

No. 2018 SA 23

IN THE
SUPREME COURT OF THE UNITED STATES

Andrew D. Lucero — PETITIONER
(Your Name)

vs.

The People of Colorado — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Andrew D. Lucero , 63859
(Your Name)

FCF-6 Upper-D 14; P.O. Box 999
(Address)

Canon City, CO 81215
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the original Criminal Trial Court abused it's discretion in it's Procedural Defaults, ab initio, depriving petitioner of Constitutionally Secured Protections of the Bill of Rights, at federal and state law, and of Statutory provisions consistant therewith, of a liberty interest in due process; a jurisdictional question?
2. Whether the Post-Conviction Courts in Habeas Corpus, abused their discretion, denied due process on issues presented of a liberty interest in violation of both constitutional and statutory provision, of continued unlawful confinement?
3. Whether the Colorado State Supreme Court wrongly denied the Petitioner's Original Jurisdiction presentment - deemed a Writ of Habeas Corpus due to a miscommunication to petitioner who filed a briefing before time, refusing to compel respondent to answer the claim? And denied a Rehearing, timely filed?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

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☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

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☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 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 Denver District/Bent County District court appears at Appendix B to the petition and is

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

JURISDICTION

☐ For cases from **federal courts**:

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

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 25 June 2018.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
Date unknown, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. S A 23.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional: (fed)

| | | | |
|---------------------|----------|------------|----------|
| Artical I, §9, CL 2 | Appendix | Amend. V | Appendix |
| Artical III, §§1,2 | Appendix | Amend. VI | Appendix |
| Artical IV, §§2, 4 | Appendix | Amend. XIV | Appendix |
| Artical VI, CL 2 | | | |

Constitutional: (state)

Appendix "C"

COLORADO:

Artical II, § 6
Artical II, § 7
Artical II, § 85
Artical II, § 25

Statutes: (Colorado)

Appendix "D"

| | |
|--------------------------|------------------------------|
| CRSA 2-4-201 | Rules of Procedure: |
| CRSA 2-4-203 | Criminal Procedure Rule 7(a) |
| CRSA 2-4-212 | Rule 7(b) |
| CRSA 17-22.5-301 | |
| CRSA 17-22.5-302 | |
| CRSA 17-22.5-402 | |
| CRSA 17-22.5-403(3)(3.5) | |
| CRSA 17-22.5-405 | |

STATEMENT OF THE CASE

Petitioner was charged and convicted of a violation of the Colorado Criminal Law. The crimes for which he was charged and the penalties which he faced were Infamous in nature. Within the framework of the state and federal constitutions, the procedural law and practice require all proceedings be preceded by a Grand-Jury Indictment of the prosecutorial Information for a showing of a) Probable Cause, b) judicial jurisdiction of the person, c) subject-matter and d) should the prosecution of the case be granted by Indictment, the court's jurisdiction to sentence in the Infamous Range of punishment per statute is also constitutionally firm. The trial court failed and refused these constitutional protections so guaranteed the defendant. Pursuant to the state constitution, all non-famous crimes may be proceeded against by either Grand-Jury Indictment or by Information. An Information is produced by the prosecutor/District Attorney. In the Instant case, prosecution initiated by an Information without permission of the Grand-Jury under Crim.P.Rule 7(b) CRSA. The petitioner was convicted of two of the crimes charged and was errantly sentenced in the Infamous Range, and Aggravated in violation of Apprendi, to two consecutive sentences of 25 years each, in 1990. This sentence provided him with sentencing reduction Statutes of both Good-Time and Earned Time upon his qualifying to receive those reductions of up to 50% of his sentence and a Discretionary Parole provisions within the scope of the sentence of the court. Should he qualify, and he did in pertinent part, he would reach statutory discharge

Nature...Cont.:

of all components of his sentence at 25 years of his sentence. However, the state did not Discharge him when he reached this junction. Instead, at this junction, due to 2 years loss of Good-Time, they waited two-years longer and Paroled him for a term of Eight-Months, returned him to prison custody and extended his sentence another 25 years absent a hearing or on new criminal charges. This action prompted his appeal to the District courts. Upon denial of his actions before them, and through the assistance of a jail-house advocate, he perfected an application for a Writ of Habeas Corpus, (state statutory) equal to the Great Writ of Habeas Corpus (Fed.Const.) and through counsel who re-faced it as a criminal habeas action rather than a civil action. The district court viewed the action as a Colorado Crim.P. Rule 35(c) postconviction case and denied it without a hearing, finding of fact or conclusion of law. At the same time, petitioner filed a Civil Statutory Habeas Corpus in the County where he was then confined. This district court never served the Writ upon the respondent or respondent's counsel and denied the case without a hearing. By the time he received his dismissal of the case, it was beyond the timebar to appeal. Consequently, he filed an Original Action Jurisdiction as a Grand-Writ of Habeas Corpus in the State Supreme Court. They too never ordered the respondent to show cause why the Writ should not be Granted and denied the same en banc. Thus, forced this appeal for a Writ of Certiorari to the State Supreme Court from this United States Supreme Court.

Nature...Cont.:

Further, it must be noted here that the Colorado Legislature has virtually legislated away the **Bill of Rights**, U.S. Constitution, and **Art. II §§ 6,7,8,18, and 25** of the Colorado Constitution and **Crim.P. Rule 7(a) The Grand Jury Indictment Clause** designed for all Infamous (felony) crimes, in direct violation of the guaranteed governmental prohibitions set forth therein.

ARGUMENTS

As to Questions 1 & 2: These jurisdictional questions are Constitutional, **Art.III, Amend. 5, U.S. Const.; ART. II § 8, Cl.1**, of the Colorado Const; and Statutorial, **Crim.P. Rule 7(a)**. Though it is self-evident, the lower courts and the prosecution errantly declare that the Grand-Jury Indictment isn't necessary because they use a preliminary hearing to justify the use of an **Information** to prosecute an Infamous Crime. Petitioner argues that this fails to provide the defendant with the **particulars** of the offense and the true levels of harm he/she faces. An information alleviates the necessity of the prosecution to prove beyond a reasonable doubt, **every element of the offense** to the jury in order to gain a guilty verdict and heightens the requirement of the defendant to prove his innocence to gain an acquittal. The law clearly states that for a felony [Infamous] crime [any crime that carries a sentence longer than a year] **must/shall/is constitutionally mandated, to be proceeded against by a Grand Jury Indictment**, all other offenses may be proceeded against by either a

Grand-Jury Indictment or by an Information. (i.e., Misdemeanor cases; not felonies) Foregoing this procedure is as procedural default, a due-process and Equal Protection error/denial. This default attaches to a **liberty interest** even if a conviction is had because the lower courts have consistantly sentenced in the infamous ranges only applicable via a Grand-Jury Indictment and not in the Informational Misdemeanor Range. This makes the Charging Instrument insufficient for purpose of the imposed sentence so challenged. Thus prejudicing the defendant by an illegal conviction and sentence in the Infamous crimes range absent any legal consent.

Question 3. In light of the above argument, the length of time the defendant has already served on an Infamous crime Sentence, and the fact that the prosecution was not required to prove every element of the offense, (elements never disclosed to the defendant before, at, during or after trial) through the above tenured Procedural defaults, one beyond the governments ability to cure due to the prejudice already suffered by the defendant, reversal of the conviction is required with prejudice. Further, the case here reveals that the criminal trial court allowed the introduction of the Fruit of the poisoned tree to gain a conviction in a manner that was indefensible by the defendant and counsel. therefore, it is needed to reverse with prejudice, that the lower courts, et al, will receive instruction and take it to heart.

REASONS FOR GRANTING THE PETITION

Petitioner believes the issues (Questions...) have significant Public Interest, as this cause involves legal principles of major significance to the judicial prudence of the states. Petitioner believes the decisions below is in probable conflict with a ~~division~~ division of the United States and State Supreme Court practices.

1. That the lower courts have decided a question of substance not previously decided by this Supreme Court.

2. The petitioner's case has not been selected for publication as to all postconviction applications.

3. Based upon the record, the issues were preserved for appeal contrary to the appellate's stand.

4. Due to the constitutional mandates, state and federal, the issues are not simply a matter of state law, but of constitutional federal law.

5. Based on the Record, there were procedural problems, ~~ab initio~~ ab initio, that may be dispositive, and prevented the lower courts from reaching the issues on which review is sought.

6. The decisions of the district and appellate courts involve fundamental liberty interest and potentially economic consequences.

7. If this court fails to act and give better guidance to ~~the~~ these issues it is likely that they will be brought up frequently in accord with the state and federal constitutions.

8. Petitioner believes that all parties will provide this court with thoughtful, if unguided briefings, to address all relevant concerns.

9. IT IS LIKELY THAT THIS ACTION WILL ATTRACT HELPFUL AMICUS BRIEFS IF CERT. IS GRANTED.

10. This may be a matter of First Impression and is therefore issues important to the development of law in the United States and especially in the state of Colorado.

11. The issues here reach a broad spectrum of applicability.

12. The trial and Appellate courts need much greater guidance on legal and procedural applications of the law, which these issues will directly address.

13. The lower court's opinion do not appear to be well reasoned due to the involvement of basic liberty interest.

14. There were no decents, persuasive or otherwise in any of the Supreme Courts decisions.

CLOSING ARGUMENTS

1. Petitioner Lucero herein argues that unless the law and procedures of the court are scrupulous followed and enforced by the judge sitting the Bench, the government becomes a law breaker, and a legislator from the bench, and is constitutionally prohibited, as being extra-jurisdictional and deprives the parties of their proper responsibilities, rights and immunities. The **Bill of Rights** are governmental prohibitions and set the tone of the requisite judicial procedure and practice as not to be violated to protect the citizens and accused from governmental overreach of it's lawful authority. In the instant case, and in most Colorado prosecutions, the government and judiciary clearly abuse these

state and federal constitutional prohibitions in order to gain and retain a conviction by side-stepping or circling around these prohibitions and then declaring **it is a matter of state law**, in order to get either the 10th U.S. District or Appellate and this United States Supreme Court to dismiss the case absent hearing the issues. Against this pernicious doctrine, this court should set its face. 2. Under Colorado Procedural law, at Rule of Civil Procedural Rule 106, **The great Writ of Habeas Corpus** and several other Writs have been **Obolished** not just suspended. When a Civil Statutory Writ of Habeas Corpus is filed with the court, the court converts the writ either into a Rule 106, id., or into a Crim.P. Rule 35(c) action, and charges the petitioner a fee to access the court of several hundred dollars, even if the prisoner is legally indigent, without funds or resources. Then upon an initial payment, the court will automatically deny the action without a hearing, finding of fact or conclusion of law, without appointment of any counsel. The courts of Colorado presume that every prisoner, regardless of legal evidence presented and the argument raised, and without presenting the same to the respondents, or his counsel, that said claim holds no merit. The First Amendment Access to the courts are denied forthwith. The state appellate court (Colo. Supreme Court) invariably affirms the same en banc, as is the case here. Petitioner argues this to be both an abuse of discretion and power, of process and due-process along with denial of Equal Protection of the law in a liberty interest case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lucero Andrew 63859

Andrew D. Lucero, 63859 by John B. Bowring, 81518

Date: September 14, 2018

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