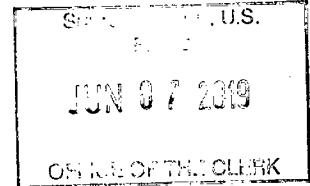


18-9584 ORIGINAL

No.



IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM MILLER, Petitioner

vs.

STATE OF ARIZONA, Respondent

From:

THE ARIZONA COURT OF APPEALS, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

WILLIAM EARL MILLER
3324 W. Del Monico Ln.
Phoenix, AZ 85051
480-414-9344

Petitioner Pro Se

June 7, 2019

QUESTION PRESENTED

Whether Arizona Revised Statutes, section 13-2313, violates the due process clause under the Fifth and Fourteenth Amendments of the United States Constitution when the state court is given subject matter jurisdiction to declare a forfeiture after there exists a determination of no liability for the substantive act causing the forfeiture.

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.....	4,5,6,7
REASONS FOR GRANTING THE WRIT.....	8
CONCLUSION.....	9
CERTIFICATE OF MAILING.....	10

INDEX TO APPENDICES

APPENDIX A	Opinion from the Arizona Court of Appeals
APPENDIX B	April 17, 2017 Judgment from The Maricopa County Supreme Court
APPENDIX C	Order from The Arizona Supreme Court
APPENDIX D	Page 2 from State Complaint
APPENDIX E	Page 2 from Petitioner Answer to State Complaint
APPENDIX F	Page 2 from Order of The Maricopa County Superior Court
APPENDIX G	Page 2 from Petitioner Proposed Order of Judgment
APPENDIX H	Page 4 of Petitioner Reply Brief in Court of Appeals
APPENDIX I	Petitioner Motion for Reconsideration of Court of Appeals Decisions
APPENDIX J	Petition Response in opposition to State Motion for Publication
APPENDIX K	Court of Appeals Order Deny Motion for Reconsideration
APPENDIX L	Petition for Review in the Arizona Supreme Court
APPENDIX M	December 3, 2015 Judgment from Maricopa County Superior Court

TABLE OF AUTHORITIES

I.	CASES	Page
	<u>Arbaugh v. Y & H Corp.</u> 126 S. Ct. 1235, 163 L. Ed. 2d 1092 (2006)	6,7
	<u>Custis v. United States</u> , 511 U.S. 485, 494, 114 S. Ct. 1732, 128 L. Ed. 2d 517 (1994)	7
	<u>Preiser v. Rodriguez</u> , 411 U.S. 475, 485, 93, S. Ct. 1827, 36 L. Ed. 2d 439 (1973)	7
	<u>Steel Co. v. Citizens For Better Environment</u> , 523 U.S. 83, 89, 118 S. Ct. 1003, 104 L. Ed. 2d 210 (1998)	7
	<u>U.S. v. Cotton</u> , 535 U.S. 535 U.S. 625, 630 (2002)	6,7
	<u>U.S. v Vreeken</u> , 803 F. 2d 1085,1088 (10 th Cir. 1986)	7
II.	OTHERS]	
	Arizona Revised Statute 13-2313	4
	U.S. 28 U.S.C 1257(a)	2
	United States Constitution Amendment V	9
	United Stats Constitution Amendment XIII	9

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 State v. Miller, 1 CA-CV 17-0304 (ARIZ. Ct. App. 2018); or,
☐ has been designated for publication but is not yet reported; or,
☐ 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 January 8, 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 06-07-19 (date) on 03-18-19 (date) in Application No. 18 A 923.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment V
United States Constitution Amendment XIII
Arizona Revised Statute 13-2313

The Fifth Amendment of The United States Constitution provides that:

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment of a Grand Jury except in cases arising in the land or naval forces or in the military when in actual service in time of war or public danger nor shall any person be subject for the same offense to be put in jeopardy of life or limb nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life liberty or property without due process of law nor shall private property be taken for public use without just compensation.

The Fourteenth Amendment of The United States Constitution provides that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of The United States nor shall any State deprive any person of life liberty or property without due process of law nor deny any person within its jurisdiction the equal protection of the laws

Arizona Revised Statute 13-2313 provides that

During the pendency of any criminal case charging an offense included in the definition of racketeering in 13-2301 subsection D paragraph 4 or a violation of 13-2312 the superior court may in addition to its powers issue an order constitutional and statutory provision involved pursuant to 13-2314 subsection B and C. Upon conviction of a person for an offense included in the definition of racketeering in 13-2301 subsection D, paragraph 4 or a violation of 13-2312 the superior court may in addition to its power of disposition issue an order pursuant to 13-2314.

STATEMENT OF THE CASE

This court previously extended by order through June 7, 2019, within which to file this petition.

This case arises from the forfeiture cause CV2015-006886 brought by the State of Arizona against Petitioner, William Earl Miller, Sr. in the Maricopa County Superior Court which on April 7, 2017 entered an in personal Judgment in the amount of \$482,400 (\$160,800x3) against him including the forfeiture of \$40,218.33 in his seized funds following a March 30, 2017 bench trial that determined he violated A.R.S. 13-2312, 13-3408 and 13-2317 under the Arizona Racketeering Act. See Appendix B attached hereto and IR114.¹

The question of the trial court subject matter jurisdiction was initially raised on July 20, 2015, in the States Complaint where it neglected to invoke the courts jurisdiction pursuant to A.R.S. 13-2313 See Appendix D attached hereto and IR 12 at 2.

October 27, 2015, in his answer the Petitioner denied the State allegation that trial court had subject matter jurisdiction. See Appendix E attached hereto and IR 26 to 2.

March 2, 2017, the minute entry denying states motion for partial summary judgment acknowledges the issue of subject matter jurisdiction where it states that “the exact crime to which Mr. Miller pled guilty is disputed.” See Appendix F attached hereto

¹ Reference to the records: The Maricopa County Superior Court Electronic Index of Record (“IR”) The Arizona court of Appeals (“ACA”) and The Arizona Supreme Court (“ASC”)

and IR 102 at 2.

March 20, 2017, Petitioner filed a proposed order of judgment asserting that the charge of attempted possession for sale of narcotic drugs to which he pled guilty was not in violation of The Arizona Racketeering Act. See Appendix G attached hereto and IR 107 at 2

January 22, 2018, in the Arizona Court of Appeals Petitioner raised the issue of trial court subject matter jurisdiction where he contends that “A.R.S. 13-2314 and 13-4312 are not applicable in this case because Miller has not committed Racketeering offenses in violation of the Arizona Racketeering Act, 13-2301 (D) (4) and 13-2312. “See Appendix H attached hereto and ACA 20 at 4. Petitioner timely appealed the trial courts decision in the Arizona Court of Appeals where it was affirmed in an Memorandum Decision on May 8, 2018, See. ACA 27 at 1-5

May 22, 2018, Petitioner filed a motion for reconsideration of the Arizona Court of Appeals decision on the ground that the trial court lacked subject matter jurisdiction to enter the judgment. See Appendix I at 1-4 attached hereto and ACA 31 at 1-4.

June 7, 2018, Petitioner filed a response in opposition to State Motion for Publication contending that trial court lacked subject matter jurisdiction pursuant to A.R.S. 13-2313. See Appendix J at 1-7 attached hereto and ACA 34 at 1-7.

August 16, 2018, The Arizona Court of Appeals issued an order denying Petitioner Motion for Reconsideration. See Appendix K attached hereto and ACA 37

August 16 2018 The Arizona Court of Appeals issued an order granting the State Motion

for Publication. See ACA 38

September 12, 2018, Petitioner filed a petition for review in the Arizona Supreme Court on the ground that the trial court lacked subject matter jurisdiction to enter orders in this case. See Appendix L at 1-14 attached hereto and ASC 6 at 1-14.

October 4, 2018, The Respondent filed its waiver of Response to Petition for Review. See ASC 13 at 1-3.

January 8, 2019, The Arizona Supreme Court entered an order denying the petition for review. See Appendix C attached hereto and ASC 14.

Pursuant to Rule 14 (g) (I) of The Supreme Court Rules of The United States above is the specifications of the stages in the proceedings where the question of the trial court jurisdiction was raised and the way in which it was passed by the courts. However according to U.S. v. Cotton, 535 U.S. 535 U.S. 625, 630 (2002), subject matter jurisdiction never forfeited or waived and in U.S. v Vreeken, 803 F. 2d 1085,1088 (10th Cir. 1986) “defendant can raise objection any time to subject matter jurisdiction but not to personal jurisdiction.”

December 3, 2015, the Superior court entered The Judgment; Order of Forfeiture in rem; findings of fact and conclusions of law re: item nos. 2.1-2.7 only. See Appendix M at 1-5 attached hereto and IR 33 at 1-5. This judgment is also void because the ultimate seizure and the forfeiture was under this same cause CV2015-006886 in which

the trial court entered its judgment.²

² Petitioner conviction is for attempted possession for sale narcotic drug which is not a violation of A.R.S. 13-2312 as alleged in the Judgment. See Appendix L at 13 and Appendix B at 4 attached hereto

REASONS FOR GRANTING THE PETITION

A. The Arizona courts have decided an important question in a way that conflicts with relevant decisions of this court. The decisions of the Respondent conflicts with this court longstanding precedent that subject matter jurisdiction is never forfeited or waived. See U.S. v. Cotton, 535 U.S. 625 (2002) and also Steel Co. v. Citizens For Better Environment, 523 U.S. 83, 89, 118 S. Ct. 1003, 104 L. Ed. 2d 210 (1998). Because the question presented in this case is important and because the Respondent decision is wrong this court should intervene to resolve the conflict.

The trial “court had no jurisdiction to render the judgment which it gave.” See Preiser v. Rodriguez, 411 U.S. 475, 485, 93, S. Ct. 1827, 36 L. Ed. 2d 439 (1973). Because Petitioner do not have a conviction in violation of A.R.S. 13-2312 as required in A.R.S. 13-2313. The error in this case is jurisdictional therefore, this court should correct the obvious constitutional violations. See Custis v. United States, 511 U.S. 485, 494, 114 S. Ct. 1732, 128 L. Ed. 2d 517 (1994).

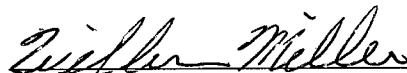
B. The question presented is of substantial and recurring importance. This court resolution of the question presented is critically important to citizens throughout the United States. The Respondent decision not to consider whether the trial court lacked subject matter jurisdiction to enter the judgments and orders if allowed to stand would set precedent that the government can seize and forfeit citizens assets for crimes in which they have not committed. Thus, enforcing judgments and order that are void and in violation of the Due Process Clause under Fifth and Fourteenth Amendments of The

United States Constitution. See Arbaugh v. Y & H Corp. 126 S. Ct. 1235, 163 L. Ed. 2d. 1092 (2006)

CONCLUSION

This court should take review in this matter. The question presented is one of substantial importance which has hitherto evaded review. Without a substantive offense there can be no jurisdiction to seize and distrain one's property, without an independent proceeding (or what is to say the same thing, jurisdiction) to seize and distrain one's property. Such a seizure is unconstitutional under the Fifth and Fourteen Amendments.

Dated this ___ day of June, 2019.


WILLIAM EARL MILLER
3324 W. Del Monico Ln.
Phoenix, AZ 85051
480-414-9344
Petitioner Pro Se