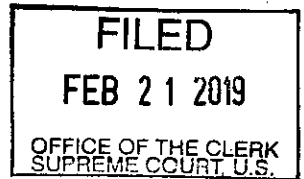


18-8199  
No. \_\_\_\_\_

ORIGINAL



\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Michael Devaughn Johnson — PETITIONER  
(Your Name)

vs.

State of Arizona — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Arizona State Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Michael Devaughn<sup>gh</sup> Johnson  
(Your Name)

Arizona State Prison-Eyman P.O. box 3400  
(Address)

Florence, AZ 85132  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

### QUESTION(S) PRESENTED

Was The ARIZONA STATE COURTS decision that the absence of the Petitioner's trial counsel during two complete "Critical Stages" of the trial did not require automatic reversal of the Petitioner's conviction, in conflict with relevant decisions of this Courts Holdings: "IF AN ACCUSED COUNSEL IS ABSENT DURING A "CRITICAL" STAGE OF A PROCEEDINGS", REVERSAL OF THE CONVICTION IS AUTOMATIC."

## 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:

THE STATE OF ARIZONA

ARIZONA ATTORNEY GENERAL: JOSEPH T. MAZIARZ

MARICOPA COUNTY ATTORNEY: DIANE MELOCHE

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION.....	6

## INDEX TO APPENDICES

APPENDIX A DECISION OF STATE COURT OF APPEALS

APPENDIX B DECISION OF STATE TRIAL COURT

APPENDIX C DECISION OF STATE SUPREME COURT DENYING REVIEW

APPENDIX D ORDER OF STATE SUPREME COURT DENYING RECONSIDERATION

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

(United States v. Cronin, 466 U.S. 648, 659, 104 S.Ct 1984)	- P. 3-5
(United States v. White, 466 U.S. 717, 720 Led)	P. 3-5
(French v. Jones, C.A.6 2003, 332 F2d 430)	p. 3-5

### STATUTES AND RULES

(ARIZ. CONST. ART II Sec 23)	_____	P. 3-4-5
(ARIZ. RULES CRIM. PROC. RULE 32.1(e))	_____	P. 3-4-5
(SUPREME COURT RULE 24.1(A))	_____	P. 3-4-5
(28. U.S.C. § 1257 (A))	_____	<del>P. 3-4-5</del> P. 3-4

### 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 E.A to the petition and is 1 CA-CR 18-0633-PRCS

☒ reported at NO. CR. 201114400-003; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the STATE TRIAL COURT court appears at Appendix B to the petition and is

☐ reported at NO. CR. 201114400-003; 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 01/25/19.  
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: 02/07/19, 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

- <sup>1</sup> (United States v. Cronin, 466 U.S. 648, 659, 104 S.Ct. 2039, 80 L.Ed. 2d, 1984)  
Prejudice is presumed if evidence shows an absence of counsel during a "critical stage" of a proceedings, and reversal of the conviction is automatic.
- <sup>2</sup> (United States v. White, 466 U.S. 114 S.Ct.)  
A "critical stage" is one where an accused's rights are lost or preserved.
- <sup>3</sup> (ARIZ. CONST. ART II Sec 23)  
The right to a jury shall remain inviolate:  
For the crimes in which a sentence of 30 yrs. or more is authorized by law, an accused shall enjoy the right to a jury of twelve people, and the same shall render a verdict.
- <sup>4</sup> (French v. Jones, C.A.6 2003, 332 F.3d 430)  
Clearly established federal law requires automatic reversal of a conviction if counsel is absent during a "critical stage" of a proceedings.
- <sup>5</sup> (ARIZ. RULES CRIM. PROC. Rule 32.1 (e))  
New alleged which if true, would probably change the conviction.
- <sup>6</sup> (Supreme Court Rule 24.1 (A))  
The court may consider a plain error not among the questions presented but evident from the record.
- <sup>7</sup> (SIXTH Amendment)  
The right to the assistance of counsel
- <sup>8</sup> (28 U.S.C. § 1257 (A))



## STATEMENT OF THE CASE

- [1] on 06/26/13, the petitioner was found guilty on count one: possession of a dangerous weapon for sale, a class two felony. Count two: possession of a narcotic drug for sale, a class two felony, and count five: possession of marijuana, a class six felony.
- [2] on 08/02/13, the petitioner was sentenced to 15.75 YRS. in the state prison.
- [3] under the ARIZONA STATE CONSTITUTION, ARTICLE TWO, SECTION 23, the petitioner was afforded as a right a Twelve Person Jury, for his charges. (P.T. 06/03/13, P. 4-5)
- [4] on 06/18/13, the petitioners counsel was absent for the trial. (R.T. 06/18/13, P. 20-21)
- [5] The petitioner requested to have the aid of his counsel before proceeding with the trial, but the court denied the request stating: "THIS IS NOT AN ISSUE, OR RIGHT THAT A DEFENDANT HAS TO AGREE TO" (R.T., 06/18/13, PP.)
- [6] In the absence of the petitioners counsel, the trial proceeded, and the court reduced the petitioners, twelve person jury to the size of an eight person jury. (R.T., 06/18/13 PP.)
- [7] on 06/19/13, counsel was again absent for the trial. (R.T., 06/19/13, PP.)
- [8] on 07/10/13, after the trial, the petitioner received a letter from his trial counsel stating that he was "INTENTIONALLY" absent for the two days of the petitioners trial, and the trial judge knew of the reason of his absence. (Ex. 1 Notice at 3)
- [9] on 07/16/13, (under rule 32.1.(e) of the ARIZ. R. CRIM. P.) the petitioner sent to the superior court this new evidence (petition at 3). The court found that the petitioners claim was not colorable (C.R., 08/22/13 P. 3) and dismissed the petitioners post-conviction, finding no 6<sup>th</sup> amend. violation.
- [10] on 12/04/13, the court of appeals found no error in the denial of counsel claim, and denied relief. (M.D. 12/4/13 P. 2-12)
- [11] The Arizona Supreme Court denied review. (Ord. 01/25/14)
- [12] Reconsideration was dismissed by the Arizona Supreme Court (02/07/14)
- [13] This court now has jurisdiction under 28 U.S.C. § 1254(a) to decide if the petitioner was denied his sixth amendment right to counsel.

### REASONS FOR GRANTING THE PETITION

- 1147 The record supports the new evidence as to proving that the Petitioners' Counsel was absent during a "critical stage" of the trial, and once this fact is established, this court has held that prejudice is presumed, and the court need not inquire into the reason for counsel's absence.  
see <sup>1</sup>(*United States v. Cronin*, 466 U.S. 648, 659, 104 S.Ct. 2039, 80 L.Ed.2d 198)
- 1157 This court has held that a "critical stage" is one where an accused's rights are preserved or lost. see <sup>2</sup>(*United States v. White*, 466 U.S. 717, 720, L.Ed.2d 198)
- 1167 Because the petitioner crimes authorized a sentence of 30 years by law, he was given a twelve person jury by right.  
see <sup>3</sup>(*Arizona Constitution Article Two, Section 23*) This right was lost on the tenth day of the trial in the absence of his counsel,
- 1177 The record reflects that the new evidence showing that the Petitioners' Counsel was absent during a "critical stage" is true, reversal is therefore, automatic. (*Cronin*) Also see <sup>4</sup>(*French v. Jones*, C.A. 6, 2003, 332 F.3d 430)
- 1187 Once the new evidence under <sup>5</sup>(*Ariz. Rules Crim. Proc. Rule 32.1 (e)*) proved the plain error of denial of the Petitioners' Counsel during a "critical stage", prejudice was demanded to be presumed without further inquiry by the state court. (*United States v. Cronin*)
- 1197 The state court's decision is clearly in conflict with relevant decisions from this court.
- 1207 This court should consider a plain error of the petitioner's <sup>6</sup>6<sup>th</sup> Amendment from evidence of the record <sup>6</sup>(*Supreme Court Rule 24.1 (A)*)

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Johnson

Date: 02-20-19