24-5949

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

FOR THE NINTH CIRCUIT

ANASTACIO G. RAMIREZ, — PETITIONER
(Your Name)

vs.

MARTIN GAMBOA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANASTACIO G. RAMIREZ,
(Your Name)

AVENAL STATE PRISON P.O. BOX 905
(Address)

AVENAL, CALIFORNIA 93204
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. In applying Cullen v. Pinholster 131 S. Ct. 1388 (2011) to a habeas corpus claim based on whether or not the section 2254 (d)(1)condition to accept the state Court's descriptions of the facts or to uphold its application of law without independently evaluating what supports (or does not support) the basis justifies (or does not justify) the Court's application of the law is inconsistent with the resposibilities of a federl habeas court under section 2254 (d). [D]oes the district court have the duty to obtain that record itself under section 2254(g)?

2. In applying Harrington v. Richter, 562 U.S. 86 (20011), to a habeas corpus claim based on the state's unreasonable application of the Constitutional standard for effective assistance of counsel in violation of 28 USC § 2254 (d)(1), can the federal court "hypothesize" about possible "tactical choices" trial counsel might have made on the basis of facts which have been unreasonably determined by the state court, in violation of subsection (d)(2).

3. In applying Harrington v. Richter, 562 U.S. 86 (2011), to a habeas corpus claim based on the state's unreasonable application of the Constitutional standard for effective assistance of counsel in violation of 28 USC § 2254 (d)(1), can the federal court "hypothesize" about possible "tactical choices" trial counsel might have made on the basis of facts which are, pursuant to subdivision (e)(1), undermined by clear and convincing evidence in the state court record?

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:

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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 _____; 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

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[X] is unpublished.

The opinion of the SECOND APPELLATE DISTRICT DIVISION SIX court appears at Appendix D to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was JULY 31, 2024.

[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 OCT 11, 2017. A copy of that decision appears at Appendix C.

[ ] 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

A. AEDPA [28 USC § 2254], U.S.C. § 636 (b)(1)(A).

B. FIRST AMENDMENT (ACCES TO COURT).

C. FIFTH AMENDMENT (EQUAL PROTECTION).

D. SIXTH AMENDMENT (AIC).

E. FOURTEENTH AMENDMENT (EQUAL PROTECTION).

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ROSE v. LUNDY, 455 U.S. 509 (1982).

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Jones v. Wood, 114 F.3d 1002 (9 Cir. 1997)

STATEMENT OF THE CASE

I ANASTACIO G. RAMIREZ, by (PRO-PER) declare that he is incarcerate at AVENAL STATE PRISON humbly and with all due respect came to this Court here by to Appeals from the judgment of the NINTH CICUIT COURT OF APPEAL, Afirmed the petition for wirt of habeas corpus. which was dismissed the action with prejudice by Hon. PHILIP S. GUTIEREZ United States District Judge.

the petitioner was convicted of two counts of unlawful act with a child 10 old and under Cal. Pen Code §288.7(a) an one count of cotinuous sexual abuse Cal. Penal Code § 288.5(a), the petitioner was sentenced to State Prison for two cosecutive terms of twenty five years (25) to life plus determinate term of tweve years (12)years.

On July 25, 2017, in case number B279359, the California Court of Appeal affirmed the judgment in an unpublished opinion. See Appendix D.

on Agust 8, 2017, the petitioner Constructively filed a State Court Habeas petition in California Supreme Court case number S243708. The petition was summarily denied. Please see Appendix C.

On April 30, 2018, Case No. CV 18-03628-PSG (ADS), the petitioner filed a petition for writ of habeas corpus in the Central District Court under 28 U.S.C. § 2254. The petition was summarily denied with prejudice in an unpublished opinion. Also the District Court denied a Certificate of Appealability (hereafter "COA"), but the Ninth Circuit issue a COA was whether the magistrate judge exceeded her authority in determining that Ramrez's April 30, 2018, petition was a mixed petition, subject to dismissal under Rose v. Lundy, 455 U.S. 509 (1982), which resulted in Ramires's voluntary dismissal of two of his claims.

The date on which the United States Court of Appeal decide the instant case was July 31, 2024 Case Number21-55770. The petition was dismissed under procedure

stablished in Rose v. Lundy no claim made in Ramirez's 2018 petition was adjudicate during the time it was pending in federal court. As such, the 2018 petition should not have been dismissed on the grounds that it was Mixed petition with prejudice. Because Rose v. Lundy, supra under law is suppost to be applied as a streihforword rule in dismissal of a habeas corpus petition on procedural ground of which is prejudice fudamentall flawed at its core. see Rose v. Lundy, 455 U.S. 509, 71 L. Ed 2d 379 (1982) and see Appendix D.

In the instant case the District Court simply determine that petitioner could not make a colorable claim of Ineffective Assistance of Counsel (IAC) and therefor he was not entitle to an evidentiary hearing. [State's purported determination of the facts without afair opportunity for petitioner's to present evidence violates AEDPA].

However, Mr. Ramirez contends that if the role of federal habeas court were simply to accept on faith the State Court's description of the facts free from any obligation to review the record on which the State Court bases its judgement, there would harly be a reason to have a federal habeas statute at all. The petitioner fails to understend how a federal habeas court can conduct a meaningful, sufficient, review without a transcrips of trial. The Rule 4 explains that the District Court must order transcripst, sentensing records, and copies of State Court opinions, among other materials, for its consideration if they not yet included with the petition. Please see Avisory Cmte. to R. 4.; 28 USC §753 (f); and Jones v. Wood, 114 F.3d 1002 (9th Cir. 1997); also Nasby v. McDaniel 853 F3d 1049 (9th Cir. 2017).

Futhermore, nowhere in the habeas statute is there any suggestion that the district court could not or should not examine the state court record. In fact,the statute expressly provides that the official records of State Court shall be admissible in the federal court proceeding, 28 U.S.C.S. § 2254 (g). Nor is there anycase that holds or even hints that the district court could not or should not examine the record. To the cotrary: Two circuits have expressly held that the Anti-Terrorism and Effective Deth Penalty Act (AEDPA). Requires federal coutrs to do so.

REASONS FOR GRATING THE PETITION

The petitioner humbly and with all due respect present his reason(s) to thi Court.

1. In applying Rose v. Lundy, 455 U.S. 509, 71 L. Ed 2d 379 (1982) and AEDPA to a habeas corpus claim based on the District Court unreasonable aplication of the Constitutional standard for the "total exhaustion" Rule impair the petitioner's right to relief, a District Court was require to dismiss petitions containing both exhausted and unexhausted claims with out prejudice.

The petitioner believe the total exhaustion rule impair the petitioner's right to relief, a District Court was require to dismiss petitions containing both exhausted and unexhausted claims with out prejudice. Because the strict enforcement of the exhaustion requirement would encorage habeas petitioner's to exhaust all of their claims in State Court and to present the Federal Court with a single habeas petitio Thus it is " necessary," [not luxries]. For a District Court to dismiss mixed petitions, leaving the petitioner with the chose of returning to State Court to exhaust his claims or resumitting tha habeas petition to present only exhausted claims to the District Court.

Because the petitioner did not corrected or resubmitted/refilled his petition, insted he deleted two unexhausted claims under 41 (a) or (c) by "proxy" that petition is still a mixed petition until today. It did not indicate how it would ultimately rule/dismiss on such motion. Please see Apependix E.

In addition, the petitioner asserts that he dismiss the unexhausted claims "apparently" believing from the Order the exhaustion question had been definitvely settled. that asertatation is not wholly it is supportted by the record,pro-se petitioner's (as most habeas petitioner's are)[1] do not come well "trained" or expertise"

---

1. High standards of legal art could not be imposed upon prisoners asthose members of the legal profession,especially a prejudicial result would occur due to an inartistically drawn petition without counsel it is not cause to dismiss. See Haley v. Estelle, 632 F.2d 1273 (1980).

to addres such matter. This straightforward exhaustion requirement served to " trap the unwary petitioner's." Mr. Ramirez was misled by the Language that the District Court chose to use in describing 4 (four) specific options regarding the Stay-And-Abeyance procedure, neither the Magistrate nor the District Court ever addressed the merits of the constitutional claims, and consequently the merits were never briefed by either side or the claims examined in the contex of an evidetiary hearing. Thus, the instant case presents the precise issue addressed for the first time in this Courtin Rose v. Lundy, supra. And Neuschafer v. Whitley, 860 F.2d 1470 (1988).

Because the District Court dismissed the petition on the " assumtion/hypothesize " that it laked to grant the petitioner's request for a Rhines stay, the Distict Court have to decide in the first instance whether the petitioner is entitly to such a stay. See Rose vl Lundy, supra, and Rhines v. Weber, 544 U.S. 269 (2005).

In the instant case the District Court "simply" reached a conclusion that appeared to allow the petitioner to adjudicated his claims "piecemeal." Nothing in the traditions of habeas corpus require the Federal Court's to "tolerate needless piecemeal litigation," or to entertain collateral proceeding whose only purpose is to vex, harass, or delay. Unless there were some acceptable excuse for the "failure to do so." The exhaustion doctrine existed long before its codification by Congress in or about 1948. In Ex parte Royall, 117 U.S. 241, 251 (1886), This Court wrote that as a matter of "Comity", Federal Courts should not consider a claim in a habeas corpus petition until after the State Courts have an opportunity to act.

Furthermore, Fourteen years before Congres enacted EADPA, this Court held in Rose v. Lundy, supra, that Federal District Courts should not adjudicate mixed petition containing both exhausted and unexhausted claims. This Court reasoned that the interests of "Comity and Federalism" dictate that State Courts most have the first opportunity to decide a petitioner's claims. See Guizar v. Estelle 843 F. 2d 371, (1988) and Szeto v. Rushen, 709 F.2d 1340, 1341 (9th Cir. 1983) (Rose v. Lundy requires dismissal of entire habeas corpus petition without reaching the merits of any

of its claims where petition combines exhausted and unexhausted claims.) Therefore the District Court should not have considered the merits of any of Ramirez's claims.

Also this Court noted that [b]ecause it would be "unseemly" in their dual system of government for Federal District Court to upset a State Court without an opportutnity to the State Courts to Correct a Constitutional violation, Federal Courts apply the doctrine of "Comity" see Rose v. Lundy, supra, (quoting) Darr v. Burford 339 U.S. 200 (1950). That doctrine "teaches that one court should defer action on cause "properly" within its juridiction until the courts of another Sovereignty with Concurrent powers, and already cognizant of the litigation, have had an opportunyti to pass upon the matter.

Also the enactment of AEDPA in 1996 "dramatically altered the landscape" for Federal Habeas corpus petitions. AEDPA preserved Lundy's tota exhaustion requirement, see 28 U,SC. § 2254 (b)(1)(A), [28 U.S,C.S. § 2254 (b)(A)]. "An application for awrit of habeas corpus...shall not be granted unless it appers that the unless it appers that the applicant has exhausted the remedies available in the Court of the State. See also Woodford v. Garceau, 155 L. Ed. 2d 363, 538 U.S. 202(2003).

Howeber, in Rose v. Lundy requires only that District Court dismiss mixed petitions must be follow one of these two paths if he wants to proceed with his petition. "Nothing" in Rose requires that both options be equally attractive, or that District Judges specific advisements as to the availability and wisdom of these options. Also nothing in Rose requires 4 (four) options equally attractive, or wisdom.

FOR EXAMPLE:

(a) A stay and abeyance would be appropiate only when a District Court determined that there was good cause for a petitioner's failure to exhaust first in state courts.

(b) Even if a petitioner had such good cause, a District Court wuold abuse its dicretion if the court were to grant a stay when the unexhausted claims

were plainly meritless.

(c) Even where a stay and abeyance was appropriate, tha District Court's dicretion in structuring the stay was limited by the timeliness concers reflected in AEDPA. Any solution to this problem therefore must be compatible with AEDPA's purposes.

(d) Even a petitioner who files "early" cannot control when a District Court will resolve the exhaustion question.

(e) It likely would be an abuse of discretion for a District Court to denay a stay and dismiss a mixed petition if the petitioner had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that he engaged in intentionally dilatory litigation tactics.

In addition, in Rose v. Lundy the petitioner was not precluded reaserting his unexhausted claims in Federal Court because at the time, there was no statute of limitation. "But that chaged with AEDPA, which preserve Lundy's . Moreover, this scheme reinforces the importance of Lundy's "simple and clear" instruction to potential litigants that before they bring any claims to Federal Courts. There ara thousends of cases discussing the principles which apply to a mixed petition containing exhausted and unexhausted claims, but all of them come down in one way or another to Rose and AEDPA standard."" So not only in Federal Court, but in State Court.

Humbly and with all due respect the petitioner has come to this court on the reasonable expectation that the " buck stops here " in the interest of Justice.

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2. In applying Cullen v. Pinholster, 563 U.S. 170 (2011), and Schrirro v. Landrigan, 550 U.S. 465, 474 (2007). Because the Federal Cout's habeas review ordinarily "is limited to the record that was before the State Court that adjudicated the claim on the merits." 28 U.S.C. §2254 (d)(1) and subsection (d)(2).

Based on this cases Cullen v. Pinholster, supra, and Schirro v. Landrigan, supra, it held that review under § 2254 (d)(1), " is limited to the record that was before the State Court that abjudicate the claim on the merits." 563 U.S. 170, 181, 131. So this court (S.C.U.S.) reasoned, district court cannot conduct evidentiary hearing to supplement the existing State Court record under 28 U.S.C. §2254 (d).

Here, the District Court determined that petitioner could not make out a colorable claim of Ineffective Assistance of Counsel (IAC) and therefor he was not etitled to an evidentiary hearring. The District Court refused to grant him an evidentiary hearing. [State's purported determination of the facts without a fair opportunity for petitioner's to precent evidense violates AEDPEA].

However, Mr. Ramirez contends that if the role of Federal Habeas Court were **simply** to accept on faith the State Court's description of the facts **free from any obligation** to review the record on which the State Court bases its judgement, there would hardly be a reason to have a federal habeas statute **at all.** The petitioner **fails to understend** how a federal habeas court can conduct a meaningful, sufficient, review without a transcrips of trial. The Relu 4 explains that a district court must order transcripts, sentencing records, and copies of state court opinions, among other materials, for its consideration if they not yet included with the petition. Advisory Cmte. Note to R.4., 28 USC § 753(f).

The District Court erred in summarily denying, without an evidentiary hearing, Petitioner's claims that the trial counsel provided Ineffective Assistance (IA). During his trial the defence counsel in several ways bungled efforts, or made no effort at all stages. To suppres evidence of pretex telephone colls. The trial counsel should have raised and federalized the claim inthe trial court and the appelate

counsel should have raised and federalized that claims both intermediaries the State Court of Appeals and in the States's hignest Court. Thepetitioner has an absolute right to reasonable expectatition of privacy in a phone calls to his wife. This can not be disputed. Please see Berger v. New York, 388 U.S. 41 (1967); Katz v. United States, 389 U.S. 347 (1967); and Brewster v. Shasta County, 275 F. 803 (9th Cir. 2001). The Sheriff Department is a County Actor when it investigates a crime and is, therefore, subject to suit under 42 U.S.C.S.§1983 when it violates a suspect's rights. See Jackson v. Barnes, 749 F.3d 755 (9th Cir. 2014). [policy of inaction].

Also, the trial court did not even look into any case law or the federal Constitution. Unless there were some acceptable reason, not just an excuse for the failure to do so.

The Trial Court plainly states:

THE COURT: In addition, the Court will find that there's nothing present inthe law prohibiting the use of these pretextural calls as violative of Mr. Rodrigez's (sic) right to counsel or any other Constitutiona right that I'm aware of.

MR. QUINN: Just for the record, Ramirez-- Mr. Ramirez.

First of his counsel did not speak up when the trial court called him Mr. Rodriquez Though his name is Mr. Ramirez. [1 RT at pp 9].

The trial courtdid not provided a full and fair hearing of the Fourt Amendment claim. full and fair consideration in the context of the Fourth Amendment includes at least one evidentiary hearing in a trial court whe there are facts in dispute and the avilablility of meaningfull Appellate review. At least in terms of raising the argument that the Fourth Amendment claims was not full and fair. If the error had not been made it is reasonably likely that result would have been more faborable to the petitioner. Please see Berger; Katz; Brewster; Jackson, supra, and Neiss v. Bludworth, 2024 U.S. LEXIS 20752 (9th Cir. 2024).

The problem here, of course, is whether the State Supreme Court's denial of

review without case citation or coment constitutes a denial on the merits or on the procedural relied upon by the trial court.

In addition, there is no constitutional right to **self-representation on the initial appeal as of right.** The right to counsel on appeal stems fromthe due proces and equal protection clauses of the Fourteenth amendment, not from the Sixth Amendment,which is the foundation on which Faretta is based.

The petitioner was permitted to file a Supplemental Brief on his own behalf with the california court of Apeal.In this regard, asdiscused, the California Supreme Court has held [M]otion and briefs of parties represented by counsel shall/must be filed by such counsel[,]...[except for] pro-se motions regarding representation, including requests for new counsel.... Any pro-se documents by represented parties not clearly coming whithin this exeeption **will be returned unfiled.**

First, the petitioner never made any motion to represent himself on direct Appeal. Please see Feretta v. California, 422 U.S. 806, 807 (1975).

second, the petitioner never discharge his appointed counsel. Please see Martinez v. Court of Appeal, 528 U.S. 152 (2000); People v. Mattson, 51 Cal. 2d 777 (1959).

Unfortunately, the record before the magiistrate judge did not include the State Court Trial Transcript. The magistrate judge's opinion contains no evidence that the transcript was examined Mr. Ramirez did not include the state court record as part of his habeas petition is of no impor. Where the review of the entire state record necesary, [not luxuries,] and the parties have failed to supply the court with that record, the District Court has the duty to obtain that record itself.

The Rule 4 explains that a district court must order transcripts, setencing record, and copies of state court opinions, among other materials, for its consideration if they not yet included with the petition. See Advisory Cmte. Note to R. 4. ; 28 USC §753 (f).

The magistrate judge did not hold a hearing, Therefore, She was obligated to

conduct an independent review of the state court record.

For example,the Federal Court must grand an evidentiary hearing to a habeas applicat's/petitioner's under the following circunstances: IF

(1) The merits of the factual dispute were not resolved in the state court hearing,

(2) The State determination is not fairly supported by the record as a whole;

(3) The fact-finding procedure employed by the State Court was not adecuate to afford a full and fair hearing;

(4) There is a substantial allegation of newly discovered evidence;

(5) The material fact were not adequately developed at the State Court hearing, or

(6) For any reason it appers tha the state trier of fact didnot affordthe habeas applicant a full and fair hearing.

Please see vicks v. Bunnell, 875 F.2d 258,259 (9th Cir. 1989); Ruff v. Kincheloe, 843 F. 2d 1240, 1243 (9th Cir. 1988).

Nowhere in 28 U.S.C.S. §2254 was there any suggestion that district court could not or should not examine the state record, and ther was no case that held the district court could not or should not examine therecord. Please see Towsend v. Sain 372 U.S. 293 (1963).

Furthermore, the case Jones v. wood, biuld on a long line of Ninth Circuit cases requiring Federal habeas courts to examine independently the basis for the state court's decision, rather than to accept on faith. Please see, e.g., Lincoln v. Sunn, 807 F.2d 805, 808 (9th Cir. 1987.) The Ninth Circuit do not affirm the District Court's denial of a writ of habeas corpus unless the court either hold a hearing, or the records shows that the district court independenty reviewed the relevant portions of the state court record. Johnson v. Lumpkin, 769 F.2d 630, 636 (9th Cir. 1985); Turner v. Chavez 586 F.2d 111, 112 (9th Cir. 1978)(same).

Five other Circuits have reached the same conclusion and held that remand is necessary in similar circunstances.

Please see the following cases:

(1) Magouirk v. Phillips, 144 F. 3d 348, 363 (5th Cir. 1998)

(2) Jeffries v. Morgan, 522 F. 3d 640, 644 (6th Cir. 2008).

(3) Aliwoli V. Gilmore, 127 F. 3d 632, 633-34 (7th Cir. 1997).

(4) Beck v. Bowersox, 257 F. 3d 900, 901 (8th Cir. 2001).

(5) Thames v. Dugger, 848 F.2d 149, 151 (11th Cir. 1988).

Those cases explain that the habeas statutes require meaningful federal court review of the evidentiary record considered by state courts and that it was error to reach the merits of [petitioner's] Fifth and Sixth Amendment claims without reviewing the transcript and including it in the record of this federal habeas proceeding. Because the key parts of the state record are missing, and a District Court has no measure to determine whether a petitioner's Constitutional claims received a full and fair hearing. Nither Collen v. Pinholster, supra, nor Schrirro v. Landriman, supra, applies to Mr. Ramirez's case . He never got a hearing in any stage of his appeal.

A Federal District Court sitting in habeas corpus proceedings intituted by a state court petitioner's/prisoner's has the power to compel production of the complete state record or, where more convenient, to hold an evidentiary hearing forthwith, without compelling production of the record. That the District Court must order the transcripts, sentencing records,materials, for its consideration if they not yet included with the petition.Please see Advisory Cmte. Note to R.4.; 28 USC § 753(f) and [DKT. No. 1].

A. FORCED TO SHIFT FOR HIMSELF BY INEFFECTIVE ASSISTANCE--IAC

For decade or more, a continuing line of cases has reached this Court concerning with the discrimination against the indigent defendant on his first appeal. Begining with Griffin v. Illinois,...and continuing thrugh Douglas v. California,. .... this Court has consistenly held invalid those procedures where the rich man, who appeal as of right. enjoys the benefit of counsel's examination into the record research of the law, and marshalling of arguments on his behalf, while the indigent, al-

ready burdened by a preliminary determination that his case is without merit, is forced to shift for himself. see Griffin v. Illinois, 351 U.S. 12 (1956); Douglas v. California, 372 U.S. 353 (1963).

Under clearly established Law, all criminal defendants have right to an advocate in mandatory appeals. On the face of the record, Mr. Ramirez's appelate counsel fails to satisfy Anders by first refusing to identify any appellate issues, and by neglecting to sek to withdraw as counsel. The failure to raise any ground for appeal was equivalent of his Attorney's withdrawal.

Mr. Ramirez, did not need to show prejudice because the failureof his counsel to raise arguable issues in the appellate brief creates a presumption of prejudice. See Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), Delgado v. Lewis, 168 F. 3d 1148 (CA 9 1999). Unless there were some acceptable reason, not just an excuse, for the failure to do so.

However, Mr. Ramirez, it is forced to shift himself. The petitioner don't speak English as fluently. To learn a foreing Language requires a lot of time in addition the petitioner do not have legal training, in legal documents, dificult words an phrases are often used. He made all the effort to comply with the obligatio to reade and transiate the transcrips of English to Spanish, which is Legal language. Mr. Ramirez has taken a Casa Reading test on Agust 23, 2022 and January 23, 2023, whereby his scale of 229 and 235 support his promotion to the ABE III program. please see Appendex F.

In addition the District Court cannot impose on the petitioner the same high standards of the Legal profesion. Especially is this true in a case like this were the the imposition of those standards would have a retroactive and prejudicial effect on the petitioner inartisticaly/inexpertly drawn petition. See Holidy v. Johnston 313 U.S. 342 (1941), Pyle v. Kansas, 317 U.S. 213 (1942).

Furthermore, the petitoner exhausted all his resourses to comply with his obligation. He wrote a letters to the following parties with out successful.

Please see the following Appendices:

A. On or about April 8, 2019 the petitioner send a letter to Mr. Quinn, requesting all information concerning to the Court orders issues and information concerning why the petitioner is not qualified for probation under §§ 1203.066(c)(1), the petitioner had be a member of the household at the time of the offences, not at the time of sentencing.

B. on or about June 21, 2019, the petitioner send a form to Mr. Quinn, requesting retur of clien papers, property, fees, work product, personal notes, Ect. But Mr. Quinn do not answered that the request.

C. on or about December 24, 2019, the petitioner send onother letter requesting the same issues the client pappers and property, including corespondence, pleadings etc.

D. Approximately March 16/17 2020, finally Mr. Quinn answered petitioner letter. Please see Appendix G, from (A to D).

E. on or about April 12, 2019, the petitioner send a letter to Mr. Gregory D. Totten, and Ms. jennie Thrift, Deputy for Ventura County Superior Court. The petitioner asked the same question that he made to Mr. Quinn.

F. on or about May 29, Mr/Ms W. Taylor Waters, Senior Deputy District Attorney answered the petitioner letter. Please see Appendix H from (E to F).

G. On or about October 25, 2022, the petitioner send a letter to Jean Ballaantine, Attorney/Lawyer. Since she have a better understanding of law and petitioner's case, it would be very helpful any answer from her legal point of view on these case Please see Appendix I.

The petitioner will be supply this court any addition materials or arguments that it deems neceeary for a promt resolution of this application. "In the interest of justice so require."

Once again this case, wether or not this argument is allegadly speculative or not, it was, a very real thought in the petitioner head at the time of the magistrate

order and should be considered by this Honorable Court in its decision.

A petitioner who is without counsel in State postconviction proceeding cannot be expected to understand the tecnical requirements of exhaustion and should not be denied the opportunity to exhaust apotentially meritorios claim simply because he laked counsel. This Court held that the Due Process did not allow self-representation of criminal appelants. Laypersons generally are woefully ill-equipped by education, training, or financial ability to initiate, and adequately, prosecute legal action. To vindicate those rights without the assistance of counsel would undermine ones ability to prosecute an appeal and the administrative burden of self-representation woulhinder the efficient funtionning of the appelate court. Please see Anders v. California (1967) 386 U.S. 738, 87 S Ct. 1396; and Gideon v. Wainwright, (1963) 372 U.S. 335.

Furdermore, The petitioner was deprived of fair trial this is often interpreted as meaning whether, in light of the entire record.Therefore, there were several improper events that conclude that the provably cumulative effect upon the jury... cannot be disregarded. Please see see United States v. Cusimino, 148 f.3d 824, 831 (7th Cir. 1998); and Berger v. United states (1935) 295 U.S. 78.

That the misstatement of evidence substantially affected the petitioner's right to a fair trial and require reversal for new trial. Tha the lawyer whose job it was to make the timely objection was ineffective in failing to do so. Now the petitioner's appeal faicing dismissed for failure to perfect his appeal, Mr. Quinn didn't have and couldn't have any strategy or plan in mind when he made the mistakes those the petitioner are complaining about. That the record speaking/screaming by it self.

At the trial Mr. Quinn stated:

THE COURT: Mr. Quinn, does your client anticipate requesting alimited instruction with respect to this evidence?

MR. QUINN: Yes.

THE COURT: Mr. Quinn, the last time we were together, we talked about the

the possibility of a limiting instruction, and I don't know, with everything else, if you've had a chance to turn your attention to that.

MR. QUINN: No, I didn't, and I've forgotten what it was about,actualy.

THE COURT: It was with respect to fres complainy evidence.

MR. QUINN: So rather than making defense motions in limine,**I think it serves the same purpose for me to object to their admission.**

THE COURT: I think what's on the table at this point is would the Court grant a 352 objetion were it raised by the defendant.

MR. QUINN: Okey. And so I anticipate in trial to objecting again, amd hope to preserve my record by objecting. **I understand that the objetions during trial will be simply objection,**

Please see RT 1 at pp 6-7.

Mr. Quinn abmits, he made some admissions.

MR. QUINN: **So some of you are shocked probably because I gave up, made some admissions,** told you this is what the evidence shows, and you were probably expecting me to come and say they can't prove any of these chages beyond a reasonable doubt, **blah, blah, blah.**

Please see 2 RT at pp 295.

The errors at petitioner's trial created prejudice and substantial disadvantages, infecting his entire trail with error of evidence it is constitutional dimensions, The petitioner' conviction base on false evidence violates his State and Federal process right. 5th; 6th; and 14th amendment and Cal. Const, art. 1. § 15. Review is necessary because the opinion by the court of appeal diluted the prosecution's burden of proof and permited a conviction without a require element. [illegible] ple v. When the prosecution fails to corect testimony or a prosecution witness that it know or should know is false and misleadind, reversal is require if there is any reasonable likehould the false testimony could have affected the judgment of the jury. See People v. Dickey (2005) 35 C4th 884, 909; Dow v. Virga (9th Cir. 2013)

729 F.3d 1041. Looking at California law which also establisheds the general duty of the prosecuter, to act as a guardian of the defendant/petitioner right. See people v. Trevino, (1985) 39 Cal. 667, 681. The prsecutor has a **DUAL ROLE** as a guardian of the defendant/petitioner Constitutional rights and as a adversory. See People v. Sherrick, (1993) 19 Cal. App. 4th. 657, 660 [same]; People v. Daggett (1990) 225 Cal.App. 3d 751, 759. A prosecutor duty is to afford those that are acused of crimes a fair trial.

The trial court did not even look into case law or the federal Constitution. the Trial Court Plainly states:

THE COURT: In addition, the Court will find that there's nothing present in the law prohibiting the use of these pretextual calls as violative of Mr. Rodrigez's (sic) right to counsel or any other Constitutional right that I'm aware of.
But the law as it existed at the time of trial. Please see Brewster v. Shasta County, supra, 275 F. 803 (9th Cir. 2001). And United States v. Henderson, (2011) 665 F.3d 160.

In addition here, the appelated Counsel Ms. Jean Ballantine, was Ineffective in failing to bring the exhausted and unexhausted clams on direct appeal. She neglected the petitioner pleas on strong factors (the exhausted and unexhausted claims) claiming there were't any merits. She was ineffective in failing to do so. Unless there were some acceptable reasonable, not just an excuse for the failure to do so. Please see DKT No. 1 exhibit 3 of district Court.

In sum, because the issue before this court it is not a "NOVEL ONE". this Honorable Court, should, soleyaddres wether a priliminary options order is and was prejudicial.

Once again humbly and with all due respect the petitioner has come to this court on the reasonable expectation that the "buck stops here." For those with great power have a greater responsibility to use that power. " In the interest of justice so require." "The Constitutional laws and rules end when the abuse of power begins."

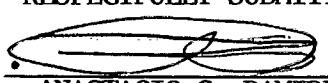
CONCLUSION

For the foregoin reasons, with all Due Respect to the NINTH CIRCUIT and CENTRAL DISTRICT of CALIFORNIA, the petitioner/appellant respectfully request that this Court vacate/reverse the order denying habeas corpus relief and "DUE PROCESS" rights under the U.S. Constitution and order remand, so that District Court may consider an independent review of the State Court record, including the trial transcript in relation to Mr. Ramirez's insufficiency claims. This case should be grated. In the interest of jutice.

I declare under the penalty of perjury under United States Law, that the foregoing is true and correct to the best of my knowledge.

DATE: OCTOBER 24 2024

RESPECTFULLY SUBMITTED



ANASTACIO G. RAMIREZ
(PRO-PER)