ORIGINAL

No. 24-5496

IN THE

SUPREME COURT OF THE UNITED STATES

JOSE MANUEL GALAN — PETITIONER
(Your Name)

vs.

STATE OF CALIFORNIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE 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

Jose Manuel Galan, CDC#BF3487
(Your Name) Valley State Prison, C4-16-3L
P.O. BOX 92

(Address)

Chowchilla, California 93610

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the admission of evidence of child sexual abuse accommodation syndrome ("CSAAS") violated Petitioner's due process rights?

2. Did the trial court erroneously provided jury instructions on the current version of Cal. Penal Code § 288.2 in violation of the ex post facto clause?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The parties to the proceeding below were the Petitioner, Jose Manuel Galan, and respondent the People of the State of California, represented by the office of the Attorney General of California.

RELATED CASES

Petitioner was convicted on January 12, 2018 in the Superior Court of California, County of Orange, People V. Jose Manuel Galan, Case No.12CF3565, and a copy of the Abstract of Judgment appears at Appendix H.

The California Court of Appeal affirmed on June 15, 2020 in an unpublished opionion. People V. Galan, June 15,2020, No.G055889, 2020 Cal. App.Unpub. LEXIS 3697(2020), and a copy of the opionion appears at Appendix G.

The California Supreme Court denied review in an unpubished decision on September 9, 2020, People V. Galan,Sept. 9,2020, No. S263536, LEXIS 6216,and a copy of the decision appears at Appendix F.

The United State District Court, Central District of California denied the Petition. The decision was on August 17, 2022, Galan V. Allison, 2022, No.8:21-cv-02019-CAS-JDE, U.S.Dist. LEXIS 148469, WL3538711. A copy of the decision appears at Appendix E.

The United States Court of Appeals for the Ninth Circuit denied the request for a certificate of appealability. The decision was on December 15,2023, Galan V. Allison, 2023, No.22-55836, U.S. App. LEXIS 33336,(9th Cir. Cal., Dec. 15,2023), and a copy of the order appears at Appendix A.

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OTHER

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

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is
Galan V. Allison,No.22-55836,U.S.App.
[X] reported at LEXIS 33336,(9th Cir.Cal.,Dec.15,2023); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is
Galan V. Allison,No.8:21-cv-02019-CAS-JDE,
[X] reported at U.S.Dist.LEXIS 148469,WL3538711(2022); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix F to the petition and is
People V. Galan,Sept.9,2020,No.S263536,
[X] reported at LEXIS 6216; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the California Court of Appeal,Fourth Dis. court appears at Appendix G to the petition and is
People V. Galan,No.G055889,(2020)Cal.App.
[X] reported at Unpub.LEXIS 3697; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was December 15, 2023.

[X] 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 _____. 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

The Sixth Amendment to the United States Constitution:

In all criminal procecutions, the accused shall enjoy the right to speedy and public trial, by an impatial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Caunsel for his defence.

The Fourteenth Amendment to the United States Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, section 9 to the United States Constitution:

No Bill of Attainder or ex post facto Laws shall be passed.

Article I, section 10 to the United States Constitution:

No State shall enter into any Treaty, Alliance, or confederation; grant Letters of Marque and Reprisal; coin money; emit Bills of credit; make any thing but gold and silver coin a Tender in payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the obligation of contracts, or grant any Title of Nobility.

STATEMENT OF THE CASE

Petitioner adopts, and incorporates by reference the "Facts" set forth in the Opinion Attached to"Appendix G" for the purposes of this Petition for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

I.

The admission of evidence of child sexual abuse accommodation syndrome ("CSAAS") violated Petitioners's Due Process Rights because the doctrine of precedence is preventing courts from revisiting the validity of CSAAS evidence. Child Sexual Abuse Accommonation Syndrome (CSAAS) has been regularly introduced in criminal trials in California since it was developed in 1983 by Dr. Roland Summit based on his personal observations. It was quickly adopted by prosecutors who introduced it via expert testimony and upheld in the Courts of Appeal who generally ruled it was not subject to the Kelly-Frye test. Frye V. United States (D.C. Cir.1923)293 F.1013,1014, which sets forth the reliability standard that must be met before scientific evidence can be presented to the jury. The subsequent reaserch has generally not found empirical data supporting Dr. Summit's claims in CSAAS. Because the rules of precedence bind the lower courts, the propriety of the current status quo permitting admission of CSAAS will not be addressed unless this court steps in. Petitioner therefore requests a Writ to determine whether CSAAS evidence should be admitted even for the limited purpose of countering popular misconceptions about child abuse. Second, Petitioner requests a Writ to determine whether CSAAS should be subject to th the Kelly-Frye test, and if so, whether CSAAS should be excluded because it has never gained general acceptance in the scientific community. See: App. G. The introduction of CSAAS evidence

violates the due process right to a fair trial because it unfairly bolsters the credibility of child abuse allegations and because it is subject to being improperly used as proof that abuse occurred.

Petitioner objected that CSAAS evidence violated his right to a fair trial.

Defense counsel objected repeatedly that CSAAS evidence violated his right to due process. U.S. Const.,6th, and 14th Amend.; Estelle V. McGuire(1991) 502 U.S. 62,72[112 S.Ct.475,116 L.Ed.2d 385]. because it essentially tells the jury to ignore any inconsistencies in a victim's testimony:

It is general. It is the worst type of evidence for a person to defend against because it's not something that you can put someone on the stand and ask. They put out these generalities, and say things like, yeah, it is common for a kid to be inconsistent. Guess what, when someone is not telling the truth, they also can be inconsistent, especially when they are admitting they are inconsistent. By inconsistant, I mean out and lie. I don't mean not remembering where she was when she got molested. 1 RT 295-296[objecting at motion in limine].

I don't know how this information is about to help the jury in any way, other than to deny Mr. Galan of the right to due process, if it is to be used at all-essentially, it is telling the jury to ignore any inconsistencies because that's all consistent with sexual abuse being accurate or that sexual abuse being accurate or that sexual abuse was actually occurring. I think that's contrary to due process, particularly in this case, where it doesn't assist the jury in any way, shape or form.

5 RT 1617-1618[arguing at time Dr. Jodi Warrd to be called].

Over defense objection, the prosecutor was allowed to call Dr. Jody Ward who testified extensiveely about CSAAS.

Dr. Ward who testified as defense counsel anticipated-stating that because of the imbalance in power between child and abuser, chiledren must accommodate in some way-which could be acquiescence and even active participation in the abuse. 5RT 1628-1629. But Dr. Ward also testified children respond in many different ways, some acting out or angry, withdrawn or depressed, maybe with no signs at all. 5 RT 1636.

With respect to disclosure, Dr. Ward testified that children might provide more explicit details over time. 5 RT 1632,1637. Dr. Ward testified these details might be more accurate as children remember. 5 RT 1637. But Dr. Ward also testified a child might lie about details to hide their feeling of culpability 5RT 1637.might forget details over time 5 RT 1634 and also might actively try to forget details and not be able to accurately remember 5 RT 1643. Dr. Ward was also permitted to testify about "grooming" behavior over defense objection. 5 RT 1644.

The prosecutor said the jury should ignore her lies that force was involved. 6 RT 1833. The Prosecutor said the jury should ignore the fact that she appeared happy with appellant.6 RT 1921.

In 2018, the New Jersey Supreme Court prohibited admission of CSAAS testimony on every topic but delayed disclosure after conduting a thorough analysis of the lack of general scientific acceptance of CSAAS. State V. J.L.G.(NJ2018)234 N.J.265[190A.3d 442].

The Court of Appeal inially declined to address Petitioner's claim that CSAAS does not satisfy the Kelly-Frye test bacause it was not raised below. See;App.,G, Opn. 14-15. The Court of Appeal also stated Kelly-Frye does not apply to CSAAS evidence because it is not a new scientific method of proof as to an individual victim. APP. G, Opn.16. Petitioner are encouraged to advocate for changes in the law in appelate court where argument can be made supporting the change. Stovall V. Denno (1967) 388 U.S. 293,301[87 S.CT 1967,18 L. Ed2d 1199]. As the Court of Appeal opinion indicates, existing law precludes defendants from being heard on this unless this court grants this Writ.

II.

The trial court erroneously provided jury instructions on the the current version of Cal. Penal Code § 288.2 in violation of the ex post facto clause. Petitioner was charged with two counts of distributing pornography to a minor in Count 1 and 7 Cal. Penal Code § 288.2(a). 1CT 212,214. Both counts were alleged to have occurred before December 10, 2012. 1 CT 212,214. However, the trial court erroneously gave the CACRIM instruction for the current version of the statute rather then the version of the statute in effect at the time of the alleged offenses. The prosecutor also argued for conviction based on the current wording of the statute. The jury ultimately conviced Retitioner of one count of distributing pornography pursuant to the erroneous statute Count 7. 6 RT 1981, 1984; 1 CT 115; 2CT 409. Petitioner contends that bacause the current version of the statute is brosder then the version in effect in 2012, the error violated Petitioner's right to due process and his

conviction must be reversed.

The Court of Appeal "agreed"that the instruction may have improperly omitted the concept of seduction from the jury, an element of the former crime not referenced in the current vesion of the statute. Appendix G, Opn. at 22.

Petitioner requests that this court grants this Writ.

The criminality of Petitioner's conduct must be judged based on the law in effect at the time of the alleged offense.

Retroactive application of a statutory amendment which expands the scope of an existing crime violates the ex post facto clauses of the state and Federal Constitutions, which offer protection from laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." Collins V. Youngblood (1990) 497 U.S. 37,43 [110 S. Ct. 2715,111 L.Ed.2d 30]; United States Constitution, art. I, §§ 9,10; Cal. Penal Code § 3.

Therefore, to avoid imposition of an ex post facto law and honor the presumption that statutes operate prospectively, Petitioner's prosecution was necessarily governed by the version of the statute in effect at the time of the offenses- between August and December of 2012.

The erroneous instruction was prejudicial and requires reversal of Count 7. Because the erroneous instruction incorrectly defined an element of the offense, it "falls within the broad category of trial error subject to Chapman V. California 386 U.S. 18 (1967) review". The test is "whether it appears' beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Neder V. United States (1999) 527 U.S. 1,15[119 S.Ct. 1827,144 L.Ed.2d 35].

Annette did not testify to any attempt to engage in intercourse. According to Annette, Petitioner once tried to touch her brests. 2 RT 448. He once tried to tough her crotch over her clothes. 2 RT 493. He once put his hands down her pants and touched her outside her vagina. The jury convicted Petitioner of attempted penetration and simple battery for this conduct, but found Petitioner not guilty of actual penetration.2 RT 498-500; 6 RT 1982-1984; 1 CT 117. He also once exposed himself to her while she sat between him and her mother on the couch. 2 RT 507. Finallt, One time when she was in the garage, stretching, Petitioner pulled her shorts down and triad to lick her vagina. 2 RT 578,586. While an intent to commit this sort of conduct would satisfy the current version of section 288.2, it is not sufficient to demonstrate an intent to seduce. There was no evidence that Petitioner ever attempted any form of sexual intercourse. The only evidence related to intercourse at all was a single comment on a single occasion when they were watching TV and Annette pointed out babies on the screen; Petitioner said "Oh maybe we will have one I and you." 3 CT 485;2 RT 436,438.

Accordingly, the prosecutor did not argue Petitioner showed Annette pornography with an intent to seduce her. Instead, the prosecutor relied on the lesser conduct of touching an intimate body part that falls under the broad scope of the current version of the statute. The prosecutor described Count 7 as "showing the pornography to Liz, Annette, on the iPod." 6 RT 1856. The Prosecutor explained argued the intent element was met," So, he is showing her the pornography because at some point down the road he planning to touch her vagina, for example, or touch her breasts."

6 RT 1857-1858. The prosecutor did not point to any evidence of an intent to engage in intercourse.

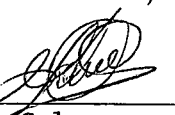
In light of the evidence and the prosecutor's argument the State cannot prove beyond a reasonable doubt that the jury would have convicted Petitioner had they been properly instructed with the elements of the offense as it existed in 2012. Petitioner's coviction of section 288.2(a)(1) in Count 7 must be revered.

Therefore this court should grant Writ of Certiorari. The State Court unreasonable applied Chapman V. California 386 U.S. 18,24 (1967), to the State Court evidence, Petitioner is entitled to relief on his Ex Facto and Due Process questions. See: Appendix A through H.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Jose Manuel Galan
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Date: 8/25/2024