

No. **23-7395**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

APR 26 2024

OFFICE OF THE CLERK

Wesley Panighetti — PETITIONER
(Your Name)

vs.

State of California — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

California Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Wesley Panighetti

(Your Name)

C.D.C.R. #AW6051

P.O. Box 3481

(Address)

Corcoran, CA. 93212

(City, State, Zip Code)

None

(Phone Number)

Questions Presented

1) Whether:

Because this case presents an important question of law and the personal rights of the people, summary dismissal in the face of petitioner's serious allegations would appear to be out of line with prior decisions of this Court?

2) Whether:

Petitioner was denied a fundamental Due Process right in a California State Court by the Court's unreasonable failure to base its determination on the undisputed facts presented in the State Court proceeding?

3) Whether:

The Due Process clause of the Fourteenth Amendment precludes the Court and jury from rejecting uncontroverted testimony that is not improbable in itself, or to disregard material facts that are indisputably established by the undisputed testimony of both the Prosecutrix and the defendant who both confirm the same material fact to be true beyond a doubt?

Questions Presented

Continued

4) Whether:

It is a pure question of law subject to review in the United States Supreme Court when the only reasonable dispute is over the legal effect and significance of undisputed facts?

5) Whether:

Appellate Counsel's failure to raise obvious issue that the verdict is unlawful and contrary to the confirmed, uncontested facts is viewed as deficient performance and thus ineffective assistance of counsel in violation of Appellant's Due Process Rights?

6) Whether:

Consenting adults have a constitutional right to engage in unrestricted sexual conduct with each other and to set their own boundaries and determine what is permissible in their personal relationships?

7) Whether:

State courts determination of the facts of this case was objectively unreasonable?

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	34
CONCLUSION.....	40

INDEX TO APPENDICES

APPENDIX A	<i>Opinion of the California Court of Appeal:</i>
APPENDIX B	<i>California Court of Appeal rejection of Petition for Rehearing and review:</i>
APPENDIX C	<i>California Supreme Court denying Petitions for Review:</i>
APPENDIX D	<i>Nevada County Superior Court order denying motion for a new trial:</i>
APPENDIX E	<i>Supreme Court of the United States order to grant an extension of time to file Petition for writ of</i>
APPENDIX F	<i>Certiorari in this case.</i>

Table of Authorities cited

Cases.

Page number

1) Miller - El. v. Dretke, 545 U.S. at 266: 34

2) Wiggins v. Smith 539 U.S. 510, 528 (2003) 34

3) Wiggins v. Smith 539 U.S. at 528: 34

4) Taylor v. Maddox 366 F.3d at 1001: 35

5) Calindo v. Warden 365 F.3d 691, 698 (9th cir.) 35

6) Wiggins v Smith 539 U.S. 510 (2003) 35

7) Milke v. Ryan 711 F.3d. at 1008-10 35

8) Schaefer Dixon v. Santa Anna 48 Cal. App 4th -
528 (1969) 35

9) Tibbs v. Fla., 457 U.S. 31: 36

10) United States v. Lincoln 630 F.2d. 1313 -
(CA 8 1980) at p. 1316 and 1319: 36

11) Smith v Robbins 528 U.S. 259: 38

12) Gray v. Greer, 800 F.2d. 644: 38

13) Gray v. Greer 800 F.2d. 644 at 646: 39

14) Mason v. Hanks, 97 F.3d. 887: 39

15) Ramirez v. Tegels, 413 F. Supp.3d. 808,
2019 U.S. Dist. LEXIS 16520, 2019 WL 4721033: 39

Statutes and Rules

1) 28 U.S.C. 2254 (d)(2) and (e)(1) 34-35

2) Sixth Amendment Right to effective
assistance of Appellate counsel 37-39

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

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

The opinion of the United States district court appears at Appendix _____ to the petition and is

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

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☒ reported at People v. Panighetti, 95 Cal. App. 5th 978
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Nevada County Superior Trial court appears at Appendix D to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

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

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

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 9-25-23.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 10-31-23, and a copy of the order denying rehearing appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including April 27, 2024 (date) on Feb. 8, 2024 (date) in Application No. 23 A 725.

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

: Constitutional and Statutory Provisions Involved:

1) Right to a fair trial under the Due Process clause of the Fourteenth Amendment:

2) Right to diligent, assiduous, and effective representation of counsel on direct appeal under the Sixth Amendment

3) *Fiore v White* 528 U.S. 23: holding that the Federal Constitution requires the convictions be set aside because the conduct of the appellant was not criminal:

4) First Amendment Right of consenting adults to engage in the life style and sexual conduct they choose in their pursuit of happiness in their private affairs

5) Society has not interest in maintaining an unconstitutional conviction.

Statement of the Case

When the undisputed facts affirmed true by both the Prosecutrix and the Accused are considered the following narrative emerges in this case without dispute.

The Prosecutrix (Jill) actively sought out the Defendant (Wesley) contacting him in April of 2020 seeking to re-establish a relationship with him after 7 years without contact having parted on good terms in December of 2012 when Wesley moved away.

Jill and Wesley entered into another sexual relationship on the understanding that their prior "Relationship Agreement" would once again continue to be valid and in effect to establish what conduct would be legally permitted in their relationship so that Wesley would be free to do as he has been assured he may do with Jill without any fear that his conduct would later be considered to have been unconsensual and thus unlawful.

After Jill assured Wesley that their prior agreement was legally valid permission to do as the agreement clearly grants him consent to do Wesley acted upon Jill's voluntary assurance.

1
2 that the agreement would continue to be valid
3 knowing that his conduct was lawful due to Jill's
4 assurance that it was.

5 At no time did Wesley act without Jill's assurance
6 that he had her continuous valid written
7 permission to do what he was doing in their
8 Dominant/Submissive like style relationship.
9 This fundamental underlying fact is not in
10 dispute. Both material witnesses - the only
11 material witnesses to offer any evidence
12 affirm this undisputed fact to be true.

13 The following statements from Jill reflected
14 in the Trial Court Record (CR) confirm this
15 statement of fact is true without dispute. In
16 early May of 2020 Wesley after being sober for
17 7 years told Jill "It's a good thing I don't drink
18 because I'm afraid that if I drank around you I
19 would kill you for what you did to me." Due to this,
20 when Wesley bought a bottle of wine for his friend
21 Sally Roberts, Jill says she became afraid for her
22 life. When Jill and Wesley returned to the
23 house rather than get out of the car and unlock the
24 house so Wesley could get his keys and property
25 and leave to meet Sally. When Wesley got out of the
26 car Jill drove off. Jill went to V. Kack's house and
27 told Ms Kack that Wesley was going to kill her. Ms Kack
28 called the police who responded and took a report.

1
2 In the Nevada County Sheriff's Office "watchguard
3 file" body-cam recording of June 14, 2020 at
4 945. Jill is recorded stating.

5 A: "I'm going to be perfectly honest. There [is]
6 was an agreement that he came up with
7 after he got out of jail the first time
8 [I lied to get him arrested] for the rape charge
9 that ended up being False Imprisonment.
10 [because I told him in my letters that I want
11 rough, forceful sex]
12 I connected with him once again, and he
13 came up with an agreement --- basically it
14 was a submission agreement if you will.
15 That he was allowed to have everything I
16 had. This was a notarized agreement.
17 It should be on file. Are you looking for it?
18 So, he's always had it in his mind that he
19 can do anything he wants to me because of
20 this agreement, violently, or whatever,
21 it doesn't matter what it is.
22 I don't know if that answers your question.
23 It doesn't sound really good.

24 Q: What was your reason for signing that?

25 A: It was dumb, stupid thing to do, because
26 he did end up torturing me [and sodomizing
27 me, but all the charges were dismissed
28 because of our agreement when I went to

the police." [when I got mad at him and wanted to have him arrested to hurt him]

"I don't have a good reason" [other than I wanted a relationship with him and he required a written agreement to protect himself from my lying about him]

"it was stupid, it was dumb."

End quote; [Brackets added to insert words not actually stated in the above quote.]

The record reflects that when Jill became upset and wanted to harm Wesley in 2007 she lied to cause his arrest. When she was questioned by officer C. Woo of the Placer County Sheriff's office report number SO-07-743 on page 9 at line 312 the report states Jill's motive for signing the agreement after she voluntarily requested the Restraining order be discontinued so she could be with Wesley once again in June of 2006.

"After Court Panighetti and V-1 (Jill) talked and she realized that she still had strong feelings for him (Wesley) and she wanted to be in a relationship with him. Panighetti did not feel that he had [unlawfully] sexually assaulted V-1 back in 2002".

[Because he had only done what Jill herself had

1
2 told him she wanted him to do with her.]
3 "Panighetti told V-1 that if they were going
4 to start seeing each other again, he needed
5 to protect himself. He stated that there
6 needed to be a "contract" and she needed to
7 provide him something that stated his
8 innocence in the [Prior] rape" [accusation].
9 "Panighetti drafted the letters, but V-1 signed
10 them." End quote [with bracketed comments
11 inserted]

12 On June 14 of 2020 Jill told the responding
13 officer when he took her statement that, she
14 "believed that Wesley had the legal right to
15 abuse her physically and sexually and she
16 could not refuse to do what he wanted
17 because she had relinquished her right to
18 say "No" and refuse in an agreement she
19 had with Wesley."

20 When asked why she had signed the agreement
21 she stated that she did not have a good reason - it
22 was a dumb thing to do. She did not at that time
23 or any point in time prior to her answering
24 the officer's direct question invoke duress as
25 a reason for agreeing to enter into the written
26 agreement. She clearly states she wanted to
27 have a relationship with Wesley and he required
28 a written agreement stating what is permissible.

This is proven by Tills own undisputed testimony and statement to the prosecution investigator, Deputy Sheriff C. Warr.

On page 1096 at line 17 of the Court record (CR 1096 at 17) Tills confirms the Wesley's innocence.

Q When you reached out to Wesley on Facebook in March of 2020, did he agree to see you again with the understanding that your relationship agreement was still valid and in effect?

A Not initially, no

[Please note that the answer above is an affirmation of the question "not initially" can be taken to mean that "yes, he did but not when I first reached out to him".]

Q When was it? Did you agree to that?

A Maybe about a month afterwards.

Q Okay. Would that have been in April or May?

A In May. Beginning of May.

Q Did Wesley insist that he would only agree to see you again if the relationship agreement was in effect and still valid?

A No, he didn't outright say that no.

Q Did Wesley insist that he would only agree to see you again if the relationship agreement was in effect and still valid?

A. No, he didn't outright say that, no.
at (p 1098; 24)

Q. Did Wesley threaten you to force you to contact him on Face Book in March of 2020?

A. No. He didn't force me to do it.

Q Did Wesley threaten you to ask him to be in a relationship with you again?

A He said he wanted to be in a relationship me again.

at (P 1098-L 16)

Q Did Wesley threaten you and force you to give him your address and ask him to come to your house so you could start seeing each other again?

A He wanted my address and I gave him my address.

Q The question is did he force you to do that?

A. He didn't force it. No. Not -- No.

Q Just so I understand this, knowing that Wesley would only agree to see you if you agreed that the relationship agreement was still valid and you agreed to be in a dominant-submissive relationship with him like you were before, you gave him

your address and asked him to meet you so you could start seeing him again?

Ms. Moteabbed-Hill. (Prosecutor)

I would object to --

Mr. Comiskey (Defense)

The question is knowing that, why did you give him your address?

at (P 1099-L

Q "If you knew the kind of relationship that the agreement contained, why would you give Wesley your address?"

A He didn't initially want that kind of relationship. That happened later. And,

--

at (1099-L 16)

Q I have a quotation in the next question. Did Wesley always ask, quote, "Don't I have the right to fuck your ass if I want to?" when you told him you didn't want him to fuck your ass?

A I don't understand the question.

Q When you said "No" to Wesley, did he always ask, "Don't I have a right to do it any way?"

A. Was he asking permission?

Q No. Did he always, if he wanted to do something and you said "No", did he ask

1
2 "Don't I have the right to do it any way?"

3 A. No.

4 Q. He did not ask that?

5 A. No. Because he did it any way.

6 He didn't ask permission. He forced it.

7 Q. This is again a quotation. Didn't you
8 always tell Wesley quote, "That your
9 ass belonged to him and that he had
10 the right to fuck your ass any time he
11 wanted to do it," close quotations?

12 A. Yes, maybe I did say it, but that doesn't
13 mean he had a right to do it, does it?

14 (P1100-L23)

15 Q. Did you tell Wesley that you wanted him
16 to take you and make you know that you
17 belonged to him in every way back in
18 2000 when you first met, yet, in 2003
19 when you had him arrested? [For doing what
20 you told him to do]

21 A. Before I had him arrested, I did say that to
22 him when we were dating. That was dating
23 talk. But that wasn't rape talk.

24 at (P1075-L

25 Q. Now, on page 9 of this packet I see a text
26 message exchange that says, "By the way,
27 how is your asshole feeling after getting
28 fucked? It doesn't hurt any more, does it?"

1
2 A. That was the one that I was talking about.
3 Yes. That was after he sodomized me.

4 Q The text message goes on to, "Now, go back to
5 sleep and think about what you need from me
6 and talk to me about it tomorrow when
7 I call." Do you know what he was talking
8 about?

9 A. Yes. He thought I wanted it. He thought
10 I wanted to be forcibly sodomized.
11 at (P1272-L24)

12 Q And can you tell us if you haven't already
13 told us when the first conversation about
14 the contract took place?

15 A I don't know. I don't remember.

16 Q Do you recall that it was very early in the
17 contacts that you had with Wesley in April?

18 A Maybe it was like mid to end of April.
19 at (P1275-L12)

20 Q When you did talk about the contract,
21 was that in person?

22 A Yes

23 Q Did you agree with him that the relation-
24 - the contract was still valid?

25 A I don't remember.

26 Q Do you know this gentleman seated to my left?

27 A Yes, I do.

28 Q When he took your police report did you

1
2 Tell him that Wesley had a valid right to
3 do what he did because you had a contract?

4 A. I don't remember.

5 Q Do you recall telling Deputy Warr, WARR,
6 that you felt that you could not refuse
7 Wesley?

8 A I don't remember.

9 Q Did you go on when you had a conversation
10 with Deputy Warr and describe a contract
11 Wesley drafted some time around 2005
12 granting him rights to abuse you
13 physically, sexually and to relinquish
14 ownership of your personal, of your
15 money and personal property to him?

16 A Yes.

17 Q You told that to Deputy Warr?

18 A Yes!

19 at (P1278-L16)

20 Q Did he [Wesley] tell you that he needed that
21 contract to make sure that would not
22 falsely send him to prison again?

23 A No, he did not! I have answered that question
24 four times now!

25 at (P1279-L9)

26 Q In 2006 when you signed that contract --
27 in 2006 before you resumed your
28 relationship again, did Wesley tell you

1
2 that he wanted you to sign that contract so
3 that you would not falsely accuse him
4 again if you had a relationship with him?

5 A No! he didn't. I answered that question
6 before.

7 Q Well, I showed you on the preliminary
8 hearing transcript that I asked you that
9 question. "Okay. Well, did he tell you he
10 wanted the contract so that you would
11 not falsely accuse him [of raping you]
12 again if you had a relationship with him?"

13 And the answer was, "Yes, falsely accuse
14 him. Yes?" Do you recall saying that?

15 Prosecutor: I'm sorry, Counsel. What page
16 is that?

17 Defense: 104, lines 25 to 28.

18 The witness (Jill) If I am answering it,
19 why are you asking me the question again?

20 You are trying to confuse me!

21 at (P1280-L25)

22 Q Now, Mrs Doe, I just want to repeat
23 something that you testified to today to
24 give some context to the next question I
25 need to ask you. That was that I asked
26 you the question from the preliminary
27 hearing transcript pages 104 lines 25 through
28 28. "Okay. Did he tell you that he wanted

the contract so that you would not
falsely accuse him again if you had a
relationship with him?" And then I
showed you the answer that you said at
the preliminary hearing transcript which
was, "Yes, falsely accuse of him, yes," or
"Yeah". That was the question and answer.

So then a follow up question that I asked
you at the preliminary hearing transcript
was, "All right. He told you that since
you had falsely accused him before and
sent him to prison and if you wanted
to have a relationship with him that you
would need to sign a contract saying that
he would have the right to do whatever
he wanted; is that correct?" You recall
that your answer was,
"Yes, that's correct"?

at (P1283-L5)

Q What I want to get clear, Ms Poe, is that this
contract was presented to you in 2006
and you signed it and then in 2020 you
were asked if the contract was still valid
and your answer was yes, that's
correct?

A Did you already ask me that question?

Q I just want to get that part clear.

At (CR 1284-L6)

Q. I just wanted to get clear that whenever you and Wesley had a conversation in 2020 about the contract that it was a referral back to the contract of 2006; is that correct?

A. Yes

Q. Well, did he say that --- were you asked at the preliminary hearing in the part I showed you, that since Wesley told you that you had falsely accused him before and sent him to prison that if you wanted to have a relationship with him you would need to sign a contract saying that he would have the right to do whatever he wanted? And then I asked "is that correct?" And your answer was, "That's correct"?

A. Yes. That's correct.

At (CR 1292-L13)

Dezense counsel states: "I would advise the District Attorney that I'm going to just make sure that I have a record of the statement she made to Detective Woo in 2006. Its --- Page 253 of the discovery that was provided to me."

Q. Does that refresh your memory whether you told Detective Woo, --- That in, [2006] you

resumed a relationship with Wesley after he came out of prison because you still had strong feelings for him and wanted to have a relationship with him?

A Yes.

On page 1302 at line 20

Q Now, in 2020 after you had reached out to Mr. Panighetti on Facebook, did the two of you have a conversation about the contract? I believe on cross-examination last week you may have -- I will withdraw my question and rephrase. I believe on cross-examination last week you said to Mr. Comiskey or you agreed with him that the agreement that you had signed into with Mr. Panighetti allowed, that allowed him to abuse you was still valid. Did I understand that correctly?

A Yes, if I said that, then, yes, that's what I said.

on page 1305 at line 7

Q When you and Mr. Panighetti were talking about this contract in 2020, did you believe that he could take you to court over this contract?

A Yes.

Q Why did you believe that?

A I don't know. I can't answer that question.

on page 1306 at line

Q Now, at the time that he presented you with this contract and made these threats to you to take you to court, [if you refused to give him the deed to your house and the money] at that point had he raped you again in your words?

A No, Not yet.

Q Okay

A Not yet

on page 1307 at line 17

Q In 2020 when Mr Panighetti brought up this contract again and wanted you to tell him that it was still enforceable or that it was still valid, had he already raped you at that point?

A No, Not yet. [only after he had consent to]
(CR 1035 at line 10)

Q Just for clarification's sake, on June 14th, 2020, what was the nature of your relationship with this man?

A I was afraid of him

Q Okay. Were you dating him?

A He thought he controlled me through the contract.

Q What makes you say that? Did he bring up the contract?

A Yes. He brought up the contract.

Q When did he bring up the contract?

A I don't remember when he brought it up. He brought it up.

Q Was it some time between June 12th and June 14th of 2020 that he brought up the issue of the contract again?

A Yes.

Q What sorts of things would he say regarding the contract that led you to believe that he thought he controlled you by virtue of it?

A I don't remember.

(CR 1020 at line 20)

Q Now on June 12th, 2020 after he invited himself to your residence, did he force you to perform oral sex on him without your consent?

A It felt forced, yes.

Q What do you mean by that?

A Well, --- he wanted me to perform oral sex on him and I didn't want to.

Q Did you tell him that you didn't want to?

A No, I didn't.

(CR 1034 at line 7)

Q I'm sorry that we were interrupted.
I'm going to jump back to the oral copulation
on June 12th, 2020. My question for you is
on that particular day "when he was
forcibly forcing you to oral cop him", did he
threaten you in any way or were there
threats preceding that?

A No.

The undisputed Fact confirmed above at
(CR 1020 line 20 to to CR 1021 line 1) and at
(CR 1034 lines 7 to 12) negates the accusation
that Wesley knowingly and unlawfully
forced Jill to perform oral sex without
her consent after being told she did not want
to do it nor, had he threatened her to force
her to do it against her will.

Under these circumstances no crime had
been committed when Wesley asked Jill to
do what she did for him and she complied
with his request for him.

There was no unlawful force, nor was there
any threat made to unlawfully force Jill to
do what Wesley asked her to do for him.

Wesley is now serving a life sentence because
Jill voluntarily did what he asked her to do...

on page 1330 at line 24 of the Court record (CR 1330 at 24) Jill is testifying in regard to the statements she made to The Nevada County District Attorney's investigator "Dominic La Fountain" when she was interviewed on June 30th, 2020.

(CR 1330 at 24)

Q "What exactly did he [Dominic La Fountain] say to you?"

A He said, "were you in a dominant - submissive relationship" is what he said.

Q How did you respond to that?

A I said, yes, that I was.

(CR 1331 at 1)

Q In your mind what was a "dominant - submissive relationship" that you believed you were in?

A Somebody controls somebody else, physically, hurts somebody physically.

Mr. Comiskey: Could I ask what report we are referring to, the page numbers?

Ms Moteabbed-Hill: I am looking at Dominic La Fountain's report dated June 30th, 2020 looks like page 2.

(CR 1331 at 14)

Q "He asked you if you were in a dominant-submissive relationship and you said yes, you were; is that correct?"

A Yes."

(CR 230 at 14)

Q "Did you [yourself] ask him [Wesley] to tie you up the first time he came to your house?"

A: No, not the first time he came to my house.

Q At some point in that -- when he came to your house, did you ask him to tie you up?

A [Yes] "to tie my hands to the bed post as a playful thing."

Q So you asked him to tie you up on which time that he came to your house?

A I don't remember, but it wasn't the first time that he came to my house.

Q And what did you want him to do when he tied you up?

A To have sexual intercourse with me.

Q All right. Did you tell Wesley that you wanted him to tie you up and do whatever he wanted to do to you without stopping because you like it like that?

1
2 A I don't remember saying that.

3 Q Do you know whether you did say it, or
4 didn't say it?

5 A I don't know what I said. That -- it was
6 20 years ago.

7 Q Okay.

8 A I don't remember...?"

9
10 Jill is not contesting the fact that she told
11 Wesley things of this nature when she, herself
12 introduced bondage and forced submission
13 into the relationship with Wesley. Had such
14 statements never been made or considered
15 Jill would have contested the assertion and
16 denied ever saying anything like it.

17 (CR 232 at 25)

18 Q "Did you tell him you liked it when he took
19 you and made you know you belonged
20 to him?"

21 Ms. Moteabbed-Hill: Objection, Vague as to the
22 Time!

23 The witness: That was -- that was when we
24 were --

25 Q You wanted to know the time I was referring
26 to when I asked you this question.

27 Did tell him you liked it when he took you
28 [Forcefully] and made you know you

Belonged to him? And I'm talking about that time when you first started getting together at some point after December of 20 -- After the year 2000. ---

A I -- I'd have to know what -- I mean, we were -- we were in a relationship.

[a dominant-submissive relationship] That is not an unusual thing [for me] to say to somebody that you are in a relationship with. So we got involved quickly. We did get involved quickly, I will say that. But, to me, that's not -- yes, I did say that, but I'm not sure exactly what time frame I said it in.

Q Okay, But you did tell him that you liked it when he took you and made you know you belonged to him?

A Yeah? [I said that]

(C.R. 184 at 28)

Q Now, following the execution of this contract -- well, let me ask you this; this contract, did it cover him having [unconditional] access to your money, or assets or anything like that?

A Well, from what I saw, it looked like it did.

(CR 185 at 4)

Q. Okay. When you entered into the contract with him, had he represented to you that he was going to have the right to your property?

A. Yes, he did mention that. Yeah.

Q. Did you actually read that contract before you signed it?

A. Yeah.

(CR 1335 at 13)

Q. Do you recall at the preliminary hearing that I asked you, "Did you text Wesley and tell him you had the money for him?" and that your answer was that you phoned him and told him you had the money for him?

A. I did phone him, yes. [and asked him to come to the house to pick it up]

Q. You phoned him and told him you had the money for him?

A. Yes! you asked me this question before.

(CR 1340 at 5)

Q. Ms. Hill asked you about the money for Wesley. Do you recall that I asked you at the preliminary hearing, "Did you put the money in the Master bedroom for him?" and your answer was "Yes"?

A. Yes.

Q. And I asked you, "When did you do that?" and your answer was?

A. It was that night.

Q. ON June 12th; Right?

A. Yes, June 12th that night

Q. That's when he was there?

A. Right.

(CR 1322 at 8)

Q. Was it your testimony today that you had offered up the money up to Mr. Panigutti and he said, [Thank you] "I'll get it later"??

A. When he came to my house at about eight o'clock at night, I told him where it was, He said he would get it later.

(CR 1322 at 21)

Q. At the preliminary hearing that you testified at, did you testify that you pulled the money out because you were afraid that you were going to get hurt?

A. No!

Jill offered to give Wesley the money he needed in an unprompted text message to help him cover the cost of repairing his A/C.

After Jill withdrew the money from the bank she phoned Wesley to let him know she had the money he needed and invited him to meet her so he could get the money from her at her house where he had a room in which he kept his personal property.

(CR 122-126)

Q. And had you and Wesley talked about having a dominant/submissive relationship and him living in your master bedroom?

A. I don't remember us saying that we're going to live in my master bedroom.

Q. I'm talking about Wesley sleeping in the master bedroom and you sleeping in the other bedroom?

A. Yeah.

Q. And that was going to be the arrangement?
[For him living with you]

A. Yeah.

Q. You talked about that? [When you asked him to move in with you]

A. Yeah.

Q. And that was going to be the arrangement?

A. I think so, yeah.

(CR 124 at 8)

Q. Did you put the money in the master bedroom for him?

A. Yes.

Q. And that was when he was there?

A. Yes.

(CR 138)

Q. -- before, but did you -- when he got there that day, was that when you offered him the money, and he told you to please put

1
2 it in the bedroom for him?

3 A. I put it in the bedroom. I told him I had the
4 money, and I put it in the bedroom.

5 (CR 1302 at 20)

6 Q Now, in 2020 after you had reached out to
7 Mr Panighetti on Facebook, did the two of
8 you have a conversation about the contract?
9 I believe on cross-examination last week
10 you may have -- I will withdraw my
11 question and rephrase...

12 I believe on cross-examination last week
13 you said to Mr Comiskey or you agreed with
14 him that the agreement that you had signed
15 into with Mr Panighetti allowed, that allowed
16 him to abuse you was still valid. Did I
17 understand that correctly?

18 A. If I said that, then, yes, that's what I said.

19 (CR 1304 at 22)

20 Q This agreement, did it contain some clause
21 in there about him having your, having the
22 right to your --

23 A. Assets.

24 Q -- having the right to your finances?

25 (CR 1306 at 23)

26 Q Now, at the time that he presented you with this
27 contract and made these threats to take you to
28 court [if you lied again] at that point had he

raped you again in your words?

A No. Not yet.

Q Okay.

A Not yet.

At (C.t. 1307) line 17

Q In 2020 when Mr. Parighetti brought up this contract again and wanted you to tell him that it was still enforceable or that it was still valid, had he already raped you at that point?

A No. Not yet.

At (C.t. 1310) line 18

Q When you were being interviewed by Deputy Warr on June 14, 2020 did you give him some information regarding your dating history with Mr. Parighetti?

A Yes.

Q Do you remember precisely what you told him?

A I said that he raped me and -- I'm just going by my memory now, so I'm guessing at what I said. That we resumed our relationship again in 2006 and that there was the contract, that we had the contract and that we started, we resumed again in 2020.

Q Okay. Did you talk to him about the specifics of this contract?

A Yes.

1
2 , AZ (C.t. 1313) line 3

3 Q Ms Doe [Jill], I want to go back to the contract
4 in question to clear up some confusion that
5 I have. Now, in 2020 after you reached out
6 to Mr. Panighetti, was it your testimony that
7 the two of you had a conversation about
8 this contract

9 A yes

10 Q And this contract that I am referring to, this
11 is what I am going to call the 'abuse' contract
12 from 2006?

13 A Yes.

14 Q Now, I believe on cross-examination last
15 week, and please correct me if I'm wrong,
16 you agreed with Mr. Comiskey --- that you
17 told Mr. Panighetti in 2020 that this
18 relationship agreement that allowed him to
19 abuse you was still valid as of 2020.
20 Did I understand that correctly?

21 A Yes

22 , line 22 of (C.t. 1313)

23 Q Your answer was yes?

24 A Uh-huh

25 Q In 2020, why did you either agree with or
26 tell Mr. Panighetti that this abuse contract
27 was still valid?

28 A Because I didn't think it was going to be that

Abusive as the torture that he inflicted on me in 2006.

At (C.t. 1314) line 17

Q Okay. Again, I need some clarification. When he brought up the contract in 2020 your testimony was that he had not yet raped you again; is that correct?

A That's correct.

Q Okay. But this was after you had reached out to him on Facebook; is that correct?

A That's correct.

Q I believe on cross-examination you said that there were maybe a couple amicable visits and some consensual sex that had occurred before he brought up the contract again; is that correct?

A That's correct.

Q I recall before we broke for lunch I was asking you about this you said you were still scared of him; is that correct?

A I had mixed feelings.

Q When he brought up this contract to you and said, "Hey, is this still valid, what exactly had he done at that point that scared you?"

A. [Nothing] It was the verbiage of the agreement. It was that I would be a

1
2 Submissive sex slave, that he would have
3 his way with me.

4 At (C.T. 1316) line 10

5 Q Were you -- at that point you said that you
6 were scared because of the verbiage of the
7 agreement, the fact that it referenced things
8 like "submissive sex slave". So in 2020 when
9 he tells you I want this contract to be some-
10 thing that controls our relationship,
11 why didn't you at that point tell him, No!
12 I don't want this contract to control our
13 relationship?

14 A I don't know...

15 At (C.T. 1318) line 12

16 Q Okay. So it sounds like the two of you had
17 discussed this contract when he made
18 these threats to kill; is that correct?

19 A Yes.

20 Q So when he made these [alleged] threats to
21 kill, had you already agreed to go along
22 with this contract again?

23 A Yes.

24 Q When you had agreed to go along with the
25 contract again since he hadn't yet
26 threatened to kill you or threaten to have
27 someone kill you, what exactly made you
28 fearful about declining to go along with

1
2 A: I don't remember.

3 Q: Okay: Your text messages, are they in your
4 phone still?

5 The Prosecutor: Objection! Discovery!

6 The Court: I'm sorry?

7 The State withheld evidence proving that
8 Jill had assured Wesley that their "Relationship
9 Agreement would continue to be legally valid
10 permission for his conduct and why she had
11 chosen to contact Wesley and then of her own
12 free will, voluntarily assured him that their
13 prior agreement would continue to be valid
14 and in effect, granting him all rights and
15 privileges stated there in.

16 After the prosecutor was permitted to deceive
17 the jury and inflame their emotions with
18 irrelevant exceedingly inflammatory testimony
19 the jury found Mr. Panighetti guilty on all counts
20 contrary to the uncontested facts in evidence of
21 the case, in violation of his Fourteenth Amendment
22 constitutional due process rights to a fair and
23 impartial trial wherein the uncontested facts
24 in evidence determine whether or not Mr. Panighetti
25 committed the crimes charged or whether he acted
26 upon Ms. Cohen's verigied assurance that his
27 conduct was permissible and thus was lawful
28 under the circumstances in this situation?

Reasons for Granting the Petition

1) Verdict is Contrary to the Evidence:

2) Conviction is un-Constitutional:

Under; 28 U.S.C. 2254(d)(2); and (e)(1):

Miller-El. V. Dretke 545 U.S. at 266; and,

Wiggins v. Smith 539 U.S. 510, 528 (2003)

"The issue is whether the State Court engaged in a procedurally unreasonable determination of the facts in light of the undisputed evidence presented in the State Court proceeding?"

"Substantively unreasonable"

"The question thus posed - whether a 'Fact Finding' is unreasonable in light of the record evidence - whether the fact-finding was fairly supported by the State Court record, or, was the fact finding erroneous" as it is in this case.

The Court in Wiggins v Smith 539 U.S. at 528 uses the phrase; "clearly erroneous," to refer to "incorrect by clear evidence" in the record.

The jury's and the Appellate Court's finding is unreasonable determination of the undisputed facts in evidence because their factual determinations were made under a misapprehension as to the correct legal standard to be applied in view of the undisputed facts; The resulting factual

determinations will be deemed 'unreasonable' and thus, no presumption of correctness can attach to it. See; Taylor v Maddox 366 F. 3d at 1001.

Section 2254(d)(2) applies, where, as here, the State court does make factual findings, but does so under a misapprehension as to the correct legal standard. Obviously, where the State court's legal error infects the fact finding process, the resulting factual determination will be unreasonable in light of the uncontested facts in evidence. See; Calindo v. Warden 365 F.3d 691, 698 (9th Cir.)

In Wiggins v. Smith 539 U.S. 510 (2003) reversal was required due to the State Court's overlooking or misconstruing the evidence. As has been done in this case where the court intentionally refused to consider the undisputed facts and adhere to the law requiring an acquittal.

"When the State Court fails [Refuses] to consider key aspects of the record, it makes an unreasonable determination of the facts."

Quoting: Milke v Ryan 711 F3d at 1008-10.

"It is a pure question of law when the only dispute is over the legal effect and the significance of the undisputed facts," quoting; Schaefer Dixon v. Santa Anna (1969) 48 Cal App 4th 528.

In this case the verdict is clearly contrary to the weight of the evidence.

When as here, a motion for new trial is made on the ground that the verdict is contrary to the weight of the evidence: "The court need not view the evidence in light most favorable to the verdict; it may weigh the evidence and in so doing evaluate for itself the credibility of the witnesses. If the court concludes that, despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury." See; *Tibbs v. Fla.*, 457 U.S. 31; and *United States v. Lincoln* 630 F.2d 1313 (CA8 1980) at p 1316 and 1319.

Here there has been overwhelming evidence presented without any dispute disproving unlawful, criminal intent while proving lawful, consensual conduct thus proving no crimes had been committed by the accused.

Where a State appointed Appellate Counsel has failed to raise a significant and obvious issue, the failure can be viewed as deficient performance. If an issue which was not raised may have resulted in a reversal of the conviction, or an order for a new trial, the failure is prejudicial.

Were it legitimate to dismiss a claim of ineffective assistance of appellate counsel solely because we found it improper to review appellate counsel's choice of issues raised and argued on direct appeal, the Sixth Amendment right to effective assistance of counsel on appeal would be worthless.

When a claim of ineffective assistance of counsel is, as here, based on failure to raise and argue viable issues, the Court on review 'must' examine the trial record to determine whether appellate counsel failed to argue significant and obvious issues.

The issues which counsel failed to raise after appellant instructed him to bring the issues to the attention of the court for review, should then be compared to those which were raised. -- When the ignored issues are clearly valid and stronger than those presented -- the presumption of effective

1
2 assistance of counsel is overcome and
3 the court must conclude that appellant has
4 been denied the Due Process Right to effective
5 assistance of counsel.

6 A reviewing court can and should take
7 the time to evaluate appellate counsel's choice
8 of argument on appeal by examining the trial
9 record and counsel's appellate brief.

10 In conducting the examination, the court
11 should be guided by defendant's presentation
12 of those issues which allegedly should have
13 been raised by counsel on appeal.

14 Therefore; as in; Smith v. Robbins, 528 U.S. 259
15 and Gray v. Greer, 800 F.2d. 644

16 This court may remand to the California
17 State Supreme Court with instructions to
18 review the trial court record and determine
19 whether the issues petitioner claims his
20 appellate counsel refused to present for review
21 may have required finding favorable to the
22 appellant and whether the California Court
23 of Appeal's determination upholding the
24 conviction is patently contrary to the law as
25 it relates to the affirmed uncontested
26 testimony of both material witnesses, the
27 Prosecutrix and the Accused, who are the
28 only witnesses to provide evidence. or;

whether the Appellate court's decision and opinion was based upon an unreasonable, or invalid determination of the evidence, the confirmed, undisputed evidence...

This situation is addressed in the cases of; *Gray v. Greer* 800 F.2d 644, 646; and *Mason v. Hanks* 97, F.3d. 887; where in the court concluded that the appeal was "not" fundamentally fair. [e.g. Fundamentally unfair...] and that the resulting affirmance of appellant's conviction was not reliable because appellant might have won his appeal on the question that his counsel failed to pursue. Thus violating the appellant's Sixth Amendment Rights, made applicable to the States by way of the Due Process clause of the Fourteenth Amendment, which entitles a criminal defendant to the effective assistance of counsel not only at trial, but during his first appeal as of right. Nominal representation on an appeal of right - like nominal representation at trial - does not suffice to render the proceedings constitutionally adequate.

In; *Ramirez v. Tegels*, 413 F.Supp.3d 808, 2019 U.S. Dist. LEXIS 16520, 2019 WL 4721033.

The court ordered, the state must release

Ramirez from custody unless, within 90 days of the date of this decision, the state grants Ramirez a new appeal, --- in which he will have the opportunity to advance the argument that his appellate counsel should have raised. See: *Mason v. Horts...*"

where undisputed evidence establishes a complete defense to the action, and there is no conflicting evidence and thus nothing proper to be submitted to a jury, it is the duty of the court to dismiss the complaint:

39 Cal. 224:: *Geary v Simmons*; see also;
Somer v Meeker 25 N.Y. 361;

CONCLUSION

The petition for a writ of certiorari should be granted.

*to determine whether people have the right to
decide what they do in their private lives.*

Respectfully submitted,

Wesley Panigethi

Date: 4-25-24