23-6432 ORIGINAL

No. ____________________

FILED
OCT 09 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

____

IN THE

SUPREME COURT OF THE UNITED STATES

____

CARLOS MARTINEZ — PETITIONER
(Your Name)

vs.

CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

CARLOS MARTINEZ
(Your Name)

P.O. Box 92
(Address)

Chowchilla, CA. 93610
(City, State, Zip Code)

____
(Phone Number)

QUESTION(S) PRESENTED

1. Whether or not Petitioner is innocent of being Habitual Criminal offender and of the sentence of 30 years to life imposed under the retroactive application of ex post facto law from 1994 and under a 1982 old law on basis of a single 1992 prior conviction and for the current conviction of burglary resulting in violation of the United States Constitution's provisions? or

2. Which habitual criminal statute must be applied only to impose sentence on the current conviction for burglary and for suffering a 1992 single prior conviction, that one from 1992 annexed to that prior conviction when it was rendered or a new 1994 that was enacted afterwards?

LIST OF PARTIES

[X] 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

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES CITED

STATUTES AND RULES	PAGE NUMBER
California Statutes	
Penal Code Sections	
15	17-18, 19
17	18, 19
459	15, 19
667 a	29, 33, 34, 35, 38
667 (b)-(i)	26, 29, 33, 34, 35, 38
667.5 (c)	32
969 (b)	32
1023	19
1170 (b)	27-28
1170 (a) (3)	37
1170 (b)	36, 37
1170.12	26, 28, 33, 34, 38, 39
1170.12 (b) (1)	23, 30, 37
1170.12 (c)(2)(A)(ii)	6, 22, 25
1192.7	32
3000 (b)(1)	37
Government Code Section	
9605	38
9606	38
9608	38

OTHER	
U.S. Constitution	
Articles	
1, Section 8	32
1, Section 10 cl. 1	34
IV, Section 1	34
5th Amendment	26, 27
6th Amendment	35, 39-40
8th Amendment	39

TABLE OF AUTHORITIES CITED

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.

[X] 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

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[X] is unpublished.

The opinion of the Second Appellate District of CA. court appears at Appendix B to the petition and is

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

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

The date on which the highest state court decided my case was July 12, 2023. A copy of that decision appears at Appendix A.

[ ] 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

United States Constitution:

Article I, Section 10, clause 1.

Amendment V.

Amendment VI.

Amendment VIII.

Amendment XIV, section 1

California Constitution

Article I, Section 10, subdivisions (a) & (c)

California Penal Code Sections

667(a)

1170.12 (a) - (e)

All of the above provision are quoted at Appendix K, at pages 82-83 but with the exception of California Penal Code Section 667 wich its complete text is at Appendix K, at pages 82 - 83.

STATEMENT OF THE CASE

Petitioner acting in propria persona prays this Court to grant review because this case on its face shows its exceptional circumstances raising the prospect of double jeopardy, ex post facto, due process, equal protection, separation of powers and the possible need to evaluate the two habitual criminal statutes in light of Blockburger Test, Calder Categories, Sawyer Standard, In re Winship Standard, Price Merger doctrine, Taylor Categorical Approach, Tynen Repeals by Implication Doctrine and Simpson Principle of Construction of two Overlapping statutes because California in this case applied prospectively and retroactively two overlapping habitual criminal statutes to impose thirty years to life sentence on the current conviction for burglary and for having a single-indivisible-prior conviction of two counts of burglaries but without the indespensable evidence of the record of the judgment of that prior conviction. This prior conviction is from 1992 and the two habitual criminal statutes applied to this 1992-"fact of conviction" were, the old-one annexed to that prior conviction was enacted on June 8, 1982, and the new-one was enacted "after the fact of that conviction" on 1994. Here just on the surface of these facts the application and sentence of 25 years to life under the new habitual criminal statute which unambiguously was not annexed to the 1992-fact of conviction is unconstitutionally illegal, cummulative, illegal and unjust under the third category of Calder v. Bull, 3 U.S. 386, 390-391 (1798) (J. Chase's opinion); Cf. id, at p. 396 (In which J. Paterson held that it would be cruel and unjust to impose punishment for not abstaining from the past or for not foreseeing future consequences of a new law enacted after an action done); or see id, at p. 400 (In which J. Iredell held in a few words that a new law increasing the degree of punishment previously denounced by other statute when a specific offense was committed would constitute an ex post facto law); Here, if these three justices were alive they would not think twice to declare the new law applied retroactively in this case repugnant to the United States Constitution and clearly for this reason Petitioner at this moment is clearly partially innocent of the 25 years to life sentence imposed under a new unannexed law that not even applies to him. Being said this Petitioner will present his case as he learned during the last 27 years of unjust imprisonment as follows:

I
FACTS

A. Trial by Jury on the substantive offense.

On June 20, 1997, Petitioner was prosecuted and tried for the charged four counts of burglary in violation of California Penal Code Section (P.C.§) 459. The Jury found Petitioner guilty of only one count of burglary and the other three counts were dismissed. See Appendix (Appx.) B, at p. 45.

B. Bench Trial on the prior convictions allegations.

On July 8, 1997, Petitioner waived trial by jury on the three prior allegations and the Judge found that Petitioner had: (1) one prior serious felony conviction within the meaning of P.C.§ 667(a)(1); (2) two strikes prior convictions within the meaning of P.C.§ 1170.12 (A)-(D); and, (3) a prior felony conviction for which he had served a separate prison term within the meaning of

P.C. § 667.5 (b); See Appx. B, at p. 45 & Appx. C, at p. 48; After these findings without any facts, elements, circumstances and without declaring that Petitioner was an habitual criminal deserving comulative or multiple punishments the Judge imposed the following life sentence: (1) 25 years to life sentence on the current count-conviction for burglary taking into account the finding of two strikes prior conviction under P.C. § 1170.12 (c)(2)(A)(ii); (2) five years enhancement sentence taking into account the finding of the prior serious felony conviction under P.C. § 667 (a)(1); (3) one year for serving a prison term under P.C. § 667.5 (b); See, Appendices B, at pp. 45-46 & C, at p. 49;

C. California Direct Appeal.

Petitioner's Ineffective appointed appelate counsel raised that contention that the 31 years to life sentence was cruel and unusual and the California Court of Appeals affirmed the judgment, See Appx. B, at pp. 44-46; The California Supreme Court denied review on December 1999. The decision is not avallable.

D. California State Habeas Filings from 1999.

During this 1999 year Petitioner, a mexican national non-speaking English with the help of other prisoner filed one round of inartfully and inarticulate State habear Corpus, which were denied at the three levels. The denials are not available.

E. First Federal Habeas Corpus filed in the U.S.D.C.

On December 22, 1999, Petitioner filed a habeas Corpus Petition (hereinafter "Petition-I") in the United States District

"Court For the Central District of California (hereinafter "CD") and on June 6, 2000, the California Department of Corrections and Rehabilitation (hereinafter "Respondent") alleged that three claims were unexhausted and assured the CD that Petitioner still have available remedies in the California Courts to exhaust them and come back to the CD and file a new Petition, See, Appx. D, at p. 52, Docket 22;

On October 25, 2000, relying on Respondent's assurances to the CD, Petitioner requested the CD to dismiss his Petition-I, without prejudices to any right to file a new Petition, this was the second option given to Petitioner by the CD, the first option was delete the three unexhausted claims and file an amended Petition, See Appx. D, at p. 53, Docket 32, and the CD granted option two and dismissed Petition I, with a right to file a new Petition. See Appx. D, at p. 53, Dockets 33, 36 & 37;

F. Second Federal Habeas Corpus filed in the CD.

On March 13, 2001, Petitioner filed a new habeas corpus Petition (hereinafter "Petition 2"). This Petition 2 was accompanied with a Motion to retain and related back to the original Petition I's number. See Appx. E, at p. 57, Dockets 1 & 7;

On September 24, 2001, Respondent objections to Petitioner's Motion to retain the original number and the Return to Petition 2, see Appx E, at p. 59, Dockets 30-31; On November 27, 2001, Petitioner filed a Traverse to Respondent's Return, see, Appx E at p. 59, Docket 38; In the Return Respondent alleged that Petition 2 was untimely because Petitioner's conviction became final on or before 1999 and

Petition 2 was not filed till March 13, 2001. The CD agreed with Respondent and recommended Petition 2 be dismissed. Appx E, at p.59, Docket 39. On August 15, 2002 Petitioner filed objections [without speaking, reading, writing, or comprehending the English language and law, but now after acquiring knowledge of the law, Petitioner now knows and he will argued that he was trap by the assurances from part of Respondent and the CD] stating and relying on Respondents assurances and on the option two given by the CD, that he had no control of the actions and delay from part of respondent and CD in filing a Return just alleging that Petition I had three claims unexhausted and delay of the CD in given the two options to Petitioner, to go back to the State Courts and exhaust or delete the three claims that were unexhausted. Note that Petitioner filed two Motion for entry of default as to Respondent for failing to timely file the Return and both were denied. Appx D, at pp. 52-53, Dockets 17, 18, 19, 21, 22; However after Petitioner filed his supplemental objection [against the supplemental Report and Recommendation of the CD, see App. E at p. 60, Dockets 45-48] that the CD failed to advised Petitioner on October 11, 2000, that the CD's doors may be closed after exhausting state remedies as selecting option 2, see Appx D, at p. 53, Docket 32, the CD on February 19, 2003, withdrawed its recommendation to dismiss Petition II and held that Petition II was timely pursuant to Ford v. Hubbard, 305 F3d 875, 884 (9th Cir 2002) and ordered Respondent to filed an Answer to Petition II, see Appx E, at p. 60, Docket 49.

On August 20, 2003 Respondent filed a Supplemental Answer, see Appx E at p. 62, Docket 70 and On December 24, 2003, Petitioner filed his traverse and with this being done the case was submitted for decision. Appx E, at p. 63, Docket 82.

On September 15, 2004, January 25, February 25 and June 29, of 2005, Petitioner filed four Petitions or Motions for prompt conduction and recommendation in Petition 2 and decision was not made on these Motions, instead the CD sua sponte recommended and dismissed, [over Petitioner's objection that he have no control of the DC's actions and delay in entertaining Petition I or Respondent's actions, delay, or assurances that Petitioner had available state remedies to exhaust and comeback to filed a new Petition] Petition II pursuant the decision of this Court in Duncan v. Walker, 533 U.S. 167 (2001), holding that "an application for federal habeas corpus filed, pending and dismissed does not toll the limitation period." id. at pp. 172-182. Now, since Petitioner is limited by the 40 page limitation would briefly that the CD abused of its discretion and violated Petitioner's due process and equal protection right to his date and hearing of his constitutional arguments under the Fourteenth Amendment of the U.S. Constitution and Petitioner alleges that the CD erred as follows:

1. The CD abused its discretion in dismissing Petition I, without prejudices with any right to file a new petition after exhausting state remedies was constitutionally contrary to this Court's admonition that the complete exhaustion rule is not to "trap the unwary prose prisoner." See, Rose v. Lundy, 455 U.S. 509, 520 (1982) ("Those prisoners who... submit mixed petitions nevertheless are entitled to resubmit a petition with only exhausted claims or to exhaust the remainder of their claims"); Cf. Slack v. McDaniel, 529 U.S. 473, 486 (1998) (The opinion [Rose's opinion] however contemplated that the prisoner could return to federal court after the requisite exhaustion) (citing Rose, supra, at 520)).

2 The CD erred in not making a decision on Petitioner's Motion to leave to filed Petition II with the benefit to retain the original number of Petition I and on Respondents objection to this Motion. It was well-establish-settled rule that under Fed. Rules of Civil Procedure (FRCR) Rule 15, that an amended pleading, claims, ground or Petition could be relate back to the date of the original pleading when the claim or defense asserted arose out of the conduct, transaction, or occurrence set forth... in the original pleading, see, 3 Moore's Federal Practice- Civil §15.19[2](Matthew Bender 2023) (hereinafter "Moore's"); Cf. Mayle v. Felix, 545 U.S. 644, 664 (2005) (so long as the original and amended petitions state claims that are tied to a common core of operative facts, relation back will be in order); In this case, the three exhausted claims were supported by the same facts and law as were presented in Petition I,

3. The CD erred in holding that Petition II was timely under the Ninth Circuit law of 2002 in Ford v. Hubbard, supra, ibid on February 11, 2003 and the erred sua sponte in dismissing that Petition II as untimely under a 2001-Duncan's decision on March 21, 2006, see Appx E, at, pp. 60, Docket 49 and p. 65, Docket 112; because Respondent waived any limitation-procedural default bar by failing to raise the issue in the supplemental answer filed on August 20, 2003 (Appx E, at p. 62, Docket 70) because Duncan v. Walker was decided on June 18, 2001 and is presume the Respondent knew the Duncan v. Walker's decision and the CD knew also the well-settled rule that if Respondent failed to raise the procedural defense the CD was not in position to raise the issue sua sponte, see Ninth Circuit law governing the jurisdiction of the CD, Franklin v. Johnson, 290 F3d 1223, 1229 (9th Cir 2002); Cf.

Francis v. Rison, 894 F.2d 353, 355 (9th Cir 1990) (finding that the Government waived the procedural default argument by contending only that petitioner failed to exhaust administrative remedies, which is "quite a different argument, of course, from asserting procedural default"). This is exactly what occurred in this case. Cf. Trest v. Cain, 522 U.S. 87, 89 (1997) ("Procedural default is normally a defense that the state is obligated to raise and preserve if it is not to lose the right to assert the defense thereafter"); see also Day v. McDonough, 547 U.S. 198, 202 (2006) (Should a State intilligently choose to waive a statute of limitations defense, a district court would not be a liberty to dissegard the choice); Trest v. Cain, supra, at p. 89; and Wood v. Milyard, 566 U.S. 463, 473 (2012) (holding that District Court abused of its discretion by raising the timeless defense sua sponte.)

4. The CD court erred by just applying Duncan retroactively under Teague v. Lane, 489 U.S. 288, 303 (1989) (new rules should always be applied retroactively to cases on direct review, but that generally they should not be applied retroactively to criminal cases on collateral review) (quoting Mackey v. U.S., 401 U.S 667, 675 (1971) (Separate opinion of Harlan, J.)); James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 536 (1991) (to apply the new rule to parties who relied on the old law would offend basic notions of justice and fairness); Cf. Chevron Oil Co. v. Huson, 404 U.S. 97, 106-107 (1971) (In détermining whether a decision should be given nonretroactive application the United States Court <u>must</u> weight the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will fur-

ther or retard its operation); In this case the CD court just abused of its discretion without considering Chevron's mandate, or at least the CD should have considered the three separate factors lay down by this Court in deciding whether to apply Duncan retroactively, see Hanover Shoe v. United Shoe Machinery Corp, 392 U.S 481, 496 (1968), or by deciding the issue of first impression whose resolution was not clearly foreshadowed, see, e.g., Allen v. State Board of Elections, 393 U.S 544, 572 (1969); Second, by looking Duncan's purpose and effect and whether retroactive operation will further or retard its operation, Linkletter v. Walker, 381 U.S. 618, 629 (1965), and Third, waigh the inequity imposed by retroactive application, for "where a decision of this court could produce substantial inequitable results if applied retroactively, there is ample basis in this court case for avoiding the 'injustice or hardship' by a holding of nonretroactivity"; Cipriano v. City of Houma, 395 U.S. 701, 706 (1969)

5. Finally, Petitioner should had not been penalized in dismissing Petition II, because if there was any delay it was solely within the control of Respondent and the CD, see Robinson v. Clipse, 602 F3d 605, 608 (4th Cir 2010) (plaintiff should not be penalized for a delay caused by the Court's consideration on his complaint.); Urrutsa v. Harrisburg County Police Dept., 91 F3d 451, 453 (3rd Cir 1996) (District Court's delay);

Therefore, at this stage of reading this Petition this Court must conclude that "a fundamental miscarriage of Justice" occurred in this case caused by Central District Court of California's delay and abuse of discretion in making decisions in the two Federal habeas proceeding mentioned above and it was possible because at the time of those Federal-habeas proceeding Petitioner was unable to defend himself, or otherwise support his limitation-timeless-defense with the authorities cited herein due to the English language impediment which in turn was an impediment to do legal research to find the legal basis to support his ground of Innocence of being a "predicate felony offender" and "persistent felony offender" and for this consequence this Court should return petitioner to the same position he was before the CD dismissed with prejudice Petition I I, justifying the relief Petitioner would had obtained if he had Known English and trained in the law back in time when he was litigating his federal habeas corpus Petitions with the help of a fellow prisoner and justice would be done, see American Trucking Assns, Inc. v. Scheiner, 483 U.S. 266, 297-298 (1987) (remanding case to consider whether ruling "should be applied retroactively and to decide other remedial issues")

6. Final California State Habeas filing from 2023, raising the same Grounds, claims, and arguments for relief as stated below in this Petition.

After Petitioner learned English and the law while researching the law related to prison-good-conduct credits he discovered all the facts that were there already and the legal basis of his innocence of being habitual criminal and filed a State habeas corpus petitioner on April of 2023, contending the same argument stated below and on July 12, 2023 the California Supreme Court denied relief as follows: "The Petition for writ of habeas corpus is denied. (See In re Robbins (1998) 18 Cal. 4th 770, 780 [court will not entertain habeas corpus claims that are untimely]; In re Clark (1993) 5 Cal.4th 750, 767-769 [courts will not entertain habeas corpus claims that are succesive].)"

Now before alleging that this denial is not an Independent decision of Federal law precluding review of Petitioner's Ground and Claims of Innocence Petitioner would like to clarify what constitutes a sucessive petition and sucessive claims. See Moore's at §671.10[2](a) "Note that some confusion can arise with the use of the word "successive" in this regard, as there is a distinction between "successive petitions" and "successive claims". Successive petition is a statutory term referring to a third or subsequent petition; successive claim is a term of referring to a claim that has been raised in a previous petition.")

The denial based that Petitioner's claims are successive do not bar review by this Court's own decisions, see, Cone v. Bell, 556 U.S. 449, 466 (2009) ("When a state court declines to review the merits of petitioner's claim on the ground that it has done so already, it creates no bar to federal habeas review) and as to the denial based of Petitioner's new claim of Innocence-untimely, the California Supreme Court's denial constitutes a fundamental miscarriage of justice by reviewing Petitioner's innocence claims which clearly is apparent on the face of the record that Petitioner was a victim of miscarriage of justice and that it was not for the constitutional errors no reasonable judge or jury would have found him as an habitual criminal and have not resulted in the imposition of 31 years to life, see Murray v. Carrier, 477 U.S. 478, 495-496 (1986) (victims of Justice will meet the cause and prejudice standard); Ake v. Oklahoma, 470 US 68, 75 (1985) (Oklahoma waiver rule does not apply to fundamental trial errors); and more important is that California Supreme Court failed and erred in her decision by not following this Court and its own decisions involving Petitioners alleging factual innocence of the crime or sentence, See Dretke v. Haley, 541 U.S. 386, 393 (2004) ("a federal court faced with allegations of factual innocence, whether of the sentence or of the crime charged, must first address all nondefaulted claims for comparable relief and other grounds for cause to excuse the procedural default"); See also id., at pp. 393-394; In re Reno, 58 Cal.4th 428, 474 (2012) ("the claim must be such that it would 'undermine the entire prosecution case and point unesringly to innocence or reduced culpability'") (Citing In re Clark, 5 Cal.4th 750, 797, fn32 (1993)). In this case on it's face shows that California as respondent did not presented the evidence required by law to prove that in fact Petitioner was previously convicted, the committment documents are not part of "record of conviction", this "fact" clearly undermine California's case against Petitioner, see Reno, supra, at 474, Cf. People v. Gonzalez, 51 Cal.3rd 1179, 1246 (1990) and California Supreme Court has permitted in the past the filing of habeas corpus attacking the adjudication of criminality, void sentence, unauthorized sentence that could be presented to the reviewing court at any time, See, In re McVickers, 29 Cal. 2d 264, 270 (1946); People v. Serrato, 9 Cal.3d 753, 763, (1973); In re Harris, 49 Cal.3rd 131, 134-136 (1989) (permiting the adjudication under P.C. §667(a), as is being attacked by Petitioner); In re Harris, 5 Cal. 4th 813, 842 (1993) (delay did not applies to sentencing errors amounting to an excess of jurisdiction and that the appellate court may "correct-a-sentence that is not authorized by law whenever the error comes to the attention of the Court") (citing In re Ricky, 30 Cal. 3rd 176, 191 (1981)) and Petitioner has more case law supporting his delay in filing this Petition and to support that in fact his two Petitions filed in the CD were timely filed and the he has always acting diligent in this case, so if this court has not found enough cause to support granting relief, then Petitioner with the appointment of counsel deserves an opportunity for first time to show why this court should grant review as to the below grond and supporting claims for relief.

II

ARGUMENG

THE RETROACTIVE APPLICATION OF A NEW 1994 HABITUAL CRIMINAL STATUTE IN ADDITION TO THE ANNEXED OLD 1982 HABITUAL CRIMINAL STATUTE TO CHARGE, PROSECUTE, TRIED, CONVICT, AND SENTENCE PETITIONER ON BASIS OF THE SAME 1992 PRIOR CONVICTION WITHOUT THE INDISPENSABE RECORD OF JUDGMENT OF THAT 1992 PRIOR CONVICTION VIOLATED THE UNITED STATES CONSTITUTION

With due respect Petitioner would write his claims and arguments parallely along with the facts of this case Keepind all of them in mind to avoid repetition of those facts,

Claim One: Petitioner being innocent was unconstitutionally convicted as predicate felony offender and persistent felony offender on basis of a single prior conviction without the record of that prior conviction in violation of the 6th and 14th Amendment of the U.S. Constitution.

First, to avoid any confusion the trial of the substantive offenses and burglary conviction is not being attacked and the question being challenged is the Sentencing Trial adjudicating and sentencing Petitioner as a persistent and predicate felony offender and the definition of each one are:

"Predicate Felony Offender," means: "Someone who has at least twice been convicted of felonies of a specified level of seriousness and often within a specified period, as a result of which the criminal sentence is to be enhanced", also termed "second felony offender. See Black's Law Dictionary, 11th ed, (2019) (By Bryan A. Gardner, hereinafter "Gardner") at p. 1300

"Persistent Felony Offender," means: "Some one who has at least thrice been convicted of felonies of a specified field level of seriousness and often within a specified period, as a result of which the criminal sentence is to be enhanced. See, Gardner at 1300

On July 8, 1997, with the consent of Petitioner's trial Attorney (hereinafter "Attorney") at trial bench by a Judge begin on the felonies charges related to the prior convictions and even though some or the majority of the courts have held that allegations of prior convictions are not considered "crime" or "offenses," under California laws the charges of prior convictions qualifies or constitutes a "felony" charges, See, P.C. § 15 "A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: 1. Death; 2. Imprisonment; 3. Fine; 4. Removal from office; or, 5. Disqualification to hold and enjoy any office of honor, trust, or profit in this State". Cf. People v. McNulty, 93 Cal. 427, 439 (1892), Writ of error dismissed in McNulty v. California, 149 U.S 645 (1893) ("A description of acts necessary to constitute a crime does not make the commission of such acts a crime; punishment is a necessary to constitute a crime as definiton"); See also P.C.§17 "(a) A felony is a crime that is punishable with death, by imprisonment in the State Prison". See also, People v. Sacramento Butchers' Protective Asso. 12 Cal. App. 471, 489 (3rd Dist 1910) (hearing denied in the Cal. Supreme Court) (The truth is that, in the determination whether certain offense is a felony or a misdemeanor, no material aid is necessarily afforded by the mere characterization of the prohibited and penalized act as either the one or the other, since the nature and extend and mode of punishment... is the sole test); Wright v. Craven, 325 F Supp. 1253, 1257 (N.D. 1971) (Affirmed in Wright v. Craven, 461 F2d 1109, 1110 (9th Cir 1972) (This Court concludes that an admission of prior convictions in the context of California's habitual criminality statute is the functional equivalent of a plea of guilty to an independent criminal charge); see also Cox v. Hutto, 589 F2d 394, 395-396 (8th Cir 1979) (adopting the reasoning and conclusion of Wright v. Craven, supra,) Cf. Calder v. Bull, 3 U.S. 386, 397 (1798) (J. Paterson's opinion) (enhancements of crimes, pain and penalties... seems to come within the same mischief as the creation of a crime of penalty; and therefore they may be classed together); See also the dissent of J. Stevens in Caspari v. Bohlen, 510 U.S. 383, 398 (1994) (The sentence enhancement thus has the same legal effect as conviction of a separate offense)

Therefore, taking whole these authorities and laws would set forth in an usual form in the Information, that Carlos Martinez committed four burglaries between October 21 and November 18, of 1996, and that he had been previously convicted of the like offenses on February 27, 1992, and there upon directs that he be held to answer for a felony. See App. X F, at pp. 69-72; See, People v. Comperlingo, 69 Cal. App. 466, 470 (2nd. Dist. 1924) (holding that P.C. §17 "is necessarily the gauge in this state by which the guilt or innocence of a defendant with reference to any prior conviction of a felony must be determined")

Now continuing with the trial on the prior convictions, the People of the State of California (California) presented and introduced without Attorney's objection a P.C. §969(b) Packet containing the "commitment records" as: (1) An Abstract of Judgement with the name of PEDRO CALDERON, showing that he was convicted of two counts of first degree residential burglary on February 27, 1992, and a State of California-fingerpring card showing the name of Carlos Martinez, that he was received at WSP-RC, on April 8, 1992, and that he committed two offense of burglary 1st, in violation of P.C. §459, and a photograph accompanied these two pieces of evidence, See Appx G, at p. 75, showing the Abstract of Judgment with the name of Pedro Calderon, and Appx. H, at p. 77, showing the fingerprint card; Note: The photograph was never given or showed to Petitiones and is not available; and (2) An abstract of Judgment with the name of Carlos Martinez, AKa-Ramirez, Carlos. and showing a fingerprint, that he was convicted of 2nd degree burglary on May 24, 1988, See Appx I, at p. 78;

After the Judge reviewed the evidence in a first stage proceeding tried Petitioner for violation of P.C. §667(a) and he specifically reviewed the abstract of judgment with the name of Pedro Calderon and the fingerprint and held: I find true the allegation of a serious prior conviction in case number NA008309, from February 27, 1992 within the meaning of P.C§667 (a)(1) (App B, at p.45); Then in a second stage proceeding the judge stated: I find true two strikes prior convictions in the same case number NA008309, from February 27, 1992, within the meaning of P.C.§1170.12(A)-(D)(See Appendices B, at p.45 and C, at p.48; Finally, in a third stage proceeding the Judge found true the prior conviction from May 24, 1988 in case number A039884, within the meaning of P.C.§667.5(b). (See App x B, at p. 45); Thereafter, the Judge denied Petitioner's motion to strike one of the two-count-strikes prior convictions and imposed the following sentence: (1) 25 years to life sentence for committing and been convicted currently of First degree residential burglary taking into account Petitioner's prior criminal conduct from February 27, 1992; (2) Five years enhancement sentence for the current conviction of First degree residential burglary taking into account the same prior criminal conduct from February 27, 1992; and (3) One year sentence for the prison term served on 1989, with a total of 31 years to life sentence (Appendices B, at p.45; C, pp.48-49; and J, at p.80)

Now Petitioner contends that he was convicted without the evidence that is indispensable to prove the serious and strikes prior convictions that were extracted from case number NA008 309. The courts around the country have required and is mandate by the Sixth and Fourteenth Amendments that a State must present the "record of the judgment" of any alleged prior conviction, no exceptions, See In re Ross, 19 Mass 165, 171 (Mass 1824) (a fact, namely, that the prisoner has already been convicted of an offense; and this fact must appear either by his own confession, or by verdict of a jury, or otherwise according to law, before he can be sentenced to the additional punishment") (cited with approval by this Court in Moore v. Missouri, 159 U.S. 673, 677 (1895)); Rand v. Commonwealth, 50 Va. 738, 751 (Va. 1852) ("to sustain the charge in relation to the former conviction, ... the record of the conviction and proof of the identity of the prisoner, the exclusion of the evidence would have been equivalent to striking out the charge or instructing the jury wholly to disregard it.") (Cited also in Moore, supra, at 677); People v. Monge, 16 Cal.4th 826, 833-839 (1998) (holding that it is required the presentation of evidence from the record of the prior conviction), affirmed by this Court on double jeopardy grounds, in Monge v. Cal., 524 U.S. 721, 726 (1998) ("a qualifying strike involves a finding of a particular "status" that may be made from the record of the prior conviction"); Tipton v. State, 160 Tenn 664, 678 (Tenn. 1930) ("the record of a former conviction shall be prima-facie evidence of a former conviction") (cited by this Court also in Chandler v. Fretag, 348 U.S. 3, 7 (1954) (same as in Tipton, supra, at p. 678); and Courts have held that the trial court must look to the record of conviction to determine the nature or seriousness of the prior offense, but no further or beyond the record of conviction, see People v. Guerrero, 44 Cal.3d 343, 345 (1988); People v. Jackson, 37 Cal.3d 826, 831 (1985); Taylor v. U.S., 495 U.S 575, 602 (1990); Mathis v. U.S., 136 S.Ct 2243, 2269-2270 (2016); Shepard v. U.S., 546 U.S. 13, 26 (2006); Cf. 22A Cal. Jur. 3rd, Criminal Law; Postrial Proceeding § 306 (2022) (hereinafter "Cal. Jur. 3rd, etc.)

Therefore, the law is clear and established and must be followed, which in this case clearly the record of the alleged

February 27, 1992, prior conviction which was the basis to find One serious prior conviction and two strikes prior convictions, is rare, three for one!... was not presented or introduced, and the commitment records that are beyond the absent or unknown record of conviction are not the judgment of conviction, see, Fuller v. State, 914 So2d 1230, 1238 (Miss. Ct. App. 2005) (a commitment document is not a judgment, rather the validity of the commitment "depends" on "the judgment behind it"); People v. Mesa, 14 Cal.3d 466, 471, (1975) (the abstract of judgment is not the judgment of conviction.); and People v. Karaman, 4 Cal.4th 335, 344 (19992) (Stating that the abstract of judgment shall be forthwith furnished to the officer whose duty it is to execute the judgment, and constitutes the commitment) (Citing P.C. §1213, and People v. Mesa, supra, at pp. 466, 471); Therefore, on the face of this it is clear that Petitioner being innocent was convicted and sentenced to 30 years to life under the two habitual criminal statutes, P.C. § 667(a)(1) & 1170.12(c)(2)(A)(ii) without evidence deserving further review of this case, see, Suydam v. Williamson, 61 U.S. 427, 433, 440-441 (1857) ("The rule is that whenever the error is apparent on the record, it is open to revison, whether it be made to appear by bill of exception or in any other manner"); see, Thompson v. Louisville, 362 U.S. 199, 204-206 (1960) (settling the principle that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged violates the Due Process Clause); In sum, Petitioner's claim of actual innocence is based on the failure of California to present the evidence indispensable to prosecute him and thus she failed to establish the five elements of the serious prior conviction and the five elements of each of the strike prior convictions leaving Petitioner actually innocent of being a predicate and persistent felony offender. See People v. Willey, 9 Cal.4th 580, 595 (1995) (J., Werdegar quoting the five elements that must be established to support either enhancement, P.C.§§ 667(a)(1) or 1170.12(c)); Cf. In re Harris, 49 Cal.4th 131, 133-137 (1989) (estadlishing five elements necessary to support the finding true of just a single serious prior conviction; (1) Conduct in the current case constituting a serious felony; (2) the fact of a prior conviction; (3) an offense underlying the prior conviction that constitutes a serious felony; (4) separate initiation of the prior charges; and (5) separate adjudication of the prior charges;)

The conclusion is that as this court has recognized that as a general rule a claim of actual innocence can be based on the failure to establish an element of the offense on which a defendant was prosecuted, see, Bousley v. U.S., 523 U.S. 614, 623-624 ( ); In this case not only California failed to just prove one element, but failed to produce evidence to support a least or show an abstract of judgment with Petitioner's name. Herein under penalty of perjury under the laws of the United States petitioner states that the Judge never say, find, or inquired above any fact, elements, or when Petitioner was released from prison or if in fact he served one or three terms for the presumed three prior convictions, nor was discused when the prior offenses were committed, either separately or in one criminal escapada, in sum, the judge only found true the prior allegations. This case, even if in case the evidence could prove the February 27, 1992 prior conviction, constitutionally under P.C.§ 667(a)(1) and In re Harris, supra, California could not count two serious prior conviction under P.C.§1170.12(b)(1) because the elements or requirements 4 and 5, listed above do permitted retroactively to separate the original two counts of burglary charges or make it look retroactively that those charges were adjudicated in separate trials, see In re Harris, supra, ibid, listing requirements 4 & 5. This would be imposible because if true, the record shows that in fact those two counts of burglaries were initrate by a single Information, one criminal prosecution, on case number NA008369, One Judgment of conviction of two counts of first degree residential burglary, one single sentence and one prison term served. Therefore also if this Court holds that P.C.§1170.12 is constitutional, under the above facts and law, the February 27, 1992 would count as a single strike prior conviction and the maximum sentence would have been as follows: Six years + upper term under P.C.§§459, 461 & 1170, doubled due to the strike prior conviction under P.C.§1170.12(c)(1), with a total of 12 years determinate sentence. The six years would be imposed for the current conviction of burglary. Finally, the record on its face that Petitioner was and is innocent of being a persistent felony offender and clearly innocent of the 30 years to life sentence. Please be aware that the one year sentence under P.C.§667.5(b) is not being challenged in this Petition, so this case deserves the granting of review to bring justice to Petitioner which one way or another is innocent actually.

Claim Two: California failed to prove beyond a reasonable doubt the serious and strikes prior convictions with insufficient evidence requiring relief under the 14th Amendment due to Petitioner being innocent of suffering them.

Under the standard test established by this Court for insufficient evidence-claims is that "whether after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt", See Jackson v. Virginia, 443 U.S 307, 319 (1979); Cf. Fiore v. White, 531 U.S. ~~225-228~~-229 (2001) (per curiam) (Due proces violated by conviction of defendant without proving each element of the crime beyond a reasonable doubt);

In this case the commitment records are not supported by the judgment of conviction behind them, see Fuller, supra, at p. 1238; These commitment records they are not even proved when the prior burglaries were committed, nor proved that petitioner served one prison term or two term or three since three prior convictions were found, see In re Application of Boatwright, 216 Cal 677, 681-682, 685 (1939) (It is essential that proof of service under prior conviction in a penal institution be shown in order to give court jurisdiction to adjudge defendant an habitual criminal); or at most could show the Pedro Calderon-Carlos Martinez was received at WSP-RC on April 8, 1992, but it did not was accompanied with a certificate of discharge, that one that every-prisoner in California signs agreeing to be release on parole, neither dicharge on habeas corpus or the judgment arrested or reversed whatever was alleged, see In re McVickers, supra, at p. 272 ("Service of a term of imprisonment can be shown by prison records")

Therefore, the commitment record are insufficient to extract the five elements to prove beyond a reasonable doubt that in fact Petitioner suffered one serious prior conviction and two strikes prior convictions and the habitual criminal convictions and the 30 years to life sentence must be vacated, reversed or be set aside under Jackson, supra, Fiore v. White, supra, and In re Winship, 397 U.S. 358, 364, (196) ("Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged");

Claim Three: The Due Process, Equal Protection and Double Jeopardy Clauses of the U.S. Constitution were violated When California Charged, prosecuted, tried, convicted and sentenced Petitioner to additional 25 years to life on basis of the same facts, elements and evidence [that were already used to adjudicate him as a predicate felony offender under the annexed old 1982 habitual criminal statute] pursuant a new 1994 habitual criminal statute.

A. The 5th and 14th Amendments as quoted in Appx K, at pp. 82-83, applies to the Information in this case the serious and strikes prior allegations are based on the same single indivisible prior conviction in case number NA008309, from February 27, 1992.

In this case California was barred from splitting this prior conviction of two counts of burglary and transform the same into three prior convictions, that were set forth in the Information on December 26, 1996, as follows; (1) Carlos Martinez, has suffered two strikes prior convictions in case number NA008309, on February 27, 1992, (Appx F, at p. 71, within the meaning of P.C. §1170.12 (a)-(d).) and, (2) Carlos Martinez, was convicted of Residential burglary (2 counts) on March 16, 1992, in case number NA008309 (Appx F, at, p. 72). Here, the miscarriage of justice is clear and obvious and California knew better that she must elect or choose between P.C §§ 667(a) (serious prior allegation carrying five year sentence) or 1170.12 (two strikes prior allegations carrying the minimum of 25 years to life), see, U.S. v. Batchelder, 442 U.S. 114, 123-125 (1979) (decision to choose between 2 statutes within prosecutor's disrection if there is evidence to convict eaither statute); In this case the determination "whether there are two prior convictions or only one, is whether each provision requires proof of a fact which the other does not" i.e., whether either is lesser included prior conviction of the other, See Blockburger v. U.S., 284

U.S. 299, 304 (1932); See also Moore's, supra, at § 608.04[3], see id. § 608.04[1] "Determining whether a count is duplicitous can hinge on whether multiple punishment would be available to the sentencing court in the event of a conviction".

To prove violation of P.C. § 667(a)(1), California need to prove the five elements enumerated above at p. 23 and to do this, California needs to present the indispensable record of the alleged serious prior conviction, see, People v. Monge, supra, at pp. 833-839; and to prove violation of P.C. § 1170.12(b)(1), California need to introduce the indispensable record of the alleged strike prior conviction, see, Monge v. Cal., supra, at p. 726.

Therefore, the record of this case that at most existed evidence, see Appendices E, at p. 75 and H, at p. 77, to prosecute either, the serious prior allegation or the strike prior allegation, but not both, see U.S. v. La Bonte, 520 U.S. 751, 762 (1997) (decision to prosecute and what charges to bring is with the broad prosecution discretion); Thus, California violated the 5th and 14th Amendments by spliting, converting, and cumulatively punishing the unproved prior conviction of two counts of burglary from February 27, 1992.

B. California violated the double jeopardy and due process clauses of the 5th and 14th Amendments by reprosecuting, trying, reconvicting and by cummulatively punishing Petitioner for second time on basis of a prior conviction for which Petitioner was already prosecuted and convicted in the first-stage-trial proceedings.

As already stated supra at p. 19 Petitioner at the election of California was placed in jeopardy, prosecuted and adjudicated as a serious habitual criminal offender under P.C. § 667(a)(1) by the true finding of the trial judge, see Appx B, at p. 45. Cf. Shorter v. State, 891 So.2d 1146, 1146 (4th Dist. Fla. 2005) (per curiam) (For purposes of the habitual offender statute, the term "conviction" is equivalent to adjudication) (citing McCrae v. State, 395 So.2d 1145, 1153-1154 (Fla. 1980); Cf. P.C. § 1023 "When a defendant is convicted...or has been once placed in jeopardy upon an accusatory pleading, the conviction,...or jeopardy is a bar to another prosecution for the same offense charged in such accusatory pleading..." also see P.C.§ 687 "No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted." see Abbate v. U.S. 359 U.S. 187, 199, fn. 3 (1959) ("The Double jeopardy Clause of the fifth Amendment applies in the same manner of a prosecution following a prior conviction as it does to a prosecution following a prior acquittal") (citing Ex Parte Lange, 18 U.S 163, 169 (1873); Cf. William Blackstone Commentaries On The Law of England (1776-1779), Vol. 4, at pp. 335-336 (hereinafter "Blackstone")

Furthermore, California was barred by the same evidence rule in Grady v. Corbin, 495 U.S. 508, 521-522, fn. 12 (1990) (barring reintroduction of any evidence that was introduced already in preceeding proceeding); Serfass v. U.S., 420 U.S. 377, 388-389 (1975); Dowling v. U.S. 493 U.S. 342, 347-357 (1990); & Harris v. Washington, 404 U.S. 55, 56-57 (1971); and if it is not enough California was barred by the collateral estoppel doctrine from relitigating the fact of conviction that it was proved already by the prior findings of the trial judge when in the first stage trial proceeding prosecuted and convicted Petitioner under P.C. § 667(a). In Conclusion the prosecution and conviction under P.C. § 1170.12 in the second stage trial proceeding must be vacated or reversed, See Ashe v. Swenson, 397 U.S. 436, 443 (1970); In conclusion the true finding of the trial judge in relation to the serious prior conviction allegation under P.C § 667(a) at the first stage trial proceeding qualifies unambiguously as a "conviction", see, Deal v. U.S., 508 U.S 129, 132 (1993) and this court must conclude that miscarriage of justice occurred in this case because once Petitioner was convicted he was immune from any other prosecution and thereafter innocent

Claim Four: The California Three Strikes and You're Out Act Unconstitutionally amended the Victim's Bill of Rights Act in Violation of the California and U.S. Constitution by not complying with the Amendment Initiative Process.

Well at this page Petitioner has only 8 pages left to set forth at least four more claims so from now on Petitioner would be vere specific and supporting his claims with just a few authorities

On June 8, 1982, California approved Proposition 8, Known as "The Victims' Bill of Rights Act, amending expressly and repealing old law and enacting P.C. § 667(a), quoted at Appx K, at p.84, which is an habitual criminal statute punishing with additional five year-enhancement sentence, on repeat offenders. (See Proposition 8, Ballot Pamphlet at Appx L at p.90, hereinafter "Appx L"); California was clearly advised before approving the enactming of P.C. § 667(a) as follows: "This initiative measure expressly repeals and adds existing provisions of the Constitution, and adds provisions to the Penal Code". Appx L at p.88. and subdivision (e) of P.C. § 667 advised California that in the future she could amend this section as follows: "The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring or by statute that becomes effective only when approved by the Electors" (Appx L, at p.88, Section 5 of Prop. 8)

Now from the date P.C. § 667(a) was enacted through January 1, 2022, has been amended numerous time without repealing subdivision (a), See, Stats 1986 ch 85 § 1.5; Stats 1989 ch. 1043 § 1; Stats 1994 ch 12 § 1 (AB 971); Prop. 36 § 2; Stats 2018 ch 423 § 64 (SB 1494); Stats 2018 ch 1013 § 1 (SB 1393); Stats 2019 ch. 497 § 195 (AB 991); and Stats 2021 ch 626 § 27 (AB 1171); and was not done so properly under California Constitution, Art. II § 10 (c), so under P.C. §§ 3, 4, 6, 12, 13 & 15 and Cal. Government Code Sections 9605-9608, P.C. § 667 (a) as annexed to the 1992 prior conviction remains the law

Claim Five: The habitual criminal conviction under P.C.§1170.12 was obtained unjustly in violation of the 6th and 14th Amendment because the "determination clause" in paragraph (1) of subdivision (b) is so vague that it fails to give ordinary people fair notice of the conduct it punishes and so standardless that involves arbitrary enforcement by the judicial power in violation also of the separation of powers doctrine.

There is no space to be quoting the cited cases due to the pages-limitation, so Petitioner would go the heart of his claim as why P.C.§1170.12 (b)(1) is vague and the legal and commonsense basis to support the vacation of the habitual criminal conviction under it.

P.C.§1170.12 (b)(1) provides separately as follows: "(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined: (1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this State. The determination[1] of whether a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction" and is not affected by the sentence imposed unless the sentence authomatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following disposition shall affect the determination that a prior conviction is a prior felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose functions is rehabilitive diversion from the state prison.

1] This underlined phrase would be called the "determination clause" and vague because it could be interpreted in many ways that offers no relia-

Now to avoid any confusion Petitioner has enclosed with quotations marks the "determination clause" above which is that one being challenged or attacked as vague, which Petitioner alleges and contends no court in California, District Attorney, Public Defender, Private Attorney, Defendant or any person studying, researching, writing or practizing the law have given the real meaning, construction and interpretation; and that California Courts have erroneusly interpreted both subdivision (b) and paragraph (1) as follows, ignoring the "determination clause": "The determination issue or phrase provide a reference to the date of conviction and mean that the court is presently required to look backward to the date of the conviction of the past offense and see if such past offense qualified as a misdemeanor, felony, serious felony or violent felony and that there is no reason, however, to require a trial court to determine whether the current or present conviction may serve as a strike prior conviction for future". See, Sipe, supra, 36 Cal.4th at p. 478; People v. Green, 36 Cal.App.4th 280, 283 (2nd Dist. 1995) rev. den.; People v. Reed, 33 Cal. App.4th 1608, 1611 (1st Dist. 1995) rev. den.; Gonzalez v. Sup. Ct., 37 Cal. App.4th 1302, 1311 (5th Dist. 1995); People v. Murillo, 39 Cal. App. 4th 1298, 1307 (6th Dist. 1995)

This interpretation is erroneous for many reasons but Petitioner would set forth a few as follows:

1. These Court are not even given significance or meaning to the "determination clause". See below the interpretation given by Petitioner to it.

2. These Courts erroneouly are misguiding the trial courts to look backwards at the "date" of the alleged prior conviction to see if the underlying was a misdemeanor, felony, serious, felony, violent or strike felony, this is absurd since recidivists statutes were created the courts are required to see or look the "record conviction" and see the statutory definition of the prior offense shown on the "record of conviction see Taylor v. U.S., supra, at p. 60 (holding that under the "categorical approach" the court must first look to the statute of conviction to determine if the offense would qualify as a serious or violent offense for purpose of section 924.) Cf., People v. Trujillo, 40 Cal.4th 165, 177 (2006) (permitting to "look... the entire

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ble way to choose between situations of what "ordinary" prior or current felony qualifies as strike prior conviction or what sentence-option with-record of conviction' but no further'."); People v. Reed, 13 Cal.4th 217, 230 (1996) (permitting the lower court to look at the preliminary hearing which is part of the record of a prior conviction within the meaning of the rule announced in Guerrero, supra, 44 Cal.4th at pp. 344-346.); and People v. McGee, 38 Cal.4th 682, 691 (2006) (holding that a court must examine the record of the prior criminal proceeding to determinate whether the prior conviction was a "serious felony")

3. These courts were only correct as to directing the trial courts to look backwards for the reasons stated below by Petitioner

4. As to these courts holding that there is no reason to require a trial court to determine whether the new, current, or present felony, is a strike for future proceedings, they are wrong, in fact it is a reason for "non-retroactivity issues" clothed within the "determination" clause as argued below by Petitioner.

5. These courts in its interpretation violated the separation of powers doctrines of both Constitutions by adding and ignoring the legal significance of the words within the "determination clause", See, U.S. Constitution, Art. 1 § 8, clauses 9, 18; Cal. Const. Art. III § 3;

Therefore subdivision (b) and the preceeding phrase of "The determination clause" in paragraph (1) were inserted there as guidance and standard to follow by the trial courts and means: "For purposes of this section, a prior conviction of a felony shall be defined as a serious or violent prior conviction if the offense shown on the record of conviction is enumerated and defined in either P.C.§§ 667.5 (c) or 1192.7 (c)," the date has nothing to do with the definition of the alleged prior conviction. Next, the "determination clause" means in much or less words: Once the trial court had determine that the alleged prior conviction is either a true serious or violent prior conviction that may qualified to be taken into consideration to impose sentence under this section, the trial court next inquiry is to made a determination of whether that serious or violent prior conviction is a strike prior conviction for purposes of this section and this determination shall

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in subdivision (c) of Penal Code to apply. Now as interpreted by petitioner this subdivision (b) without the determination clause serves as a "categorimade on the date of conviction so in the future any court in the State of California shall made a determination by looking at the date on the alleged strike prior conviction whether qualifies for purposes of P.C.§1170.12. See Section 2 of Prop.184,"All references to existing statutes are to statutes as they existed on June 30,1993 (Appx M at p.101) The reference to this date means that if the trial court looking at the date on the record of the alleged strike prior conviction discovers that the date on the record postdates June 30,1993 or the enactment of P.C.§1170.12, then the trial court shall made a determination that it qualifies as strike prior conviction, but if the date predates the determination is negative.

This Thre strikes law act was created to be applied to any person committing any felony and that person was warned that if results in conviction, it will be his or her "Strike one" which initially a normal sentence would be imposed,(see illustration and example at Appx M, at pp. 96,98) but if the person commits a second felony he or she will receive the double the base sentence for the conviction and so on if she or he commits a third felony - life sentence. (Appx M at pp. 98,98)

Furthermore, California Courts have held that the "notwithstanding any other provision of law" language in either subdivisions (a),(b) or (d) displaces other laws, but only insofar as they would limit or reduce the term of imprisonment, or take away from, its own definition of a [strike] "prior conviction of a felony" for its own purposes [referring to P.C.§ 1170.12] or render it inapplicable within its own sphere. See People v. Hazelton, 14 Cal.4th 101, 115-116 (1996); see also People v. Sipe, 36 Cal.App.4th at pp.475-479; Cf. People v. Tillman, 70 Cal.App.4th 710, 730, 785 (1st Dist 1999)

Now it is the position of petitioner that P.C.§1170.12, could not be held that it repeal, amend or abrogated the fundamental mandate of P.C.§667(a) governing specifically only serious prior convictions and the precedent In re Harris, 49 Cal3d 131, 134-136 (1989), settled or established for over 30 years holding that two or more counts serious felonies conviction count as only a single serious prior conviction and thus, the word not-

cal approach" for the court to decide whether the prior or current offense is serious or violent and not the facts underlying the prior conviction or current offense see Taylor v. U.S. 495 U.S. 575, 600 (1990) and Welch v. U.S, 578 U.S. 120, 124 (2016) and the "determination clause" covers the prior and current offenses requiwitstanding in P.C.§1170.12, could not take on meaning because this new Three Strikes law act is not making any change in P.C.§667(a) to which the "notwithstanding statement is not noting a specific exception", see Shomberg v. U.S., 348 U.S. 540, 546 (1955); In othere words that "notwitstanding" words means "in spite of" [see Blaks at 10th ed. cited and quoted In re M.F. 32 Cal. App.5th 1, 20 (4th Dist 2019)] and the use of such a "notwithstanding" clause in P.C.§1170.12 means that the circumstances described in it exist and P.C.§667(a) also applies, but P.C.§667(a) is in conflic with P.C.§1170.12, then P.C.§1170.12 displaces and overrides the application and penaltres of P.C.§667(a), see In re M.F., supra, at 20. Cf. Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 ( ) ("notwithstanding" section override conflicting provisions of any other section); see also Shomberg, supra, at pp. 542-548; see, also Casey's Gen. Stores, Inc. v. City of W. Plains, 9 SW 3rd 712, 719 (Mo. Ct. App. S.D. 1999) ("when there is conflict between two statutes, one of which deals with a subject in general way and the second treats a part of the same subject in a more detailed way, the specific govern"... over the general "notwithstanding provision.")

Now briefly, if the legislature or California did not expressly repeal, amend or abrogated P.C.§667(a) and its interpretation-precedents, nor they clearly expressed to apply it in addition to any other law and impose cumulative punishment repeal by implication do not applies in this case. Also P.C.§§667(a) and 1170.12 are not in conflic and could be reconsiliare, plus P.C.§667(a) is more specific, clearly states that it would apply only if a person commits a serious felony and that person must had suffered a serious prior conviction, in contrast P.C.§1170.12 applies to every person who commits a "felony", it need not be a serious or violent felony, it states any "felony", see P.C.§1170.12(a) and also requires that the person committing a new "felony" must had suffered generally serious or violent felony prior convictions, see, Hazelton, supra, at pp. 104-106. In addition P.C.§667(a) is that one that should stand because it has been annexed to the February 27, 1992, serious prior conviction since it was recorded in the trial court's records and must remain as a single serious prior conviction. Art. IV §1 of the U.S. Constitution.

ring the trial court (Court) to picture the kind of conduct that the offenses

Claim Six: The Application of a 1994 new habitual criminal statute retroactively inflicting additional greater punishment, than the 1982 old habitual criminal statute annexed to the 1992 prior conviction, when suffered. violated the Article 1, Section 10, Clause 1, of the U.S. Constitution.

Articles 1, section 10, clause 1, and IV, section 1 of the United States constitution on the face of this case condems and denounces that California unjustly and unconstitutionally retroactively altered the February 27, 1992 judgment of conviction of two counts of felony and not only increased the punishment, than P.C. §667(a) annexed to that judgment of conviction, when was rendered by the Long Beach Superior Court, but inflicted additional 25 years to life under P.C. §1170.12(c)(2)(A)(ii) to the five years enhancement sentence under P.C. §667(a) annexed to that judgment of conviction. See, Calder, supra, at pp. 390-391:

> "I will state what laws, I consider ex post laws, within the words and intent of the prohibition, 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravate a crime, or makes it greater than it was, when committed; 3rd. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed, 4th. Every that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppresive"

See also Watson v. Mercer, 33 U.S. 88, 110 (1834) ("In short, expost facto laws relates to penal and criminal proceedings which impose punishments.")

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involves or involved in "the ordinary case and to judge whether the abstraction presents a serious potential of violence or injury against any victim see James v. U.S., 576 U.S. 192, 208 (2007) so the court must made a determination

In this claim it would be cumulative to cite and quoted cases commencing with the older cases, e.g., Turner v. Turner's Ex'x, 8 Va. 234, 237 (Va. 1792) ("For a legislative interpretation, changing titles founded upon existing statutes, would be subject to every objection which lies to ex post facto law's as it would destroy rights already acquired under the former statute.") and many more ending with Peugh v. U.S. 569 U.S. 530 (2013) (ex post facto laws, a category that includes "[e]very law that changes the punishment and inflicts a greater punishment, than the law annexed to the crime when committed)

Here it is sufficient to stated that California has stiffened the "standard", "formula", or "element" of punishment applicable to prior convictions that have been already suffered, see Lindsey v. Washington, 301 U.S. 397 (1937); Miller v. Florida, 482 U.S. 423 (1987); and Weaver v. Graham, 450 U.S. 24 (1981); Since there is not much space left, in short, Petitioner argues that as in these three cases California changed the formula or standard in imposing punishment for safferin a single prior conviction as follows: (1) Under P.C. §§ 667(a), 1170 and 1170.1, the Judge was required to impose the middle term of four years for the current burglary without providing any reason, P.C. §§ 1170(a)(3) & 461 and if the judge wanted to depart and impose the lower tem of two years or the upper term of six years he must set forth on the record the facts and reasons, P.C. § 1170(b) and for suffering the February 27, 1992 conviction of two counts of burglary, which under the annexed P.C. § 667(a) and In re Harris, supra, at pp. 134-136, counts only a single serious prior conviction, the judge was required under his discretion, P.C. § 1385, to impose, stay, or strike the five years enhancement sentence, P.C. § 1170.1 and the minimum sentence or maximum sentence would have between seven or eleven years, in contrast under the formulas or standards of P.C. § 1170.12 (b) and (c) not only created a "sufficient" or "significant" risk of increasing the punishment for the given 1992 prior conviction, but 30 years to life were imposed and under that formula this sentence was possible

from these facts or circumstances whether the prior or current offense qualifies as strike prior conviction. Thus this clause is unconstitutional be-

because now the formula in subdivision (b)(1) of P.C § 1170.12 explains the operation of P.C. § 667(a) by saying that the 1992 serious prior convictions counts as to serious prior convictions and that the single record of that prior conviction could now serve to prove two serious prior conviction, and afterwards converts these two serious prior convictions into two strikes prior convictions which its sort is more grave in degree punishable with double or more than 25 years to life. All these formulas have destroyed Petitioner's right to receive less punishmen and have attached collateral consequences and disabilities to Petitioner, not incurred in the ordinary course of P.C. § 461, 667(a), 1170(a)(1),(3);(b)&(f), 1170.1 (d)&(e) and 3000 (b)(1) (right to parole after serving the presumed maximum eleven years that "only" should had been imposed under these penal code sections) and are e.g. (1) Petitioner as the defendant in Lindsey has been held in prison for the last 27 years and remains subject to the discretion of the California Board of Parole Hearings (Board) to be released on parole, which the board already refused to exercise its discretion by denying parole on October 13, 2020, in contrast Petitioner would have been released without any discretionary decision under P.C §§ 1170 & 3000 (b)(1) see Lindsey, supra at p. 399-401; (2) Petitioner as the defendant in In re Medley, 134 US. 160, 171-172 (1890), is subject also to the okey of the Governor of California in case the board grants release on parole as the Warden fixing the hour, day and week to excute Medley; (3) Petitioner has served almost his sentence at the rate of 85%, instead of serving eleven years at the rate of 50%, see Weaver supra, at p. 27-30; (4) Petitioner lost many liberties and previleges by placing him in a maximum secutity-prison-level four in which he was almost 20 hours in the cell for the first four years, he was no able to work-pay, etc. (5) Petitioner was deprived to travel in the free world; and there is many more disabilities but there is no space to set forth them or cite more authorities, see Turner at 237 (It is the business of legislators to make the laws; and of the judges to expound

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cause it ties the judicial assessment [determination.., shall be made on the date of that prior conviction] of the risk of violence or injurie to judicially them. Having made the law, the legislative have no authority afterwards to explain its operation upon things already done under it); In this case as alleged in clams four and five California and its judicial and executive officers have explained the P.C.§1170.12 indirectly could alter the rule of evidence [splitting and reusing a consolidated judgment of conviction, convert it into two judgment of conviction to prove beyond a reasonable doubt to serious prior convictions and thereafter transform them into a more aggravate strikes prior conviction and reuse the same record of the judgment of conviction to prove them and impose an additional greater punishment to that one already annexed or attached to the suffered 1992 prior conviction] which surely she cannot do directly under the old P.C.§667(a) and resulted in violation of the ex post facto and full faith credit clauses of the U.S. Constitutions and violated whole the following cited and unquoted reasonings and opinions, State v. Callahan, 109 La 946, 947-948 (1903) (reversin Callahan because the element of punishment was changed even though the new law repealed the old one); In re Medley at pp. 161-166, 171-173 (same as in Callahan, supra); People v. McNulty, supra, at pp. 436-437 (applying the old law because California enacted the new law without inserting a repealing clause having Knowledge of the saving statute); In this case California could have amended P.C.§667 (a) or repealed under California Constitution Art II, sections 8-10, specifically 10(c) given the power to the people to amend or repeal the initiative 8, enacting penal code section 667(a)-(d); Cf. California Government Code Section(s) (GC§) 9600-9608; See, e.g. G.C.§9605, which in much or less words that e.g., in the case of amending P.C.§667, it states that e.g, subd. (a) was never repealed or amended it remains the law as was enacted in 1982, and the amended added subdivisions (b)-(i) is the law when the amendment was done, why stating that the old subdivision and the new subdivision becomes the law at different times? The answer is sample, the old subdivion controls. See P.C.§3 stating that no law shall be apply retroactively unless clearly expressed by the enacting authority. P.C.§1170.12 or Prop.184 do not expressly clearly so states, neither California inserted any saving clause.

imagined "ordinary case" rather than to real facts or statutory elements, the clause leaves grave uncertaity about how and when to made that deter-

Claim Seven: The sentence of 30 years to life imposed in this case practically or literally for committing a burglary in 1992 and other in 1996, violated the principles of Justice and fairness that formed the United States' Criminal justice system offending the Eight Amendment of the United States Constitution

The primary concern in the Eight Amendment context has been that the sentencing decision be based on the facts and circumstance of the defendant, his background, and his crime, see, e.g., Spaciano v. Florida, 468 US 447, 460 (1984); Zant v. Sephens, 462 U.S. 862, 879 (1983); Eddings v. Oklahoma, 455 U.S. 104, 110-112 (1982); Lockett v. Ohio, 438 U.S. 586, 601-605 (1978) (plurality opinion); Gregg v. Georgia, 428 U.S. 153, 197 (1976) (joint opinion of Stewart, Powell, and Stevens, J.J.,)

In short and in half page the 30 years to life sentence is not unusual due to the lenght of the sentence, but is cruel, unjust and unhuman because its severity lies in the absence of an opportunity either to avoid the consequences of the new law, P.C. §1170.12, or to defend prosecution with effective counsel, unless California presents any proof that Petitioner knew or had a knowledge or the he could have foreseen the enactment of P.C. §1170.12, otherwise, the evil would be as great as it is when this law is written in print to fine to read or in a clothed language that the California courts were the only ones that understood the foreign language of this new law. Therefore, the true findings that Petitioner suffered a single prior conviction of two counts of burglary alone without a graduation or factoring the standard written above qualifies as an cruel and unjust sentence under this Court's precedents, see, J., Paterson's opinion in Calder, supra, at p. 396 (condemning a law punishing someone for not abstaining or foreseen the future); Cf Lambert v. Cal., 355 U.S. 225, 229 (1957)

Claim Eight: The Trial and Appellate Counsel Failed to Act Violating Petitioner's rights to effective counsel at both levels.

Here under Gideon v. Wainwright, 372 U.S 335, 342 (1963), Stricklan v. Washington, 406 U.S. 608, 687 (1984) (laying the Inneffective standard of counsel), & Evitts v. Lucey, 469 U.S. 387, 396 (1985) and the Sixth and Fourteenth Amendments of

U.S. Constitution both counsels in general failed to filed motions to demurrer the prior allegations, to strike them, to claim former jeopardy, to challenge the unfactored-unsupported habitual criminal adjudication or conviction, objections to the "commitment records" as not reliable without the judgment of conviction behind, to challenge the application of P.C.§ 1170.12, to filed motions or briefs raising arguments as those raised above, and more important, trial counsel and Direct Appeal counsel both failed to inquired how the two prior burglaries were committed and which was the purpose or plan in committing them, whether one or more victims were involved, whether the charges were initiate in a single or two Indictments, complaints or Informations to properly argued that Petitioner's 1992 prior conviction qualified as only a single serious prior conviction, e.g. see People v. Vargas, 59 Cal.4th 635, 635-637 (2014) (holding that two prior convictions growing out from a single act of criminal conduct qualifies as only one strike) and as to showing prejudices, they are obvious, Petitioner has been in prison for the last 27 years, if not, Petitioner deserves an evidentiary hearing to support and prove all the claims and his innocence. See Appellate counsel's excuses for not raising all this claims at direct appeal. Appx N, at pp. 103-104

III

RESONS FOR GRANTING REVIEW

Petitioner prays this court to review his case because this case is an extraordinary case presenting novel and important issues never decided by this court and on their faces Attorney Generals of all States, Public defendant, the people of the U.S., all courts around the country and thounsend of defendants and prisoner's would like to know the answers of the below question that would be resolved by themselves by a opinion of this court in this case:

1. What this Court meaned when it said: "than the law annexed to the crime or as in this case, than the law annexed to the prior conviction, when suffered or rendered by the Cour?

2. Which law applies to impose punishment for suffering a prior conviction, the law in existence governing at the time the judgment of that prior conviction was rendered or a new one enacted afterwards?

3. Based on the Facts of this case the application of P.C§1170.12 retroactively is repugnant or the law itself is repugnant as interpreted by California Courts?

4. Based on the facts of this case, could the court consider Monge v. Cal. as to the double jeopardy not applying to twice try a defendant for the same prior conviction under two habitual criminal statutes?

Date: December 22, 2023 Respectfully submitted, Callas Martinez

mination the violence posed by the crimes; James at 124; Johnson v. US., 576 U.S. 591, 596-597 (2015) see also id at pp. 604-605. This clause as already show has more than 2 interpretation and requires review under Welch and Johnson, supra