

Study Guide and Background Materials for *In re Roberts*

The California Supreme Court has provided a summary of the issues that may be presented in the case of *In re Roberts*, to be argued before the Supreme Court in Fresno in October 2002. The summary is attached at the end of these materials and provides a useful overview of the case as it will be presented at oral argument.

The purpose of this study guide is to provide students enough background information to allow them to understand what the attorneys are talking about in their presentations to the Supreme Court and to understand any questions the Justices might ask the attorneys. In addition, the study guide will provide questions for further consideration and classroom discussion.

The sections of the study guide are attached in the following order:

I. Overview of Criminal Appeals

II. Writs of Habeas Corpus

III. The History of this Case

IV. The Task for the Supreme Court in this Case

V. Legal Issues Involved

A. Should Roberts get a new trial because the prosecutor knew some of the witnesses were lying?

B. Should Roberts get a new trial because his trial attorney was incompetent?

VI. Other Issues for Discussion

VII. Supreme Court Summary of *In re Roberts on Habeas Corpus, S071835*

I. Overview of Criminal Appeals in California

In California, a criminal case is brought in the name of the “People,” i.e., *People v. Smith*. The term “People” means the citizens of the state as represented by the prosecution, usually a deputy district attorney. Persons charged with a crime are referred to as “defendants” at trial. If they are convicted of the charges and appeal, they are referred to as “appellants.”

A person convicted of a crime has the right to challenge the conviction and/or sentence in a higher court. If someone is convicted of a felony (a serious crime usually punished by imprisonment for more than a year) and sentenced to prison, he or she appeals to the Court of Appeal, which is an intermediate appellate court (the court between the trial court and the Supreme Court). If the person is sentenced to death, however, his or her conviction and sentence are automatically appealed to the California Supreme Court, which is the highest court in California’s judicial system.

On appeal, the issues raised by the appellant (who usually was the defendant at trial but who, under rare circumstances, may be a representative of the prosecution) are decided based on the facts and circumstances contained in the record on appeal. The record on appeal generally consists of pleadings filed with the trial court (such as motions to exclude evidence, for example), reporters’ transcripts of trial and other oral proceedings (these are word-for-word documentation that look and read like a script), and the trial court’s rulings.

An appellate court does *not* conduct trials or hear evidence. Its review of a case is limited to what is contained in the record. The issues it decides are framed by the attorneys who are representing the parties on appeal.

If an appellant can raise an issue on appeal, he or she is generally required to do so or the issue is waived and cannot be raised later. Sometimes, however, an appellant wants to raise an issue that depends on facts *outside* the record on appeal. For example, an appellant may claim that events have taken place after trial which, had they been known at trial, might have changed the outcome; or that favorable information was withheld from the appellant and also from the jury. Because the information was not discussed at trial and so was not contained in the record on appeal, the appellant could not raise these issues on appeal. Similarly, an appellant may claim that his or her attorney was “ineffective” at trial, meaning the attorney’s performance was deficient for some reason. Such claims frequently are raised because the attorney failed to make a particular argument, which the appellant now claims would have favorably swayed the jury, or failed to investigate or present evidence which might have made a difference in the trial’s outcome. The attorney may have a perfectly good explanation for his or her conduct, but that explanation usually is not contained in the record on appeal because the attorney was not asked, at trial, to explain what he or she was doing. To decide these kinds of issues, the appellate court must obtain facts *outside* the record on appeal.

II. Writs of Habeas Corpus

To enable the court to deal with facts *outside* the record on appeal, the appellant files a petition for writ of habeas corpus, alleging that he or she is held in custody illegally. “Habeas Corpus” is a Latin phrase meaning “you have the body.” If granted, a writ of habeas corpus orders a person to be brought before the court, which will decide whether or not his claims are valid and entitle him to relief.

When an appellant/prisoner files a petition for writ of habeas corpus, the court first decides whether the appellant (called the petitioner in writ proceedings) has presented facts which, *if proven*, would entitle him or her to relief (usually in the form of a more lenient sentence or a new trial). If the petitioner has alleged¹ sufficient facts, he or she is given the opportunity to establish that relief should be granted.

Because a reviewing court does not conduct trials or gather evidence, it appoints someone, such as a superior court judge, to act as a “referee.” A “referee” is the technical name given to the person appointed by the reviewing court to hear evidence and come to conclusions regarding the petitioner’s claims in the writ petition.

Much like in a trial (although without a jury), the referee hears evidence, makes factual findings (determines which facts are true, i.e., who is telling the truth), and makes legal determinations (applies the law to the facts found true and reaches a conclusion regarding the correctness of the petitioner’s claims). The reviewing court then has a record (similar to, but not as limited as, the record on appeal) on which to determine whether the petitioner’s claims are true and, if so, whether relief should be granted. (It should be noted that a petition for writ of habeas corpus is not a substitute for appeal and generally cannot be used to obtain review of issues which should have been raised in the appeal. Likewise, it is not a second appeal and generally cannot be used to obtain further review of issues which were decided on appeal.)

¹ To “allege” means to assert that something is true. The petitioner must swear to the truth of the facts he sets out in his writ petition.

III. The History of this Case

The *Roberts* case arises out of a murder which took place in 1980, when prison inmate Charles Gardner was fatally stabbed. Roberts was convicted of murdering Gardner, and, in 1992, the California Supreme Court affirmed the conviction on appeal. (*People v. Roberts* (1992) 2 Cal.4th 271.) (Interestingly, Roberts was also convicted of murder in the death of a prison guard who was stabbed by Gardner, the theory being that Roberts's acts in mortally wounding Gardner – but not immediately killing him – left Gardner able to act but unable to reason. While in this state, Gardner struggled with the guard and fatally stabbed him. The Supreme Court reversed this conviction because the trial judge, who instructs the jury on the law, did not give proper instructions concerning Roberts's liability for the acts of Gardner.)

At trial, several fellow inmates testified against Roberts. In response, the defense presented evidence that the prosecutor's key witnesses – inmates Cade, Long, Hayes, Rooks, and Yacotis – had obtained benefits from the prosecution that had given them a motive to lie. The trial judge limited some defense evidence on this point and overruled defense objections to other evidence. Based on the record *on appeal*, the Supreme Court found that some of the trial judge's rulings were error, but that Roberts had received a fair trial. The Supreme Court unanimously affirmed both Roberts's conviction for killing Gardner and his death sentence.

Sometime after trial, inmates Long, Yacotis, and Rooks recanted part or all of their trial testimony. Long and Yacotis said they had lied at trial because the prosecutor encouraged them to do so and gave them money and other benefits. (Several years later, Long returned to his original position and stated that his trial testimony was truthful.) Since the change in the witnesses' stories was not known until after trial and so could not have been presented on appeal since it was not part of the trial record, Roberts brought it before the Supreme Court by filing a petition for writ of habeas corpus. He claimed he should receive a new trial because the prosecutor knew some of the witnesses were lying and encouraged them to do so, and also because defense counsel should have found certain evidence which would have cast doubt of the prosecution's claim that Roberts was the killer. A hearing was held, and testimony presented, before a superior court judge who was appointed to act as the referee.

The referee found that the prosecutor had not encouraged the witnesses to lie and found that the gate was unlocked when Gardner was murdered. The referee also found that some of the prosecution witnesses had lied, but that others were truthful.

IV. The Task for the Supreme Court in this Case

The Supreme Court now must decide whether Roberts should receive a new trial. The court will decide the question based on the record of the evidentiary hearing, as well as the record of Roberts's trial. The attorneys for Roberts and for the prosecution have submitted written briefs, containing their views of the facts and the law, and they will be orally arguing their positions to the court and answering any questions the justices might have.

V. Legal Issues Involved

A. Should Roberts get a new trial because some of the witnesses lied?

Whether Roberts should receive a new trial involves both state law and provisions of the United States Constitution. A prosecutor violates the due process clause of the Constitution² if he or she knowingly uses perjured testimony to obtain a criminal conviction. In addition, he or she has a duty to correct testimony by prosecution witnesses (persons who testify for the People) which he or she knows, or should know, is false or misleading.

Not every falsehood (lie) requires reversal and new trial. It is a petitioner's burden³ to establish that the standard for reversal has been met. Under the United States Constitution, when a prosecutor fails to correct false or misleading testimony, reversal is required if there is any reasonable likelihood the testimony could have affected the jury's verdict. (*United States v. Agurs* (1976) 427 U.S. 97, 103.) Under section 1473 of the California Penal Code, when false evidence is presented, reversal is required if there is a reasonable probability that, had the evidence not been introduced, the result would have been different. (*In re Sassounian* (1995) 9 Cal.4th 535, 546.) A "reasonable probability" is one which undermines the reviewing court's confidence in the outcome of the trial. (*Ibid.*) In other words, if the reviewing court is not reasonably certain that even without lies the jury would have reached the same verdict, the judgment must be reversed.

² "Due process" means the conduct of legal proceedings according to established rules and principles. The Due Process Clause prohibits the government from unfairly depriving a person of life, liberty, or property.

³ This "burden" is sometimes called a burden of persuasion. The "burden of persuasion" means the petitioner's duty to convince the court to view the facts in a way that favors him.

B. Should Roberts get a new trial because his trial attorney was incompetent?

Roberts also claims he deserves a new trial because he received “ineffective assistance of counsel.” Specifically, he claims his defense attorney should have found evidence that the gate through which he allegedly passed to reach his cell after stabbing Gardener was locked.

In order to win a new trial on this claim, the petitioner must prove that the performance of his or her trial attorney was constitutionally deficient. This is a two part test. The petitioner must show that his trial attorney (1) “performed at a level below an objective standard of reasonableness under prevailing professional norms;”⁴ and, as a result, (2) subjected the defense to prejudice. In other words, if the defense counsel had not made the claimed mistakes, it was “reasonably probable” that the outcome of the trial would have been better. (*People v. Hamilton* (1988) 45 Cal.3d 351, 377.) For example, the petitioner might have been convicted of a less serious offense or might even have been found not guilty. This is the standard under both state law and the United States Constitution.

⁴ In other words, would someone looking at the attorney’s performance conclude that the average attorney would have acted the same way or done the same thing—not necessarily the work of an “A” student, but at least earning a passing grade.

VI. Other Issues for Discussion

The Problem of False Testimony

The *Roberts* case raises some interesting questions, especially concerning the allegedly false testimony. How does a jury decide which witness(es) to believe? How does a reviewing court make that decision when the justices do not get to see the witness testify, and so cannot evaluate such things as the witness's demeanor (body language)? When a witness such as Long recants (changes his story), only to later switch positions once again, should his testimony be given any consideration? Should the testimony of in-custody witnesses or informants even be allowed in a trial, since such witnesses almost always stand to gain something by testifying for the prosecution? On the other hand, when one inmate kills another in the presence only of other inmates, how would the guilty person ever be convicted if such testimony were prohibited? Is the risk of perjury (lying on the witness stand), whether or not known to the prosecutor, and, thus, the risk of convicting an innocent person, so great that certain crimes should go unpunished?

The Problem of Delay in Death Penalty Cases

Roberts also demonstrates how long it can take a death penalty case to wind its way through the legal system. It took 12 years, from the time of Gardner's murder, for the appeal to be decided; it is now 22 years after that murder. Much of the delay is attributable to things such as the Supreme Court's heavy case load, delay by court reporters and trial court clerks in preparing extremely lengthy records, and inability to obtain qualified attorneys who are willing to be appointed by the court⁵ (often for substantially less than their usual hourly fee) on death penalty cases, which can be both physically and emotionally draining. Could the process be speeded up? For instance, with some exceptions, the Supreme Court does not hear a case until after that case has first been decided by the Court of Appeal. The Supreme Court Justices then decide which cases they want to hear. When the death penalty has been imposed, however, the appeal goes directly to the Supreme Court. Should death penalty cases be treated the same as non-death penalty cases and go first to the Court of Appeal?

Even if the process can be speeded up, should it be? When a convicted killer is sentenced to death and that sentence is not carried out for years and years, has the victim's family been denied justice? Is a convicted person subjected to unconstitutional cruel and unusual punishment when he or she spends years on Death Row? Would speeding up the process by limiting appeals and writs increase the risk that an innocent person might be executed? Is that a risk we as a society are, or should be, willing to take? Is there any way to balance the right of a convicted person to a full and fair review of his or her case, with the victim's family's interest in closure?

⁵ If defendants cannot afford to hire their own attorney, the court will appoint an attorney to represent them. Most of the inmates on death row cannot afford to hire their own attorneys. The Supreme Court has established fee schedules for the appointed attorneys and the attorney cannot charge his or her usual hourly fee.

Supreme Court Summary of *In re Roberts on Habeas Corpus*, S071835

Petitioner Larry Roberts was sentenced to death for murdering fellow prison inmate Charles Gardner. Gardner was stabbed repeatedly as he walked down a prison corridor. Inmate Leslie Rooks testified that he saw petitioner with a knife shortly before the crime. Inmates Raybon Long, Robert Hayes, and Ryland Cade testified at trial that they saw petitioner stab Gardner and then run upstairs. Petitioner was seen in his cell on the third floor shortly after the crime. The prosecution introduced evidence that a person could run up the stairs from the first floor to petitioner's cell in less than a minute, but would have to go through a gate that sometimes was locked. Long testified that petitioner later admitted to him that he killed Gardner, and inmate Richard Yacotis testified that he overheard petitioner discussing the crime with another inmate. The California Supreme Court upheld the judgment on appeal.

Long later recanted his testimony and claimed petitioner did not stab Gardner, stating: "I lied on the witness stand at the trial about nearly everything I testified to regarding Larry Roberts." Long said that the prosecutor had encouraged him to lie, giving him money and other benefits. But a few years later, Long went back to his original position, stating: "What I said during the course of my testimony during the trial was the truth. Larry Roberts stabbed Charles Gardner."

Yacotis also recanted part of his testimony at trial, saying he did not hear petitioner discuss the crime with another inmate but had lied at trial because the prosecutor promised him money and other benefits. Rooks recanted part of his trial testimony, stating that he did not see petitioner with a knife before the murder.

Petitioner filed a petition for writ of habeas corpus claiming he should have a new trial because 1) the prosecutor knew that some of his witnesses were lying and had encouraged them to lie, and 2) defense counsel should have found evidence that the gate through which petitioner allegedly passed to reach his cell after stabbing Gardner was locked.

Habeas corpus is called "the Great Writ" and may be used to obtain the release of a person who is being held in custody illegally. It is not a substitute for an appeal. Often habeas corpus is used when the petitioner's claim is based on facts that were not known by the court that upheld the conviction on appeal. To obtain relief, it is not enough for the petitioner to show that some minor errors occurred during the trial. The petitioner must show serious errors occurred that violated his or her fundamental rights (like the right to an effective attorney) or that made the trial unfair.

The Supreme Court appointed a Superior Court Judge to act as a referee and hold a hearing to help the Supreme Court determine whether petitioner's claims were true. Long claimed his privilege against self-incrimination and did not testify at the hearing. Yacotis again said he had lied at trial when he testified that he heard petitioner discuss the crime with another inmate. But Cade repeated his trial testimony that he saw petitioner stab Gardner. Hayes, who also had testified he saw petitioner stab Gardner, did not testify at the hearing; he had since died. There was conflicting testimony about whether the gate through which petitioner allegedly passed on the way to his cell after the murder was locked and, if so, when it was locked.

The referee found that the prosecutor had not encouraged the witnesses to lie and found that the gate was unlocked when Gardner was murdered. But the referee further found that

Long's testimony at trial was not believable, accepted as true Yacotis's statement that he had lied at trial and found that "Cade's trial testimony was not truthful." But the referee found there was no reason to doubt the trial testimony of Hayes and Rooks. Petitioner now claims that he should have a new trial whether or not the prosecutor knew the witnesses were lying because his conviction is based upon false testimony.

The Supreme Court generally gives great weight to a referee's findings, because the referee actually saw and heard the witnesses testify at the hearing. But the Supreme Court is not required to accept the referee's findings.

The Supreme Court must decide whether to accept the findings of the referee and whether to order a new trial.