

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOSE VASQUEZ PRESTEGUI PETITIONER
(Your Name)

vs.

WARDEN RAYMOND MADDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOSE VASQUEZ PRESTEGUI
(Your Name)

CENTINELA STATE PRISON
(Address)

P.O. Box 931 Imperial, CA. 92251
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) whether petitioner was denied his right to effective assistance of counsel.

2) whether the Court instruction to the jury to use the preponderance of the evidence violated petitioner state and federal constitutional rights to proof beyond a reasonable doubt, due process right to a fair trial.

3) whether petitioner custodial interview and coercion, violated petitioner fifth amendment, right to remain silent

4) whether the 9th circuit court of appeal was correct when it denied petitioner's request for certificate of appealability based on the fact that the court did not receive a document stating why petitioner's case "should not be dismissed for lack of jurisdiction," after petitioner timely file the request document. (see exhibit "c")

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 A 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☒ is unpublished.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☒ is unpublished.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☒ is unpublished.

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 JANUARY 16, 2015.

☒ 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 11/24, 2015
A copy of that decision appears at Appendix _____. Also 07/20, 2016

☐ 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

- 1) The SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ART. I, SECTION 15 OF THE CALIFORNIA CONSTITUTION GUARANTEE A CRIMINAL DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL. (STRICKLAND V. WASHINGTON (1984) 466 U.S. 668, 691-692; IN RE GAY (1998) 19 CAL. 4TH 771, 789; PEOPLE V. LEDESMA (1987) 43 CAL. 3D 171, 215)
- 2) Cumulative error here implicate CHAPMAN V. CALIFORNIA, 386 U.S. 18, 87 S. CT. 824, 17 L. ED. 2D 705. STANDARD OF REVIEW, THE CHAPMAN STANDARD APPLIES TO CUMULATIVE ERROR ANALYSIS. ALSO SEE (UNITED STATES V. RIVERA (10TH CIR. 1990) 900 F. 2D 1462, 1470 FN6 [ANY ERROR BEING AGGREGATED ARE CONSTITUTIONAL IN NATURE, THEN THE HARMLESS-ERROR-BEYOND-A-REASONABLE-DOUBT STANDARD ANNOUNCED IN CHAPMAN SHOULD BE USED TO DETERMINING WHETHER THE DEFENDANT'S SUBSTANTIAL RIGHT WERE AFFECTED.]).
- 3) The beyond a reasonable doubt standard is a "requirement of due process" (VICTOR V. NEBRASKA (1994) 5211 U. S. 1, 5.) AND HAS BEEN ENSHRINED AS A "prime instrument for reducing the risk of conviction resting on factual error". IN RE WINSHIP (1970) 397 U.S. 358, 363, THE STANDARD PROVIDES "CONCRETE SUBSTANCE FOR PRESUMPTION OF INNOCENCE-THAT BEDROCK 'AXIOMATIC AND ELEMENTARY PRINCIPLE' WHOSE 'ENFORCEMENT LIES A THE FOUNDATION OF THE ADMINISTRATION OF OUR CRIMINAL LAW'"

4) The Fifth Amendment to the U. S. Constitution provides that no person shall be compelled to be a witness against himself in a criminal case. This protection applies not only during a defendant's criminal trial, but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answer may incriminate him in future criminal proceedings. MINNESOTA V. MURPHY (1984) 465 U.S. 420, 426.

STATEMENT OF THE CASE

PETITIONER JOSE VASQUEZ PRESTEGUI, WAS CHARGED IN THE SUPERIOR COURT FOR THE COUNTY OF SANTA BARBARA WITH LEWD ACTS UPON A CHILD (CALIF. P. CODE § 288(a), COUNTS 1, 8 AND 9); AGGRAVATED SEXUAL ASSAULT OF A CHILD BY RAPE (CAL. PENAL CODE 269(a)(3), COUNTS 2 AND 6); AGGRAVATED SEXUAL ASSAULT BY SODOMY (CAL. PENAL CODE § 269(a) 3, COUNTS 3, 4 AND 5); AND CONTINUOUS SEXUAL ABUSE (CAL. PENAL CODE § 288.5, COUNT 7.

THE JURY FOUND TRUE A MULTIPLE VICTIMS ALLEGATIONS (CAL. PENAL CODE §§ 667.61 SUBDS. (b), (e) (4)).

THE TRIAL COURT SENTENCED PETITIONER TO 145 YEARS TO LIFE IN STATE PRISON.

PETITIONER CONTENDED THAT THE TRIAL COURT ERRED AND VIOLATED HIS CONSTITUTIONAL RIGHTS BY:

- 1- ADMITTING STATEMENTS WHICH VIOLATED MIRANDA V. ARIZONA (1966) 384 U.S. 436. (MIRANDA);
- 2- ADMITTING HIS INVOLUNTARY CONFESSION;
- 3- ADMITTING CONCURRENTLY CHARGED OFFENSES AS PROPENSITY EVIDENCE
- 4- INSTRUCTING THE JURY INCORRECTLY ON THE USE OF CHARGED OFFENSES AS PROOF OF HIS PROPENSITY TO COMMIT OTHER CHARGED OFFENSE.

PETITIONER. FURTHER CONTENDS THAT HIS CONVICTION OF AGGRAVATED SEXUAL ASSAULT AND TWO COUNTS OF LEWD ACTS UPON A CHILD CANNOT STAND BECAUSE, AS CHARGED, THOSE CRIMES WERE ALL PERPETRATED AGAINST THE SAME VICTIM DURING THE SAME TIME PERIOD AS THE CONTINUOUS SEXUAL ABUSE. BECAUSE CALIFORNIA PENAL CODE SECTION 288.5(K) PROHIBIT CHARGING CONTINUAL SEXUAL ABUSE AS AN ADDITIONAL RATHER THAN AN ALTERNATIVE TO CONTEMPORANEOUS ASSAULT AND LEWD CONDUCT. THE TRIAL COURT VACATED THE CONTINUOUS SEXUAL ABUSE CONVICTION AND SENTENCE, AND AFFIRMED THE JUDGMENT ON THE OTHER ISSUES.

REASONS FOR GRANTING THE PETITION

PETITIONER address this court as his last avenue to claim the violation of his fifth, sixth and fourteenth amendment to the United States Constitution, as well as his rights under the California Constitution.

Even though this court has not control over the state of California constitutional violation, I like to state that this court should, due to the fact that at this time California has over 20000 prisoners between jails and prisons. (more than what China has) and almost every one is claiming violations of their constitutional rights.

On pages 9 through 12 PETITIONER is presenting issues of his sixth amendment violation, as this court and other federal court have understood and gave their opinion.

On pages 13 - 23 PETITIONER is presenting to the best of his knowledge, a violation of his due process clause of the fourteenth amendment to the United States Constitution

On pages 24 through 37 PETITIONER presents violation of his fifth, sixth and the fourteenth amendment as presented in the California court and the United States District court for the central district.

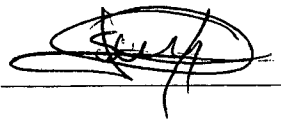
Also PETITIONER PRESENTS A CLAIM AS TO WHY THE COURT OF APPEAL FOR THE NINTH CIRCUIT DENIED HIS CLAIM BASED ON AN ISSUE BEYOND PETITIONER'S CONTROL. ONCE WE DEPOSIT OUR LEGAL MAIL IN THE CENTINELA MAIL SYSTEM, WE DO NOT KNOW WHEN OR IF IT IS SEND TO THE ADDRESSED PARTIES.

HERE, I SENT THE RESPONSE AS REQUESTED BY THE NINTH CIRCUIT, COURT OF APPEAL. (SEE EXHIBIT)
AS STATED BEFORE I DO NOT KNOW WHAT THE PRISON LEGAL OR REGULAR MAIL SYSTEM DID WITH IT.

PETITIONER ASKS THIS COURT TO REVIEW NOT JUST THIS PRESENT CASE BUT MOST CASES RELATED TO SEX CRIMES WERE EVIDENCE ARE NOT NECESSARY IN THE CALIFORNIA COURT, WERE HEARSAY IS ENOUGH AND WERE MOST OF THE EVIDENCE FOR THE DEFENSE EITHER ARE NOT PRESENTED BY THE APPOINTED OR PAID COUNSEL OR ARE THROWN OUT BY THE COURT. AS IN THIS PRESENT CASE. WERE DEFENDANTS ARE APPOINT A COUNSEL WITH OR WITHOUT EXPERIENCE ON THE ISSUES AT BAR, AND TO PROSECUTE SEXUAL CHARGES A EXPERT PROSECUTOR IS APPOINTED TO THE CASE. PETITIONER RESPECTFULLY ASKS THIS COURT TO GRANT HIS PETITION AND SEND IT BACK TO COURT FOR RETRIAL. CONCLUSION or File and Serve a Motion to Dismiss.
I want Justice, I am Innocent.
All the issues presented above as base on the U.S. CONST. rights.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 03-20-2018