE.

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:

RELATED CASES

PETITIONER: ANDRE JACKSON, No. CVR12300950 SUPERIOR COURT OF CALIFORNIA,
COUNTY OF RIVERSIDE. JUDGMENT ENTERED MAR. 13, 2023. RIF142821

IN RE ANDRE JACKSON ON HABEAS CORPUS, NO. EO 81151

COURT OF APPEAL - STATE OF CALIFORNIA Fourth District Division 2
Filed ON MAY 31, 2023. RIF142821 & CVR12300950

IN RE ANDRE JACKSON ON HABEAS CORPUS, ^{No. S280517} IN THE SUPREME COURT
OF CALIFORNIA EN BANC. Filed SEPT. 13, 2023

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APPENDIX E- RECORD OF THE PRESERVED ISSUE.

APPENDIX F- RECORD OF THE CROSS-EXAMINATION OF THE ALLEGED VICTIM.

TABLE OF AUTHORITIES CITED

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 A to the petition and is ~~DECISION OF STATE TRIAL COURT~~

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☒ is unpublished.

The opinion of the ~~STATE SUPREME COURT~~ ^{DECISION OF THE} _____ 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.

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 9-13-23.
A copy of that decision appears at Appendix B.

☐ 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
CONSTITUTIONAL AMENDMENT - 6TH.
APPELLATE COUNSEL DO NOT PROVIDE
DEFICIENT, IE, OBJECTIVELY UNREASONABLE
ASSISTANCE BY FAILING TO RAISE EVERY
NON FRIVOLOUS CLAIM ON APPEAL. HOWEVER,
WHERE APPELLATE COUNSEL FAILS TO RAISE
AN SIGNIFICANT AND OBVIOUS AND CLEARLY,
PLAINLY STRONGER ISSUE THAN THOSE ACTUALLY
PRESENTED TO THE APPELLATE COURT IS DEFICIENT
PERFORMANCE UNDER STRICKLAND.

DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT.

DUE PROCESS CLAUSE OF THE FOURTEENTH
AMENDMENT PROTECTED A CRIMINAL DEFENDANT
AGAINST CONVICTION EXCEPT UPON PROOF BEYOND
A REASONABLE DOUBT OF EVERY FACT NECESSARY TO
CONSTITUTE THE CRIMES CHARGED. A STATE PRISONER
WHO ALLEGED THE EVIDENCE COULD NOT BE FAIRLY
CHARACTERIZED AS SUFFICIENT TO HAVE LED A RATIONAL
TRIER OF FACT TO FIND GUILT BEYOND A REASONABLE
DOUBT STATED A CONSTITUTIONAL CLAIM COGNIZABLE
IN A FEDERAL HABEAS PROCEEDING.

STATEMENT OF THE CASE

DUE TO HANDWRITING CONCERNS, THE STATEMENT OF THE CASE IS ~~NOT~~ WRITTEN
ON THE FOLLOWING PAGES. ~~THRU~~ 3 THRU 9.

(SENTENCE)
54 YRS. 8 MONTHS TO LIFE STATEMENT OF THE CASE

ON FEBRUARY 26, 2009 IN RIVERSIDE COUNTY, CALIFORNIA SUPERIOR COURT, AFTER A TRIAL BY JURY, I ANDRE JACKSON WAS FOUND GUILTY OF THE FOLLOWING OFFENSES: ATTEMPTED P.C. 288 (a) - (LESSER), P.C. 269(a)(4) CHILD SEX ASSAULT, P.C. 269(a)(4) CHILD SEX ASSAULT, P.C. 269(a)(3) CHILD SEX ASSAULT, P.C. 266(b)(2) SODOMY CHILD-16, P.C. 242 - (LESSER), P.C. 288(c)(2) ORAL COUPULATION. AFTER AN INITIAL ROUND OF STATE AND FEDERAL HABEAS CORPUS LITIGATION RESULTED IN DENIAL OF MY PETITIONS, I INITIATED ANOTHER ROUND OF STATE HABEAS CORPUS LITIGATION IN 2023. I ASSERTED FOR THE FIRST TIME: (1) APPELLATE COUNSEL PROVIDED CONSTITUTIONALLY DEFICIENT ASSISTANCE BECAUSE COUNSEL FAILED TO RAISE A MERITORIOUS CLAIM OF INSUFFICIENT EVIDENCE ON DIRECT APPEAL THAT WAS SIGNIFICANT, OBVIOUS AND CLEARLY, (PLAINLY), STRONGER THAN THOSE THAT WERE PRESENTED TO THE APPELLATE COURT, AND I DID NOT HAVE REASON TO BELIEVE I HAD A VIABLE CLAIM OF TAAC BECAUSE I WAS ~~NOT~~ AWARE OF MY APPELLATE COUNSEL'S FAILURE TO RAISE THE CLAIM UNTIL I DISCOVERED A PARTICULAR APPELLATE COURT DECISION WHEN ANOTHER INMATE SHOWED ME ON THE COMPUTER AT THE CALIFORNIA MENS COLONY, ^{SP} SAN LUIS OBISPO, CA, ON FEBRUARY 2, 2023, THE IN RE HAMPTON, 48 CAL. APP. 5TH 463 (APRIL 3, 2020) DECISION. I WAS UNAWARE OF MY ENTITLEMENT TO A CLAIM OF INSUFFICIENT EVIDENCE. THE SUPERIOR COURT COURT IN RIVERSIDE CALIFORNIA'S ADJUDICATION OF THE CLAIM WAS CONTRARY TO AND INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, AND WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING. THE STATE SUPREME COURT'S PROCEDURAL RULE IS "MANIFESTLY UNFAIR" IN ITS OF MY FEDERAL CONSTITUTIONAL CLAIM TO BE CONSIDERED ADEQUATE FOR THE PURPOSE OF THE PROCEDURAL DEFAULT DOCTRINE. THERE IS NO EXPLICIT STATEMENT THAT THE ^{STATE} SUPREME COURT ACTUALLY RELIED ON THE PROCEDURAL BAR AS AN INDEPENDENT BASIS FOR THE DISPOSITION OF THE CASE. THE STATE SUPREME COURT'S REFERENCE TO A PROCEDURAL BAR,

STATEMENT OF THE CASE - CONT.

DOES NOT SUFFICE. AND EVEN IF THERE WAS A DISCUSSION OF ITS APPLICABILITY TO THIS CASE THAT WAS UNDER REVIEW, IT WILL NOT SUFFICE. AND BECAUSE THE "CAUSE AND PREJUDICE" STANDARD IS SATISFIED BY THE ALLEGED VIOLATION OF FEDERAL LAW, A FEDERAL COURT IS FREE TO IGNORE THE PROCEDURAL DEFAULT AND HEAR THE MERITS OF MY CLAIMS. AND FAILURE TO CONSIDER THE CLAIMS WILL RESULT IN A MISCARRIAGE OF JUSTICE. THAT IS A FUNDAMENTAL MISCARRIAGE OF JUSTICE. DURING THE VICTIM'S CROSS-EXAMINATION THE VICTIM THAT THE ABUSE "DIDN'T HAPPEN". THE CROSS-EXAMINATION WAS CONTRADICTORY FROM THE VICTIM'S DIRECT-EXAMINATION. THE CROSS-EXAMINATION OF THE VICTIM DID NOT ALLOW JURY UNANIMITY. THE EVIDENCE COULD NOT BE FAIRLY CHARACTERIZED AS SUFFICIENT TO HAVE LED A RATIONAL TRIER OF FACT TO FIND GUILT BEYOND A REASONABLE DOUBT. THE ISSUE OF INSUFFICIENT EVIDENCE WAS SUFFICIENTLY DEVELOPED ON THE RECORD. FURTHER, THE FACTUAL PREDICATE FOR THE CLAIM COULD NOT HAVE BEEN DISCOVERED PREVIOUSLY THROUGH THE EXERCISE OF DUE DILIGENCE; AND THE FACTS UNDERLYING THE CLAIM OF INEFFECTIVE ASSISTANCE OF ASSISTANCE OF APPELLATE COUNSEL ARE PROVEN IN THIS PETITION, AND IF VIEWED IN LIGHT OF THE EVIDENCE AS A WHOLE, IT IS SUFFICIENT TO ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT, BUT FOR APPELLATE COUNSEL'S CONSTITUTIONAL ERROR, NO REASONABLE FACT FINDER WOULD HAVE FOUND ME GUILTY IN A NEW TRIAL OF THESE UNDERLYING OFFENSES.

STATEMENT OF THE CASE - CONT.

APPELLATE COUNSEL DACIA A. BURZ FAILED TO RAISE A SIGNIFICANT AND OBVIOUS, PLAINLY STRONGER ISSUE THAN THOSE ISSUES THAT WERE RAISED ON DIRECT APPEAL, BY FAILING TO RAISE THE ISSUE OF INSUFFICIENT EVIDENCE. THE RECORD WAS SUFFICIENTLY DEVELOPED AND THE ISSUE WAS PRESERVED FOR DIRECT APPEAL. DEFENSE ATTORNEY BRIAN COSGROVE STATED IN COURT THAT "THE EVIDENCE IS INSUFFICIENT TO CONVICT MR. JACKSON OF THOSE CHARGES." THE COURT STATED THAT "THE MAIN EVIDENCE HERE WAS THE TESTIMONY OF THE COMPLAINING ~~WIT~~ WITNESS, AN ADULT NOW AT THE TIME OF TRIAL. OF COURSE THE MAJOR QUESTION FOR THE JURORS WAS THE CREDIBILITY OF THAT VICTIM BECAUSE THERE REALLY WAS NO OTHER EVIDENCE, REALLY. THE VAST MAJORITY OF THE EVIDENCE WAS WHAT THE VICTIM SAID FROM THE WITNESS STAND AND OF COURSE THE JURY WOULD HAVE TO WEIGH HIS CREDIBILITY IN ORDER TO REACH A VERDICT." THE SUFFICIENCY OF THE EVIDENCE WAS THE CORE OF THE TRIAL. THE TESTIMONY OF THE ADULT STEPSON, HIS CLAIM OF SEXUAL ABUSE IS A PHYSICAL IMPOSSIBILITY THAT HIS STATEMENTS ARE TRUE AND THEIR FALSITY IS APPARENT WITHOUT RESORTING TO INFERENCES OR DEDUCTIONS. JONATHAN ROBINSON DID NOT REPORT THE INCIDENTS OF ABUSE UNTIL JULY OF 2007, A FULL THREE YEARS AFTER THE LAST CHARGED INCIDENT AND TEN YEARS FROM THE FIRST. FURTHER, THE VICTIM HAD OPPORTUNITY IN OCTOBER OF 2004 AND BEYOND TO DETAIL ABUSE BY ME (MR. JACKSON) HIS STEP-FATHER TO SOCIAL WORKERS, POLICE AND A PSYCHIATRIST AFTER A REPORT OF PHYSICAL ABUSE AND REFERRAL TO CHILD PROTECTIVE SERVICES. INSTEAD, JONATHAN ROBINSON DENIED ANY SUCH ABUSE. LAST, HIS MOTHER, GLENDA JACKSON, TESTIFIED THAT SHE TOOK HER SON TO A DOCTOR, DR. SCHWARTZ, AFTER SHE SUSPECTED ABUSE AND WAS TOLD THAT NOTHING WAS WRONG WITH HER SON.

STATEMENT OF THE CASE - CONT.

THE EVIDENCE PRESENTED SHOWED THAT THE VICTIM HAD GREAT MOTIVE TO FABRICATE ABUSE DUE TO A PROLONGED DIVORCE CUSTODY PROCEEDING INVOLVING HIS MOTHER AND HIS STEP-FATHER OVER THE VICTIM'S BROTHER, JAYSON JACKSON. THE FIRST REPORT OF ABUSE TO THE MORENO VALLEY POLICE DEPARTMENT IN JULY OF 2007 CAME ON (THESE) AFTER A MOVE OUT OF STATE TO LAS VEGAS. THE FOLLOW-UP REPORT TO THE SAME DEPARTMENT IN MARCH OF 2008 CAME AFTER AN OSC FOR CUSTODY AND AN ALLEGATION OF ^{LAW} CHILD ABDUCTION WAS MADE BY ME (MR. JACKSON) IN RIVERSIDE FAMILY COURT. THE SPECIFIC CHARGES OF ABUSE, COUNTS 1 THROUGH 7, ARE TAKEN VERBATIM FROM A DECLARATION TYPED BY JONATHAN ROBINSON IN HIS MOTHERS HOUSE IN LAS VEGAS AT THE REQUEST OF HER FAMILY LAW ATTORNEY.

AS DEMONSTRATED BY HIS ARTICULATE TESTIMONY AND NOW ADULT AGE, WHEN VIEWED WITH KNOWLEDGE OF THE HISTORY OF THIS FAMILY, THAT JONATHAN ROBINSON CONDUCTED, TYPED AND THEN REHEARSED HIS TESTIMONY FOR THE FAMILY LAW PROCEEDINGS TO AID HIS MOTHER AND THEN LATER FOR THE CRIMINAL COURTS. JONATHAN ROBINSON'S MOTHER, GLENDA, ADMITTED IN HER TESTIMONY THAT SHE HAD PREVIOUSLY FALSIFIED IMMIGRATION AND EMPLOYMENT RECORDS TO CONCEAL HER ILLEGAL STATUS IN THE UNITED STATES. FURTHER, SHE ADMITTED THAT SHE HAD WILLFULLY VIOLATED THE ORDER OF THE COURT NOT TO MOVE JAYSON OUT OF STATE. BOTH ACTIONS SHED LIGHT ON THE MOTIVATION BEHIND JONATHAN'S TESTIMONY AND THE LACK OF CREDIBILITY OF EACH WITNESS. THE JURY DID NOT INTELLIGENTLY AND JUSTLY PERFORM ITS DUTY IN THE EXERCISE PROPER LEGAL DISCRETION, TO DETERMINE WHETHER THERE WAS SUFFICIENT CREDIBLE EVIDENCE TO SUSTAIN THE VERDICT. THE VERDICTS IN THIS MATTER ARE CONTRARY TO LOGIC AND THE REQUIREMENT OF THE BURDEN OF PROOF BEYOND A REASONABLE

DOUBT. WHILE IT IS POSSIBLE AS INSTRUCTED, THAT A CONVICTION OF

STATEMENT OF THE CASE - CONT.

SEXUAL ABUSE MAY STAND ON THE TESTIMONY OF ONLY ONE WITNESS, IN THIS CASE IT IS NOT PROPER WHEN VIEWED IN LIGHT OF THE TOTALITY OF THE EVIDENCE DETAILED ABOVE, AND SHOULD NOT STAND AS AN "INTELLIGENT" AND "JUST" EXERCISE OF LEGAL DISCRETION. THEREFORE, APPELLATE COUNSEL'S FAILURE TO RAISE THIS SIGNIFICANT AND OBVIOUS, CLEARLY, PLAINLY, STRONGER ISSUE OF INSUFFICIENT EVIDENCE THAN THOSE ACTUALLY PRESENTED TO THE APPELLATE COURT IS DEFICIENT PERFORMANCE UNDER STRICKLAND. DUE TO THE FACT THAT THE DEFICIENT PERFORMANCE MADE IT IMPOSSIBLE FOR ME TO EVER HAVE RAISED THIS CLAIM IN STATE COURT BECAUSE OF THE PROCEDURAL BAR. FURTHER, BUT FOR APPELLATE COUNSEL DACIA A. BURZ'S DEFICIENT PERFORMANCE THERE WOULD HAVE BEEN A REVERSAL OF THE CONVICTION.

COLEMAN V. THOMPSON, 501 U.S. 722

WHERE A PETITIONER DEFAULTS A CLAIM AS A RESULT OF THE DENIAL OF THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, THE STATE, WHICH IS RESPONSIBLE FOR THE DENIAL AS A CONSTITUTIONAL MATTER, MUST BEAR THE COST OF ANY RESULTING DEFAULT AND THE HARM TO STATE INTEREST THAT FEDERAL HABEAS REVIEW ENTAILS. COUNSEL'S INEFFECTIVENESS WILL CONSTITUTE CAUSE ONLY IF IT IS AN INDEPENDENT CONSTITUTIONAL VIOLATION.

ATTORNEY ERROR THAT CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL IS CAUSE. IN ALL CASES IN WHICH A STATE PRISONER HAS DEFAULTED HIS FEDERAL CLAIMS IN STATE COURT PURSUANT TO AN INDEPENDENT AND ADEQUATE STATE PROCEDURAL RULE, FEDERAL HABEAS REVIEW OF THE CLAIMS IS BARRED UNLESS THE PRISONER CAN DEMONSTRATE CAUSE FOR THE DEFAULT AND ACTUAL PREJUDICE AS A RESULT AS A RESULT OF THE ALLEGED VIOLATION OF FEDERAL LAW, OR DEMONSTRATE THAT FAILURE TO CONSIDER THE CLAIMS WILL RESULT IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

EVILTS V. LUCEY, 469 U.S. 387

IN BRINGING AN APPEAL AS OF RIGHT FROM HIS CONVICTION A CRIMINAL DEFENDANT IS ATTEMPTING TO DEMONSTRATE THAT THE CONVICTIONS WITH ITS CONSEQUENT DRASTIC LOSS OF LIBERTY, IS UNLAWFUL. TO PROSECUTE THE APPEAL, A CRIMINAL APPELLANT MUST FACE AN ADVERSARY PROCEEDING THAT, LIKE AT TRIAL, IS GOVERNED BY INTRICATE RULES THAT TO A LAY PERSON WOULD BE HOPELESSLY FORBIDDING. AN UNREPRESENTED APPELLANT LIKE AN UNREPRESENTED DEFENDANT AT TRIAL, IS UNABLE TO PROTECT THE VITAL INTEREST AT STAKE. NOMINAL REPRESENTATION ON APPEAL AS OF RIGHT, LIKE NOMINAL REPRESENTATION AT TRIAL, DOES NOT SUFFICE TO RENDER THE PROCEEDINGS CONSTITUTIONALLY ADEQUATE. A PARTY WHOSE COUNSEL IS UNABLE TO PROVIDE EFFECTIVE REPRESENTATION IS IN NO BETTER POSITION THAN ONE WHO HAS NO COUNSEL AT ALL. A FIRST APPEAL AS OF RIGHT THEREFORE IS NOT ADJUDICATED IN ACCORD WITH DUE PROCESS OF LAW IF THE APPELLANT DOES NOT HAVE THE EFFECTIVE ASSISTANCE OF AN ATTORNEY. EFFECTIVE ASSISTANCE OF COUNSEL ON FIRST APPEAL AS OF RIGHT HELD GUARANTEED BY DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

JACKSON V. VIRGINIA, 443 U.S. 307

AS AN ESSENTIAL OF THE DUE PROCESS GUARANTEED BY THE FOURTEENTH AMENDMENT, NO PERSON, NO PERSON SHALL BE MADE TO SUFFER THE ONUS OF A CRIMINAL CONVICTION EXCEPT UPON SUFFICIENT PROOF, WHICH IS DEFINED AS THE EVIDENCE NECESSARY TO CONVINCE A TRIER OF FACT BEYOND A REASONABLE DOUBT OF THE EXISTENCE OF EVERY ELEMENT OF THE OFFENSE. ~~EXISTENCE OF EVERY ELEMENT OF THE OFFENSE~~; ACCORDINGLY, A STATE PRISONER WHO ALLEGES THAT THE EVIDENCE IN SUPPORT OF HIS CONVICTION CANNOT BE FAIRLY CHARACTERIZED AS SUFFICIENT TO HAVE LED A RATIONAL TRIER OF FACT TO FIND GUILT BEYOND A REASONABLE DOUBT HAS STATED A FEDERAL CONSTITUTIONAL CLAIM. ACCORDINGLY, A CONVICTION BASED UPON A RECORD WHOLLY DEVOID OF ANY RELEVANT EVIDENCE OF ~~THE OFFENSE~~ A CRUCIAL ELEMENT OF THE OFFENSE CHARGED IS CONSTITUTIONALLY INFIRM. THE NO EVIDENCE DOCTRINE THUS SECURES TO AN ACCUSED THE MOST ELEMENTAL OF DUE PROCESS RIGHTS: FREEDOM FROM A WHOLLY ARBITRARY DEPRIVATION OF LIBERTY. WHILE THE FACT FINDER IN A CRIMINAL CASE MAY ENTER AN UNASSAILABLE BUT UNREASONABLE VERDICT OF NOT GUILTY - THIS BEING THE LOGICAL COROLLARY OF THE RULE THAT THERE CAN BE NO APPEAL FROM A JUDGMENT OF ACQUITTAL, EVEN IF THE EVIDENCE OF GUILT IS OVERWHELMING - THIS POWER DOES NOT INCLUDE A POWER TO ENTER AN UNREASONABLE VERDICT OF GUILTY, THE APPLICATION OF THE BEYOND-A-REASONABLE-DOUBT STANDARD TO THE EVIDENCE NOT BEING IRRETRIEVABLY COMMITTED TO JURY DISCRETION, ON REVIEW OF THE ~~EVIDENCE~~ SUFFICIENCY OF THE EVIDENCE TO SUPPORT A CRIMINAL CONVICTION, THE CRITICAL INQUIRY IS NOT SIMPLY WHETHER THE JURY WAS PROPERLY INSTRUCTED, BUT ALSO WHETHER THE RECORD EVIDENCE CAN REASONABLY

JACKSON V. VIRGINIA, 443 U.S. 307 - CONT.

SUPPORT A FINDING OF GUILT BEYOND A REASONABLE DOUBT; THIS INQUIRY DOES NOT, IN PRESERVING THE FACTFINDERS ROLE AS A WEIGHER OF THE OF THE EVIDENCE, REQUIRE A COURT TO ASK ITSELF WHETHER IT BELIEVES THAT THE EVIDENCE AT TRIAL ESTABLISHED GUILT BEYOND A REASONABLE DOUBT, THE RELEVANT QUESTION BEING WHETHER, AFTER VIEWING ALL THE EVIDENCE IN LIGHT MOST FAVORABLE TO THE GOVERNMENT, ANY RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CRIME BEYOND A REASONABLE DOUBT. EVIDENTIARY SUFFICIENCY IN A CRIMINAL CASE MAY BE TESTED THROUGH A MOTION FOR A NEW TRIAL AND POST-VERDICT APPEAL FROM THE DENIAL OF SUCH A MOTION.

STRICKLAND V. WASHINGTON, 466 U.S. 668

WHERE APPELLATE COUNSEL FAILS TO RAISE "A SIGNIFICANT AND OBVIOUS ISSUE" THE FAILURE WILL GENERALLY BE CONSIDERED DEFICIENT PERFORMANCE UNDER STRICKLAND, SUPRA, 466 U.S. 668 (918), IF THE MISSED ISSUE IS "CLEARLY STRONGER THAN THOSE PRESENTED" AND WHERE "AN ISSUE THAT WAS NOT RAISED MAY HAVE RESULTED IN A REVERSAL OF THE CONVICTION, OR AN ORDER FOR A NEW TRIAL, THE FAILURE IS PREJUDICIAL."

28 USC 1257 (3)

FINAL JUDGMENTS OR DECREES RENDERED BY THE HIGHEST COURT OF A STATE IN WHICH^A DECISION COULD BE HAD, MAY BE ~~REVIEWED~~ REVIEWED BY THE SUPREME COURT AS FOLLOWS:

(3) BY WRIT OF CERTIORARI, WHERE THE VALIDITY OF A TREATY OR STATUTE OF THE UNITED STATES IS DRAWN IN QUESTION OR WHERE THE VALIDITY OF A STATE IS DRAWN INTO QUESTION ON THE GROUND WHERE ITS BEING REPUGNANT TO THE CONSTITUTION, TREATIES OR LAWS OF THE UNITED STATES, OR WHERE ANY TITLE, RIGHT, PRIVILEGE OR IMMUNITY IS SPECIALLY SET UP OR CLAIMED UNDER THE CONSTITUTION, TREATIES OR STATUTES OF, OR COMMISSION HELD OR AUTHORITY EXERCISED UNDER, THE UNITED STATES.

USCS CONST. ART. VI, C12

THIS CONSTITUTION, LAWS OF THE UNITED STATES WHICH SHALL BE MADE, UNDER AUTHORITY OF THE UNITED STATES, SHALL BE ~~MADE~~, SUPREME LAW OF THE LAND, AND JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, ANYTHING IN THE ~~CONSTITUTION~~ CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOT WITHSTANDING.

REASONS FOR GRANTING THE PETITION

DUE TO HANDWRITING CONCERNS, THE REASONS FOR
GRANTING THE PETITION ARE WRITTEN ON THE FOLLOWING
PAGES.

REASONS FOR GRANTING THE PETITION

I AM A PERSON IN CUSTODY UNDER A STATE COURT JUDGMENT WHOSE CONVICTION WAS OBTAINED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES. THE CONVICTIONS WERE CONSTITUTIONALLY INVALID WHEN OBTAINED. MY INCARCERATION IS FUNDAMENTALLY UNJUST AND IT IS IMPERATIVE THAT IT BE CORRECTED. THE FUNDAMENTAL FAIRNESS OF MY CONVICTION IS AT ISSUE. THE RIVERSIDE COUNTY CALIFORNIA SUPERIOR COURT'S DECISION IN THE NINTH CIRCUIT IS IN CONFLICT WITH MILTON V. MILLER, 744 F.3d 660, 669 (10th CIR. 2014), WHICH CORRECTLY IDENTIFIES STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052, 80 L. ED. 2d 674 (1984) AS THE CLEARLY ESTABLISHED FEDERAL LAW APPLICABLE TO MY INEFFECTIVE ASSISTANCE OF APPELLATE ^{COUNSEL} CLAIM. THE VERY FOCUS OF A STRICKLAND INQUIRY, REGARDING PERFORMANCE OF APPELLATE COUNSEL IS UPON THE MERITS OF OMITTED ISSUES, AND NO TEST THAT IGNORES THE MERITS OF THE OMITTED CLAIM IN CONDUCTING ITS INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ANALYSIS COMPORTS WITH FEDERAL LAW. THE FEDERAL COURTS NEVER HAD THE OPPORTUNITY TO ADJUDICATE THE CLAIM OF INSUFFICIENT EVIDENCE OR INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON THE MERITS. I AM ENTITLED TO HAVE THE FEDERAL HABEAS COURT TO MAKE ITS OWN INDEPENDENT DETERMINATION OF THE FEDERAL CLAIM, WITHOUT BEING BOUND BY THE DETERMINATION ON THE MERITS OF THESE CLAIMS REACHED IN THE STATE PROCEEDINGS. THE SUPERIOR COURT'S ADJUDICATION OF THE CLAIM UNREASONABLY APPLIED CLEARLY ESTABLISHED FEDERAL LAW BY APPLYING THAT RULE UNREASONABLY TO THE FACTS. AND THE SUPERIOR COURT'S DECISION WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDINGS. THE STATE SUPREME COURT'S PROCEDURAL RULE IS

REASONS FOR GRANTING THE PETITION - CONT.

"MANIFESTLY UNFAIR" IN ITS TREATMENT OF MY FEDERAL CONSTITUTIONAL CLAIM TO BE CONSIDERED ADEQUATE FOR THE PURPOSES OF THE PROCEDURAL DEFAULT DOCTRINE. I HAVE DEMONSTRATED CAUSE FOR THE DEFAULT AND ACTUAL PREJUDICE AS A RESULT OF THE ALLEGED VIOLATION OF FEDERAL LAW, AND DEMONSTRATED THAT FAILURE TO CONSIDER THE CLAIMS WOULD RESULT IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE. I HAVE ALSO PRESENTED A COLORABLE SHOWING OF FACTUAL INNOCENCE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ANDRE JACKSON



Date: NOVEMBER 12, 2023