

24-5725

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

SEP 30 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOSE GOMEZ

— PETITIONER

(Your Name)

vs.

STATE OF WASHINGTON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Federal Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Jose Gomez

(Your Name)

P.O. Box 888

(Address)

Monroe, WA, 98272

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Was Gomez' Sixth Amendment right to effective assistance of counsel violated when his counsel refused to follow his instructions and failed to accept the hung jury, and failed to move for mistrial under the Strickland standard?
2. Was Gomez' Sixth Amendment right to effective assistance of counsel violated when his counsel would not let him or advised him to not testify on his own behalf under the Strickland standard?
3. Was Gomez' Sixth Amendment right to effective assistance of counsel violated when his counsel advised him to not take his medications for depression and pain meds, which is an issue of first impression for this Court under the Strickland standard?
4. Was Gomez' Sixth Amendment right to effective assistance of counsel violated when his counsel failed to present an entrapment defense under the Strickland standard?
5. Was Gomez' Sixth Amendment Right to a Fair Trial and Fifth and Fourteenth Amendment Due Process rights violated when the trial judge impermissibly interfered with the verdict when, on two occasions the presiding juror reported that the jury could not reach a unanimous verdict as to all counts, the judge directed the jury to continue its deliberations rather than granting a mistrial?

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

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) -

Bobby V. Van Hook, 558 U.S. 4, 7, 130 S.Ct. 13, 175 L.Ed.2d 255 (2009) -

Maryland Vs Kulbicki, 577 U.S. 1, 14, 136 S.Ct. 2, 193 L.Ed.2d 1 (2015) -

Mitchel v. Louisiana, 350 U.S. 91, 101, 76 S.Ct. 158, 100 L.Ed. 83 (1955) -

Barnes V. Louisiana, 590 U.S. 83, 140 S.Ct. 1390, 206 L.Ed.2d 563 (2020) -

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TABLE OF AUTHORITIES CITED

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<u>Chevron Oil v. Huson</u> , 403 U.S. 97, 92 S.Ct. 349, 355, 30 L.Ed.2d 296 (1971)	296

STATUTES AND RULES

Supreme Court Rule 10(c)

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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 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 2 to the petition and is

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

☐ For cases from **state courts**:

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

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

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

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 26, 2024.

☐ 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: August 26, 2024, 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 _____ (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

U.S. Const. Amend. 5 (Fifth Amendment)

U.S. Const. Amend. 6 (Sixth Amendment)

U.S. Const. Amend. 14 (Fourteenth Amendment)

STATEMENT OF THE CASE

Gomez began an online communication on the dating app "Badoo," with undercover cop acting under the name "Sam," RP 446, 464. "Sam" indicated she was 13 years old, and staying with a friend in Olympia, RP 471-72. Gomez asked if she liked older guys and if she had already had sex with an older guy? RP 472, 474. Gomez asked, "How old is your friend, the one you are staying with?" And "Sam" responded "she's 12," RP 478. Gomez asked if she liked older guys? RP 478. Gomez continued having a sexually explicit text conversation with "Sam" and discussed whether adults were in the residence, RP 484.

The conversation discussed Gomez bringing alcohol and Gomez describing having sex with both girls, RP 485-86. Gomez continued discussing with "Sam" to arrange to meet with the girls, RP 485-86. The detective gave him an address for a business to go to, RP 490.

Gomez said he was in fifth and said he had condoms, RP 491. After saying he was on his way, Gomez then indicated that he had car trouble on I-5 and asked for the phone number of "Audrey," "Sam's" fictitious 12-year-old friend, RP 493. Gomez asked to meet a different day, RP 495. Gomez was also texting with the fictitious persona "Audrey," who was "Sam's" 12-year-old friend, RPS09-10. The conversations with "Audrey" were also explicit, RPS11, S64-65, S70.

Eventually, Gomez again arranged to meet with both girls for sex and was given the address of a gas station to go to and told to send a picture when he got there, RPS20-21. Gomez provided the picture at the gas station and law enforcement worked to locate him, RPS22, S45-46. At that point, Gomez was stopped by law enforcement and arrested, RPS52. Law enforcement located three condoms during a search of Gomez incident to his arrest, RP 620.

As a result of the investigation, Gomez was charged with two counts of attempted rape of a child in the second degree and two counts of felony communicating with a minor for immoral purposes through electronic communications CP 4-5. The jury found Gomez guilty as charged on counts two through four but were unable to reach a verdict on Count One, RP 779-780, 798-99; CP 36-39. At sentencing, the State moved to dismiss Count One, RP 812. The trial court sentenced Gomez to a low-end sentence of 109.5 months to life on Count Two and high-end sentences on Counts 3 and 4, RP 828, CP 80-96. The trial court also imposed lifetime community custody pursuant to RCW 9A4A.507 CP 85.

Gomez has procedurally exhausted all grounds through the State and Federal Courts, See Appendices.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision conflicts with the Strickland, Bobby, Michel, and Kulbricki decisions. The panels decision conflicts with the longstanding Supreme Court precedent on Ineffective Assistance of Counsel that indirect efforts to persuade the Courts, Gomez is entitled to the same protections as this Courts precedents in Strickland V. Washington, Bobby V. Van Hook, Michel V. Louisiana, and Maryland V. Kulbricki, under the Equal Protection Clause of the Fourteenth Amendment, since he is similarly situated.

State courts and Ninth Circuit violated Rule 10(c) when they decided important federal questions that conflict with relevant decisions of this Court. These are important issues to other inmates, and neither of Gomez' issues 3 or 5 have clear precedent cases decided in this Court, and being "issues of first impression," judicial review is required. Chevron Oil V. Huson, 404 U.S. 97, 92 S.Ct. 349, 359, 30 LEd 2d 396 (1971).

First, issue 3 and 5 will both establish a new principle of law, either by overruling clear past precedent on which litigant may have relied or on by seeing an issue of first impression whose resolution was not clearly foreshadowed.

Gomez' attorney failed to follow his requests and move for a mistrial when the jury was hung. Gomez' attorney failed to allow him to testify on his own behalf in violation of his Fifth and Sixth Amendment rights. Gomez was Ordered to not take his medications by his attorney. Gomez' attorney fails to present an entrapment defense he requested. And the trial judge impermissibly interfered with the jury verdict when the presiding juror twice informed the judge they could not reach a unanimous verdict, and both times the judge Ordered them to keep deliberating. This violated Gomez' Sixth Amendment right to a fair trial, and Fifth and Fourteenth Amendment rights to Due Process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Jose Gomez
Jose Gomez, Petitioner

Date: September 26, 2024