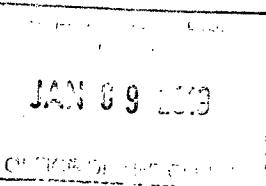


18-7510

No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



MARK A. PEREZ — PETITIONER  
(Your Name)

VS.

1.) Supt. S.C.I. Retreat  
2.) Robert Falin District Attorney — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Pennsylvania  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARK A. PEREZ  
(Your Name)

S.C.I. Retreat / 660 State Route 11  
(Address)

Hunlock Creek, PA 18621  
(City, State, Zip Code)

N/A  
(Phone Number)

**QUESTION(S) PRESENTED**

- 1.) As a matter of first impression - Does the Supreme Court of Pennsylvania's original jurisdiction process pursuant to 42 Pa. C.S.A. §§721, 726 constitute a process to seek "other collateral review" outside the Direct review process?
- 2.) Whether the Supreme Court of Pennsylvania's Grant of Application for Leave to File Original Process and the denial of Application for Extraordinary Relief is a denial on the merits of Application for Extraordinary Relief?
- 3.) Whether Petitioner is in custody in violation of the Due Process Clause of the 14th Amendment of the United States Constitution on a 5 to 10 year sentence imposed under 42 Pa. C.S.A. §9712 that was held to be unconstitutional rendering Petitioner innocent of the elements of §9712?

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Alleyne v. United States</u> , 133 S.Ct. 2151 (U.S. 2013)	5
<u>Bailey v. United States</u> , 516 U.S. 137 (U.S. 1995)	5
<u>Wall v. Kitoli</u> , 526 U.S. 545 (U.S. 2011)	5
<u>Commonwealth v. Newman</u> , 99 A.3d 86, 98 (Pa. Super. 2014) (en banc)	5

## STATUTES AND RULES

42 Pa. C.S.A. §§ 721, 726, 9712	Passim
Pa. Rules of Appellate Procedure 3307	

## OTHER

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28 U.S.C. §1257(a)	2

## 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:

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.

[X] 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,  
[X] 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 \_\_\_\_\_.

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 October 11, 2018. A copy of that decision appears at Appendix A.

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 14

42 Pa. C.S.A. §§721, 726, 9712

## STATEMENT OF THE CASE

On June 20, 2011, Petitioner entered a guilty plea to Aggravated Assault, Robbery, Theft by Unlawful Taking, Burglary, and Persons Not to Possess a Firearm. As part of the sentence imposed, Petitioner received a mandatory sentence of 5 to 10 years under 42 Pa. C.S.A. §9712 for Persons Not to Possess Firearm. However, subsequent to Petitioner receiving the mandatory sentence under §9712, the statute was held to be unconstitutional by the Pennsylvania Appellate Courts after the time for Petitioner to seek Direct Review and Collateral Relief expired.

Petitioner then sought review and relief in the Supreme Court of Pennsylvania and invoked the Court's original jurisdiction to seek "Other Collateral Review" outside the direct review process, as there was no other remedy available. See: Attached Appendix - B. The Supreme Court of Pennsylvania Granted Leave to file Original Process and denied Application for Extraordinary relief in a one page Order. This Petition for a Writ of Certiorari follows and for the reasons submitted to this Honorable Court Infra, this Honorable Court should Grant the Writ.

## REASONS FOR GRANTING THE PETITION

The Pennsylvania Supreme Court has decided an important Federal question in a way that conflicts with relevant decisions of this Court. In light of Alleyne v. United States, 133 S.Ct. 2151 (U.S. 2013), the Pennsylvania Superior Court held in Commonwealth v. Newman, 99 A.3d 86, 98 (Pa. Super. 2014(en banc)), the Mandatory minimum sentence(s) imposed pursuant to 42 Pa. C.S.A. §9712 are unconstitutional, and, therefore, the Court invalidated §9712. This Court held in Fiore v. White, 531 U.S. 225 (U.S. 2001)(the 14th Amendment forbids a state from convicting and incarcerating a person of a crime where his conduct did not violate a criminal statute). Likewise, this Court also held in Bailey v. United States, 516 U.S. 137, 144 (U.S. 1995)(where a defendant's conduct does not does not violate a criminal statute that was subsequently held to be unconstitutional, a defendant is actually innocent of the elements of said statute. As such, the Pennsylvania Supreme Court's denial of Application for Extraordinary Relief conflicts with this Court's decision(s) Fiore, Bailey, Supra, as the unconstitutional statute, 42 Pa. C.S.A. §9712, is not law, and, therefore, renders Petitioner's 5 to 10 year mandatory sentence a legal nullity and Petitioner's imprisonment unconstitutional under the 14th Amendment of the United States Constitution. Hence, this Honorable Court should Grant the Writ, as the Pennsylvania Supreme Court's denial of Application for Extraordinary Relief to correct Petitioner's unconstitutional imprisonment conflicts with this Court's Fiore and Bailey, decision(s), but said

denial of relief by the Pennsylvania Supreme Court is an important issue of public importance that should be resolved by this Honorable Court.

The Pennsylvania Supreme Court's denial of Application for Extraordinary Relief also conflicts with this Court's decision in Wall v. Khali, 562 U.S. 545 (U.S. 2011), where this Court defined what constitutes "other Collateral Review" outside the Direct Review Process. As such, it is respectfully requested that this Honorable Court consider the question presented as a matter of "First Impression" to resolve the issue - Does the Pennsylvania original jurisdiction process constitute a process to seek "other Collateral review" outside the Direct Review Process. See: 42 Pa. C.S.A. §§ 721, 726.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark A. Perez  
MARK A. PEREZ, (Petitioner, Pro Se)

Date: 1-9-19

## APPENDIX - A