

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER DAVID KROHE. — PETITIONER
(Your Name)

VS.

JOE A. LIZARRAGA, Warden, Mule Creek
State Prison — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

In The Supreme Court of California / S187439 En Banc Nov. 23 , 2010
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER DAVID KROHE,

(Your Name)

B-8-236 L/ M.C.S.P.
P.O. Box 409099
Ione , CA 95640

(Address)

Ione, California , 95640

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Though the COURT HAS THE AUTHORITY TO DECIDE THAT IF IN A SIMILAR ISSUE ADDRESSED IN ANOTHER STATE SUPREME COURT LATER AFTER THE ISSUE PRESENTED IN HIS OR HER STATE WAS PRESENTED TO THE STATE SUPREME COURT CAN THE STATE THEY WERE CONVICTED OR, CAN THE UNITED STATES SUPREME COURT OVERTURN THEIR CONVICTION ?

COULD THIS BE POSSIBLE DO TO CASE LAW OF ANOTHER States Supreme Courts Ruling ?

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:

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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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 B to the petition and is

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☒ is unpublished.

see exhibit (A)

The opinion of the Court of Appeals for California court appears at Appendix A to the petition and is

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☒ is unpublished.

also exhibit (a)

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 11/23/2010.
A copy of that decision appears at Appendix B.

☐ 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. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial 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 Counsel for his defence.

U.S. CONST., AMEND. XIV

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.

42 U.S.C. Equal Rights Under The Law
§ 1981

28 U.S.C. § 1651 (a)

Petition for an Extraordinary Writ

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(A) the claim relies on —

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(h) Except as provided in section 408 of the Controlled Substance Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

STATEMENT OF THE CASE

Mr. Christopher David Krohe was convicted of six counts of forcible child molestation (Pen. Code § 288, subd. (b)(1) and three counts of aggravated sexual assault on a child (Pen. Code § 269, subd. (a)). The court found defendant had served two prior separate prison terms and had one prior serious felony conviction. The trial court sentenced defendant to a total term of 76 years to life.

Defendant raised a single issue in his appeal. See Exhibit (A). He contends the trial court abused its discretion by admitting evidence that he threatened and choked his mother subsequent to the charged offenses. The court assumed that because Krohe denied choking his victim during the alleged assaults, the evidence was properly admitted, the jury was properly instructed, and on December 23, 2008 convicted.

Facts

Krohe is the father of the alleged plaintiff who as the key witness claimed to have been assaulted sexually on the two visits of the prior month before the arrest. The court did not call the witness to testify at the preliminary hearing and never testified until trial. Well after the preliminary the assistant D.A. changed and the new A.D.A. before trial mentioned that if he doesn't take a plea bargain his case will become a life case. The amount of consecutive sentences was never mentioned or brought up before trial. On the day after trial was to begin in a pretrial hearing it was stated for the record that Krohe would if convicted face three consecutive 15 year to life sentences. On top of the max term for each count. A way over the top sentence enhancement for an accusation that could only depend on the word of the one and only witness. The three terms were each based on that over the last month on the two every other weekend visits Krohe had committed three different lewd acts with his daughter and said that he said "HE would harm himself if I told." Krohe claims he's innocent and didn't commit the lewd acts or ever say he would harm himself to his daughter.

The A.D.A. gave Krohe a Plea bargain offer of the next 12 years flat. The offer was declined and the case went to trial. It did seem very unfair to Krohe that (A) It was never put on the record before trial exactly how many years to life he would face and also the fact that after trial had begun he's told that it was going to be three 15 years to life consecutive on top of the based term sentences. The Lawyer Michael Rivera had never mentioned to Krohe, his trial lawyer that it was going to be three 15 to life terms. He always told him life like 25 to life and never mentioned consecutive terms or any based terms.

As Krohe denies everything he's been convicted of he also denies any claim that he said anything to his daughters mother on the day the report was made. Krohe claims that when his daughter ran out he didn't say anything and that's when he left. On that day of that report his daughter never said anything about that Krohe had said "He would harm himself if You say anything." That all was brought up when the second A.D.A. Ms. Bryant took over. Krohe finds that the fact his daughter would make up such a life very hard for him to understand and that he thinks that some way she was coerced to say all the story she made and to say "HE said he would harm himself." To make him look like a bad father.

Note the Report under th WESTLAW in Exhibit (A); states "He had no contact with her or her mother until the victim was in first grade. " That was not the case the fact that he had no contact until she was in third grade was because he never had a court order to see her until third grade. He claims that the mother left him and that when she was born went away to be married to another man . Even though the mother sayed she would keep in contact with him she never did unto the courts order. He first saw his daughter at about 9 years old. When the visits were going to start over the night visits the mother refused to let him pick her up. So it wasn't to when she was ten years old that the court ordered her to have every other weekend visits.

As the visits started it wasn't very long that Krohe had been in trouble for a dirty drug test . He tried to stay in rehab and spent six months going from there to see his daughter. For the first few months he wasn't allowed overnight visits at home. Than as he worked on his rehab he got to start spending the nights on the weekened when she was to visit with her at his family home that his mother lived. This was for a short while as at about the end of the rehab he left the rehab and his probation violated him. He then spent the next several months. in the California Department of Corrections.

After Parole the visits began back to normal. He had only been out about four months to the day the report was made. He did not ever expect that such a report would ever be made like the report made. He has and always has still to this day loved her and wanted to be a good father to her. The mistakes he made to violate his probation were mostly a bad choice to have made to put before her. Still the allegation that she was abused and it went on for some time back is very hard to understand bein that for much of the last year he had not been there at the family home.

Discussion

The prosecution called Krohe's mother as a witness having his mother called to testify that she made a police report that he put his hands around her neck in atight grip. As however the court claimed Krohe denies that ever occured and it ever happened. Needless to say the court biased the jury by bringing that to there attention. For one the above mentioned was never charged by the court and or ever proven. The A.D.A. took away the fact that any person charged of a crime is innocent until proven guilty . The jury was presented testimony that never should of been taken place.

On Appeal defendant asserts error in admitting evidence, giving the instruction, and violatøon of Evidence Code section 352. Also that he claims it was unfair Incontrary, Irronerious and Irrelevant. The court should of never allowed the jury to hear of anything untried or uncharged.

Now his mother Maria Krohe has Passed Away as she died a month and a half after the trial she still loved and cared about her granddaughter. Shee wouldn't want anything more yhan to see the conviction overturned and things to be resolved between her son and granddaughters.

Besides the untenable theory the prosecution set out was unfair and violated Due process of the Fourteenth AMEN. OF THE U.S. CONSTITUTION.

REASONS FOR GRANTING THE PETITION

This issue is presented to the U.S. Supreme Court on the grounds set by a recent case. In The Supreme Court of Texas Granted Jason Pain in 2013 on an issue for very similar to the same issue denied for Krohe in 2010. I, Christopher David Krohe am the Petitioner Pro se in this writ here now. I humbly come before this court The United States Supreme Court. I ask the court to give me consideration in the one only issue brought on Appeal to California on direct appeal.

There is a distinct relationship between the above mentioned case that was granted IN The Texas Supreme Court to Jason Pain in (2013). As I was watching T.V. I changed the channel to turn on a special about the case from Texas about Jason Pain. I didn't see a case number or the exact spelling of his name. I did in fact turned the channel just about a minute before it talked about the appeal of his first trial. This caught my attention and I watched to see if I could get a case number or the correct spelling of his name, but when they ran the special on the air I didn't see either. So I ask the court to please except the above case and issue as the cross reference in my issue whether correct or not. For in fact I tried to pull it on the computer at the law library and the staff there said that the computers in the law library here don't store very many Texas Supreme Court cases on them. We only have what's on the storage and don't work out of the full database as the program is Lexus Nexus not all case law is stored so I couldn't find a case number. For the above case in the first trial of Jason Pain his conviction was overturned because the trial court allowed very similar testimony to be heard by the jury. I believe it was that his sister in law had seen him hold his wife around her neck and he was never charged, or hold his hands around her neck.

As this program was in less than the past year I had no way until I saw this case or heard about it until it aired. The computers don't store it in their database so I had no other way to know or find out. See *Artuz v. Bennett*, 531 U.S. 4, 9, 121 S.Ct. 361, 148 L.Ed. 2d 213 (2000), but only when "extraordinary circumstances beyond a prisoner's control make it impossible to file a petition on time" and "the extraordinary circumstances were the cause of his untimeliness." *Lewis v. Lamarque*, 351 F.3d 919, 922 (9th Cir.2003) The extraordinary circumstances made it impossible to file a petition on time *Ramirez v. Yates*, 511 F.3d 993, 997 (9th Cir.2009) The defendant's failure to file within the prescribed time was without fault on the defendant's part.

Under 42 U.S.C. § 1981 Equal Rights under the Law

(a) all persons within the jurisdiction of the United States shall have the same right in every State and Territory...

"All citizens of the United States shall have the same right, in every state..."

This is 42 U.S.C. 1982

Though the court has the authority to decide that if in a similar issue addressed in another State Supreme Court later after the issue presented in his or her state was presented to the State Supreme Court can the state they were convicted, can The United States Supreme Court overturn their conviction ??

Could this be possible do to case law of another States Supreme Courts Ruling?

The failure of a state to abide by its own statutory commands may implicate a liberty interest protected by the 14th Amendment against arbitrary deprivation by a state."

Fetterly v. Paskett, 997 F.2d 1295, 1300 (9th Cir.1993)

The history as far back of the formulation of the constitution itself involves the appropriate role of Federal Courts in vindicating civil rights. The constitution of the United States is the Supreme Law of the land. 7th Amendment applies to all civil rights actions for damages. In Souza v. Travisono, a court recognized that a corollary to the right of access to the courts was the right of access to reasonably available competent legal assistance.

So as mentioned here petition with respect to access presents how this could effect how long between the time it took from the decision from the out of state Supreme Court to now to file the writ. Also in Re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970) "a state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim."

The Supreme Court has consistently interpreted requiring proof of specific intent, petitioner contends that it cannot "be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend" Leary v. United States, 395 U.S. 6, 36 (1969); see under Ulster County Court v. Allen, 442 U.S. 140, 165 (1979). Hence, petitioner urges the conclusion that use of the presumption impermissibly shifted the burden of proof to him, see Mullaney v. Wilbur, 421 U.S. 684 (1975), or unlawfully permitted the prosecution to circumvent the reasonable doubt standard with respect to the element of unlawful intent see in Re Winship, 397 U.S. 358 (1970). The above mentioned does and should give information that shows how the trial court may have erred in Krohe's trial and relates to the appeal.

Note in MIRANDA (Cite as: 384 U.S. 436, 86 S.Ct. 1602)

this court declared in *Weems v. United States*, 217 U.S. 349, 373, 30 S.Ct. 544, 551 L.Ed. 793 (1910) "our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted **1612 by precedent into important and lifeless formulas. Rights declared in words might be lost in reality. And this has been recognized. The *444 meaning and vitality of the Constitution have been developed against narrow and restrictive construction. As without full warning of constitutional rights in violation of Fifth Amendment. Also "deprivation of legal materials are "very important and necessary".

"... is the type of external impediment which we have granted equitable tolling."

Waldron-Ramsey v. Pacholke, 556 F.3d 1008, 1013 (9th Cir. 2009)

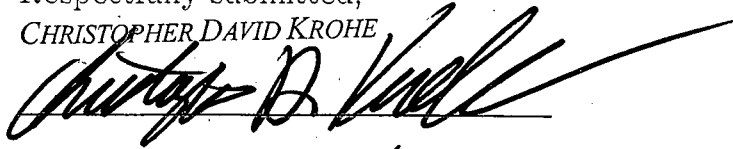
As with in relation to what mentioned above the case-law and cross references should give a relevance as to how the Court should decide. As to the outset of this application I hereby ask the Supreme Court of the UNITED STATES to please consider review for my issue as here how my first issue on direct appeal relates in other case in case-law. That if so be it the Court should find it in best interest to appoint counsel due to my inability to pay, I humbly ask the Court to please do so.

The writ should issue and Krohe is entitled to relief. For the foregoing reasons, Mr. Krohe prays the court to issue the writ, and to vacate his sentence in full order reversal. That Mr. Krohe be afforded a new trial, or be released from custody. To Grant Mr. Krohe Relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
CHRISTOPHER DAVID KROHE

A handwritten signature in black ink, appearing to read "Christopher D. Krohe", written over a horizontal line.

Date: 11/16/2017