

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2018

Stevie J. Stevenson

— PETITIONER

(Your Name)

vs.

Craig Richman, et al.,

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NINTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

Stevie J. Stevenson

(Your Name)

2302 Brown Road

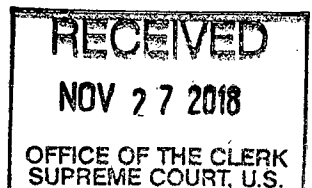
(Address)

Imperial, CA 92251-0901

(City, State, Zip Code)

N/A

(Phone Number)



QUESTION(S) PRESENTED

On January 1, 2003, the California Legislature enacted a state law entitlement by adding section §1054.9 to its penal code. (Stats.2002, ch. 1105, §1, enacting Sen. Bill No. 1391 (2001-2002 Reg. Sess.) Senate Bill 1391).) California Penal Code Section §1054.9 states in part:

subdivision (a)

"Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the DEFENDANT be provided reasonable access to any of the materials described in subdivision (b)."

subdivision (b)

"For purposes of this section, "discovery materials" means materials in the possession of the prosecution and law enforcement authorities to which the same DEFENDANT would have been entitled at time of trial."

subdivision (d)

"The actual costs of examination or copying pursuant to this section shall be borne or reimbursed by the DEFENDANT."

The questions presented are:

- (1) Does California Penal Code Section §1054.9 create a Liberty Interest under Kentucky v. Thompson, 490 U.S. 454, 460-63 (1989)? If so, what process is due that deserves constitutional protection and guarantee?
- (2) Does Stevenson have a right under the Fourteenth Amendment's Due Process and Equal Protection Clauses to pursue discovery without counsel during the PC §1054.9 proceedings?
- (3) Did the District Court lack jurisdiction to review Stevenson's §1983 action against defendants whos conduct infringed upon his protected Liberty Interest during the PC §1054.9 proceedings?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [x] 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:

DEFENDANTS

Corene Locke-Noble, Deputy District Attorney, Los Angeles County

James S. Bisnow, Attorney

Jackie Lacey, District Attorney, Los Angeles County

Zeke Perlo, Los Angeles County Bar Director, Indigent Criminal
Defense Appointments

Craig Richman, Superior Court Judge, Los Angeles County

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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 'C 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 _____ 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 April 16, 2018.

☐ 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: August 28, 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

United States Constitution

Amendment I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the government for a redress of grievances."

Amendment XIV

"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 law."

United States Codes

Title 28 U.S.C. §1331 Federal Question

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Title 42 U.S.C. §1983 Civil Action For Deprivation of Rights

"Every person who, under color of any statute, regulation custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

State of California Codes

Penal Code Section §141(c)

"A prosecuting attorney who intentionally and in bad faith alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the physical matter to the outcome of the case, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented at the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years."

Penal Code Section §1054.9(a)

"Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the Court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materials described in subdivision (b)."

subdivision (b)

"For purposes of this section, 'discovery materials' means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial."

subdivision (c)

"In response to a writ or motion satisfying the conditions in subdivision (a), court may order that the defendant be provided access to physical evidence for the purpose of examination, including but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. The procedures for obtaining access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and nothing in this section shall provide an alternative means of access to physical evidence

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

subdivision (c) continued

for those purposes."

subdivision (d)

"The actual costs of examination or copying pursuant to this section shall be borne or reimbursed by the defendant."

STATEMENT OF THE CASE

The Kidnapping and Investigation

On January 19, 1990, Melvin Rodriguez was kidnapped in front of his Los Angeles home at 4:00am by five armed black males. Rodriguez was beaten placed in the back of his chevrolet suburban, shot and driven from Los Angeles down to San Diego, while money was being demanded from his Mother.

The Los Angeles and San Diego Police Departments conducted an investigation into the kidnapping. LAPD Detectives Norman Jackson and Larry Hedwall led the investigation in Los Angeles and San Diego Sergeant Anthony Johnson led the investigation in San Diego. In connection with the kidnapping detectives Jackson and Hedwall arrested LaTanya Johnson, Donald Manuel, Denise Manuel and Diane Manuel. Kevin Richardson, Charles McMath and Tracey Gosha were arrested in connection to the case in San Diego. All of these arrests happened on January 19, 1990.

State Trial Court Proceedings

While serving a federal drug sentence in 1992, Petitioner, Stevie J. Stevenson was extradicted to California to stand trial for the 1990 kidnapping of Rodirguez. Los Angeles Superior Court case #BA011908(02).

1. At trial, five witnesses testified for the prosecution.

Melvin Rodriguez testified that he was kidnapped by five armed black males, taken to his suburban, beaten, placed in the back and shot. One of the five kidnappers called his mother demanding money and drove his vehicle throughout the day. Rodriguez overheard the driver say to someone on a cell phone "Uncle Mike will be there to see you in four hours."

Kevin Richardson testified that he knew Stevenson but heard he

was given the name Mike from somewhere. Richardson testified that Stevenson (Mike) called him on the morning of January 19, 1990, and asked that he follow him down to San Diego and he agreed. Richardson and Mike met up at his fathers house and that Mike asked that Richardson drive his jeep cherokee while Mike drove a suburban. Richardson followed Mike down to San Diego during a drive that took three hours.

Tracey Gosha testified that she knew Stevenson but knew he was called Mike. Gosha testified that Stevenson (Mike) called her on the day in question and asked to meet up at a gas station. Later on that day Gosha met Mike at a gas station in San Diego and was walked over to a suburban and asked could she help a man who was bleeding. Gosha looked at the man and told Mike that he needed to take the man to the hospital, but Mike refused and stated that he was not taking the man to the hospital until he got some money that the man owed him.

Los Angeles Police Detective and Co-Lead Investigator Larry Hedwall testified that while he was interviewing Richardson, Richardson told him that Mike's last name was Stevenson (Petitioner) and that Mike told him that he kidnapped the man (Rodirquez) for ransom to get some money back that was owed to him.

LaTanya Johnson testified that even though she knew Stevenson she knew other people called him Mike. Johnson testified that Stevenson called her on the day in question and asked could he have some money dropped off until he returned to pick it up and she agreed. [The money turned out to be the ransom money for Rodriguez].

The prosecution presented the ransom demands and determined that the caller was an unidentified male.

2. The defense presented no defense evidence whatsoever.

3. After a brief summation by the prosecutor that Stevenson was known as Mike and that he and four others kidnapped Rodriguez and that Stevenson drove the victims suburban from Los Angeles down to San Diego and throughout the day, that Stevenson was armed and should be charged as the principal.

In response counsel argued that the only evidence the prosecution presented was the name Mike and that evidence was not enough to secure a conviction.

4. The Honorable Albert Mathews Jr., presided over the bench trial and at the conclusion of the summation found Stevenson guilty of Count I for kidnapping Melvin Rodriguez in violation of California Penal Code §209(a) for kidnap ransom with great bodily harm. Stevenson was sentenced to an Indeterminate term of Life Without the Possibility of Parole, plus a three year gun enhancement.

The entire trial was reported on One Hundred and Forty-Nine (149) pages and the sentencing was only five (5) pages for a total of One Hundred and Fifty-Four (154) pages.

State Appellate Court Proceedings

1. On direct appeal Stevenson through counsel alleged insufficient evidence. Counsel concurrently filed a petition for writ of habeas corpus alleging Ineffective Assistance of Counsel.

In support of this claim counsel presented a declaration from Antoinette Gibbs who swore that at the time Rodriguez was kidnapped in Los Angeles Stevenson had been with her in San Diego since the 18th of January 1990; presented a declaration from JuTaun Sanders who swore that prosecution witness Kevin Richardson told her that he testified against Stevenson because he was threatened to do so; presented

a declaration from Private Investigator Steve Switzer PI-16323 who swore that he interviewed Ms. Gibbs and that she told him Stevenson was with her since the evening of January 18, 1990, in the City of San Diego; and presented a declaration from Ivy Kessel who swore that she interviewed trial counsel John Cheroske, who had since become a Superior Court Judge in Compton California. Cheroske was asked why he did not present any defense, why he did not call Stevenson's alibi witness and why he did not let Stevenson testify. Cheroske replied that he did not remember anything about Stevenson's trial or whether he was asked by Stevenson to testify. Kessel swore that she interviewed PI Switzer who told her that he thought it was odd that trial counsel did not contact much less call alibi witness Antoinette Gibbs to trial. When asked could he think of any reason why Cheroske did not call Ms. Gibbs to Stevenson's trial and Switzer replied he could not.

2. The California Appellate Court, Second District, Division Two, case numbers #B070341 and #B079658 denied both the direct appeal and habeas petition.

A petition for review was filed alleging Ineffective Assistance of counsel case number S037042 to the California Supreme Court which was denied as well.

Second Petition For Writ of Habeas Corpus

Appellate Attorney Ivy Kessel after numerous attempts received the trial file from Stevenson's trial counsel Cheroske old law firm after the direct appeal and first writ were denied. After reviewing the discovery, that did not include any audiotapes, Kessel sent the discovery to Stevenson with a letter informing him to file another petition due to documents showing that counsel (Cheroske) was Ineffective.

1. Stevenson filed a pro-per petition to the Los Angeles Superior Court raising an IAC claim (a) IAC on direct appeal, (b) IAC for failure to conduct pretrial investigation, (c) failure to call alibi witness to trial, and (d) failure to advise Stevenson he had a right to testify if he so chosed to do so over counsel's objections. Stevenson raised a knowing use of false testimony by the prosecution and raised that a new trial should be granted due to new evidence. To support these claims Stevenson submitted the declarations filed by attorney Kessel with a few police reports and probation report. The Honorable James Bascue, Superior Court Judge denied relief.

2. Stevenson filed a pro-per petition to the California Appellate Court, Second Appellate District, Division Two raising the same claims presented to the Superior Court, case number #B086793. The petition was denied.

3. Stevenson filed a pro-per petition for review to the California Supreme Court raising the same claims presented to the Superior Court and Court of Appeals, case number #S042986. The petition for review was denied.

Federal Court Proceedings

1. Stevenson filed a pro-per Title 28 U.S.C. §2254 petition for writ of habeas corpus to the United States District Court, Central District of California, Western Division raising the same claims raised in the State Courts, case number 2:95-cv-01573-RSWL-JR.

The Court ordered the State of California to show cause. After a response from the State and a traverse the Magistrate recommended that the petition be denied. After timely objections to which the District Court never responded, the Court accepted the Magistrate's

recommendation and denied the petition.

2. Stevenson filed a timely appeal to the Ninth Circuit Court of Appeals only raising the Ineffective Assistance of Counsel claim along with the District Abused its discretion by not having an evidentiary hearing, and a cumulative error claim, case number 95-56755.

The Court denied the appeal, denied the request for an evidentiary hearing and refused to rule on the cumulative error claim due it not being fully presented in the state courts.

3. Attorney Wendy Catherine Forward was hired to file a petition for rehearing and suggestion for rehearing en banc to the Ninth Circuit and a petition for Writ of Certiorari to this Court. Attorney Forward never filed the petition for rehearing in the ninth Circuit and filed a late Writ of Certiorari to this Court. (Stevenson-Bey v. Lungren, 520 U.S. 1185 (1997)).

4. Stevenson filed a motion to recall the mandate to the Ninth Circuit Court of Appeals and on April 28, 1997, the motion was denied.

5. At the time Stevenson's first and second petitions were filed in the State of California the Supreme Court in People v. Gonzalez, 51 Cal.3d 1179, 275 Cal.Rptr. 729, 800 P.2d 1159 (1990) held that a defendant seeking habeas corpus relief and sentenced to death was not entitled to Court ordered discovery unless and until the California Supreme Court issued an order to show cause and thus determined that the petition stated a prima facie case for relief. Id. at 1255-1261.

THE ENACTMENT OF CALIFORNIA PENAL CODE §1054.9

Unknown to Stevenson on January 1, 2003, the California Legislature added section 1054.9 to the penal code that entitled defendants sentenced to death or life without parole to discovery during postconviction proceedings.

2012

In July of 2012, Stevenson received an unsigned affidavit from Andre' Burks friend of prosecution witness Tracey Gosha. Burks swore that Gosha told him that she was threatened with twenty years in prison and placement of her son in foster care if she didn't tell the police what they wanted to hear. Gosha stated that to keep her son she just agreed with what she was told by the police and that she lied during her testimony at Stevenson's trial.

POSTCONVICTION DISCOVERY PROCEEDINGS UNDERPC §1054.9

Due to Mr. Burks dying and his original signed affidavit being lost and or thrown away by prison staff Attorney Venita Ray of Houston Texas signed a declaration regarding her conversations with both Burks and Stevenson.

On August 9, 2012, Stevenson filed a pro-per motion for postconviction discovery to use as an aid with preparing a petition for writ of habeas corpus, and even though he did not request counsel one was appointed.

1. In October of 2013, Stevenson received an affidavit from prosecution witness Kevin Richardson who recanted his testimony and stated that he lied on Stevenson at his trial due to his life and that of his family being threatened by the men who actually kidnapped Mr. Rodriguez. This affidavit bolstered the 1993 statement (declaration) of JuTaun Sanders who swore that Richardson told her that he testified against Stevenson because he was threatened.

2. In November of 2013, appointed counsel Christa Hohmann provided discovery to Stevenson as a result of the 1054.9 process. One of the documents was a February 13, 1990, statement of Rodriguez (victim), that was not provided at the time of trial, where he told LAPD detectives Jackson and Hedwall that he was set up to be kidnapped by a female

Colombian named Beatrice 'Patricia' Garcia because he owed her husband Andy Garcia [owner of Virgo Travel in East Los Angeles] \$27,000 for 2 kilos of cocaine.

Stevenson read Rodriguez's March 31, 1992, preliminary hearing testimony where he stated that he did not know Stevenson and that when he was abducted he was told it was related to the money he owed for 2 kilos of cocaine. Knowing the exculpatory value of this statement Stevenson began to learn all that he could about discovery.

3. In January of 2015, Stevenson obtained an affidavit from LaMount Johnson brother of prosecution witness LaTanya Johnson. LaMount swore that his sister told him that when she was arrested the police grabbed her by the neck, choked and slammed her head into a metal garage door. LaTanya stated that while she was being interviewed she was threatened with more harm and a life sentence if she did not tell the police what they wanted to hear. Terrified LaTanya just agreed with what she was told and stated that she later testified at Stevenson's trial as instructed to by the police.

4. In January of 2015, Stevenson came into possession of two civil lawsuits that were filed in the Los Angeles Superior Court, case numbers #BC002201 & #BC020272. These suits were filed by LaTanya Johnson (prosecution witness) along with a Donald Manuel, Denise Manuel and Diane Manuel. These lawsuits showed Donald Manuel was tortured by the police during his arrest where a bag was placed over his head where he could not breathe, Dinae Manuel was beat struck and kicked by the police with billy clubs, LaTanya Johnson was grabbed by the neck and slammed into a garage door and Denise Manuel was drugged down the street and threatened with the "gas chamber."

Documents found in the lawsuits showed that an LAPD personnel complaint Internal Affairs Log #90-469M was filed, another document showed the names of the LAPD Officers involved in misconduct but most compelling was Stevenson found a document that showed on July 8, 1992, just twenty one days before trial on July 29, 1992, an arbitrator found the LAPD liable for misconduct.

Stevenson reviewed a follow up report prepared by detectives Jackson and Hedwall where they documented that they arrested The Manuels and Ms. Johnson, thereby proving that the two lead investigators in the case participated in the torture, assault and battery of suspects arrested in connection with this case. Stevenson also reviewed this same report that showed detectives Jackson and Hedwall despite being directly involved in the violent and brutal arrests of The Manuels and Ms. Johnson conducted the following interviews of: LaTanya Johnson, Donald-Diane-Denise Manuel, Kevin Richardson, Tracey Gosha, Charles McMath, Melvin Rodriguez (victim), Inez Alvarenga, Lisa Rogers and Wareen Goins. The original notes, written reports and audiotapes were never provided to Stevenson's trial counsel.

5. In August of 2016, Stevenson received additional discovery during the 1054.9 proceedings which consisted of the January 20, 1990, statement of prosecution witness Kevin richardson made to LAPD DETECTIVE Larry Hedwall. The report, which was not provided at the time of Stevenson's trial, revealed that Richardson never stated that Mike's last name was Stevenson or that Stevie J. Stevenson was involved in the crime at all.

Discovery Requests and Pitchess Motion

Because Stevenson was preparing to file a pro-per petition for

writ of habeas corpus he prepared both a discovery request and pitchess motion that he determined would aid him with filing his petition. some of the discovery requests consisted of ALL of the interviews conducted by lead investigators Jackson and Hedwall along with reports by ALL of the LAPD detectives who were involved in the brutal and violent arrest of The Manuels and Ms. Johnson.

Despite Stevenson preparing both his discovery requests and pitchess motion and providing them to attorneys, both appointed and retained, no attorney submitted his requests with supporting documents.

Appointed Attorneys

1. Christa Hohmann

Attorney Hohmann submitted Stevenson's discovery requests to Deputy District Attorney Corene Locke-Noble in January of 2015, however, refused to file a pitchess motion by stating, "you don't file pitchess motions against those guys from the SIS." (Refer to Los Angeles Times News Article dated November 29, 1998, by Matt Lait times staff writer titled 'SIS: Stormy Past, Shaky Future.')

In February of 2015 DDA Locke-Noble responded to the discovery request and refused to provide any of the requested discovery. Due to a conflict of interest attorney Hohmann withdrew.

2. Judith rochlin

Attorney Rochlin was very interested in the case and provided Stevenson with information that the SIS was known as the 'Death Squad' and that the lawsuit and other information proved that the LAPD or prosecution withheld exculpatory evidence to cover up misconduct. However, Ms. rochlin had to withdraw due to family illness.

3. James S. Bisnow

Attorney Bisnow told Stevenson that he was just another GUILTY

inmate bothering both the Courts and District Attorney asking for discovery that if it was up to him Stevenson would not get his discovery. Bisnow told Stevenson he must have flunked out of school because he (Stevenson) did not know how to speak the English language, Bisnow told a friend of Stevenson's that he was GUILTY and told Stevenson's sister and wife that Stevenson had to prove to Bisnow that he (Stevenson) was innocent before he asked for any discovery materials.

Bisnow was provided with Stevenson's discovery requests and pitchess motion but refused to submit those requests and supporting documents and submitted requests without Stevenson's knowledge and or approval.

December 13, 2016 Hearing

Despite both DDA Locke-Noble and attorney Bisnow being provided with discovery requests that was never submitted by Bisnow and never provided by Locke-noble during the December 13, 2016, both Bisnow and DDA locke-Noble stood before the Honorable Craig Richman and stated that all discovery was COMPLETED and that the 1054.9 proceedings could be closed without ever addressing all of Stevenson's requests.

Right before th eJudge was going to close the 1054.9 motion an attorney Naren Hunter (retained) unknown to Stevenson stepped forward and told the Judge that all discovery was not completed.

Retained Attorneys

After the December 13, 2016, hearing attorney Bisnow approached attorney Hunter and told him that Stevenson was GUILTY and that he should not represent a GUILTY Person.

Hunter spoke to Stevenson and told him that he was shocked to hear an Officer of the Court speak with such disdain towards a client.

Hunter was provided with all of Stevenson's discovery requests

and pitchess motion with supporting documents yet failed to submit those requests and documents to the court. Due to Stevenson's wife Misty Stevenson along with appellate specialist Neil Rosenbaum and Stevenson being unable to contact Hunter another attorney was hired unknown to Stevenson.

Attorney Hunter eventually backed away from the case and never submitted Stevenson's requests and returned the money he was given and stated that the case was Hot that he did not know there were allegations against a sitting deputy district attorney and that he was losing friends and clients for taking Stevenson's case.

5. Christopher Campbell

Despite Attorney Campbell being retained in August of 2017, as of this very date he has not submitted Stevenson's discovery requests and pitchess motion with supporting documents.

6. Craig Richman, Los Angeles Superior Court Judge

As a result of no attorney submitting Stevenson's requests he wrote numerous letters and filed many motions asking to be self represented and the Court has ignored and or denied these requests. Stevenson has asked to be able to submit his own requests and pitchess motion and has been told that the only way that he can submit anything in the Court is through attorney Bisnow or a retained attorney.

The Court made it a point to state that it does not read anything that Stevenson has filed and will not read any of it.

Stevenson filed many petition for writ of mandates and petitions for review and has been denied without any order to show cause or request for an informal response. (Refer to California Court of Appeals Second Appellate District Division Two case numbers B269686, B277650,

B278906, B279752, B282606; California Supreme Court case numbers S232867, S238211, S239646, S242488).

There have been evidentiary discovery hearings and one pitchess hearing held on July 14, October 20, December 13, 2016; April 20, August 18, 2017; January 10, February 6, April 18, June 10, August 14, and September 18, 2018 and the Court denied Stevenson the right to be present either physically, telephonically or by video conference; the Court has not provided Stevenson copies of transcripts for the hearings held since December 13, 2016; the Court will not allow Stevenson to possess four exculpatory audio recordings of interviews of prosecution witnesses two who were coerced under PC §1054.9(a) & (b); the Court will not allow Stevenson to reimburse the prosecution for the copying of those audio recordings as afforded PC §1054.9(d); and most importantly the Court will not allow Stevenson to represent himself and has demanded that he either accept appointed attorney James Bisnow (who called him Guilty), or Stevenson has to retain an attorney just to submit his requests.

TITLE 42 U.S.C. §1983 PROCEEDINGS

District Court

1. On May 4, 2017, Stevenson filed a pro-se Civil Rights complaint along with a request to proceed without prepayment of filing fees in the United States District Court, Central District of California, Western Division in the matter of Stevenson v. Richman et al., case number 2:17-cv-03367-CJC-JC.

The complaint asserted multiple claims regarding the violation of Stevenson's Due Process, Equal Protection and Access to Court during a state law entitlement "Liberty Interest" proceeding under penal code section §1054.9. Stevenson alleged that the defendants actions and

inactions infringed upon a protected liberty interest in PC §1054.9: (1) where defendant Richman deprived him due process and equal protection to submit his discovery and pitchess requests in pro-per like other inmates who were similarly situated in violation of the 14th Amendment; (2) where defendant Richman deprived him access to court by refusing to allow Stevenson to be present during the PC §1054.9 evidentiary hearings and for refusing to accept Stevenson's pro-per discovery requests and pitchess motion with supporting documentation; (3) where defendant Bisnow (attorney) defamed Stevenson by telling everyone he was GUILTY and for violating Stevenson's due process and equal protection by refusing to submit the discovery and pitchess requests that was provided to him from Stevenson during the state law entitlement "Liberty Interest" proceedings under PC §1054.9; (4) where defendant Locke-Noble deprived Stevenson due process by refusing to provide the requested discovery during the state law entitlement "Liberty Interest" proceeding under PC §1054.9; (5) where defendants Bisnow [who was once sued by his former client for working with the prosecution against him; Miller v. Brown, 2014 U.S. Dist LEXIS 15116, case number 1:12-cv-01589-LJP-BAM (PC)] and Locke-Noble "CONSPIRED" to deprive Stevenson of his rights and privileges during the state law entitlement "Liberty Interest" proceedings under PC §1054.9 by stating that ALL discovery was COMPLETE where there were requests that Locke-Noble refused to respond to and there were requests provided to Bisnow that he never submitted; (6) where defendant Lacey failed as a supervisor to correct the constitutional violations of her deputy Locke-Noble and (6) where defendant Perlo failed as a supervisor to correct the constitutional violations of attorney Bisnow.

2. On May 24, 2017, the Magistrate recommended that the In Forma Pauperis application be denied, that the action be dismissed for lack of jurisdiction, that the complaint was frivolous, malicious or failed to state a claim, that the complaint sought monetary relief from a defendant immune from such relief and because leave to amend would be futile.

On May 26, 2017, without reviewing Stevenson's complaint liberally, without accepting his factual allegations (affidavits, declarations and documentary evidence) or determining if California Penal Code Section §1054.9 was a Liberty Interest and what process was due, the District Court accepted the Magistrate's recommendation and DISMISSED the complaint. (Appendix 'C')

3. Stevenson filed a request to appeal the District Court's dismissal of the complaint. On April 16, 2017, without construing Stevenson's complaint liberally, without accepting his factual allegations as true and determining if California Penal Code Section §1054.9 was a "Liberty Interest" to determine if a federal question was being presented for jurisdiction DISMISSED the request for appeal as frivolous. (Appendix 'A' case number 17-55889.

Stevenson filed a petition for rehearing and suggestion for rehearing en banc on August 28, 2018, the Court denied the requests. (Appendix 'B')

4. In January of 2017, the California Legislature added section 141(c) to its penal code. The provision calls for the prosecution of any prosecuting attorney who withholds relevant exculpatory evidence during a trial, [special] proceeding or inquiry, which is a felony punishable by imprisonment for 16 months, or two or three years.

REASONS FOR GRANTING THE PETITION

Many indigent inmates, like Stevenson, are deemed uneducated and illiterate [Lewis v. Casey, 116 S.Ct. 2174, 2181 (1996); Gilmore v. Lynch, 319 F.Supp. 105, 109-110 (N.D. Cal.1970)], therefore it is respectfully requested that this pro-se petition for Writ of Certiorari be liberally construed. Haines v. Kerner, 404 U.S. 519, 520 (1972); Price v. Johnson, 334 U.S. 206, 292 (1948).

Petitioner, Stevie J. Stevenson, is a defendant sentenced to an Indeterminate term of Life Without the Possibility of parole in the California Department of Corrections and Rehabilitation (CDCR). In August of 2012 he rightfully filed a motion for postconviction discovery under California Penal Code Section §1054.9 to use as an aid with stating a prima facie case for relief once he filed his petition for writ of habeas corpus.

Stevenson never requested the appointment of counsel, however, the State of California has demanded that the only way Stevenson can submit the requests that he sees fit to assist him with his pro-per petition is, he must either accept an appointed attorney, who has worked against his best interest, or Stevenson has to retain an attorney. Other inmates similarly sentenced to Life Without parole are allowed to represent themselves and ask for and obtain discovery materials.

The §1983 civil rights action was filed because Stevenson was under the impression that PC §1054.9 was a state created "Liberty Interest" and that the defendants actions and inactions were depriving him of a protected interest, that being, to use the discovery proceedings to ask for discovery to use with helping him with filing his pro-per petition for writ of habeas corpus.

There is a need for review by this Court because an important question of federal law has never been discussed by any Court in the State of California, any of the four federal district Courts in California or by the Ninth Circuit Court of Appeal, that being, is California Penal Code Section §1054.9 a "Liberty Interest" and if so what process is due that deserves constitutional protection and guarantee?

This important question of federal law has not been, but should be settled by this Honorable Court because there is a possibility that the rights of defendants will be eviscerated when a State Legislature enacts a law that allows defendants access to discovery materials on postconviction are not being afforded the process that they are due and forced to either accept agents (attorneys) appointed and/or retain who act in a manner completely adverse to the clients' interest.

Stevenson has made numerous attempts to terminate all of his attorneys (appointed/retained) representation so that he could represent himself, yet these efforts have been thwarted by forces wholly beyond his control.

Stevenson comes to this Honorable Court asking for review so that he can use a state law entitlement "Liberty Interest" on his own so that he can ask for discovery and submit a pitchess motion to obtain evidence to help aid with his petition for writ of habeas corpus that has claims of a Brady, Trombetta, Napue, Mooney-Alcorta-Pyle, Stein-Lynumn and Donnely, to prove not only his innocence but that he did not receive a fair trial as afforded the 14th Amendment to the United States Constitution.

I. THE NINTH CIRCUIT AND DISTRICT NEVER APPLIED THE "SUBSTANTIVE PREDICATE" "EXPLICITLY MANDATORY LANGUAGE" REVIEW TO DETERMINE IF CALIFORNIA PC §1054.9 WAS A "LIBERTY INTEREST"

This Court in Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 460-63, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989) set the standard for reviewing a state statute to determine if it met the requirements for a liberty interest. This Court held that for a state statute or regulation to create a "Liberty Interest" protected under the constitution, two things must be true: (1) the law must set forth 'substantive predicates' to govern official decision making, and (2) the law must contain 'explicitly mandatory language' specifying the outcome that must be reached if the substantive predicates have been met. This standard has been followed by the Ninth Circuit in Bonin v. Calderon, 59 F.3d 815, 841-842 (9th Cir. 1995) and all other Circuits of the Federal Judicial Circuits, however, neither the District Court nor the Ninth Circuit applied this standard of review to PC §1054.9.

California Penal Code Section §1054.9 states in relevant part:

"Upon the prosecution of a postconviction writ of habeas corpus ... in a case in which a sentence ... of Life in prison without the possibility of parole has been imposed, ..., the Court SHALL ..., order that the **DEFENDANT** be provided reasonable access to any materials described in subdivision (b)."

subdivision (b)

"For purposes of this section, 'discovery materials' mean materials in the possession of the prosecution and law enforcement authorities to which the same **DEFENDANT** would be entitled to at time of trial."

The plain language of the statute clearly establishes a non-discretionary entitlement for defendants sentenced to death or life without parole (like Stevenson) access to discovery materials. PC §1054.9 states that the Court shall order that the **DEFENDANT** be provided reasonable

access to discovery materials to which the same **DEFENDANT** was entitled to at time of trial. The statute thus uses mandatory language and clearly specifies the outcome to be reached-that the **DEFENDANT** be entitled to reasonable access to discovery materials.

In addition the decision makers discretion is limited where the language sets forth the substantive predicate that circumscribes the trial court's discretion. Therefore the statute meets the requirements this Honorable Court described for the creation of a "Liberty Interest" in Thompson, supra 490 U.S. 460-63 because it imposes an absolute duty on the court to provide a **DEFENDANT** sentenced to death or life without parole reaosnable access to discovery materials that they were entitled to at time of trial.

Thus it is the entitlement to 'discovery materials' that the law establishes, and it is that statutory right that creates a "Liberty Interest" for pC §1054.9.

A. State Courts Interpretation And Use of PC §1054.9

The California Supreme Court in In re Steele, 32 Cal.4th 682, 691 (2004) held that defendants were entitled to seek discovery to assist in stating a prima facie case for relief while preparing to file a petition or after one had been filed. The Court further held:

"[W]e interpret §1054.9 to require the trial court on a proper showing of good faith effort to obtain the materials from trial counsel, to order discovery of specific materials currently in the possession of the prosecution or law enforcement authorities involved in the investigation or prosecution of the case that the **DEFEDNANT** can show either (1) the prosecution did provide at the time of trial but have since been lost to the **DEFENDANT**; (2) the prosecution should have provided at the time of trial because they came within the scope of a discovery order the trial court actually issued at that time, a statutory duty to disclose exculpatory evidence; (3) the prosecution should have provided at time of trial because the

defense specifically requested them; (4) or the prosecution had no obligation to provide at time of trial absent a specific defense request, but to which the **DEFENDANT** would have been entitled at time of trial had the **DEFENDANT** specifically requested them." Id at 697.

The Second Appellate District Court in *Hurd v. Superior Court*, 50 Cal.Rptr.3d 893 (Cal.App. 2 Dist 2006) held that PC §1054.9 authorizes a pre habeas corpus motion for discovery from a Police Officer's personnel records pursuant to *Pitchess v. Superior Court*, 11 Cal.3d 531, 537-538 (1974); California Evidence Code Sections §1043-§1045.

The Statute itself and the California Supreme Court in *Steele* emphasizes that it is the **DEFENDANT** who is entitled to discovery to use as an aid with stating a prima facie case for relief.

The question to be determined is, what process is a pro-se indigent litigant sentenced to Life without parole has under the statute that needs this Court's review to settle that important question.

II. A PRO-PER DEFENDANT SHOULD BE ALLOWED TO PURSUE DISCOVERY WITHOUT HAVING TO ACCEPT AN APPOINTED ATTORNEY OR RETAINING ONE DURING THE PC §1054.9 DISCOVERY PROCEEDINGS

As stated above the statute itself along with the interpretation of the statute by the California Supreme Court emphasizes that it is the **DEFENDANT**, not counsel who has access to discovery materials.

The question about a defendant having to have an attorney for discovery was discussed by the Third Appellate Court in *Burton v. Superior Court*, 105 Cal.rptr.3d 604, 605-606 (Cal.App. 3 Dist 2010) wherein the Court stated "There is no statutory requirement that a **DEFENDANT** be represented by an attorney at the time he pursues a section PC §1054.9 motion. The Court expounded on its reasoning for stating that a defendant did not have to have an attorney while pursuing discovery under PC §1054.9 by holding:

"[N]othing in the language of section 1054.9 limits the statute to **DEFENDANTS** who are currently represented by counsel. Rather subdivision (a) of section 1054.9 provides that if conditions are satisfied, "the Court shall ... order that the **DEFENDANT** be provided reasonable access to any materials described in subdivision (b).

Where the plain language of a statute is clear and unambiguous, there is ordinarily no cause to consider its legislative history or other authority. (citations omitted) This is such a case. The trial court's decision, quite simply, rewrites the statute to include the additional requirement that a **DEFENDANT** be represented by counsel in all cases, even though no such requirements was specified by the legislature. Whatever may be thought of Wisdom, expediency or policy of a statute, we have no power to rewrite the statute to make it conform to a presumed intention that is not expressed."

As stated both the statute itself and the Supreme Court in *In re Steele*, supra 32 Cal.4th 691, 697, recognizes that it is the **DEFENDANT** who has access to the discovery materials. The explanation by the Court in *Burton* specifically holds that the statute is unambiguous and what has occurred to Stevenson is the defendants has rewritten the statute itself and has required him to either accept an attorney, where there is a conflict of interest, or he has to pay for one just to submit his discovery requests and pitchess motion to obtain evidence and information that he is going to use for his pro-per petition for writ of habeas corpus clearly a violation of Stevenson's due process.

More importantly is, Stevenson has helped other men sentenced to Life Without Parole file a 1054.9 motion and he prepared one defendant Robert Smith with going back to court and representing himself to ask for an dobtain discovery materials that he was entitled to under the statute, a clear equal protection issue.

The imporant question that needs to be addressed is, does Stevenson a pro-per indigent defendant sentenced to Life without parole have a due process and equal right to represent himself in light of the

the language of the statute itself, the interpretation of the statute by the Supreme Court in Steele, supra 32 Cal.4th 691, 697, or the holding of the Appellate Court in Burton, supra 105 Cal.Rptr.3d 605-606; or does the statute demand that a defendant has to have either an appointed or retained attorney just to pursue discovery during the PC §1054.9 proceedings?

III. THE FEDERAL DISTRICT COURT DID NOT LACK JURISDICTION TO REVIEW STEVENSON'S §1983 ACTION

Stevenson's §1983 civil rights complaint argued that he was being arbitrarily deprived the right to use a state law entitlement "Liberty Interest" in penal code section §1054.9. This Court has ruled that when a defendant argues they have an entitlement (what the Supreme Court precedents call a 'Liberty Interest') Courts must first examine the asserted liberty interest to determine what process (if any) is due. District Attorney's Office v. Osborne, 129 S.Ct. 2308, 2319 (2009) citing Board of Regents of State Colleges v. Roth, 408 U.S. 564, 570-571, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); Olim v. Wakinekona, 461 U.S. 238, 250-251, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983).

In the case at hand the District Court without using the required standard of reviewing a statute under the "substantive predicate" and "explicitly mandatory language" for California Penal Code Section §1054.9 under Kentucky, supra 490 U.S. 460-463 never knew that the statute met the requirements of being considered a "Liberty Interest." By the District Court not knowing that PC §1054.9 was a "Liberty Interest" it was unable to analyze Stevenson's claims for violation of the right to procedural due process under the threshold inquiry to determine if the defendants conduct infringed upon a protected interest and assess whether the process provided by defendants was

constitutionally adequate. See *Hewitt v. Helms*, 459 U.S. 460, 468, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983); *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976).

This Court has previously held "[W]hen ... a State creates a liberty interest, the Due Process Clause requires fair procedures for its vindication-and federal courts will review the application of those constitutionally required procedures." *Swarthout v. Cooke*, 562 U.S. 216, 131 S.Ct. 859, 861-862, 178 L.Ed.2d 732 (2011).

The Ninth Circuit recognizes that where a governmental official fails to comply with state law that gives rise to a liberty or property interest, a procedural due process violation may occur which can be redressed by 42 U.S.C. §1983. See *Carlo v. City of Chino*, 105 F.3d 493, 497-500 (9th Cir. 1997).

As a direct result of the District Court's failure to determine if PC §1054.9 was a state created 'liberty interest,' failure to accept Stevenson's factual allegations (affidavits, declarations and documentary evidence) as true, and construe the pro-se complaint liberally it was unable to rightfully determine that it lacked jurisdiction to review the complaint. Had the Court reviewed PC §1054.9 under the required standard of review it would have determined that the statute was a 'liberty interest' under Kentucky, *supra* 490 U.S. 460-463, and under federal question jurisdiction per Title 28 U.S.C. §1331 in light of *Baker v. Carr*, 369 U.S. 186, 198, 82 S.Ct. 691, 699-700, 7 L.Ed.2d 663 (1962) the Court had jurisdiction to review the §1983 action by Stevenson.

The Ninth Circuit Court of Appeals also failed to determine if PC §1054.9 was a state created 'liberty interest,' failed to construe

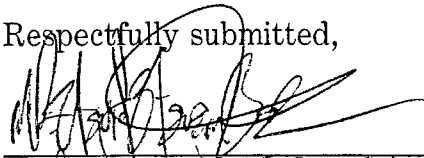
Stevenson's §1983 complaint liberally, failed to accept his factual allegations as true [Erickson v. Pardus, 551 U.S. 89, 94, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007); Hebbe v. Pliler, 627 F.3d 338, 341-342 (9th Cir.2010)] and most importantly failed to address whether the District Court's determination that it lacked jurisdiction was incorrect. As a result of those multiple failures the Ninth Circuit's dismissal of Stevenson's request to appeal the District Court's denial as frivolous was not based on the record.

Having failed to properly review California Penal Code Section §1054.9 and examine how the State Courts interpreted the statute and applied it, coupled with its failure to determine if the statute was a "Liberty Interest" the Ninth Circuit's decision to dismiss Stevenson's request to appeal as frivolous should be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



MR. STEFAN J. STEUNSWIJK-6324

Date: NOVEMBER 19, 2018