

No. 23-7088

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAR 11 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

BRIAN T. HILL — PETITIONER
(Your Name)

VS.

JOSIE GASTELO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

BRIAN T. HILL H67149
(Your Name)

P.O. BOX 705
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SOLEDAD, CA. 93960
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

- 1) Do a (2) judge panel of the U.S. Court of Appeals for the Ninth Circuit constitutes a quorum within the meaning of 28 United States Code Section 46?
- 2) Do a incarcerated person has a constitutional right to Board of Parole Hearing Counsel if such a right to counsel was created by a State's statutory scheme?
- 3) If such a constitutional right to Board of Parole Hearing Counsel exist, does the Due Process Clause of the 14th Amendment encompasses such a Constitutional Right?
- 4) If the Constitutional Right to Board of Parole Hearing Counsel does not exist, can such a right exist if one has suffered a fundamental constitutional right violation during such a Parole Board Hearing?
- 5) As a Protected Class Member of a Class Action lawsuit, does such a Protected Class Member has the Constitutional Right to Equal Protection of the Law as a Class of One?
- 6) Do such a Protected Class Member have a Constitutional Right to a Jury Trial on the issues litigated in such a Class Action Lawsuit under the 7th Amendment of the U.S. Constitution?

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

Los Angeles County Superior Court, case no. BH011887, *In re Brian Terrell Hill*, decided March 20, 2019

Court of Appeals, Second Appellate District, Division Two, case no. B298888, *In re Brian Terrell Hill*, decided August 20, 2019

Supreme Court of the State of California, case no. S260187, *In re Brian Terrell Hill*, decided September 23, 2020

U.S. District Court, Central District of California, case no. 2:20-CV-11015-MWF-JC, *Brian T. Hill VS. Josie Gastelo*, decided April 11, 2022; Request to Alter or Amend Judgment decided June 3, 2022

U.S. Court of Appeals for the Ninth Circuit, case no. 22-55693, *Brian T. Hill VS. Josie Gastelo*, decided December 1, 2023; Petition for Rehearing and Rehearing en Banc decided February 1, 2024

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TABLE OF AUTHORITIES CITED

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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 A 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 B 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 _____ to the petition and is

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

The opinion of the _____ court appears at Appendix _____ 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 Dec. 1, 2023.

[] No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Feb. 1, 2024, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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

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

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On December 1, 2023 a (2) judge panel of the United States Court of Appeals for the Ninth Circuit denied the Petitioner's Request for a Certificate of Appealability and Notice of Appeal. Another (2) judge panel of this Court also denied the Petitioner's Request for Rehearing and Rehearing en Banc on February 1, 2024. These (2) judge panels' does not constitute a quorum within the meaning of 28 U.S.C. Section 46 and as defined by this Court in Khanh Phuong Nguyen v. United States (2003) 539 U.S. 69, 82-83.

According to it's ruling in Salgado V. Garcia (9th Cir. 2004) 384 F.3d 769, 773-774, the Ninth Circuit court of Appeals thinks, feels, and believes that it has the authority to constitute (2) judge panel hearings' to rule on such motions' in which these rulings' is in conflict with this Court's ruling in Khanh Phuong Nguyen V. United States (2003) 539 U.S. 69, 82-83 and other United States Courts of Appeals' decisions' such as the Second Circuit Court of Appeals rulings' in Murry V. National Broadcasting Co. (2nd Cir. 1994) 35 F.3d 45, 47-48 and Snell Island SNF LLC V. NLRB (2nd Cir. 2009) 568 F.3d 410, 419; the Fourth Circuit Court of Appeals ruling in Peters V. Hanger (4th Cir. 1905) 136 F. 181; and the Fifth Circuit Court of Appeals ruling in Tobin V. Ramey (5th Cir. 1953) 206 F.2d 505, 506 in which this conflict is in need of this Court's resolution.

Pursuant to California Penal Code Section 3041.7 "At any hearing for the purpose of setting, postponing, or rescinding a parole release date of an inmate under a life sentence, the inmate shall be entitled to be represented by counsel and Section 3041.5 shall apply."

[CONSTITUTIONAL AND STATUTORY PROVISIONS CONTINUED, APPENDIX I]

STATEMENT OF THE CASE

On March 2, 2017 a commissioner and deputy commissioner of California's Board of Parole Hearings (BPH) conducted an alleged Youth Offender/Initial Parole Consideration Hearing in which the Petitioner was not given notice and or the opportunity to be Heard as to why this Hearing was not conducted within (1) year after the Petitioner's Youth Offender Parole Hearing (YOPH) date of April 23, 2014 and or (1) year before the Petitioner's Medium Eligible Parole Hearing (MEPD) date of November 15, 2017 in violation of California's state Statutory Scheme California Penal Code Sections' 3041, 3051, et. seq. and the 14th Amendment of the United States Constitution.

Unbeknownst to the Petitioner and without being given Notice and or the Opportunity to be Heard, to opt-out, to acquiesce in the settlement of this lawsuit, to request a jury trial, etc.... a Civil Rights Complaint was filed against BPH Officials' on April 20, 2012 on behalf of Indeterminate Sentenced Prisoners' such as the Petitioner, entitled: Johnson V. Shaffer, et. al., case no. 2:12-CV-1059-KJM-P-AC, challenging the Risk Assessment Tools' as used by BPH Forensic Assessment Division Psychologist to determine Indeterminate Sentenced Prisoners' (Lifers) so-called dangerousness and threat to public safety such as HCR-20, Version 3, PCL-R, and Static 99-R.

Unbeknownst to the Petitioner and further without being given Notice and or the Opportunity to be Heard, BPH Officials' were lawfully obligated within the Terms' of this Settlement Agreement to give Class Counsel(s) Notice of the Use of different risk assessment tool's such as DSM-5-TR by BPH Officials', the opportunity to present an expert to challenge how and whether such risk assessment tool's will be administered and failed to give said expert the opportunity to speak and answer questions for up to (2) hours.

Further, unbeknownst to the Petitioner and without being given Notice and or the Opportunity to be Heard, BPH Officials' failed to conduct new risk assessment evaluations within (3) years prior to subsequent board of parole hearing's as agreed to in violation of the Terms of this Stipulated Settlement Agreement and in the Petitioner's case, within (3) years of February 15, 2024.

And BPH Officials' failed to give the Petitioner Notice and or the Opportunity to be Heard as to BPH Officials' failure to implement rules and regulations to challenge the psychological reports of BPH Forensic Assessment Division's psychologist.

At the beginning of this 2017 BPH Hearing, the Petitioner attempted to set-forth the violations' of the Petitioner's constitutional right violations' by BPH Officials' failure to conduct this hearing in a timely manner in which BPH Commissioner Brian Roberts alleged that the Petitioner's case was a gap case, that this hearing was to be conducted by December 31, 2017, and asked the Petitioner's BPH Counsel was his client's rights met so far, in which the Petitioner's board Counsel responded yes.

Upon the submission of a writ of habeas corpus to the superior court on April 30, 2018, Ground One consisted of the violation of the constitutional rights' to due process of law, equal protection of the law, the ex post facto clause, etc... and Ground Two the ineffective assistance of board counsel.

The superior court issued an Order for an Informal Response in which the State's deputy attorney general filed a letter addressing these allegations on September 7, 2018, but never argued the alleged untimeliness of this writ's filing, the Petitioner filed a Reply to this Informal response on November 18, 2018 and the superior court rendered its ruling without an evidentiary hearing being conducted, etc... on March 20, 2019. (see Appendix G)

After the superior court denied relief, the Petitioner filed a writ of habeas corpus in the state court of appeal, second appellate district, division two, on July 2, 2019 raising the same Grounds for relief in which this court issued a denial without citation to law or fact, without an indication of this writ's alleged untimeliness, and without any constitutional right violations being briefed, etc... on August 20, 2019. (see Appendix F)

On January 12, 2020 the Petitioner filed a writ of habeas corpus with the California Supreme Court raising the same Grounds' for relief in which this court denied this writ on September 23, 2022 without any constitutional right violation being briefed, etc... citing People V. Duvall (1995) 9 Cal. 4th 464, 474 [a petition for writ of habeas corpus must include copies of reasonably available documentary evidence].) (see Appendix E)

On November 26, 2020 the Petitioner filed a writ of habeas corpus with the U.S. District Court, Central District of California, this court issued an Order directing the Respondent and the Attorney General be served a copy of this writ on December 8, 2020 giving Respondent (14) days from this date to make an appearance and (30) days from this December 8, 2020 date to file a Response to this petition.

The Deputy Attorney General Charles Chung filed a Motion for an Extension of Time to file a response to this habeas corpus on December 28, 2020, the District Court granted this Request on December 29, 2020 giving the Respondent until February 8, 2021 to file this Response, the Petitioner filed a Request for an Extension of Time to file a Reply to Respondent's Response on February 18, 2021 in which the Petitioner was given until April 7, 2021 to file this Reply.

On July 15, 2021 the magistrate judge of the District Court filed a report and Recommendations, the Petitioner filed (2) Requests

for an Extension of Time to file Objections to this Report and Recommendations on July 25, 2021 and September 2, 2021 in which both were granted giving the Petitioner until October 2, 2021 to file these Objections to this Report and recommendations, these Objections were filed on September 20, 2021 and the district court judge excepted the magistrate judge's Report and Recommendations on April 11, 2022 in which the district court judge fails to address the Petitioner's due process of law violations, etc... but just the allege untimeliness of this writ's filing and equal protection of the law claims.

Also, on April 11, 2022 the district court judge denied the Petitioner a certificate of appealability before the Petitioner even filed a request for one.

On April 27, 2022 the Petitioner filed a Request to Alter or Amend Judgment pursuant to fed. Rule Civil Procedure, Rule 59(e), et. seq. arguing the timeliness of this writ's filing and set-forth the violation of a multitude of federal constitutional rights' to have the district court judge deny this Motion on June 3, 2022. (see Appendix D)

On June 28, 2022 the Petitioner filed a Notice of Appeal and a Request for a Certificate of Appealability with the u.s. court of appeals for the ninth circuit in which a (2) judge panel of this court denied the Petitioner's Request on December 1, 2023.

On December 12, 2023 the Petitioner filed a request for Rehearing and Rehearing en Banc in which another (2) judge panel of this court denied this Motion on February 1, 2024. (see Appendix C)

REASONS FOR GRANTING THE PETITION.

This Petition involves important questions of law that has not been resolved by this Court; to resolve conflicts of law regarding the Court of Appeals for the Ninth Circuit decision and this Court's in prior rulings'; and to further the Public's Interest in the resolution of such questions' of law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature consisting of the letters 'B' and 'M' connected by a horizontal line.

Date: March 6 2024