

JUL 31 2018

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

(IBEABUCHI, IKEMEFULA C.) — PETITIONER
(Your Name)

vs.

STATE OF ARIZONA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS, STATE OF ARIZONA, DIVISION ONE.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(IBEABUCHI, IKEMEFULA CHARLES)
(Your Name)

(ADC No. 177007, P.O. Box 3200)
(Address)

(Florence, Arizona, 85132-3200)
(City, State, Zip Code)

(None)
(Phone Number)

Cover-Page

QUESTION(S) PRESENTED

1. A defendant always has the right to contact an attorney at his own expense. It is a violation of the U.S. Constitution to punish defendants for exercising their Constitutional rights. Mr. Ibeabuchi had questions about his probation and contacted his attorney. When Mr. Ibeabuchi asked his probation officer to allow him to work with Counsel to resolve the questions, the probation officer petitioned for Mr. Ibeabuchi's probation revocation and the Court found him in violation. Did the Court unconstitutionally punish Mr. Ibeabuchi for exercising his right to Counsel?
2. A probationer cannot be punished merely because he cannot pay fees. Mr. Ibeabuchi's probation officer told him he would have to pay for Sex Offender Counseling. She did not tell him that probation could help pay if he could not. Because he believed he would have to pay but was unable, Mr. Ibeabuchi did not sign up for the Counseling. Through failing to educate Mr. Ibeabuchi on his options, did probation effectively punish him for being unable to pay fees?

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:

CR 1999-095310

07/28/2016

STATE OF ARIZONA

V.

IKEMEFULA CHARLES IBEABUCHI (A)

DOB: 02/02/1973

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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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 _____ 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 Maricopa County Superior 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 May 30, 2018.
A copy of that decision appears at Appendix C.

[] A timely petition for rehearing was thereafter denied on the following date: June 15, 2018, and a copy of the order denying rehearing appears at Appendix D.

[] 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 6

United States Constitution Article III

STATEMENT OF THE CASE

On, November 19, 2015, Petitioner was released by the United States Department of Homeland Security to his Aunt's House in Gilbert, Arizona with Directives to report to Adult Probation Department, immediately, to commence his Terms of Probation, as stipulated in his SENTENCE-PUNISHMENT, of May 9, 2003, of Record and Fact.

The United States Department of Homeland Security (U.S.-D.H.S.) did not inform Petitioner that, On, April 1, 2015, the United States Citizenship and Immigration Services, of the United States Department of Justice, expunged and approved the Petitioner a new, Form I-325, for re-entry, which Act, invalidated the Petitioner's October 4, 2004, ORDER OF REMOVAL, by Immigration Judge Ellen Weiss.

On, November 30, 2015, Petitioner reported to Arizona Adult Probation Department, after addressing the delay on the telephone with Adult Probation Officer, Danielle Impellizzeri.

APO Impellizzeri presented Petitioner, a Revised Acknowledgment of Petitioner's Conditions of Probation to sign, which Petitioner declined. Because Petitioner signed a Plea Bargain with the Court, in May 2003, and is bound to the Terms therein.

1 Upon, the disingenious importunity by APO
2
3 Impellizzeri to sign the Retardation, Petitioner,
4
5 then, complied by signing the Same Plea Barga-
6
7 in, of May 9, 2003, under the Signature line,
8
9 where he had signed before.
10
11

12 Still, on, strictures of illicit indulgence by APO
13
14 Impellizzeri, to signature, She, scheduled a Con-
15
16 ference in the Court, on, February 19, 2016, before
17
18 Judge Pamela Gates. (See, Transcript of Proceed
19
20 ing, for Review). (Appendix E, in its Entirety)
21
22

23 Amendatory Uniform Condition 25, Sex Offender
24
25 was signed in the Court, (See, Form 1100-210A(R-10-
26
27

10)) and in the abrogation of the Petitioner's Contractual Obligations existing in his SENTENCE, in Arizona. And, there was no benefit, accorded to the Petitioner in this nullification, which, thereby violated Petitioner's Constitutional Rights, at law.

On, March 24, 2016, Petitioner's Probation Officer, Impellizzeri issued the Petitioner a Written Directive in accordance with the Revised Uniform Condition 25, Ordering him to Contact the Mountain Valley Counseling Agency, before March 29th, to schedule an Intake appointment and pay the Required Fees.

1 On, April 5, 2016, the Warrant of Arrest, Order
2
3 was issued by the Court alleging that, Petition To
4
5 Revoke Probation of Officer's belief, that, Petitioner
6
7 had failed to comply with his term(s) of Proba-
8
9 tion. But, the Arresting Document was disinge-
10
11 nious to the Revised Uniform Condition 25, sig-
12
13 ned on February 19, 2016. In fact, it was the
14
15 Original Conditions Signed by the Petitioner
16
17 on May 9, 2003, which basis formed a Con-
18
19 stitutional Tort, against the Petitioner, toward
20
21 his Arrest on, April 7, 2016. (See, the attached
22
23 three (3) page PRP Petition To Revoke Probation -
24
25 Order for Warrant, as evidence for review.)
26
27

1 On, June 6, 2016, A Witness Violation Hearing was
2
3 held, and Parties testified under oath, at-law.
4
5 (See, Excerpts of Transcript, Appendix E.)
6

7 In the Trial, APO Impellizzeri testified to admitting
8
9 to violating the Petitioner's Sixth Amendment Right
10
11 to Counsel in the following manner as referenced
12

13 (See, Page 11, lines 23-25, and Page 12 lines 1-4)
14

15 Ms. Lopez: No. I am bringing in my -- the fact
16 that he's represented by Counsel.
17 The fact that she spoke to Counsel
18 and then ultimately refused to speak
19 to Counsel. And, Mr. Ibeabuchi's
20 interpretation of that is a violation
21 of his rights to Counsel since he is
22 presented and was represented at
23 the time. And, therefore, that is the
24 basis for his failure to comply.
25

26 Ms. Lopez: Well, I think it goes to his state of
27

1 mind, Your Honor, and his state of mind,
2 he refused to sign the directive directing
3 him to do this and therefore-- So you
4 Can't say that he was-- that he acknow-
5 ledged that he was required to do that
6 by that date. (Page 12, line 9-13)
7

8 Q. What did he tell you-- because when I
9 Spoke with you briefly out there, I thought
10 that you had said that he had told-- he
11 had relayed to you his position on-- be-
12 cause you wouldn't talk to his attorney
13 that his right to Counsel was being
14 Violated and he wasn't going to Comple-
15 te that term?
16

17 A. I don't know that that was on that parti-
18 cular time when he wanted-- when I gave
19 him the directive for treatment- Though
20 he has said-- mentioned that since he's
21 retained the Nolan Firm as his attorney.
22

23 Q So, he has told you that?
24

25 A. Yes. He said he was going to take the
26 directive to his attorney and review it
27

1 with his attorney.
2

3 Q. And then did he ever tell you that he was
4 not going to comply since you refused to
5 talk to his attorney?
6

7 A. No.

8 (Page 13, line 24-25; Page 14, line 1-13)
9

10 Q. Do you recall having a conversation with
11 Mr. Ibeabuchi where he did tell you that
12 that was his position because of he felt
13 that his right to counsel had been viola-
14 ted?
15

16 A. He-- not in those words. He said he wanted
17 to-- wanted me to go through his attorney
18 on everything regarding his probation.
19

20 Q. And what did you say to that?
21

22 A. No.
23

24 MS. GODDARD: objection. Relevance
25

26 (Page 15, line 4-11, line 12-21)
27

To the Defendant/Petitioner's inability to pay.

Q. All right, were you -- Mr. Ibeabuchi -- strike that. Isn't it true Mr. Ibeabuchi told you that he was going -- that he had difficulty -- would have difficulty paying those fees?

A. He may have

Q And, is it also true that Mr. Ibeabuchi doesn't have a job right now and does not -- is not able to work in this Country

A To my knowledge he doesn't have a job. Whether he can work in this Country, I am not aware of.

Q. Okay. So, in addition to the fact that Mr. Ibeabuchi's position about his attorney, Mr. Ibeabuchi didn't have the funds to participate in the evaluations. Isn't that correct?

A I'm not sure if he had the funds or not.

Q He related to you that he had been --

1 that he did not have the money, correct?

2
3 A. Correct.

4
5 Ms. LOPEZ: No further questions

6
7 (Page 17, lines 19-25; Page 18, lines 1-11)

8
9
10 On, Juxtaposing Act, the Court found that the
11
12 Petitioner, "whether or not he believed he could aff-
13
14 ord to pay for treatment ultimately does not imp-
15
16 act whether or not he was able to schedule the
17
18 intact as he was directed to do". And found that,
19
20 the State has proved this allegation by the prepon-
21
22 derance of the evidence, and further revoked
23
24 Petitioner's release and remanding him to the Cus-
25
26 tody of the Sheriff, held him without bond.
27

1 On, July 28, 2016, the Court sentenced Petitioner
2
3 to a Modified Sentence of Intensive Probation Sup-
4
5 ervision of Lifetime period. (See, APPENDIX, B.)
6
7

8 On, August 4, 2016, Petitioner, timely filed a
9
10 Notice of Appeal, proceeding Pro se, as a matter
11
12 of his right to waiver of right to Counsel. Because
13
14 se, Petitioner was unable to pay his attorney fees.
15
16

17 On, October 19, 2016, the Court of Appeals state
18
19 of Arizona Division One, issued the ORDER RE:
20
21 COUNSEL AND TRANSCRIPTS, appointing, therein, the
22
23 Maricopa County Public Defender as Counsel for
24
25 Petitioner for all further proceedings on appeal.
26
27

1 (Citing, State v. Stolze, 112 Ariz. 124, 125, 539 P.2d
2
3 881, 882 (1975) and Arizona Rule of Criminal Pro-
4
5 cedure 31.8, at-law.)
6
7

8 And, on, November 21, 2017, ruled and Affirm-
9
10 ed the Decision of the Superior Court, in a ME-
11
12 MORANDUM DECISION. Stating that, in-pertinently,
13

14 "The record shows that the probation officer
15 gave Ibeabuchi the written directive and
16 explained to him orally that he needed to
17 Schedule an intake appointment"... "The
18 record shows that fees related to treatment
19 were listed on the directive, but there was
20 no testimony or other evidence of any
21 fee related to scheduling an intake appoin-
22 tment listed on the directive." (See, ORDER
23 at, Paragraph 14.)
24

25 Which, DECISION was erroneous, in that, Petit-
26
27

1 ioner was "present" when the APO Impellizzeri, wrote
2
3 the Sua Sponte Record which evidences the fee
4
5 related to scheduling an intake appointment
6
7 listed on the directive, which invariably evin-
8
9 ced the pairness of Obligation and cannot be
10
11 Separated.
12

13
14 Further, the Court of Appeals, State of Arizona
15
16 Review, on, Merit, failed to recognize the invali-
17
18 dation of Contractual Obligations to existing
19
20 Petitioner's SENTENCE, by Judge Pamela Gates
21
22 on, February 19, 2016, in that, the MEMORANDUM
23
24 DECISION, at, paragraph 2, stated, that, "Ibeabu-
25
26 chi signed the Uniform Conditions of Probation
27

1 and acknowledged in Court that all sex offender
2
3 terms would be imposed."

4
5 Whereas, this statement defies accuracy, in that
6
7 the Petitioner's Sentence acknowledged four (4) Res-
8
9 trictions to sex offender terms of, Numbers, 1; 3; 4
10
11 and 11, axiomatically, and out-of-the issued
12
13 Numbers 1, through 15, therein, at-law.

14
15
16 The "Term 25" as stated, perforce of Court
17
18 of Appeals' "Affirm-Decision", in paragraphs, 6; 7;
19
20 9, and 12 was illegal to the Petitioner's Appeal,
21
22 which emanated from the "Term 21" or, as Revi-
23
24 sed, of the Signed on, February 19, 2016, of Judge
25
26 Gates' inapposition or Fraud on the Court.

1 Because, Petitioner would had Called and Schedu
2
3 led, the Appointment for Intake, albeit the APO's wri
4
5 then Fees Obligation, Simultaneously, therein, the Court
6
7 of Appeals state of Arizona Committed a reversi-
8
9 ble error in Concluding that, Petitioner was not
10
11 required to assume that, he ought to pay fees to
12
13 Schedule an intake appointment. (See, paragraph
14
15 12, of ORDER.) Or, that, the failure violated Term
16
17 25 of his probation Conditions. When the alleged
18
19 violation was Number 7, of Term 21, as revised.
20

21
22 Consequently, On, December 28, 2017, Petitioner
23
24 filed a Petition for Review, appropriate with the
25
26 Jurisdiction of the Supreme Court of Arizona,
27

1 because, Petitioner's Court Appointed Attorney, with-
2
3 drew his Representation, by the forecasting that the
4
5 Supreme Court of Arizona will deny Review. But
6
7 Petitioner proceeded without Representation, none-
8
9 theless.
10
11

12 On, May 30, 2018, the Supreme Court of Arizona
13
14 denied Review, (in the hiatus of the Petitioner's filed
15
16 Pro Se Petition for Writ of Habeas Corpus pursuant
17
18 to 28 U.S.C. § 2254 in the U.S. District Court, DIS-
19
20 TRICT OF ARIZONA, assigned a Case Number, 2:18
21
22 -CV-00238-SPL--JZB, and raised different Grounds
23
24 on his Immigration Matters, which were not raised
25
26 on this Appeal.). (See, Appendix C, herein)
27

1 But, Jurisdiction is vested on the Supreme Court
2
3 of Arizona on "Life" Sentence and, therefore, it
4
5 is not at discretion to deny Review, at-law.
6

7 On, June 15, 2018, the Supreme Court of Arizona
8
9 also denied Petitioner's Motion For Rehearing and
10
11 or Reconsideration. (See, Appendix D, herein.)
12

13 This Court has Jurisdiction, pursuant to tim-
14
15 eliness in, e.g., 28 U.S.C. § 2101(c) of the within 90
16
17 days after entry of the Order denying discretion-
18
19 any review.
20
21
22
23
24
25
26
27

REASONS FOR GRANTING THE PETITION

1. This Criminal Petition should be granted because the Jurisdiction to review a Life Sentence was denied by Arizona Supreme Court, Citing, Swoopes v. Sublett, 196 F.3d 1008 (1999).

Stating that, except in habeas petitions in life-Sentence or Capital Cases, Claims of Arizona State prisoners are exhausted for purposes of federal habeas once the Arizona Court of Appeals has ruled on them.

2. The Court of Appeals, Affirmed Decision, Should be Vacated or Reversed, pursuant to its erroneous findings Which the Petitioner, here, has demonstrated, in the Statement of the Case. Accordingly, the Court of Appeals, Affirmed Decision, is not final, pursuant to the Jurisdiction of this Court. 28 U.S.C. ss. 2101(C).

3. This Petition should be granted pursuant to the Violation of Petitioner's Constitutional Right to allowance of Counsel. See, U.S.C.A. Const. Amend. 6. (Citing, Strickland v. Washington, 466 U.S. 668 (1984) Id at 2

Stating that, "Government violates right to effective assistance of Counsel when it interferes in certain ways with ability of Counsel to make independent decisions about how to conduct defense."

1 "The Sixth Amendment recognizes the right to the
2
3 assistance of Counsel because it envisions Coun-
4
5 sel's playing a role that is critical to the ability
6
7 of the adversarial System to provide just results.
8
9 An accused is entitled to be assisted by an attor-
10
11 ney, whether retained or appointed, who plays the
12
13 role necessary to ensure that the trial is fair."

14
15 For that reason, the Court has recognized that
16
17 "the right to Counsel is the right to the effective
18
19 assistance of Counsel," McMann V. Richardson,
20
21 397 U.S. 759, 771, n.14, 90 S.Ct. 1441, 1449 n.14, 25 L.Ed.
22
23 2d 763 (1970)

24
25
26 4. This Petition should be granted pursuant to
27

1 Consultation with Counsel; privacy, Geders v.

2
3 U.S., 425 U.S. 80 (1976) 96 S.Ct. 1330, 47 L.Ed. 2d

4
5 592, Id at 167 Stating that, "Trial Court's Order

6
7 preventing defendant from Consulting his Counsel

8
9 about anything during 17-hour overnight recess

10
11 in trial between defendant's direct and cross-

12
13 examination deprived defendant of his right to

14
15 assistance of Counsel guaranteed by Sixth Am-

16
17 endment. U.S.C.A. Const. Amend. 6.

18
19
20 5. This Petition should be granted pursuant to insu-

21
22 fficient proof to revoke probation, See, O'Connor v.

23
24 Hyatt ex rel. Maricopa, 207 Ariz. 409 411, 113, 87 P.3d

25
26 97, 99 (App. 2004) stating that, "however, an illegal

1 Sentence is fundamental error that (this Court)
2
3 must correct"

4
5 The purpose of violation hearing is to determine
6
7 whether a probationer has in fact violated a Pro-
8
9 bation Condition, and a probation violation finding
10
11 made at the violation hearing is a prerequisite to
12
13 Probation Revocation at the disposition hearing
14
15

16 ... If the Court finds the probationer violated a
17
18 Probation Condition, the Court "shall make specific
19
20 findings of the facts which establish the violation"
21
22 to a degree of a reasonable doubt. (Ariz. R. Crim.
23
24 Proc. 27.8(b)(4),) Citing, State v. Vaughn 217 Ariz
25
26 518, 521, 14 176 P.3d 716, 719 (App. 2008).
27

1 6. Finally, the Petition should be granted pursu-
2
3 ant to Imprisonment on Nonpayment of FINES
4
5 See, Bearden v. Georgia, 461 U.S. 660 (1983) 103
6
7 S.Ct. 2064, 76 L.Ed 2d 221, *Id* at [31], stating that,
8
9 "If probationer has wilfully refused to pay fine or
10
11 restitution when he has the means to pay, State is
12
13 perfectly justified in using imprisonment as a San-
14
15 ction to enforce Collection."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cecilia (Ibeabuchi.)

Date: July 31, 2018