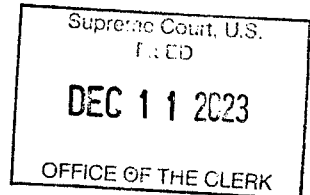


No. 23-7169

IN THE

SUPREME COURT OF THE UNITED STATES



ROBERT PULLEY — PETITIONER
(Your Name)

vs.

DANIEL PARAMO (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ROBERT PULLEY
(Your Name)

R.J. Donovan, 480 Alta Road, E-25-C201-2 low
(Address)

San Diego, CA. 92179
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WHAT CONSTITUTES SUFFICIENT EVIDENCE TO OVERCOME THE PRESUMPTION CREATED BY THE CALIFORNIA PENAL CODE SECTION 198.5, WHERE THE STATE COURT'S DECISION IS BASED ON AN UNREASONABLE DETERMINATION OF FACT, AND LAW, IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDINGS? (28 USC §2254(d)(2)).

2. WHETHER PRELIMINARY HEARING TESTIMONY UNDERLYING AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM (28 USC 2254(d)(1)) - [WITHHELD FROM THE JURY BY TRIAL COUNSEL] - QUALIFY AS "NEW" EVIDENCE FOR THE PURPOSE OF INVOKING THE SCHLUP ACTUAL-INNOCENCE/MISCARRIAGE OF JUSTICE EXCEPTION TO THE STATE PROCEDURAL DEFAULTS AND EXCEPTION TO THE AEDPA'S STATUTE OF LIMITATION; SPECIFICALLY WHERE THE WITHHELD TESTIMONY EVIDENCE IS THE LINCHPIN - [EVIDENCE OF THE UNLAWFUL ENTRY INTO THE RESIDENCE] - THAT SETS IN MOTION THE WHOLE MACHINERY OF CALIFORNIA PENAL CODE SECTION 198.5?

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

NONE.

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OPINIONS BELOW

The opinion of the highest state court to review the merits of my direct appeal appear is unpublished.

The opinion of the highest state court to review the merits of my petition for writ of habeas corpus is also unpublished.

The opinion of the United State District Court to review the merits of my petition for writ of habeas corpus is reported at 2016 U.S. Dist LEXIS 157338.

Supreme Court Rule 12.2 provides: "An inmate confined in an institution, if proceeding in forma pauperis and not represented by counsel, need file only an original petition and motion.

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 8, 2023, No. 22-55388. A timely petition for rehearing was denied by the United States Court of Appeals on September 14, 2023. (U.S. Court of Appeals, No. 22-55388, Dkt #76, 9/14/2023).

Petitioner invokes the jurisdiction of this Court under 28 USC §1257 on the ground that Pulley's rights under the Fourteenth Amendment to the United States Constitution were violated.

STATUTORY PROVISION

California Penal Code Section 198.5 governs Pulley's defense. Section 198.5 - Presumption in favor of one who uses deadly force against intruder provides:

"Any person using force intended or likely to cause death or great bodily injury within his or her residence shall be presumed to have held a reasonable fear of imminent peril of death or great bodily injury to self, family, or a member of the household when that force is used against another person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using force knew or had reason to believe that an unlawful and forcible entry occurred. As used in this section, great bodily injury means a significant or substantial physical injury." (P.C. §198.5).

legislative Intent:

The legislative history of Penal Code §198.5, indicates that the statute was enacted to permit residential occupants to defend themselves from intruders without fear of legal repercussions, to give the benefit of the doubt in such cases to the resident, establishing a presumption that the very act of forcible entry entails a threat to the life and limb of the homeowner. Thus the presumption was implemented to promote a public policy and affect the burden of proof. (People v Owens (1991) 226 Cal App 3d 996).

The statutory presumption of law was provided to the jury by the court in the form of California Jury Instruction CALCRIM 3477 - PRESUMPTION THAT RESIDENT WAS REASONABLY AFRAID OF DEATH OR GREAT BODILY INJURY. (See the following page CALCRIM 3477 California Jury Instruction).

STATEMENT OF THE CASE

On May 3, 2011, the San Diego County District Attorney filed an Information charging defendant ("Petitioner, Robert Pulley") stating:

COUNT 1 - MURDER:

On or about December 25, 2010, ROBERT PULLEY did unlawfully murder Jimmy Misaalefua in violation of Cal. Penal Code §187(a). It was alleged as to the murder that Pulley intentionally and personally discharged a firearm resulting in death in violation of P.C. § 12022.53(d); and it was further alleged as to the murder that Pulley personally used a firearm in violation of P.C. §12022.5(a).

COUNT 2 - MAKING A CRIMINAL THREAT:

On or about December 25, 2010, ROBERT PULLEY did unlawfully threaten to commit a crime which would result in death and great bodily injury to Matthew Pulley in violation of Penal Code §422.

COUNT 3 - BATTERY

On or about December 25, 2010, ROBERT PULLEY did unlawfully use force and violence upon the person of Matthew Pulley, in violation of Penal Code §242.

COUNT 4 - MAKING A CRIMINAL THREAT:

On or about November 11, 2010, ROBERT PULLEY did unlawfully and willfully threaten to commit a crime which would result in death and great bodily injury to Angelia Pulley in violation of Penal Code §422.

STATEMENT OF THE CASE:

State Court proceedings:

On April 28, 2011 and ending on May 3, 2011, the Superior Court of California conducted a preliminary hearing proceedings based on the Four-Count Information against defendant Robert Pulley ("Pulley"). In respect to the charge of murder, Pulley's defense counsel raised a relevant issue to FEDERAL QUESTION #2: - [the unlawful entry into the residence, whether or not Pulley was present with the victim ("Misaalefua") when Misaalefua entered Pulley's garage and/or whether Pulley was present inside Pulley's garage when Misaalefua entered] - counsel asking eyewitness Matthew Young ("Young") [Question:] "Was the light on or off - [inside the garage] - or do you know?" [Young: Answer:] "... I believe it was on because I can see the inside of the garage." [Question:] "And what did you see Robert do when he (Misaalefua) entered the garage?" [Young: Answer:] "I didn't see Robert, Mr Pulley, when Jimmy (Misaalefua) was walking up." [Question:] "What did you see Jimmy do?" [Young: Answer:] "He walked up to the driveway and walked into the garage." (PH305:25-307:3 [PH3RT305:28-306:13].

The record of Pulley's state court proceedings is completely devoid of any evidence that places Pulley in Misaalefua's presence when he entered Pulley's garage.

On May 3, 2011, in a decision that distinguished Pulley's garage from Pulley's house, the court stated, "Mr. Pulley, the probable cause to believe that the offense[s] set forth in count 1... have occurred and that you are guilty thereof. We have... He went in got the gun and came out and shot." (PH3RT321:7-15 [PH3RT321:14-15]).

STATEMENT OF THE CASE:

On July 5, 2011, and ending on July 22, 2011, the Superior Court of California conducted a criminal trial against Pulley based on the Four-count Information filed. On July 15, 2011, in respect to the murder charge and to the relevant issue of FEDERAL QUESTION #2, the prosecutor elicited knowingly false testimony from eyewitness Matthew Young that mischaracterized Pulley's garage separate and distinct from Pulley's house, the prosecutor asking Young [Question:] "What happen next?" [Young: Answer:] "And Jimmy (Misaalefua) walked up to the -- in front of Pulley's driveway and started walking in... And he just walked up to the garage, walked inside the garage, and he stopped." [Question:] "Did he go inside the house?" [Young: Answer:] "No. No. The garage was open. He walked inside the garage..." (6RT946:9-21, [6RT946:17-19]).

On July 21, during jury deliberations, the court received a note from the jury asking the court, "Is the garage part of the home?" (Jury Note #2, 9RT1735:21-22, 4CT776). The court answered saying, "An attached garage is part of the residence." [Court's Response to Jury Note #2 (9RT1743:24-25, 4CT777)].

Following a jury trial, a jury found Pulley guilty of second degree murder in count 1. The jury also found the firearm allegations with respect to the murder true. The jury found Pulley guilty of count 2 - making a criminal threat to Matthew Pulley and the jury found Pulley guilty of count 3 - misdemeanor battery upon the person of Matthew Pulley. The jury found Pulley not guilty of count 4 - making a criminal threat to Angelia Pulley.

On September 2, 2011, the court sentenced Pulley to 40 years to life for second degree murder and an addition consecutive term of 25 years to life for the firearm enhancement (P.C. §12022.53(d)). A consecutive term was imposed for count 2, and credit for time served in county jail was imposed for count 3.

Pulley was ordered to pay a \$10,000 restitution fine (§1202.4(b)), a \$10,000 parole revocation fine (§1202.45), which was stayed pending the successful completion of parole, \$120 in court security fees, and \$90 in criminal conviction assessment fines.

Pulley filed a timely notice of appeal on September 12, 2011.

On June 4, 2012, Pulley's court appointed direct appeal attorney filed an appeal in the California Court of Appeal, Fourth Appellate District, Division One ("CCA"), challenging Pulley's second degree murder conviction raising FEDERAL QUESTION #1 stating,

"Appellant ("Pulley") due process rights under the Fourteenth Amendment were violated because there was insufficient evidence that he committed murder, and the verdict in count 1, should be reversed" (CCA, No. D060502, Opening Brief, dated 6/4/2012, page 30).

On March 22, 2013, the Court of Appeal, Fourth Appellate District, Division One ("CCA") for the state of California affirmed Pulley's conviction of second degree murder holding that "The jury could have concluded that in retrieving a gun and shooting an unarmed man, Pulley used more force than was reasonably necessary to protect himself or his house, and thus, that the presumption of justification embodied in section 198.5 had been overcome by contrary evidence." CCA Unpub. Opinion, No. D060502, 3/22/2013, page 16).

In affirming Pulley's conviction of second degree murder, the CCA unreasonably applied a knowingly false and unsupported historical fact - [the relevant issue of FEDERAL QUESTION #2] - that was previously raised and answered by Matthew Young's clear and convincing eyewitness preliminary hearing testimony, Young saying,

"[b]ecause I can see inside [Pulley's] garage...I did not see Robert, Mr. Pulley when [Misaalefua]... walked into the garage." (PH3RT305:25-307:3).

The court saying,

"Pulley entered the house through an interior garage door WHILE (emph. added) Misaalefua stood in the garage... waiting..." (CCA Unpub. Opinion, No. D060502, March 22, 2013, page 15-16).

On March 26, 2013, Pulley's attorney filed a timely Petition For Review in the Supreme Court of California raising FEDERAL QUESTION #1: saying,

"What constitutes sufficient evidence to overcome the presumption in favor of a person defending his residence created by Penal Code Section 198.5 and to satisfy the due process requirements of the United States and California Constitution?"

The petition further submits that "review should be granted because,

"The Court of Appeals did not cite sufficient substantial 'contrary evidence' to overcome the protections that homeowners are afforded by Section 198.5." (CCA., Petition For Review, No S209608, 3/26/13, p.3/4).

On June 12, 2013, the California Supreme Court denied Pulley's Petition For Review, thereby exhausting all state court remedies of FEDERAL QUESTION #1. (2013 Cal LEXIS 4939, Cal Supreme Court, No. S209608, June 12, 2013, CCA. No. D060502).

Federal Court proceedings:

On August 29, 2014, Pulley filed a timely pro se federal habeas corpus petition in the U.S. District Court, Southern District of California, raising FEDERAL QUESTION #1 saying,

"Pulley's Due Process rights under the Fourteenth Amendment were violated because there was insufficient evidence to overcome Pulley's defense of law and to sustain a conviction of murder." (U.S. Dist. Court, No. 14-cv-2034-JLS-MDD, Dkt #1, 8/29/2014, page 6, page 31).

Pulley's further submits that the district court:

"[s]hould grant the petition to give guidance to the lower courts on what [constitutes] sufficient evidence to overcome the presumption in Section 189.5" (U.S. Dist. Court, DKT #1, 8/29/2014, page 32).

On October 28, 2014, after Pulley filed his timely federal petition for writ of habeas corpus (Dkt#1), Pulley filed two motions in the U.S. District Court: (1) Motion to have his federal habeas corpus action "Stayed" and held in abeyance (Dkt #6), and Motion for Leave To Amend his federal habeas corpus petition upon returning to federal court after exhausting state court remedies of Pulley's new claims of federal constitutional violations in his state court proceedings. (U.S. Dist. Court, Dkt #8). Pulley's motion were based on "newly presented" government documents providing irrefutable proof of fact - [that, by law, Misaalefua, the victim, had entered Pulley's inhabited dwelling house when he was shot. (U.S. Dist. Court, Dkt #8, page 9:9 - page 11:19). Pulley's two motions clearly invoked the Schlup actual-innocence fundamental miscarriage of justice exception to the AEDPA's statute of limitations. (Dkt#8, p.2-6).

On January 14, 2015, Pulley filed an untimely, pro se, "Proposed" First Amended Federal Petition for Writ of Habeas Corpus ("FAP") in the U.S. District Court. (U.S. Dist. Court, Dkt #22 and #25-duplicate). The "proposed" FAP contained thirteen new claims of prejudicial constitutional violations that occurred in Pulley's trial. Ground One: (in respect to count 1 - murder): A relevant issue of FEDERAL QUESTION #2: Trial counsel failed to investigate, discover and introduce at trial government documents that provide irrefutable proof that Pulley's garage, the particular garage of jury note #2 (4CT776), was a structure attached and integral to Pulley's house; Ground Fourteen: A relevant issue of FEDERAL QUESTION #2: The invocation of the Schlup actual-innocence exception.

State Court proceedings:

On February 9, 2015, Pulley filed a state Petition for Writ of Habeas Corpus in the Superior Court of California containing the exact same grounds, memorandum, exhibits and attachments that was included in his federal "proposed" FAP. (Superior Court, No. HC21902/SCD231564).

On February 16, 2015, Pulley submitted a First Amended Petition ("FAP") in the Superior Court containing the exact same grounds,... as Pulley's federal FAP. (Sup. Court, No. HC21902/SCD231564, March 10, 2015).

On March 10, 2015, the Superior Court denied all fourteen grounds of Pulley's petition stating, "grounds 2,4,6,8,10 and 11 are procedurally barred; and further stating, Pulley's "has not stated a prima facie case for relief as to grounds 1,3,5,7,9,13 and 14..." (Sup. Court, In re the Petition of: Robert G. Pulley, No. HC21902, page 11:15-16).

Federal Court proceedings:

On April 7, 2015, the Magistrate Judge for the U.S. District Court, Southern District of California filed a Report and Recommendation ("R&R") to deny Pulley's motion to Stay and Leave To Amend his federal petition. (U.S. Dist. Court, Dkt #39, 4/7/15). In the R&R, the magistrate judge said, "Pulley's 'new' evidence is neither new or exculpatory and the claims... are untimely..." (U.S. Dist. Court, Dkt #39, page 7, A relevant issue of FEDERAL QUESTION #2.

State Court proceedings:

On April 15, 2015, Pulley filed a pro se petition for writ of habeas corpus in the California Court of Appeals containing the exact same grounds... that was denied in the Superior Court. (CCA, No. D067878, 4/17/2015).

Federal Court proceedings:

On June 12, 2015, Pulley filed a pro se Objection to the Magistrate Judge's R&R. (U.S. Dist. Court, Dkt #43). In his Objections, Pulley argued a relevant issue of FEDERAL QUESTION #2: that "new evidence" invoking the Schlup actual innocence exception need not be "newly discovered" only "newly presented." (Griffin v Johnson (9th Cir 2003) 350 F.3d 956, 963; Calderon v Thompson, (1998) 523 US 538, 559 quoting Schlup at 324; McQuiggin v Perkins (2013) 513 US 383, 386). (U.S. Dist Court, Dkt #43, 7/12/15, page 4:19-21; page 23:6 - 25:22, page 43:8 - 44:19).

State Court proceedings:

On July 17, 2015, the Court of Appeal for the State of California issued an Order To Show Cause why relief requested in Pulley's petition for writ of habeas corpus should not be granted (CCA., No. D067878, 7/17/15). Pulley was appointed counsel.

Federal Court proceedings:

On September 1, 2015, the U.S. District Court overruled Pulley's Objections and denied Pulley's motion for Stay and motion for Leave to Amend (U.S. Dist. Court, Dkt #47, 9/1/2015). In the Order, the court conceded to a relevant issue of FEDERAL QUESTION #2, saying, Pulley's newly presented government documents had "no potential to reverse because there was no dispute at trial.. that the garage was attached to the home..." (Dkt #47, page 6:19-24); the court also held that Pulley's government documents does not qualify as new evidence because it was readily available at trial... only new evidence of innocence open the gateway to a miscarriage of justice claim - the gov. record do not meet this standard (Dkt #47, Obj. One, page 17:10-17, Obj. Two, page 19:20-21;

Obj. Six, page 29:5-16). In further justifying Pulley's state court conviction, the District Court raised the prosecutor's knowingly false and unsupported argument saying, "[Pulley] brought the decedent into the garage where the altercation occurred"- [contrary to Matthew Young's uncontroverted eyewitness preliminary hearing testimony (PH3RT305:25 - 306:3; the relevant FEDERAL QUESTION #2]. (U.S. Dist. Court, Dkt #47, 9/1/2015, page 17, FN#6, line 23-25).

State Court proceedings:

On October 27, 2015, Pulley's state court appointed counsel filed a Supplemental Petition for Writ of Habeas Corpus in the State Court of Appeal. (CCA, No. D067878, 10/27/2015). In the supplemental petition counsel raised five ineffective assistance of counsel claims. Relevant to FEDERAL QUESTION #2, the petition raised "trial counsel's failure to investigate and present the official records that would have established beyond any question that the garage in which the shooting occurred was attached to and an integral part of the residence where the court left open the question of whether the particular garage involved in the case was attached and therefore part of the home; clearly [by jury note #2], the evidence was insufficient to satisfy the jury that the shooting was within the residence." (CCA. No. D067878, Supp. Petition For Writ of Habeas Corpus, 10/27/2015, page 22-25).

Federal Court proceedings:

On December 3, 2015, the Magistrate Judge for the U.S. District Court filed a R&R to deny Pulley's Petition for Writ of Habeas Corpus. (U.S. Dist. Court, Dkt #48, 12/3/2015). In the report, the magistrate judge determined that [Pulley] "returned to the garage where he knew Misaalefua was waiting, after [Pulley] had goaded Misaalefua to follow him home by saying 'I got

something for you motherfucker' (page 40:8-11); a jury rationally could find sufficient circumstantial evidence of expressed malice from Pulley's provocative invitation to Misaalefua that he had something for him (p. 40:16-18); a jury could rationally find sufficient circumstantial evidence of implied malice - a conscious disregard for life - from [Pulley's] decision to return to confront Misaalefua..." (U.S. Dist. Court, Dkt #48, 12/3/2015, page 40:20-22).

On March 23, 2016, Pulley filed an Objection to the magistrate judge's R&R. (U.S. Dist. Court, Dkt #53, 3/23/2016). In the Objection #2, Pulley contends that the jury's rejection of first degree murder establishes the non-existence of the fact - willfully and deliberately instigated, goaded, invited for purpose of... (U.S. Dist. Court, Dkt #53, page 6:9 - 7:19). In Objection #3, Pulley raised the issue of FEDERAL QUESTION #2: Preliminary hearing testimony by Matthew Young demonstrating that Pulley could not have known the intruder was inside of his house until he discovered him by surprise (Dkt #53, page 7:21 - 14:21). In Objection #4, Pulley raised the issue of relevant to FEDERAL QUESTION #1: Ena's testimony of the intruder's threat of imminent serious bodily injury on Pulley. (Dkt #53).

On November 11, 2016, the U.S. District Court issued an Order overruling Pulley's Objections and denying Pulley's Petition for writ of habeas corpus. (U.S. Dist. Court, Dkt. #54, 11/14/2016). In it's denial of Objection #4, the District Court illuminated the dispute of FEDERAL QUESTION #1 saying "the state court found that, even if the jury found that [Pulley] reasonably feared for his safety, the jury could have concluded that Pulley used more force than reasonable, thus, overcoming any presumption in his favor." (U.S. Dist. Court, Dkt #54, page 14:21-24).

On December 15, 2016, Pulley filed a timely Notice of Appeal in the U.S. District Court. (U.S. Dist Court, Dkt #55, 12/15/2016).

On January 23, 2017, Pulley filed a motion for a Certificate of Appealability in the U.S. Court of Appeals, No. 16-56885, Dkt #61). In his motion Pulley raised two claims appealing the district court's denial of his sufficiency of evidence claim: (1) that the district court failed to review the relevant portion of the state court record containing exculpatory facts (page 31-32), and (2) the district court's failure to conduct an independent review of the record denied Pulley of his due process right to a fundamentally fair process and equal protection of the law. (Dkt #61, page 35-48).

State Court proceedings:

On February 15, 2017, the State Court of Appeal issued an Order denying Pulley's First Amended Petition and the attorney filed Supplemental Petition for Writ of Habeas Corpus. (CCA. No D067878, 2/15/2017). In addressing Pulley's newly presented government documents, the court said "The record does not support Pulley's suggestion that the jury was misled into thinking that the garage was detached from the house..." (CCA. No. D067878, 2/15/2017, page 20).

On March 17, 2017, Pulley's court appointed attorney filed a Petition For Review in the Supreme Court of California containing the exact same claims denied in the CCA. (Cal. Supreme Court, No. S240713, 3/17/2017).

On May 10, 2017, the California Supreme Court denied Pulley's Petition For Review. (Cal. Supreme Court, No. S240713, 5/10/2017).

Federal Court Proceedings:

On August 2, 2017, the U.S. Court of Appeals denied Pulley's request for a certificate of appealability. (U.S. Court of Appeals, No. 16-56885, Dkt #61, 8/2/2017).

On August 15, 2017, Pulley filed a motion for rehearing following the denial of his request for a COA. (U.S. Court of Appeals, No. 16-56885, 8/15/17).

On October 4, 2017, the U.S. Court of Appeals denied Pulley's motion for rehearing (U.S. Court of Appeals, No. 16-56885, Dkt #62, 10/4/2017).

State Court proceedings:

On February 26, 2018, in respect to Pulley's murder conviction, Pulley filed a state petition for writ of habeas corpus in the California Court of Appeal claiming Ground Two: FEDERAL QUESTION #2: Newly presented exculpatory eyewitness preliminary hearing testimony by Matthew Young demonstrating trial counsel's ineffective assistance (CCA, No. D073562, 2/19/2018, page 151-189).

On March 3, 2018, the California Court of Appeal denied Pulley's petition holding, "Pulley presents no change in law of facts warranting reconsideration of his substantively identical claims." (CCA, No. D073562, 3/6/2018).

On May 16, 2018, in respect to Pulley's murder conviction, Pulley filed a petition for writ of habeas corpus in the Supreme Court of California containing the exact same claim as "Ground Two" of his petition in the California Court of Appeal. (Cal. Supreme Court, No. S248827, 5/16/18, p. 150-189).

On September 12, 2018, the Supreme Court of California denied Pulley's petition for writ of habeas corpus thereby exhausting all state remedies of FEDERAL QUESTION #2. (California Supreme Court, No. S248827, 9/12/2018).

Federal Court proceedings:

On April 19, 2019, Pulley filed a mislabeled pro se Federal Rules of Civil Procedure, Rule 60(b)(6) motion as an appeal from the U.S. District Court Order denying Pulley's motion for Stay and denying Pulley's motion for Leave to amend..., and motion to set aside the district court's final

judgment (U.S. Court of Appeals, No. 19-55508, Dkt #63, 4/19/2019). In his motion, Pulley claimed the district court abused its discretion by applying an improper standard to deny Pulley's Schlup actual innocence inquiry. (U.S. Court of Appeals, No. 19-55508, Dkt #63, 4/19/2019, page 1-3, The relevant issue of FEDERAL QUESTION #2).

On May 16, 2019, the U.S. Court of Appeals labeled Pulley's Federal Rule of Civil Procedure, Rule 60(b)(6) motion as a Notice of Appeal then dismissed the mislabeled motion as duplicative. (U.S. Court of Appeals, No. 19-55508, Dkt #65, 5/16/2019).

On May 30, 2019, Pulley filed a motion for reconsideration. (U.S. Court of Appeals, No. 19-55508, Dkt #66, 5/30/2019).

On July 5, 2019, the U.S. Court of Appeals denied Pulley's motion for reconsideration. (U.S. Court of Appeals, No. 19-55508, 7/5/2019).

On October 7, 2019, Pulley filed a petition for writ of certiorari in the United States Supreme Court. (U.S. Supreme Court, No. 19-6467, 10/7/19). In respect to his murder conviction, Pulley raised two question to the Court:

- (1) whether newly presented post-conviction evidence... is sufficient to invoke the Schlup actual innocence, miscarriage of justice exception, and
- (2) whether newly presented preliminary hearing testimony... satisfies the requirement as new evidence to invoke the miscarriage of justice/actual innocence exception. (U.S. Supreme Court, No. 19-6467, 10/7/2019).

On January 13, 2020, Pulley received a letter from the court clerk informing him that his petition was denied. (U.S. Supreme Court, No. 19-6467, 1/23/2020).

State Court proceedings:

On March 26, 2020, Pulley filed a petition for writ of habeas corpus in the State Court of Appeal. (CCA, No. D077417, 3/25/2020). Pulley's petition raised two claims: (1) ineffective assistance of counsel - trial counsel's failure to raise clarifying jury instructions defining the victim's antecedent threat to knock Pulley out as a serious bodily injury equivalent with a great bodily injury, and (2) trial court's failure to instruct the jury on the correct defense of habitation instruction element - [element one or element two] raised by substantial evidence at trial. (CCA, No. D077417, 3/25/2020, page 18 and page 28, respectively).

On March 26, 2020, the California Court of Appeal denied Pulley's petition saying, "habeas corpus proceedings involving factual situations should be tried in Superior Court..." (CCA, No. D077417, 3/26/2020).

On April 21, 2020, Pulley filed a petition for writ of habeas corpus containing the exact same claims, arguments and evidence as in his previous Court of Appeal petition in the Superior Court. (Superior Court, No. HC21902/SCD231564, 4/21/2020).

On June 6, 2020, the Superior Court denied Pulley's petition saying Pulley's claim of constitutional violations were already raised in the Court of Appeals, "which denied them on the merits," and saying, "any alleged errors in instructing the jury was not prejudicial. (Superior Court, No. HC21902/SCD231564, 6/4/2020).

On June 29, 2020, Pulley filed a petition for writ of habeas corpus in the California Court of Appeals containing the exact same claims, arguments and evidence as in his previous Superior Court petition. (CCA, No. D077641).

On June 30, 2020, the California Court of Appeal denied Pulley's petition saying, [Pulley's] petition is barred as repetitive." (CCA, No. D077641, 6/30/2020).

On July 8, 2020, Pulley filed a petition for rehearing in the California Court of Appeal which went unanswered. (CCA, No. D077641, July 8, 2020).

On July 21, 2020, Pulley filed a Petition For Review in the California Supreme Court raising four question for review: (1) whether fear of peril as explained in the definition of a forcible and atrocious burglary statute is consistent with reasonable fear as explained in Section 198.5, (2) whether the absence of instructions that the loss of consciousness was a great bodily injury resulted in an inadequate legal theory, (3) whether the failure to instruct that a threat to a residential occupant by an intruder justifying the use of deadly force does not require a forcible or violent entry, (4) whether the absence of the aforementioned instruction erroneously withdrew consideration of justifiable homicide defenses. (Cal. Supreme Court, No. S263495, 7/21/2020).

On July 24, 2020, the Supreme Court of California notified Pulley that his petition for review was untimely. (California Supreme Court, No. S263495).

On August 31, 2020, Pulley filed a petition for writ of habeas corpus in the California Supreme Court raising two claims: (1) trial counsel provided ineffective assistance when he failed to request clarifying instructions explaining the term great bodily injury includes the specific injury of the victim's antecedent threat, and (2) the trial court committed a prejudicial error when it withdrew from the jury the only defense of habitation instruction responsive to the evidence. (Cal Supreme Court, No. S264201, August 31, 2020).