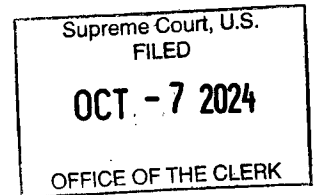


24-5823 ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES  
Washington D.C.



Jose Bernazard Prose PETITIONER  
(Your Name)

VS.

Superintendent, Mark Miller — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United states Court of Appeals For the Second Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jose Bernazard #16A2260  
(Your Name)  
GREEN HAVEN Corr Facility  
P.O Box 4000  
(Address)

Stormville, NY 12582  
(City, State, Zip Code)

N/A  
(Phone Number)

### QUESTION(S) PRESENTED

- I The People Failed To Prove by Clear and Convincing Evidence That Petitioner Caused Complainant witness To Refute Her Prior statement to a grand Jury and a Prosecutor Recorded statement Implicating Petitioner. When The Evidence At the SIROIS Hearing showed that the Complainant witness Decided on her own to help Petitioner and was not under His Control SEE: Crawford v. Washington 541 U.S. 36 (2004) Pursuant to U.S. CA Constitutional Amendments 6<sup>th</sup> and 14<sup>th</sup>.
- II The Prosecution presented legally insufficient Evidence to Convict Petitioner of Attempted Murder 2nd Degree. When the Court submitted same intent Element that Petitioner was acquitted by the Jury of Attempted First-degree murder having the same essential Element that was charged for the Second degree murder Convicting Petitioner. The "verdict repugnant" as charged to the Jury is conclusive as to a necessary-Element of the other Crime, that share an Identical Element, a mixed guilty/not guilty verdict may be repugnant and will be set aside. SEE People v. Demott, 188 AD 2d, 1068 (1992). People v. Loughlin, 76 NY2d 804, 806. Thereafter Petitioner Petitioned For a Habeas corpus writ Asserting His Appellate Counsel Failed to raise the Insufficiency on All the Counts in totality. Petitioner would Argue that his Appellate Counsel Argued on Direct Appeal the sufficiency of the Evidence on the Second degree Assault Count. Purposely Caused Prejudice by not Fully Reviewing the insufficiency of Evidence before the Jury. Rendering Appellate Counsel ineffective Assistance during Petitioner's initial Review collateral Proceedings may establish cause for a prisoner's procedural default SEE Martinez v. Ryan, 566 U.S. 1 (2012), under the standards of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed 2d. 674 (1984). Here the Trial Records demonstrate that the underlying Ineffective Assistance of trial counsel Failed to preserve Petitioner's due process not Requesting A trial order dismissal on Petitioner Verdict At the End of Trial proceedings.

#### QUESTION(S) PRESENTED

III Petitioner Asserts that the District Court Decision & Judgement and the 2nd Circuit Court of Appeals Denial to Afford Petitioner a certificate of Appeals was an unreasonable Determination of the Facts during Petitioners state collateral proceedings that Raised his Confrontational Clause Violation pursuant to Crawford Rule and Guided by the 14th Amendment due process and Equal Protection of the Law deprived Petitioner a Fair trial.

## 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:

Jose Bernazard #16A2260  
GREEN HAVEN Corr. Facility  
P.O. BOX 4000  
STORMVILLE, N.Y. 12582

STATE of New York  
Office of the Attorney General  
28 Liberty Street  
New York, New York 10005  
C/O Asst Counsel For Respondent  
Margaret A. Cieprisz

# TABLE OF AUTHORITIES CITED

## CASES

## PAGE NUMBER

People v. Swinson, 38 Misc.3d 1220(A) (2013).  
 People v. Dobarry, 25 N.Y.3d 161 (2015).  
 Crawford v. Washington, 541 US 36 (2004).  
 People v. Demott, 188 A.D.2d 1068 (1992).  
 People v. Haughlin, 78 N.Y.2d 804, 806.  
 People v. Baldi, 54 NY 2d 137 (1981).  
 Martinez v. Ryan, 566 U.S. 1 (2012).  
 Whitley v. Ercole, 642 F.3d 278 (2011).  
 Perkins v. Herbert, 596 F.3d 161 (2010).  
 Cotto v. Herbert, 331 F.3d 217 (2003).  
 Pointer v. Texas 380 U.S. 400 (1965).  
 Miller-El v. Cockrell, 537 U.S. 322 (2003).

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## STATUTES AND RULES

CPL § 470.05 (2).  
 CPL § 470.15 (5).  
 CPL § 670.10  
 P.L. 10.00(9).  
 N.Y. Const., Art I § 6  
 U.S. Const. Amend V 5<sup>th</sup>  
 U.S. Const. Amend VI 6<sup>th</sup>  
 U.S. Const. Amend VIII 8<sup>th</sup>  
 U.S. Const. Amend XII 14<sup>th</sup>  
 CPL 300.30 (5).

## OTHER

SEE: STATE Records point II

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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 A to the petition and is  
☒ reported at 2nd circuit decision/judgment; 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 B to the petition and is  
☒ reported at 2024 WL 142235; 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 C to the petition and is  
☒ reported at 36 N.Y. 3d 1095 (2021); or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the 188 AD 3d 1239 court appears at Appendix D to the petition and is  
☒ reported at 50 Misc. 3d 1209; 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 5, 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: N/A, 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 N/A (date) on N/A (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 March 18, 2021.  
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on N/A (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1) U.S.C.A. Const. Amend 6,
- 2) U.S.C.A Const. Amend 14.
- 3) U.S.C.A Const. Amend 5.
- 4) N.Y. Const. Art 1 § 6.
- 5) USCA Const. Amend 8.

## STATEMENT OF THE CASE

On July 16, 2013, Petitioner was having an argument with his then girlfriend Ms. Christina Rodriquez, during this argument, off – duty policeman Mr. Koch discharged his weapon four times and petitioner was struck twice. One of those four shots was self-inflicted and in a internal affairs report (Exhibit-A). An investigation was done and it was found that Mr. Koch's testimony was a lie. During trial and on cross-examination, officer Koch recanted his testimony and told another version of the events that took place on the night in question. The problem with this new version of events, is that during the suppose struggle petitioner was trying or took position of the weapon from Mr. Koch. Therefore, this version is also a lie because DNA testing proves that petitioner's DNA or fingerprints were not on the gun.

Petitioner admits to falling in love with Ms.Christina Rodriquez and proposed marriage at Rikers Island. During this stressful time petitioner was seeking comfort from Ms. Rodriquez and was only asking her to tell the truth of the events that took place on the night in question. Ms. Rodriquez had plenty of time to think about the events that took place and was tired of being harassed by the District Attorney's office. When the District Attorney's office recognized that Ms. Rodriquez was tired of the lies and only wanted to tell the truth, they asked for a Sirois Hearing. This tactic by the District Attorney's Office barred Ms. Rodriquez from telling the truth. If Ms. Rodriquez had been able to testify, the District Attorney's Office would have had to dismiss this case or at the very least downgraded the charges. Instead petitioner's Constitutional Rights were violated, under the Confrontation Clause and the trial court refused to let petitioner cross examine the witness.

Therefore, petitioner asks this court for reconsideration and to lay these arguments at the feet of Lady Liberty and consider this objection and argument, to be viewed through a wider lens of Justice.

## REASONS FOR GRANTING THE PETITION

Petitioner Asserts that Lower Court state Ruling deprived A substantial Constitutional Right to Confrontation and New York policy For narrow exceptions must **NOT** be expanded and Applied to circumstances in which the Facts given rise to the exception are Absent People v. Maher 89, N.Y. 2d 456, 461-62 (1997). The Court's put A paternalistic Approach Also usurped the Role of the Jury because it presupposed that the Complainant witness initial statements were true and the subsequent statements Recantations were False, since neither statements nor the Grand Jury testimony were subject to any cross-examination our legal system's primary truth seeking device the Jury heard those statements untested in any way by defense counsel and were never provided with an opportunity to evaluate the truthfulness of those subsequent statements By shielding these Facts From the Jury and Denying Petitioner's Right of Confrontation, the Court put paternalism Ahead of its role "protect the truth-seeking process" Geraci 85 N.Y. 2d at 367. Herein Petitioner Case is similar to the People v Swinson, 38 Misc.3d 1220(A) (2013). Same Frame structures Findings of Facts. Petitioner's Claims Are not procedurally barred they were raised during state collateral proceedings see: Martinez v. Ryan, 566 U.S. 1 (2012). The District Court's Ruling and Decision is clearly Erroneous. Therefore, Petitioner Conviction

(5)

Should be reversed and A New TRIAL ordered.

#### CONCLUSION

The petition for a writ of certiorari should be granted. in the interest of Justice.

Respectfully submitted,

Jose Berenguer

Date: October 1, 2024