

18-8551
No. _____

Supreme Court, U.S.
FILED

MAR 05 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

(IKEMEFULA IBEABUCHI) — 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

(Ikemefula Ibeabuchi, 177007)
(Your Name)

(ASP/South Unit, P.O. Box 8400)
(Address)

(Florence, Arizona, 85132-8400)
(City, State, Zip Code)

(N/A)
(Phone Number)

ORIGINAL

COVER-Page

QUESTION(S) PRESENTED

1. Whether or not, the Court of Appeals, State of Arizona, correctly denied Appellant's Motion To Dismiss, his Appeal, Submitted pursuant to Arizona Rules of Criminal Procedure, Rule 31.15(a)(2)?
2. Whether or not, the Court of Appeals, State of Arizona, abused its discretion, therein?
3. Whether or not, the Court of Appeals, State of Arizona, exceeded its Jurisdiction in denying Appellant's, MOTION FOR SELF REPRESENTATION, duly informed by Appellate Supervisor Counsel, Tennie B. Martin, on March 13, 2018, for thirty days timeliness to file such Motion, from, March 5, 2018, date the Notice of Appeal was filed by the Court of Appeals, to April 2, 2018, pursuant to Arizona Revised Statutes, 16 A. Rule 1-7(b)(4), filing by the Incarcerated Parties?
4. In Arizona, there is one Competence Standard that applies to Waiver of Constitutional rights, including Self-representation. The trial Court, however, denied Ibeabuchi's motion to represent himself based upon a second higher standard Arizona has never adopted. Did the Court err?

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:

TABLE OF CONTENTS

| | |
|--|----|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | 3 |
| STATEMENT OF THE CASE | 4 |
| REASONS FOR GRANTING THE WRIT | 11 |
| CONCLUSION..... | 19 |

INDEX TO APPENDICES

| | |
|------------|---|
| APPENDIX A | <i>Decision of State Court of Appeals, Division One</i> |
| APPENDIX B | <i>Decision of State Trial Court, Maricopa County</i> |
| APPENDIX C | <i>Decision of State Supreme Court Denying Review</i> |
| APPENDIX D | <i>Order</i> |
| APPENDIX E | |
| APPENDIX F | |

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|--|-------------|
| 1. <i>Faretta v. California</i> , 422 U.S. 806 (1975) 95 S.Ct. 2525, 45 L.Ed.2d 562 | 6, 11 |
| 2. <i>Adams v. United States ex rel. McCann</i> , 317 U.S. 269, 279, 63 S.Ct 236, 241, 87 L.Ed 268 | 11, 12 |
| 3. <i>Moore v. Michigan</i> , 355 U.S. 155, 161, 79 S.Ct. 191, 195 2 L.Ed. 167 | 11 |

STATUTES AND RULES

| | |
|--------------------------------|----|
| 18 U.S.C.A | 13 |
| 28 U.S.C.A. § 1654 | 13 |
| 28 U.S.C. § 1257(a) | 10 |
| Fed. Rul. of Crim. Proc. R. 44 | 13 |

OTHER

| | |
|---|----|
| <i>State v. McLemore</i> , 230, Ariz. 511 (2012) 288 P.3d 775, 648 Ariz. Adv. Rep. 13 | 13 |
| Arizona Rules of Criminal Procedure, Rule 31.15(a) and (2) | 7 |
| Arizona Rules of Criminal Procedure, Rule 31.20 (f) | 10 |
| 16A A.R.S. Rules Crim Proc. Rule 6.1 (c) | 17 |
| Arizona Rules of Civil Appellate Procedure, Rule 22 (f) | 10 |
| Arizona Revised Statutes, 16A, 1-7 (b)(4) | 15 |

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 C 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 State Trial 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 February 5, 2019
A copy of that decision appears at Appendix C.

[] 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

1. Constitutional Amendment, 6, Right to self-representation
2. Constitutional Amendment, 14, Equal Protection.

STATEMENT OF THE CASE

On, October 5, 2016, the Superior Court of Arizona, Maricopa County, issued an Order of Warrant of Arrest, for a Petition To Revoke Probation, written by Probation Officer in Mesa, Arizona.

(See, Supreme Court Clerk's Notice of February 8, 2019, by Clayton R. Higgins, for Supreme Court Rule 14.5, in, Ibeabuchi v. Penzone et al.)

But, whilst the Arrest, the Petitioner, was already on his Direct Appeal, Stemming from the Conviction and Sentence, which the Probation Violation, allegedly occurred. That, Appeal, was timely, denied the Writ of Certiorari, by this Court, on, January 7, 2019.

Accordingly, the State of Arizona was without warrant of Jurisdiction to impose an Order of Warrant of Arrest, as stated, herein, to cause an Imprisonment, upon the Petitioner, at-law. Because, the Jurisdiction was in this Court's Docket, No. 18-6642,

On, February 12, 2018, the Superior Court of Arizona, Maricopa County, Convicted and Sentenced the Petitioner, herein, to Imprisonment of (3.5 yrs), to Consolidate the Life-time, Probation, remaining in the Petitioner's Original Sentence of Plea Bargain, executed on, May 9, 2003, filed on, May 14, 2003, Clerk.

On, February 13, 2018, Petitioner, filed a Notice of Appeal to the Court of Appeals, State of Arizona, within the allocated, twenty (20) days-time frame, at-law.

This Appeal's, Date was recognized by the Court of Appeals, State

1 OF Arizona, ORDER DENYING MOTION FOR SELF REPRE-
2
3 SENTATION, issued on, April 13, 2018, by ANTHONY MACKEY,
4
5 Judge Pro Tempore. Accordingly, the Petitioner's, Notice
6
7 of Appeal was timely and Constitutionally, provided.
8
9 On, September 11, 2018, Petitioner's, former, Court of
10
11 Appeals, Appointed, Public Defender, Mr. Mikel Steinfeld,
12
13 (Who abandoned the Petitioner's, Direct Appeal, at the
14
15 Intermediate Appellate stage, (See, ICA-CR16-0542, (Affirm-
16
17 ed, Nov. 21, 2017)), Cause of Petitioner's, Second-Probation,
18
19 Violation and Arrest, and Conviction, as stated, herein,
20
21 and Sentence to Imprisonment by a Court Order.) filed
22
23 the, APPELLANT'S OPENING BRIEF, without the due
24
25 Consultation, accorded by the Sixth Amendment of the
26
27 United States Constitution. (See, Compulsory Process, in
28

1 Farettu v. California, 422 U.S. 806 (1975) 95 S.Ct. 2525,

2
3 45, L.Ed.2d 562 [2,3] WESTLAW 2018)

4
5 Defectively, the Opening Brief, raised only one (i)

6
7 Issue, in-regard to Self-representation, the Standard

8
9 adopted in the State of Arizona, as compared to the

10
11 Petitioner's, Competence. But, Other Issues, which the

12
13 Petitioner would had raised, remained, unattacked,

14
15 for, instance, whether or not, Petitioner can violate the

16
17 Probation which his Direct Appeal, originates from? or

18
19 whether or not, the Compromise of the Former Appointed

20
21 Attorney, was a "Star-Chamber, Proceeding" therein.

22
23 It should be recalled that, Mr. Steinfeld, is a Res-

24
25 pondent, in this Honorable Court's Docket in NO. 18-7957

26
27 Re: Ikemefula Charles Ibeabuchi v. Mikel Steinfeld. Ergo,

1 a Conflict of Interest, exist in his re-appointment, and
2
3 objectionable, therein, at-law.

4
5 October 1, 2018, the Petitioner, Submitted and filed,
6
7 with Certificate of Service, his, MOTION TO DISMISS, VOLUN
8
9 TARY DISMISSAL, of Appeal, Docketed as, No. 1CA-CR18-
10
11 0098 by the Court of Appeals State of Arizona, Division
12
13 One, and as a matter of the Petitioner's Right, at-
14
15 law. (See, Arizona Rules of Criminal Procedure, Rule
16
17 31.15(a).) (And, Served Respondents. Rule 31.15(a)(2).)

18
19 On, October 9, 2018, the Court of Appeals, Division One,
20
21 denied, Petitioner's, Motion To Dismiss, Appeal, Stating,
22
23 that, "A review of the record indicates that (Petitioner)
24
25 is represented by Counsel on appeal. (Petitioner) has
26
27 no right to hybrid representation. That, (Petitioner) may
28

1 not file motions on his own behalf while he is repre-
2
3 sented by Counsel."

4
5 On, October 22, 2018, the Petitioner, proceeded to file
6
7 a, PETITION FOR REVIEW, in the Supreme Court of Arizo-
8
9 na, and which, Petition was Docketed as, NO. CR-18-
10
11 0521-PR.

12
13 On, October 24, 2018, the Clerk of Court of Appeals, sta-
14
15 te of Arizona, transferred, Records on Appeal, to the
16
17 Clerk of Supreme Court of Arizona, in-recognition of
18
19 the said, PETITION FOR REVIEW.

20
21 On, November 21, 2018, the Respondent, as, Mark Bruno-
22
23 vich, Attorney General, Dominic Praye, Solicitor General,
24
25 Joseph T. Maziarz, Chief Counsel and Elizabeth B.N.
26
27 Garcia, Assistant Attorney General, filed a Response,
28

entitled, THE STATE OF ARIZONA'S RESPONSE TO PETITION FOR REVIEW, through, Electronically, by using the Court's AZTurboCourt e-filing system. And, served the Petitioner, herein, a copy, and addressing same as, "Attorney for Appellant." (Envelope, clearly marked as, OFFICE OF THE ARIZONA ATTORNEY GENERAL, SOLICITOR GENERAL DIVISION, CAPITAL LITIGATION SECTION, 1275 W. Washington, Phoenix, Arizona 85007-2926, GFAE80029).

On, February 5, 2019, the Supreme Court state of Arizona, in an Official Seal of Procedural Order, ordered the Petition for Review, DENIED, And, that, "Justice Gould did not participate in the determination of the matter."

On, February 14, 2019, Petitioner, submitted for filing of the Supreme Court of Arizona, Request for stay of Man-

1 date Pending Application For Certiorari, in the United
2
3 States Supreme Court, due to the fact, that, the Arizona Ru-
4
5 les of Criminal Procedure Rule 31.20(f) makes it clear,
6
7 that, unless permitted by specific order of the appell-
8
9 ate Court, no party shall file a motion for reconsider-
10
11 ation of an order denying a petition for review. (See,
12
13 also, accord in, Arizona Rules of Civil Appellate Procedure
14
15 Rule 22(f).)

16
17 Accordingly, Jurisdiction is vested in this Court,
18
19 in, 28 U.S.C. § 1257(a).
20
21
22
23
24
25
26
27
28

REASONS FOR GRANTING THE PETITION

1. In, Faretta V. California, 422 U.S. 806 (1975) 95 S.Ct. 2525, 45 L.Ed. 2d 562, the Court's Opinion, states that, "a defendant in a State Criminal trial has a Constitutional right to proceed without Counsel when he voluntarily and intelligently elects to do so, and that the State may not force a lawyer upon him when he insists that he wants to Conduct his own defense."

Therefore, the Petition, should be granted, because, Petitioner filed a recognizable, Notice of Appeal, in the Arizona State Court of Appeals, Division One, on, February 13, 2018, a day after his Judgment of Conviction, was issued, and proceeding Pro Se, therein, as clear indication that, he elected to prosecute his Appeal, No. ICA-CR18-0098, by himself.

The State of Arizona nor, Government, therein, may not, return this Gesture, by thrusting a former, Public Defender, (Who abandoned his Duty, on previous Appeal) to represent the Petitioner.

Accordingly, this Honorable Court, should review, the profound Legal Dispute, surrounding the Petitioner's desire not to prosecute his Appeal, anymore.

2. In, Adams V. United States ex rel. McCann, 317 U.S. 269, 229, 63 S.Ct 236, 241, 87 L.Ed 268, at 279, 63 S.Ct, at 242, the Court also held that, "the Constitution does not force a lawyer upon a defendant," comparing with,
3. In, Moore V. Michigan, 355 U.S. 155, 161, 79 S.Ct. 191, 195, 2 L.Ed 167, stated that, "... what were contrived as protections for

1 the accused should not be turned into fetters....To
2
3 deny an accused a choice of procedure in circum-
4
5 stances in which he, though a layman, is as capable
6
7 as any lawyer of making an intelligent choice, is to
8
9 impair the worth of great Constitutional safeguards
10
11 by treating them as empty verbalisms.

12
13 ... When the administration of the criminal law...
14
15 is hedged about as it is by the Constitutional safe-
16
17 guards for the protection of an accused, to deny
18
19 him in the exercise of his free choice the right to
20
21 dispense with some of these safeguards... is to
22
23 imprison a man in his privileges and call it the
24
25 "Constitution" Id at, Adams Supra, 279-280, 63 S.Ct.,
26
27 at 241-242 (emphasis added)
28

1 Sentation, waiving appellate Counsel, received and filed
2
3 by the Court of Appeals, State of Arizona, on, April 5,
4
5 2018, was in fact, erroneous, for the actual signing
6
7 and dispatch, by the Petitioner of April 2, 2018, pursuant
8
9 to Arizona Revised Statutes, 16A, 1-7(b)(4), the
10
11 provision of law, relating to filings by incarcerated
12
13 parties. (See, RESPONSE, at Pages 1, 2, 3.)
14

15 Accordingly, this Court should grant Petition,
16
17 likewise, due to the manifest erroneous, computation
18
19 of time of thirty (30) days by the Court of Appeals,
20
21 State of Arizona's, ORDER DENYING MOTION FOR SELF
22
23 REPRESENTATION, issued on, April 13, 2018. Therefore, the
24
25 Petitioner's, Motion, waiving appellate Counsel, and seeking
26
27 to proceed pro se, was timely, and should had warr-
28

anted the granting of his Request to voluntary Dismissal of Appeal, at-law. Accordingly, the Petition, herein, should be granted.

Further, the State of Arizona's, RESPONSE TO PETITION FOR REVIEW, suggested, Some Reasons the Supreme Court of Arizona, should grant, the Petitioner's Petition for Review. (See, in Page 3, RESPONSE) For instance, that, the Supreme Court of Arizona should treat the Petition as a Petition For Special Action. And, that, the Supreme Court of Arizona should remand the Case to the Court of Appeals for a determination on whether, (Petitioner's) Request To Dismiss, his Appeal was voluntary. (See, in Page 4, RESPONSE),

Axiomatically, this Court, should grant, Review, at-law.

1 Finally, In, *McLemore Supra*, "A timely and unequivocal
2
3 assertion of the right to proceed pro se requires the Court
4
5 to ascertain whether the defendant, has the Capacity,
6
7 and chooses, to make a knowing², intelligent, voluntary,
8
9 and thus, Constitutional waiver of the right to Counsel.
10
11 U.S.C.A. Const. Amend. 6; 16A A.R.S. Rules Crim Proc., Rule 6.
12
13 1(c).

14
15 Petitioner, waived the Mr. Steinfeld's, Representation
16
17 properly, by timely filing of his, Notice of Appeal, of
18
19 February 13, 2018, and when, Mr. Steinfeld had abdi-
20
21 cated his Representation on² the Petitioner's, Direct App-
22
23 eal, which was in extant, at the time. Petitioner had
24
25 no-appellate Counsel at the time, he filed his, Notice
26
27 of Appeal. This should had formed the basis for
28

1 the granting of his lawfully, Request to voluntary Dis-
2
3 smissal of Appeal.

4 Accordingly, this Court should grant Petition to
5
6
7 Correct the impediment, as Cause appearing, therein
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cecilia Abeabuchi

Date: 03/05/2019