

No. 17-614

**In The
Supreme Court of the United States**

—◆—
In re: ROBERT RYAN SNYDER, AC9136

—◆—
**On Petition for Rehearing on Extraordinary
Writ Of Habeas Corpus**

—◆—
**Salutations To The Honorable Justices Of Our
Nations Highest Court**

—◆—
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QUESTIONS PRESENTED

1. Should the California State Laws covering firearm use and discharge, in particular, PC § 12022.53, be ordered amended for clarity?
2. Would petitioner be wrong to say that § 12022.53 could have combined usage and discharge into one provision (being that they are not completely different); especially, considering the simple fact that subdivision (d) combines GBI and death into one provision and those are actually very completely different?
3. Does the petitioner's earlier Rule 20 pleading deserve encouragement to proceed further?

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PETITION FOR REHEARING

Robert Snyder, in Pro Se, respectfully petitions for a rehearing on the denial of a Petition for Extraordinary Writ of Habeas Corpus. Thank you for the opportunity to be heard in this matter.

STANDARD OF REVIEW

Petitioner here consulted Moore's Federal Civil Practice, Volume 23 § 544.03, to ponder the basic tenets of a motion for rehearing after an unfavorable ruling on Petition for Extraordinary Writ of Habeas Corpus. Petitioner is aware that there are a few principles governing this court's consideration of a Supreme Court Rule 44 motion for rehearing. They are as follows:

(1) Exceptional circumstances of substantial or controlling effect. Moore's cites *Massey v. U.S.*, 291 U.S. 608, 609-10/54 S.Ct. 532/78 L.Ed. 1019 (1934) (per curiam).

(2) The court may consider—new substantial grounds, not previously presented to the court. Look now at *Lebron v. National Railroad Passenger Corp.*, 130 L.Ed. 2nd 902, 907 (1995). "Once a Federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise argument they made below." *Citizens United v. FEC*.

(3) The petitioner must have a writ that will aid in the Court's appellate jurisdiction so that the interest of justice could prevail beyond the finality of litigation

where the strict application of your rules may be seen as unfair. See *United States v. Ohio Power Co.*, 353 U.S. 98, 99/77 S. Ct. 652/1 L.Ed. 2d 683 (1937).

DISCUSSION

A. Previously Omitted Content

Petitioner realized that in the recent filing pursuant to Rule 20 he forgot to include this case: *U.S. v. Batchelder*, 442 U.S. 114, 121 (1979) in regards to the vagueness doctrine applying also to statutes fixing sentences.

In supporting the position that Penal Code §12022.53 is vague, confusing and standard-less:

1) There are a lot of arbitrary differences in State Court interpretations.

2) §12022.53 contains subdivision (e)(1) which refers to criminal gang members. And, the enhancement for "intentionally discharging" a firearm which causes GBI is 25-years under §12022.53, but only 10-years for discharging a firearm with intent to cause GBI (greater culpability) under §12022.55. Similarly, §12022.5(b)(1) enhancements max out at 10-years. Why the huge difference you may ask. No explanation except for the mention of gang members in §12022.53(e)(1). The only logical conclusion is that §12022.53 as a whole is intended for use against criminal gangs. However, the Courts did not see it that way in petitioner's case.

3) California Courts often made expedient attempts to misconstrue § 12022.53 in such a way that

rejects the most logical view of its plain facial language..., and favored more confusing attempts to display the legislative intent such as this idea that (e)(1) only comes into play and/or becomes operational in limited circumstances. See *People v. Elizalde* (2015) 61 Cal. App. 4th 523. These exact words are new and are a re-summarization of other varying opinions from the past: "Provides enhancements for personal use or discharge of a firearm—it's provisions apply to any principal when the offense is committed to benefit a street gang...". These words are probably in response to many challenges to the legislative intent of (e)(1)'s intended purpose. Lower Cal. App. Courts are divided on this statutes' true meaning

Recently a legislative proposal called SB-620 passed in both the California Senate and the Assembly. This allows the trial court to strike an enhancement under both §§ 12022.5 and 12022.53 [the amendments to the above statutes are § 12022.5(c) and § 12022.53(h) respectively]. This will allow judges in the Superior Court to make a good faith determination with regards to whether in the interest of justice, these added consecutive enhancements, are too strict for the facts in any one case. This common sense legislation may have indirectly helped my situation. Although it has a non-retroactive effect and does not include petitioner, it *significantly implies confessed error on the part of the legislative bodies.*

To put an end to such pervasive flouting of Constitutional Rights of prisoners serving lengthy sentences would certainly be in aid of this Court's appellate jurisdiction. To bring judicial harmony between this state and decisions of the Federal Courts would be well in-line with aiding this Court's jurisdiction.

Past abuses of discretion by the lower Courts in question here, led to a real breakdown of trust between the two dilatory Courts; this is another reason petitioner could have provided for '*why relief could not be obtained in District Court under 28 USC § 2242.*' As well, petitioner wanted to mention that there was a possible confluence of actions pending in the Central District Court. Although the above seems to contradict itself, it does not because: where else can prisoners file a case about civil rights violations? Waiting a year only to be disappointed seemed hopeless while enduring the conditions of confinement.

B: Contents Involving State Court Material

Certainly, if § 12022.53 intends to add a hefty consecutive 10, 20 or 25-to-life term to an already heavy primary term (as well as painting the defendant in a more prejudicial light during trial) then that might be alright where there is a facial requirement by statute, that this heavy enhancement be justified by extremely extraordinary circumstances. On one occasion, lower California Courts in *People v. Martinez* 76 Cal. App. 4th 489 (1999) admitted that (paraphrased) 'the enhancements in this section apply only to the most serious felonies.' But again, it is not their duty to set the standard as it would be for the Cal. Supreme Court but it is their moral obligation to apply the law in a way that seems equitable and just. The high court in *People v. Jones*, 47 Cal. 4th 566, 571 (2009) gave only an opaque treatment of § 12022.53 and did not reference any older cases treating this issue by their Court. Instead, they offered this often cited passage: "Section 12022.53 imposes increasingly severe sentence enhancements for those who use firearms in the commission of certain felonies listed in

subdivision (a) of that section." So as it is, currently we are without a way to grasp how to gauge why 25-to-life should apply to all cases where the 25-to-life was already applied or, why it would be wrong to do so. After canvassing as many California "Official Reports" as petitioner could, there was no way to make a definite comparison between the average shooting case and the 'extraordinary' one where both are treated the same in California's opinions. Nor did those cases receive the benefit of a well-reasoned opinion to back why the facts were so outrageous to warrant an extra 10, 20, or 25-to-life penalty added on to an already stiff sentence for a crime committed against a person. In petitioner's case, the discharge came from his vehicle, yet they still chose the strictest enhancement instead of the more facially proper §12022.55 which specifically mentions 'from a vehicle/discharge' and at worst carries a 10 year penalty, and also includes the more harsh language of "intentionally causing GBI" instead of "Intentional discharge..." which is how § 12022.53 reads. Petitioner has yet to find any guiding clues as to what was originally intended for this gun law.

Additionally, the California Courts could have, but failed to clarify the following: They approved the usage of both §186.22 and § 12022.53 enhancements after deciding that some cases apply to both. In *People v. Jones* (Supra), Jones said that certain cases could allow for both but the Court did not clarify their intentions for making this distinction, nor did they provide any compelling reasoning. But they must have done so knowing that a standard was expected of them at some point. What can be worse than to specifically avoid creating headnotes with the statute in question? Only one case was found that included §12022.53 in a headnote in the most recent California

'Official Reports I'. See *People v. Elizalde* (2015) 61 Cal. App. 4th 523. If there are no headnotes in recent history of California Supreme Court opinions, then certainly no recent standards have been set. The older, would be standards are the product of collusion by early witness' to the many challenges to its legislative validity; those from the state who were very concerned by the potential for a great liability arising from the many people behind bars for a long time—all behind a vague and standard-less gun law.

C. Newer Analysis/Federal Case Materials

Were the Court previously aware of the following viewpoints, petitioner believes that they would possibly have ruled in favor of his Rule 20 claims.

Petitioner's recent Rule 20 filing, relied on *Blackledge v. Allison*, (1977) 52 L.Ed. 2d 136 to address an improper summary denial of a meritorious claim set, presented in State Courts. It should be noted that in *Blackledge*, a unanimous decision was reached in this great high Court. Petitioner feels as though that means the stare decisis should be given effect to a greater extent. In *Blackledge*, the following passage is worth quoting in full and petitioner is hopeful that his case is protected by these words: "Although not necessarily entitled to a full evidentiary hearing in the Habeas proceedings, was nevertheless entitled to a careful consideration and plenary processing of his claim(s), including full opportunity for presentation of relevant facts, since (1) petitioner's allegations were not vague or conclusory, but instead contained specific factual allegations."

In response to any contention by the State that petitioner did not follow procedural rules, it was the

result of "State Created Impediments". Looking back, I forgot to include that language in my recent petition. That passage is from *Holland v. Florida*, 560 U.S. 631 (2010).

"Failure of persistent efforts to establish a standard can provide evidence of vagueness." *Johnson v. U.S.* at headnote 11, 135 S.Ct. 2551. See also, *U.S. v. L. Cohen Grocery Co.* 255 U.S. 81 (1921) "...should uphold the challenge only if the enactment is impermissibly vague in all its applications." *L. Cohen Accord with Hoffman Estates v. Flipside* 455 U.S. 489, 495 (1982). My argument here is that § 12022.53 is worse than just vague because it intends to level an enormous added punishment; it is also standard-less and in violation of due process. Until a standard is set that can consistently be applied, each application up until that point is only floating along on a vague haphazard adventure.

I believe the following passage applies to my questions presented for review so that none of the contents inside of the memorandum could be deemed out of the question: "Because the stakes are so high, our standard practice is to refrain from addressing constitutional questions except when necessary to rule on particular claims before us." See *Ashwander v. Tva*, 297 U.S. 288, 346-48 (1936) (Brandeis, concurring). After reading this, I realized this is a different context however, a statute that is unconstitutionally vague, is worse when it carries a heavier liability, like losing 25 years of ones life behind unclear precepts.

CONCLUSION

"When a State Court does not furnish a basis for its reasoning in regards to summary denials, we have no basis other than the record for knowing whether the State Court correctly identified the governing legal principle or was extending the legal principle into a new content. The conclusion inherent below in Lewis' argument is that the State Court judgments can be insulated from Habeas Review in Federal Courts simply by failing to provide any reasoned explanation for the disposition. "We reject this argument now, just as we did in Delgado I." *Delgado v. Lewis*, 223 F.3d 976, 981-82 (9th Cir. 2000)

Section 12022.53 is like other statutes with obvious problems due to it being jam-packed with options, having many enumerated felonies and residuary clauses. The wide ranging inquiries, guesswork and judicially imagined ordinary case scenario exercises all come along with bootstrapping, as well as multi-defendant vicarious liability that becomes perplexing and deceptive to read for lawyers, not to mention John Q. Public who is more easily confused by vagueness.

Sadly, as it currently stands, the problematic situation allows for a wide variety of deviant applications—those upheld at times, by false interpretations as to the abstract legislative nature of this uniquely difficult statute. While it is true that Judges decide the true legislative intent, they should not do so by trying to wildly ignore the actual facts and the words behind the statute. The California Court's current views on the matter at hand are insufficient to address the many more unanswered questions that

remain. Most of which can only be answered by swimming through an ocean size puzzle of varying opinions to see if some sort of statistical consensus is determinable towards truly seeing legislative intent.

Interestingly, the California Courts were not at fault for writing a lot of conflicting opinions because either Cal. Supreme Court itself left it completely standard-less or at best, created a definite conflict between their own purported opinions—those of which they may claim are ‘standards’ but are not. Whether no standard exists, or whether the Court’s supposed standards themselves are in conflict., the fact remains that it is standard-less either way.

Optima est lex quae minimum relinquit arbitrio judicis. This legal Latin maxim succinctly states why § 12022.53 is deplorable.

Petitioner here seeks a jurisdictional resolution of above noted disagreements and a rescue mission as well. Based upon the facts in the original petition side by side with this petition, petitioner believes his reasons for granting relief are very compelling. Thank you for the opportunity to be heard in this matter.



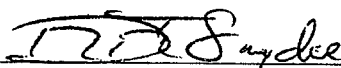
App. 1

**CERTIFICATE OF COMPLIANCE
WITH RULE 44**

Petitioner here made every effort to comply with the standards and restrictions governing content, according to the Supreme Court Rule 44. To the best of petitioner's knowledge, this motion for rehearing is both formally and procedurally correct. Petitioner believes that the contents of the above document will show this motion is presented in good faith, as it is a fact that petitioner is in need of relief and that it is certainly not for the purpose of delay.

Executed on: Dec. 12TH, 2017

Respectfully submitted,



Petitioner in Pro Se
Robert R Snyder

_____ ♦ _____

App. 2

VERIFICATION

I am the petitioner in this action. All of the alleged facts are true to the best of my knowledge and beliefs. This document was written in good faith and with respect to the penalty of perjury.

Executed on: Dec 12TH, 2017

Respectfully submitted,



Petitioner in Pro Se
Robert R Snyder

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