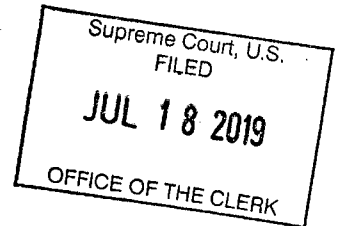


19-5297

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



In re ESTERLIN APPOLON — PETITIONER
(Your Name)

vs.

THE STATE OF ARIZONA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ARIZONA SUPERIOR COURT IN AND FOR PIMA COUNTY
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

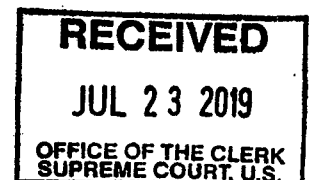
PETITION FOR WRIT OF CERTIORARI

Esterlin Appolon
(Your Name)

ASPC-Tucson/Winchester Unit 10002 S. Wilmet rd.
(Address)

P.O. Box 24401 Tucson, Az 85734
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

- 1) Whether, Arizona Supreme Court abuse it's discretion by dismissing the Petition For Special action and Motion For Stay?
- 2) Whether, the Superior Court was without jurisdiction to render judgment or impose sentence, and, whether the Justice of peace court in initial appearance was without jurisdiction?
- 3) Whether, there was sufficient evidence to justify a rational trier of facts to find guilt beyond a reasonable doubt of count 1) Agg assa, causing physical injury and count 2) Agg, wit a deadly weapon?

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:

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- APPENDIX B: Commitment order, filed on 1-31-18, Arizona Superior Court in Pima County
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- APPENDIX K: Waiver of Right to lawyer Filed 9-18-17 ;
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- APPENDIX M: Full Reporter's Transcript of 3rd trial ;
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Court filed Aug 2, 2017;

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STATUTES AND RULES

OTHER

1. Fundamental rights;
2. Natural law;
3. Natural justice;
4. Personal jurisdiction;
5. Subject-matter jurisdiction;
6. Due Process Clause of the 14th Amendment of the United States Constitution.

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 Arizona Superior Court in Pima County 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.

1.

Continuation of Opinions Below:

The opinion of the Arizona Superior Court in Pima County appears at Appendix C to the petition and is unpublished.

The opinion of the Arizona Superior Court in Pima County appears at Appendix D to the petition and is unpublished.

The opinion of the Arizona Superior Court in Pima County appears at Appendix E to the petition and is unpublished.

The opinion of the the Justice of peace court in Pima County appears at Appendix F to the petition and is unpublished.

The opinion of the Arizona Superior Court in Pima County appears at Appendix G to the petition and is unpublished.

The opinion of the Arizona Superior Court in Pima County appears at Appendix Y to the petition and 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 4-23-19.
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), and
28 U.S.C. § 1651(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Fundamental rights;
2. Natural Law;
3. Natural justice;
4. Personal jurisdiction;
5. Subject-matter jurisdiction;
6. Due Process Clause of the 14th Amendment of the United States Constitution

STATEMENT OF THE CASE

1) The Arizona Supreme Court abuse it's discretion by dismissing my Petition for Special action and Motion For Stay. I filed a petition for special action on 4-12-19. See (Appendix X), and also I filed a petition to Stay and affidavit to support my Special action. I presented a prima facie showing to the Arizona Supreme Court of the inactions or actions, and acts of bad faith of it's lower court and The State to warranted it's supervisory power. I presented acts of denial of fundamental fairness, and also presented acts that the Superior Courts was without jurisdiction to render judgment or to impose judgment and/or sentence. I presented a issue that my conviction rest on insufficient evidence. I was unable to petition for rehearing because I am incarcerated, and by the time I receive the order the time to file and/or petition for rehearing had elapse.

2) I was arrested on May 8, 2015 by TPD and swat at gun point without probable cause or without any officers seeing a crime being commit on April 27, 2015. I was arrested for a crime I didn't commit or [had knowledge that the crime was committed.] I was arrested with no warrant or summons prior to my arrest. See (Appendix F) I was brought to the Justice Court for a initial appearance and complaint in Precinct No. one, Cause No. 508341 without notice. In the complaint in which fail to state a claim, the statement of probable cause stated "4-27-15 police responded to ⑤ Home to find him suffering from a GSW to his face the bullet was through/ through each facial cheek & entered both the upper/lower jaws. ⑤ also had a tracheotomy to facilitate breathing. 2 ⑥ did not see the shooting but reported that 'Stan' was talking to the ⑤. A cartridge & 9mm bullet was recovered from the scene. On 5-5-15 the ⑤ was able to speak & ID'D Stanley Appolon, who was a friend of 7 yrs prior to incident, ⑤ was hold money for Appolon & ⑤ was not able to give back all of the money. ⑤ was presented a photo line up & Appolon was ID'D. See (Appendix F)

There was no statement made by me or evidence that I intentionally, knowingly, or recklessly committed A.R.S. § 13-1204(A)(1) and 13-1204(A)(2) or assault as prescribed by A.R.S. § 13-1203, nor was there any proof that I committed any violation on 4-27-15. The Justice of the Peace court was without jurisdiction and subject-matter jurisdiction.

In my 3rd trial in the Superior court the indictment for the two counts read "On or about the 27th day of April, 2015 Esterlin Appolon assaulted CASH BROWN, causing serious physical injury, in violation of A.R.S. § 13-1204(A)(1) and, "On or about the 27th day of April, 2015, Esterlin Appolon assaulted CASH BROWN with deadly weapon or dangerous instrument, to wit: a FIREARM, in violation of A.R.S. § 13-1204(A)(2)

See (Appendix R) There wasn't any pretrial statement made by me of guilt or [mens rea] prove by the State at my 3rd trial, nor was there any gun found. See (Appendix M 4th day proceedings pg 140 lines 5-23)

There was no witness to the crime present at my trial; the victim said he never seen who shoot him. The victim said he didn't want to get the police involved or them know who the person was that shoot him. See (Appendix M 2nd day proceedings pg 103 lines 7-10)

Continuation or statement of the Case

There was no proof or evidence that a violation of A.R.S. 13-1204(A)(1) or A.R.S. 13-1204(A)(2) had been committed at my trial or before my trial. See (Appendix M) I have been imprisoned and tried for a crime I didn't commit or had any knowledge been commit. On the face of the indictment the Superior Court was without jurisdiction, and at my 3rd and/or all my trials the Superior Court was without jurisdiction to render judgment or impose sentence. The lack of evidence remain the same as the issue presented in this petition in the insufficient evidence to justify a rational trier of facts to find guilt beyond a reasonable doubt of the two counts.

I filed a notice of non-compliance on 1-25-18, in which I stated the Superior Court was without jurisdiction to sentence me or jurisdiction over me, and ask to be released. See (Appendix V) I filed a notice of non-compliance on 6-25-19, where I restated the Superior Court was without personal jurisdiction and subject-matter jurisdiction See (Appendix W) A contract and/or Waiver of right to lawyer was obtain on 9-18-17 it's void because I didn't want to sign it. The Superior Court obtain the sign waiver of right to lawyer and/or contract through Fraud, undue influence, duress, misrepresentation, and overweening bargaining power. The Court gave me insufficient notice of the outcome of the waiver of right to lawyer. I filed a pro se motion on 9-29-17 to remove the State case to the District Court of Arizona, that motion was denied by the Trial judge, the trial judge use threats of unable to self-representation and proceeded to waive fundamental rights, the contract and waiver of right to lawyer was sign after judgment of the jury finding of guilt.

Quoting the hearing: "Mr. Appolon: Yes. The Fine? I don't want to write my signature to anything -- any fines or anything that feels like --" See (Appendix H pg 11 line 10-12)

"The Court: Let me explain that to you. What it is, when you are found guilty of a felony and you are sentenced to prison, the sentencing judge, I can impose all different sorts fines and fees. I don't make them

1 up. The legislature sets them. And what somebody did when they
2 prepared this they basically put indications for what is called
3 the worst case scenario. At sentencing, I could impose \$150,000
4 plus there is a like 89 percent surcharge fee. I guess that
5 come out to \$265,500. That is just a possibility. It is not saying that
6 that that is going happen. And by you". See (Appendix H pg 11 line 16-
7 25) Continue of the court: signing this waiver, that does not mean
8 you are agreeing to payment of anything. See, this why get to think
9 long and hard about representing yourself". See (Appendix H pg 12 line 1-3)
10 "Mr. Appel: I understand what you are saying. I don't feel comfortable
11 signing that". See (Appendix H pg 12 4-5)
12 "The Court: Well, if you don't sign the waiver of right to lawyer,
13 I am going to assign Mr Bond to be your lawyer" See (Appendix H pg 12
14 line 6-8)
15 "Mr. Appel: I still want to represent myself but is there anyway to take
16 the number off because I feel like me signing this is pretty much saying
17 that I have done whatever the court have found me guilty of." See
18 (Appendix H pg 12 line 9-12)
19 "The Court: It just says you could be given a jail or prison sentence and
20 you could be required to pay fines up to and then those numbers." See
21 (Appendix H pg 12 line 13-15)
22 "Mr. Appel: This has nothing to do with me representing myself." See
23 (Appendix H pg 12 line 16-17)
24 "The Court: I mean, if the defendant isn't going to sign the waiver
25 of right to lawyer, I'm not inclined to grant the request. I will certainly
26 be heard by you. Ms. Scheider, because this is new ground for me" See
27 (Appendix H pg 13 line 3-6)
28 "The Court: --if we can't even work with you signing the waiver of
29 right to lawyer, if we can't get past the first paragraph, that is telling
30 me that at this point I can't find that you are adequately prepared to
31 represent yourself in this matter." See (Appendix H pg 14 line 2-5)
32 "The Court: So here is what I am going to do. I'm going to assign advisory

1 counsel Al Bond. I am going to assign him to be advisory counsel in
2 this matter. I will order that Mr Bond meet you within the next 21 days
3 and discuss the waiver of right to lawyer form that was provided to you
4 and also discuss whether you truly want to be representing yourself
5 in this matter. I know you want to. All right? Here is what happen. Let
6 me finish." See (Appendix H pg K lines 6-13)

7 "The court: I am going to order that Mr Bond shall be appointed as
8 advisory counsel" See (Appendix H pg 15 lines 7-10), "I will order Mr Bond
9 meet with Mr. Appolon prior to the status conference and we will give
10 him three weeks."

11 After the hearing Mr. Bond came and visit me per Marner order
12 pressure me into signing the waiver. See (Appendix J)

13 I sign the waiver because of the pressure of the court and Al Bond per
14 trial court's order. See (Appendix K)

15 I stated "I want to also state that any fine and punishment, I'm not
16 willingly accepting any fines any sentence." See (Appendix I pg 9 line 2-4)
17 I never felt right signing the waiver and/or contract I withdrawn from
18 the waiver. See (Appendix L) The court fail to tell me I was waiving
19 fundamental rights, the court deny me of fundamental right.

20 Before my sentence I refuse transport and 5 to 6 officers come to my room
21 put handcuff and took me to transport there was a video of this.

22 During sentencing or before I was put into a chair with chains around
23 my ankles and arm because I didn't want to be sentence for a crime
24 I didn't do, per Marner order I was brought up in restraints. See (Appendix
25 N pg 5 lines 12-25 and pg 6 lines 1-18), and I also object to the sentencing.

26 In a presentence report that got distribute to the trial court and the State
27 before sentencing. I stated to probation office "The defendant stated he is
28 innocent and wanted it noted he has not consented to being sentenced. See (Appendix
29 O)

30 ^{Quoting hearing} "Mr. Bond: Just, honor that I have me with Mr. Appolon out of jail a couple of
31 times and then spoken with today in court. We have tried to go through all
32 of the issues in terms of the extent of his right to an attorney, the process

1 he would need to go through in waiving that any steps I could
2 make to also ensure his understanding of the right and any
3 waiver would be knowing, intelligent and voluntary. See (Appendix
4 I pg 4 lines 24-25 and pg 5 lines 1-6) Mr. Bond himself invoke or
5 assert any waiver would be knowing, intelligent and voluntary as
6 advisory counsel and he couldn't do that as advisory.

7 The Superior Court obtain the signature through fraud, undue in-
8 fluence, duress, misrepresentation, and overbearing bargaining power, the
9 court gave me insufficient notice of the outcome of the waiver of
10 right to lawyer. The Superior Court was without jurisdiction
11 to sentence me, and unreasonable to assert jurisdiction. Jurisdiction
12 assert by The Superior Court violate my fundamental rights.

13
14 3) Review evidence most favorable to the prosecution no rational
15 fact finder could have found me guilty beyond a reasonable doubt
16 of count 1: A.R.S. § 13-1204(A)(1) and count 2: A.R.S. § 13-1204(A)(2); the
17 state didn't prove the essential elements of the two counts, nor prove
18 mens rea of the two crimes. [No confession of guilt was given by me
19 at trial or at all and/or pretrial.]

20 "The Court: Mr. Appelon, at this time are you going to invoke your
21 Fifth Amendment rights?" Mr. Appelon: Yes, Sir" See (Appendix M
22 4th day proceedings pg 140 lines 5-23)

23 No gun, DNA, or other incriminating evidence such as bloody clothing was
24 found or presented at trial. See (Appendix M 4th day proceeding pg 30
25 lines 13-16) and (Appendix M 2nd day proceeding pg 92 lines 16-21)

26 Cassi Brown claimed he owed me money he testified that I never asked
27 him for it and the night he claimed ^{I shot him, Mr. Brown testified I did}

28 not threaten him, and he did not feel in any danger and I was friendly on
29 the night I shot him. See (Appendix M 2nd day proceeding pg 91-95)

30 Mr. Brown misidentify me in my trial proceeding and pretrial statements
31 as he stated and testify that he know me for yrs, but fail to I.d. with my
32 tattoos on my arms and neck. See (Appendix M 2nd day proceeding pg 92-93)

1 At trial Mr. Brown denied saying "it wasn't Stan" who shot him but then
2 acknowledged that he did so because he didn't want the police involved.
3 It was also contradicted by his statement to Det. The that "that's why
4 I did tell her no, that it was not him. See (Appendix M 2nd day proceeding
5 pg 103-104)

6 "Why did you say no, no no, it wasn't Stan?" ^{Mr. Brown: Because I didn't}
7 want the police involved, of them knowing who the person was that shot."
8 See (Appendix M 2nd day proceeding pg 103 lines 7-10)

9 Mr. Brown testify and/or told Det. The that the event was a blur and he
10 had a horrible memory. See (Appendix M 2nd day proceeding pg 113-114)
11 There was no contact information in Mr. Brown's phone with My information.
12 See (Appendix M 2nd day proceeding pg 110)

13 Mr. Brown had previously been convicted of felonies including witness tampering.
14 Renee Rodriguez (victim girlfriend) testified that she was in the bath and
15 did not see who shot Mr. Brown, "and heard voices over the T.V. when she
16 heard the shot, she testify she came out of the bathroom and went to her
17 daughter's room saw blood on the victim but did not see anyone other than
18 Mr. Brown on the floor. Renee testify she called 911 and told the 911 operator
19 she didn't know who shot the victim, then a few moments after that
20 said it was Stan. Renee was never shown a pretrial line up, making her
21 in-court-I.d. unconstitutional as it was tainted because I was the only
22 one sitting at the defendant table.

23 Virginia Rodriguez (Renee mother) testify she didn't see the crime, she
24 testify that she stopped by the house prior to the shooting to drop something
25 off, and saw Mr. Brown talking to someone who she identified in-court
26 as me, contrary to Virginia testimony at my 1st trial she struggle to I.d.
27 me as the person she seen that night. Virginia was never shown a pretrial
28 line up, making her in-court-I.d. unconstitutional as it was tainted because
29 I was the only one sitting at the defendant table.

30 Det. The lead detective in the allege shooting of Mr. Brown confirmed
31 and testify that no officer's observe the shooting, testify that no other witness
32 seen the assault of the victim. Det. The testify that he had no direct evidence

1 of guilt of the assault, the only evidence was the victim in which have
2 a long history of giving and making false statements. Det. The as lead on the
3 case fail to investigate as victim was involved in questionable activity
4 on the night of the shooting. It only seem that Det. The, the victim, the State
5 went with the easy route trying to convict me. Det. The present in my 3rd
6 and final trial was cell phone data that allege the phone was on me
7 during the time of the shooting. I made pretrial and post trial remarks
8 that the phone wasn't mine in fact; however, there is and won't be no
9 testimony or evidence as to whom collect the phone on the night of arrest.

10 In a affidavit of Joel Fermin (Trial attorney) he stated there was
11 little evidence. See (Appendix P)

12 I present a alibi witness, and trial counsel question my alibi witness Ms.
13 Peerington about my whereabouts of the of the shooting of the victim, she
14 testify that I had tattoo's during this period. She testify that I was in
15 a whole other area during the shooting.

16 Further, neither Det. The cell data presentation, nor Brown's evidence, and/or
17 evidence presented at trial could be considered as sufficient evidence to
18 warrant a conviction.

19 The State didn't prove ~~meas~~ real or the essential elements of the two counts,
20 and/or ^{it wasn't} ~~wasn't~~ sufficient evidence necessary to convince a rational trier of facts
21 beyond a reasonable doubt of the two counts of assault to find guilt.
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REASONS FOR GRANTING THE PETITION

The State of Arizona and Superior Court "trial Court" has acted in bad faith and abuse process to convict me with insufficient evidence. I have absolutely no faith in receiving a fair impartial proceeding from The State of Arizona, Trial Court, Arizona Supreme Court and/or any State Court thereafter. The Trial Court doesn't have personal jurisdiction to deprive me liberty, and without subject-matter jurisdiction to render judgment or sentence me. I have present these issue's to the U.S. District Court for the District of Arizona Case# CV 18-00357-TMC-CKJ. In my past conviction proceeding The State and Trial Court have abuse process to assert jurisdiction, also ignoring pleading, and refusing to file motions or pleadings. The actions or inactions of Trial Court and The State is a denial of [fair play] and also repugant to laws and/or opinions of this court. I ask this court for it's interpretations of personal jurisdiction, subject-matter jurisdiction, fundamental rights, natural law, and natural justice in the issue before this court. I presented a prima facie shewing to the Arizona Supreme Court of the inactions or actions of it's lower court and The State to warranted it's supervisory power, Arizona Supreme Court fail to act according to laws. The questions and/or issue's before this court is such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this court, and call for an exercise of this court's supervisory power. The national importance of having this Court "The U.S. Supreme Court" decide the questions involved is not only important to me but important to others similarly situated. To avoid a miscarriage of justice this court must grant this petition. [I am a United States citizen and being held in violation of the constitution, laws, or treaties of the United States.] Before I was arrested on May 8, 2015 I was a resident of Florida. I avow to this Court that I didn't commit the two counts of Agg Asslt on 4-27-15. On the basis of ethics, morals, my fundamental rights, and intra petition and/or appendices this petition for a writ should be granted.

CONCLUSION

I ask for the reasons stated in petition; A) Release From custody and discharge; B) Reversal of the conviction; C) Order that all public records generated by arrest and conviction in this matter be expunged; D) Set aside or vacating conviction in a matter of law; E) Any relief deemed appropriate by this court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Esterlin Appolan
Esterlin Appolan

Date: July 18th 2019