No. 24-5730

SUPREME COURT OF THE UNITED STATES

In re CARLOS MARTINEZ,
Petitioner,

PETITION FOR WRIT OF HABEAS CORPUS

Acting In Propia Persona
CARLOS MARTINEZ #E16085
Valley State Prison - A1-9-3Low
P.O.Box 92
Chowchilla, California. 93610

PETITION FOR WRIT OF HABEAS CORPUS

QUESTIONS PRESENTED FOR REVIEW

1. Whether the indeterminacy of the wide-ranging inquiry reqvired by the "determination clause" in subdivision (b)(1) of California Penal Code Section 1170.12, both denies fair notice to defendants and invites arbitrary enforcement by judges

2. Whether the serious or strikes prior felony convictions allegations against petitioner were so totally devoid of evidentiary support as to render his status as a three striker felony-offender unconstitutional under the due process clause of the Fourteenth Amendment

RELIEF SOUGHT

Petitioner prays for a writ of habeas corpus directed to the Superior Court of Los Angeles County in California, and to the Honorable Judge James B. Pierce of the Long Beach Superior Court, directing and commanding these respondents to set aside or vacate petitioner's habitual criminal conviction as a three Striker offender and sentences according to the opinion or mandate of this Court

UNAVAILABILITY OF RELIEF IN OTHER COURTS

No other court can grant the relief sought by this petition because California's courts have construed California Penal Code Section (P.C.§) 1170.12(b)(1) wrongly and the United States District Courts of California and Ninth Circuit Court of Appeals followed its soundness. Also because no judge or circuit justice has not ever reviewed Petitioner's case and all the lower courts have denied relief based on procedural grounds, never on the merits. In this case Petitioner is in a situation in which the Ninth Circuit Court of Appeals denied Petitioner's Application for authorization to file a second or successive habeas petition on August 22, 2024 (Appendix D at pp. 21-22), and he has no other remedy but to pray to this Court to exercise its original habeas jurisdiction under either of this Court's rule 20.4 (a), 28 U.S.C.§ §1651(a) & 2241(a)&(c) and U.S. Const. Art. III, §2; Cf. Felker v. Turpin, 518 U.S. 651, 658, 661-662 (1996)

UNAVAILABILITY OF ANY OTHER FORM OF RELIEF

No other form of relief will be sufficient to protect the dignity and rights of Petitioner or preserve the ability to seek review of the lower court judgment because direct appeal, petition for review, State habeas corpus, federal habeas corpus or certiorari from final judgment were and are inadequate

LIST OF PARTIES IN COURT BELOW

1. Carlos Martinez, Defendant and Petitioner,
2. People of the State of California, Plaintiff and first respondent,
3. State of California, second respondent
4. Long Beach Superior Court of the State of California, third respondent,

TABLE OF AUTHORITIES CITED

TABLE OF AUTHORITIES CITED, Continuation

JURISDICTION STATEMENT

This Court has jurisdiction to issue the requested writ under 28 U.S.C. §1651(a) and Supreme Court Rule 20, after the Ninth Circuit Court of Appeals denied Petitioner's permission to file a second federal habeas corpus petition, Felker, supra, 518 U.S at 651, 661-662, and it should be granted because California Courts' usurpation of power is clearly apparent by deciding what facts, circumstances, or elements shall be taken into account to impose the hasher sentences under its three strikes law, see, Santosky v. Kramer, 455 U.S. 745, 755-756 (1982)

CITATION OF LOWER COURT DECISIONS

The decision of the California Court of Appeals for the Second District affirming the judgment of the sentence of 31 years to life in direct appeal is attached as Appendix (Appx.) A at pp. 12-15.) and Petitions for review and habeas corpus were subsequently denied. See, In re Martinez, 1999 Cal. Lexis 2087 (Cal. 3/31/99); In re Martinez, 1999 Cal. Lexis 1927 (Cal. 3/31/99); In re Martinez, 1999 Cal. Lexis 4364 (Cal. 6/30/99); In re Martinez, 2001 Cal. Lexis 1419 (Cal. 2/28/01); In re Martinez, 2014 Cal. Lexis 1986 (Cal. 3/19/14); In re Martinez, 2023 Cal. Lexis 3944 (Cal. 7/12/23) and two federal habeas corpus were denied as untimely sua sponte by the United States District Court see Calderon v. Terhune, 2:99-cv-13406-CJC-AJW (C.D. Cal. 12/22/99); Calderon v. Terhune, 2006 U.S. Dist. Lexis 118713 (C.D. Cal. 12/12/06); Calderon v. Hernandez, 2019 U.S. App. Lexis 33567 (9th Cir. Cal. Nov. 8, 2019); and Certiorari was denied by this Court, see Martinez v. California, 2024 U.S. Lexis 784 (U.S. Feb. 20, 2024)

CONTROLLING PROVISIONS, STATUTES, AND OTHER AUTHORITIES

1. The Fourteenth Amendment to the United States Constitution provides in relevance to this case:

> "...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;"

2. California Penal Code Sections:

Section 667(a) provides: "any person convicted of a serious felony who previously has been convicted of a serious felony...shall receive, in addition to the sentence imposed by the court for the present offense, a five year enhancement for each such prior conviction on charges brought and tried separately...." (1992 edition)

Section 1170.12(b)(1) provides:

(b) "Notwithstanding any other provision of law and for purposes of this section, a prior conviction of a felony shall be defined: (1) Any offense defined in subdivision (c) of section 667.5 as a violent felony or any offense defined in subdivision (c) of section 1192.7, as a serious felony in this state. <u>The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction</u>..." (This underlined phrase is what Petitioner calls the "determination clause" that must be given the correct construction by this Court)

STATEMENT OF THE CASE AND GOVERNING FACTS

Petitioner was convicted of two counts of burglary in first degree in violation of California Penal Code Sections (P.C.§) 460, 459 and 1192.7(c)(18) on 1992, in a single trial to which under the P.C.§667(a)'s language converts this conviction into a single prior serious felony conviction because the two counts were brought and tried together at a single trial deserving the imposition in the future of a five-year enhancement if convicted again in the State of California. This was a fair warning under P.C.§667(a) as required by the Due Process Clause of the Fourtheent Amendment, See, In re Harris, 49 Cal.3d 131, 133-136 (1989) (in which the California Supreme Court construed P.C.§667(a) and established what constitutes a single prior serious felony conviction.)

On June 20, 1997, Petitioner was convicted of one count of burglary in first degree in violation of P.C.§§459 and 1192.7(c) and the prosecution alleged that: (1) Petitioner was previously convicted of two strikes prior serious felony convictions within the meaning of P.C.§1170.12(b)(1), and (2) Petitioner was previously convicted of a one prior serious felony conviction withing the meaning of P.C.§667(a). [The conviction of one count of burglary is not being challenged]

On July 8, 1997, Petitioner requested a bifurcated trial on the prior allegations in which the prosecution introduced as evidence a P.C.§669(b)-package containing: (1) An abstract of judgment showing the name of Pedro Calderon and that he was convicted of two counts of first degree burglary (Appx B at p.17), (2) A fingerprint card showing the name of Carlos Martinez and that he was received at Wasco State Prison's reception center on April 8, 1992, for the commission of two first degree burglaries (Appx C at p.19) and (3) A photograph that was never showed to Petitioner.

Then after the trial judge reviewed these pieces of evidence he found that: (1) Petitioner was a persistent felony offender within the meaning of P.C. § 1170.12(b)(1) for suffering two strikes prior serious felony convictions, and (2) Petitioner was a predicate felony offender within the meaning of P.C. § 667(a) for suffering one prior serious felony conviction. (Appx A, at p. 13) Finally the judge imposed a 25 years to life sentence according to the findings of two strikes prior felony convictions and in addition imposed five years - enhancement sentence for the finding of a prior serious felony conviction

As mentioned above Petitioner's direct appeal was affirmed and his subsequent petitions for review, State habeas Corpus, federal habeas corpus and certiorari raising claims under the ex post facto, due process, double jeopardy and precedents of this Court were all rejected or denied without reaching the merits of those claims.

Now after reading and researching case law for more than 25 years Petitioner concluded that the construction of subdivision (b)(1) of the P.C. § 1170.12 becomes unconstitutional according to the Johnson ruling which represents a substantive change on constitutional law and therefore applies retroactively to Petitioner's case or sentence, See Johnson v. United States, 576 U.S. 591 (2015)

Therefore if this court fails to grant relief by way of this writ California will continue to adjudicate habitual criminals without the evidence required to determine whether a defendant is a predicate-felony offender with at least two serious felony convictions or a persistent felony offender with at least three serious felony convictions and she will be applying the unconstitutional "determination clause" in subdivision (b)(1) which is being questioned and challenged by this writ.

ARGUMENT

I. The determination clause did not survive the prohibition of vague criminal laws, because the determination clause left grave uncertainty about how estimate the elements or risk posed by a prior or present crime and left uncertainty about how much harm or bodily injury was involved in a prior or present crime to qualify as a strike felony conviction.

The prohibition of vagueness in criminal statutes "is well-recognized requirement" and a statute the flouts or is ambiguous it "violates the first essential of due process", Connally v. General Constr. Co., 269 U.S. 385, 391 (1926) and United States v. Batchelder, 442 U.S. 114, 123 (1979) (vague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a given criminal statute") (citations omitted) These principles apply to the "determination clause" involved in this case in P.C. § 1170.12(b)(1).

First, California Courts have construed this "determination clause" as follows: "The determination reference to the 'date of conviction' means that the court is currenty required to look backward to the date of the conviction of the past offense and see if such past offense qualified as a misdemeanor, felony, serious or violent felony, and that there is no reason, however, to require a trial court to determine whether the current or present offense-conviction may serve as a strike prior conviction for future sentencing proceedings." See, People v. Sipe, 36 Cal. App. 4th 468, 478 (3rd Dist. 1995) rev. den. 1995 Cal. Lexis 5979 (1995) and Writ of Certiorari den. Sipe v. California, 516 U.S. 1131 (1996); People v. Green, 36 Cal. App. 4th 280, 283 (2nd Dist. 1995) rev. den; People v. Reed, 33 Cal. App. 4th 1608, 1611 (1st. Dist. 1995); People v. Murillo, 39 Cal. App. 4th 1298, 1307 (6th Dist. 1995); Gonzalez v. Superior Court, 37 Cal. App. 4th 1302, 1311 (5th Dist. 1995)

Here this interpretation is clearly erroneous, first because under the categorical approaches in Taylor v. United States, 495 U.S. 575, 600 (1990) and In re Harris, supra, 49 Cal. 3rd at pp. 133-134 & n. 3, to assess whether a prior or current crime qualifies as a serious or violent felony the current court must look to the terms of how the law defines the offense and not in terms of dates, and second, that "determination clause" mandates that the present court shall made a determination of whether a prior conviction is a strike prior felony conviction on the date of that prior conviction and not whether the past offense qualified as a misdemeanor, serious or violent felony. However, this "determination clause" covers a prior or current crime thus requires a court to picture the kind of conduct or weapon used that the crime involves in any ordinary case and judge whether on the date of conviction that abstraction presented a harm or serious bodily injury, see, People v. Rodriguez, 17 Cal. 4th 253, 261 (1995) (holding that the abstract of judgment alone did not prove that Rodriguez's assault without showing he personally inflicting great bodily harm or bodily injury was a strike prior conviction and that least adjudicated elements of the crime define in section 245(a)(1) are insufficient to establish a "serious felony") (citing People v. Davis, 42 Cal. App. 4th 806, 814 (2nd Dist. 1996).) The tasks of California Supreme Court and the majority of California Court of Appeals goes and went beyond in deciding whether creation of risk harm, bodily injury or speculation, i.g, in petitioner's case the judge find that the two prior burglaries were strikes prior felony convictions because risk of injury arised because petitioner might had confronted the victims in the residence after breaking and entering as an element of the crimes. That is so because, unlike the part preceding the "determination clause" defining a serious or violent felony prior conviction that ask the court whether the crime is listed or enumerated in subdivisions (c) of P.C. §§ 667.5 and 1192.7, the "determination clause" asks whether the serious or violent prior felony conviction qualifies as a strike prior felony conviction by looking what conduct was proved "on the date of that prior conviction". What is more, the inclusion of all serious or violent enumerated offenses preceding the "determination clause" confirms that the court's task also goes beyond evaluating, implicating, assuming, or speculating facts that were not proved or proved that were not elements of the crime and or chances that the physical acts that make up the crime will injure someone. In this case Petitioner's acts of breaking and entering [even though were never proved] into the victims' residences does not, in and of itself, normally cause physical injury.

Therefore, on the face of the record and on the "determination clause" itself requires a court to first find whether the alleged prior felony conviction is enumerated in subdivision (c) of P.C §§ 667.5, ~~or~~ 1192.7, see language of subdivision (b) preceding paragraph (1) and second, the "determination clause" mandates the court to determine whether that serious or violent prior felony conviction under subdivision (b) qualifies as a strike prior felony conviction by looking what occurred on the date of that serious or violent felony prior conviction, but in the other hand the "determination clause" conspire to make it unconstitutional because it leaves grave uncertainty about how to determine which serious or violent prior felony conviction qualifies as strike prior felony conviction.

Therefore, this court must find that the indeterminacy of the wide-ranging determination required by the "determination clause both denies fair notice to Petitioner and to all defendants similarly situated and invites arbitrary enforcement by judges. See Johnson, supra, 576 U.S. at 595-606.

II. Petitioner's 30 years to life sentence must be set asider or vacated because not a single piece of evidence from the record of the alleged prior convictions was introduced or presented at trial.

Since 1824 to this date it was established by precedents of this Court and inferior courts that before a defendant can be sentenced to the additional punishment for his persistence in committing crimes the States must present or introduce as evidence the "record of the judgment of conviction" to prove beyond a reasonable doubt that said defendant was previously convicted once or more than two times, See In re Ross, 19 Mass 165, 171 (Mass 1824); Rand v. Commonwealth, 50 Va. 738, 751 (Va. 1852); Tipton v. State, 160 Tenn. 664, 678 (Tenn. 1930); People v. Guerrero, 44 Cal. 3rd 343, 345 (1988); People v. Jackson, 37 Cal. 3rd 826, 831 (1985); Monge v. Cal., 524 U.S. 721, 726 (1998) (observing that the record of the prior conviction is required to prove the status of defendants); Cf. Taylor, supra, 495 U.S. at p. 602; Mathis v. United States, 136 S.ct. 2243, 2269-2270 (2016); Chandler v.

Fretag, 348 U.S. 3, 7 (1954); see also 22A Cal. Jur. 3rd Criminal Law: Postrial Proceeding § 306 (2022);

The facts as shown by the record (Appx B at p. 17 & Appx C at p. 19) clearly are not part of "record of the alleged serious or strikes prior felony convictions" and "just as conviction upon a charge not made is sheer denial of due process, so is it a violation of due process to adjudicate and punish petitioner as both a predicate felony offender under P.C. § 667(a) and as a persistent felony offender under P.C. § 1170.12 (b)-(i) without evidence of his guilt of prior criminal conduct, see, Thompson v. Louisville, 362 U.S. 199, 204-206 (1960) in which this Court established a principle that "a conviction based on a record lacking any relevant evidence as to the crucial element of the offense charged violates the due process clase."); Cf. Monge, supra, 524 U.S. at 726 ("The plurality explained that a qualifying strike involves a finding of a particular "status" that may be made from the record of the prior conviction") See also People v. Biggs, 9 Cal. 2d 508, 512 (1937) and In re Rosencrantz, 205 Cal. 534, 540 (1928), in these two cases the Supreme Court of California held that: .. "in determining the nature of punishment for future offenses, the legislatvre is justified in taking into consideration the previous or past criminal conduct, and the punishment to be graduate accordingly", id at p. 240 & Biggs, supra, at p. 512. Cf. Moore v. Missouri, 159 U.S. 673, 677 (1895)

In this case Appendiices B and C, are not part of the "record of conviction, neither they not even match in the names on them, in other words they are not even equivalent to form the commitment-documents. Here in California and in any other State or in federal Court, the trial court in adjudicating an status of any criminal-defendant under any "habitual Criminal statute it needs to review the record of the alleged prior conviction to assess or determine the degree of criminilaty before imposing the hasher or extreme life sentence. See, Rand, supra, 50 Va. at 751 (holding in much or less words that if the record of the prior conviction is excluded as "evidence would have been equivalent to striking out the charge" or allegations) (cited in Moore, supra, 159 U.S. at p. 677).)

In summary the judgment of the trial court that Petitioner suffered one serious prior felony conviction (P.C. § 667(a)) and two strikes prior felony conviction must be set aside because the evidence presented at trial did not shows: (1) the date in which petitioner committed the prior crimes, (2) petitioner's prior criminal conduct, (3) whether those prior crimes were brought and tried separately, (4) the constitutional basis of each prior conviction, (5) that petitioner served a separate prison term for each of the alleged prior convictions, (6) matchability between the abstract of judgment under the name of Pedro Calderon and the fingerprint card under the name of Carlos Martinez, e.g. if petitioner was convicted of two counts of burglary under the name of Pedro Calderon, why Wasco State Prison's staff did not booket and fingerprented Petitioner under the name of Pedro Calderon which would had been the best course to follow because it was the name on the commitment-document, see P.C. § 1213 and (7) an explanation or proof that all the mentioned above was ever discussed or proved. In this case the trial judge reviewed the evidence introduced for only five minutes and without factoring, details, or finding the elements of each allegation and without any word or objection from Petitioner's counsel or the prosecution he just simply found true that Petitioner was previously convicted three times. (See Appx E at pp. 24-25, This minutes shows what exactly Petitioner stated above); Cf. People v. Coffey, 67 Cal. 2d 204, 217 (1967) ("the prosecutor shall first have the burden of producing evidence of the prior conviction sufficient to justify a finding that defendant has suffered such previous conviction") (citing P.C.§1025); also see Williams v. New York, 337 U.S. 241, 243 (1949) ("...Before rendering judgment or pronouncing sentence the court shall cause the defendant's previous criminal record to be submitted to it...."); U.S. v. Tucker, 404 U.S. 443, 447 (1972)

CONCLUSION

Wherefore, Petitioner has showed this Court upon the face of the judgment that imprisonment of 29 years in prison was caused doubtless by the unconstitutional "determination clause" which in a brief look appears ambiguous by just directing the trial courts that "a determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction", but this "determination clause" do not provides not even an ordinary guidance what the trial court shall do, review, look o read or how to know what prior conviction qualifies as strike prior conviction, based on what facts, circumstances, conduct or elements of the prior or current crime, or how much harm or injury is tolerable to put aside or strike certain kind of prior crimes or current crimes, nor this "determination clause" provides discretion for the courts to say which defendants are within or out of terms of this "determination clause" and as to the record of the prior convictions it is clear on the face of the record that Petitioner was convicted as a habitual criminal without any piece of such records and for these similar reasons this court has granted review when on the face of the record shows that the lower court has exceeded its jurisdiction or that a criminal statute is clearly repugnant to the U.S. Constitution, See Marbury v. Madison, 5 U.S. 137, 176 (1803) ("The question, whether an act, repugnant to the Constitution, can become the law of the land, is a question deply interesting to the United States"); Cf. In re Coy, 127 U.S. 731, 758-759 (1888) (the validity of the statute under which a prisoner is held in custody may be inquired into under a writ of habeas corpus as affecting the jurisdiction of the court which ordered his imprisonment") (citing Ex Parte Siebold, 100 U.S. 371, 376-377 (1879)); Cf. Ex Parte Yorbrough, 110 U.S. 651, 654 (1884) (If the law which defines the offense and prescrbes its punishment is void, the court was without jurisdiction and the prisoner must be discharged)

Here in this case the trial court exceeded its jurisdiction by going beyond the recognition of the alleged prior convictions, that was, the trial judge went beyond the facts that were necessarily found in the course of entering those prior convictions, see People v. Gallardo, 4 Cal.5th 120, 134, (2016) (unambiguously and providing guidance to the trial courts that to determine whether on alleged prior conviction is a strike prior conviction the facts the jury was necessarily required to find to render a guilty verdict must be reviewed); Gallardo confirms that the "determination clause" do not provides guidance to the trial courts before 2016 and for this reason Gallardo provided this guidance and this is the construction given to the determination clause by California Supreme Court. This construction is misplaced and wrong because this construction belongs to subdivision (b) preceding paragraph (1) containing the "determination clause" directing the trial courts to made a determination whether a prior conviction qualifes as a strike prior conviction upon the date of that prior conviction, it doen not say upon the facts the jury was necessarily required to find to render a guilty verdict. For this and all reasons set forth above this Court must interpret or construe this "determination clause."

Respectfully submitted,

Dated: September 23, 2024

Carlos Martinez