

IN THE SUPREME COURT OF THE UNITED STATES

CARLOS MARTINEZ,
Petitioner,

v.s.

CALIFORNIA,
Respondent

Case number: _____

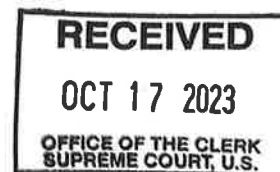
MOTION FOR GRANT LEAVE TO
FILE PETITION FOR A WRIT OF
CERTIORARI IN EXCESS OF
PAGE LIMIT PURSUANT TO THIS
COURT RULES 22.3, 33.1(d) and
39.

ON WRIT OF CERTIORARI TO THE
CALIFORNIA SUPREME COURT

APPLICATION TO

JUSTICE KAGAN FOR GRANT LEAVE TO EXCESS
PAGE LIMIT ORDER

Acting in Propria Persona CARLOS MARTINEZ
VALLEY STATE PRISON, P.O. Box 92, A1-9-1Low
Chowchilla, California, 93616



APPLICATION TO
JUSTICE KAGAN FOR GRANT LEAVE
TO EXCESS PAGE LIMIT IN THE
ATTACHED PETITION FOR A WRIT
OF CERTIORARI

Applicant CARLOS MARTINEZ, applies to Justice Kagan, the Honorable Circuit Court Justice, pursuant to Rules 22.3 and 33.1(d) for an order granting Applicant's request for leave to file his Petition for a writ of Certiorari exceeding the page limitation of 40 pages.

Rule 33.1(d) permits Applicant to address an application to a circuit justice even though normally an application to exceed the page limit would not warrant the attention of the Court, see Rule 33.1(d), but in this case it is necessary to file the Petition for a writ of Certiorari exceeding 40 pages because:

1. In this case even before filing the Information document charging Applicant of the charges and prior convictions allegation the State of California (California) begin violating the U.S. Constitution and Applicant's constitutional rights by transforming or separating a single-indivisible-1992-prior conviction of two burglaries into two separate new strikes prior conviction under a new-1994 habitual criminal statute, which originally under the annexed California law (Penal Code section 667(a)) at that year of 1992 qualified as only a single serious prior conviction and it was defined as a serious prior conviction, not as California afterwards changed the definition and upgraded the criminality of conduct of that serious prior conviction and changed also the standard of punishment from five years maximum under the annexed P.C. § 667(a) to the minimum of 25 years to life in prison which Applicant served already more than 25 years and waiting for the Cal. Board

of Parole Hearings' discretion to be released on parole, so since the filing charges against Applicant to the date the Cal. Superior court imposed 31 years to life sentence on the current conviction for committing a single burglary and taking into account the 1992 prior conviction California violated all the guarantees of Applicant to have a fair trial and a fair sentencing hearing and for consequence it is necessary to explain to this Court step by step in which all the clauses of the U.S. Constitution were violated.

2. Furthermore, a fundamental miscarriage of justice occurred in this case, first as stated above Applicant was a victim of miscarriage of justice by having appointed an ineffective counsel at trial and an unfair trial, and thereafter the California Courts and federal courts denied review of the merits of this case, specifically Applicant was trapped by California and the Federal District Court when California alleged in the federal court that Applicant failed to exhaust three claims and assured the federal court that Applicant had available remedies of exhaustion and then come back to federal court and refile a new federal petition, the Court give two options to applicant, delete the three claims and proceed with the first Petition or go and exhaust remedies and come back. The Applicant elected to go and exhaust and come back. After exhausting Applicant filed a new federal Petition and California alleged that the second Petition was untimely, however after two years of litigation the federal court held that the Petition was timely on December 2003 and was submitted for decision. At this 2003 year and previously on 2001 this Court decided *Duncan v. Walker* holding that a pending federal petition in federal court did tolled the one year limitation of 28 U.S.C. § 2244(d)(1) and California was presumed that it had knowledge of the *Duncan's* decision, but elected not to present the defense-limitation, however the federal district abused of its discretion and sua sponte dismissed the second petition as untimely on November 2005, two years after the case was submitted for decision and

therefore, is necessary to put all these facts in the Petition for writ of Certiorari, this case is an extraordinary case in which Applicant has been a victim of miscarriage of Justice since the filing of charges to July 12, 2023 in which California Supreme Court denied Applicant's second round of state habeas corpus Petition.

3. On the face of this case shows that Applicant at first glance is innocent of the charges under the new 1994 habitual criminal statute because the field governing the 1992-prior conviction is already occupied by the old 1982-habitual criminal statute which is that one California annexed to that 1992 prior conviction.

4. As the court will see on the face of the record applicant was convicted as an habitual criminal offender under two categories just based on the same 1992 prior conviction - same case number under the old and new habitual criminal statutes without the evidence required by federal and state law. As this court has repeatedly that the "record of the judgment of conviction" or "the plea colloquy" is necessary to prove any alleged prior conviction, but guess what, California only presented a fingerprint card with a photo under the name of Carlos Martinez showing only that he was received at Wasco State Prison, California and an abstract of judgment with the name of Pedro Calderon, these three pieces of evidence are the "commitment document" and are not part of the "record of the alleged 1992 prior conviction", this is the unique evidence that supported the imposing of 30 years to life, so there is necessary to place everything on the table of this court.

Therefore, for the above stated reasons Applicant prays that this honorable justice grants an order permitting the filing of the attached Petition for writ of Certiorari and the forma pauperis Motion.

I declare under the penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed at Valley State Prison at Chowchilla, CA. this 9th day of October, 2023

Carlos Martinez

4 Applicant and Declarant