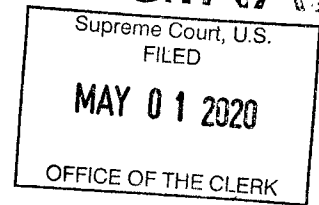


No. 19-8472

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

WYTE YOUNG JUNIOR — PETITIONER
(Your Name)

vs.

STATE OF ARIZONA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Wyte Young Jr
(Your Name)

A.S.P.C. - Eymen, Unit - Smul, P.O. Box 4000
(Address)

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

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did the trial court violate petitioner's 5th, 6th, and 14th amendment rights, when it made a judicial determination, as to the dangerous nature element in CR98-208 counts 7 and 8, and CR98-473 count 1?
2. Did the trial court violate petitioner's 6th, 8th, and 14th amendment rights, when it enhanced petitioner's sentences beyond the sentence range prescribed by the jury's verdicts?

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:

RELATED CASES

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CASES	PAGE NUMBER
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A.R.S. §§ 13-704 (L)	

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☐ is unpublished.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☐ is unpublished.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 _____ 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☐ is unpublished.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 _____ 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 4/2/2020.
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

The Fifth amendment of U.S. Constitution

The Sixth amendment of U.S. Constitution

The Fourteenth amendment of U.S. Constitution

The Eight amendment of U.S. Constitution

A.R.S. §§ 13-702

A.R.S. §§ 13-105

A.R.S. §§ 13-704

Wyte Young Jr
Prison # 78528
A.S.P.C. - Eymann
Unit - 5M01
P.O. Box 4000
Florence, AZ 85132

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

WYTE YOUNG, JR.,

Petitioner

v

STATE OF ARIZONA,

Respondent,

PETITION FOR CERTIORARI

IN THE UNITED STATES

SUPREME COURT

Comes now petitioner in Properia Persona would respectfully move this Honorable Court to grant review of this petitioner's Petition for Certiorari, in the above entitled cause, from the Arizona Supreme Court's decision to deny review, on 4-2-2020, of the Arizona Court of Appeals 12, 12, 2019 erroneous decision, that this petitioner failed to establish that Navajo County Superior Court, visiting Judge Donna Grimsley Abused her Discretion on Oct. 3, 2016 When petitioner's Petition For Post Conviction Relief was Summarily Dismissed as untimely raised and previously raised in a prior Petition.

In the present case the trial court abused its discretion

When Navajo County Superior Court, Judge Gloria J. Kindig sentenced petitioner as a dangerous offender, when the dangerous nature was not listed in the indictment, nor was there a finding of dangerousness in the jury's verdict forms, thereby petitioner was illegally sentenced beyond the sentencing range prescribed by the jury's verdict, petitioner was sentenced under a incorrect sentencing statute range of 5 to 15 years, and received a 15 year sentence, when in fact the correct sentencing range is Probation Eligible to a super aggravated max sentence of 8.75 years.

The fact is the Absolute Discharge date was January 13, 2012, therefore petitioner was being held in custody after his lawful sentence had expired.

Thereby proving petitioner filed A timely Petition For Post Conviction Relief, pursuant to Arizona Rules of Criminal procedures, Rule 32.1 (d) which follows Arizona Revised Statute. Subsection 13-42 (a), The Law, that a competent court would have applied had that Court not been bias.

It was also visiting Judge Grimsley's ruling that this issue had been raised in a previous petition, but yet the court does not specify what previous petition this issue was allegedly raised in, nor is there a previous adjudication of the facts of this

Issue in the Superior Court's record.

In Arizona a issue is not to be precluded until it has been finally adjudicated on the merits on appeal or in any previous collateral proceeding... see ARIZ. Rules of Crim. Procedures, Rule 32.2 (a)-(2) which follows A.R.S. Sub. sec. 13-42 (b). The 100% fact is this issue could not been finally adjudicated on the merits, because it has not been raised in any previous proceedings.

Which a Competent, diligent, and impartial Court would have known, and based its ruling on the facts of the Court's record and the Law.

STATE v. CHAPPLE, 135 Ariz. 281 (1983); An abuse of discretion is equated with a ruling that is legally incorrect... see STATE v. SWOOPS, 216 Ariz. 390 (2007); A trial court's erroneous ruling on a question of law, such as whether a post conviction claim is or is not precluded, constitutes an abuse of discretion.

The trial court's summary dismissal of the PCR petition is clearly contrary to law and the facts of the Court's record, which makes it blatantly obvious the Judge abused her discretion, therefore the decision of the Court of Appeals, that petitioner did not establish Abuse of Discretion is unequivocally a Legal Fiction, to keep from reaching the merit of the issue presented in the Petition For Post Conviction Relief, petitioner presented legal and factual proof of the Superior Court's abuse of discretion

that was not refuted. Therefore the Court of Appeals "ERRONOUS RULING" should have been reviewed by the Ariz. Supreme court, who had a duty to correct the Court of Appeals legal fiction, and order that Court to reach the merit of issue, or reach the merit of the issue itself.

But Each of these Arizona courts showed undeniable bias in there decision, in the fact they purposely avoided reaching the merits of the illegal sentencing issue raised in the PCR petition, for these courts are well aware that the "LAW COMMANDS", that the illegally enhanced portion of petitioner's sentences be vacated.

ISSUE PRESENTED IN PCR PETITION

In the consolidated cases of CR98-208 and CR98-473 trial court Judge Gloria J. Kindig sentenced petitioner to an aggravated sentence of 15 years for dangerous nature offenses when the counts were not alleged as dangerous nature offenses based on the indictments and Jury verdicts. (see P.C.R. petition EXH (A) indictments and EXH (B) Jury verdicts).

In the state's April 21, 2017 response to petitioner's PCR petition, the state confessed error, when prosecutor Krueger failed to address the fact that the "DANGEROUS NATURE STATUTE" was "NOT" listed in the indictment, a.

... see NISSAN SENTRA, 201 ARIZ. 114, 117 917, 32 P.3d 39, 42 (APP. 2001) (failure to address issues raised on appeals⁶⁶ "can be considered a confession of error") PERRY v. RONAN, 225 ARIZ. 49, 234 P.3d 617 (ARIZ. APP. 2010).

The state would then go on to misapply the Court of Appeals decision in LARIN v. STATE; quoting the State; The case law is clear that when an element of the offense includes the use of a dangerous instrument or deadly weapon, there is no requirement to make a separate dangerous finding by the jury, as the finding is inherent in the offense itself. "Generally, an allegation of dangerousness where it is inherent in the crime."

It was the state's position that the dangerousness was inherent in the offenses charged and there was no need for the jury to make a separate finding.

The state's assertion of the Court of Appeals decision in LARIN, has been incorrectly applied to petitioner's case, for petitioner quotes the Court of Appeals decision in STATE v. LARIN, 233 ARIZ. 202, 310 P.3d 990, 671 ARIZ. ADV. REP. 6, (APP. 2013), ¶ 42;

The enhanced sentencing scheme for dangerous offenders is mandatory where applicable, see

A.R.S. § 13-704 (L) ("The penalties prescribed by this section "SHALL" be substituted for the penalties otherwise authorized by law if... an allegation of

dangerousness is charged in the indictment or information and admitted or found by the trier of fact.") Although LARINS armed robbery conviction was inherently dangerous, we acknowledge that the jury none the less could of found the dangerousness allegation was not proven... see STATE v PARSON 471 ARIZ 15, 15-16, 827 P.2d 476, 477 (CAPP 1991) (finding no error when jury render inconsistent verdicts, finding DEFENDANT GUILTY OF AGGRAVATED ASSULT, USING DEADLY WEAPON OR DANGEROUS INSTRUMENT and FINDING STATE FAILED TO PROVE DANGEROUSNESS). Notably in separate proceedings, the jury acquitted LARIN of Prohibited Possessor and found the aggravator of use, threaten use, or possession of a deadly weapon or dangerous instrument not proven. Accordingly the trial court can not subject LARIN to the enhanced sentencing scheme of §13-704 absent a jury's finding of dangerousness, see PARKER, 128 ARIZ. at 98, 624 P.2d at 296. (It is noted the court's vacated LARIN sentence).

It is clear the inherent dangerousness in LARIN's conviction, did not relieve the jury of its duty to make a separate finding of dangerousness.

The court was clear that the trial court can not subject LARIN to a enhanced sentencing scheme for dangerous

offenders, absent a Jury's finding of dangerousness.
(The same is "REQUIRED" in the petitioner's case).

In petitioner's case the dangerous nature is not changed in the indictments. (as "REQUIRED" by ARS 13-704 (L), the 5th and 6th amendments), nor did the Jury make a finding of dangerousness. (as "REQUIRED" in LARIN),

Once more it was the trial Judge that illegally made the finding of dangerousness at the Nov. 19, 1998 Sentencing hearing, her finding of dangerousness as to the aggravated assault counts petitioner was convicted of at trial, made it clear there was separate finding as to these counts, only it was the Judge that made the finding of dangerousness (ILLEGALLY), instead of the Jury, which voids the state's argument of separate findings.

When a Judge inflicts punishment that the Jury's verdict alone does not allow, the Jury has not found all the facts. "WHICH THE LAW MAKES ESSENTIAL TO THE PUNISHMENT," and the Judge clearly exceeds his or her proper authority.

(U)nder the Due Process Clause of the 5th amendment and The Notice and Fair Trial Guarantees of the 6th Amendment, any factor (other than a prior conviction) that increases the maximum penalty for a crime "MUST" be charged in an indictment,

Submitted to a jury and proven beyond a reasonable doubt. (JONES v. U.S., 526 U.S. 227, 243 n.6 (1999)). The 14th amendment Commands the same answer in this case involving state statutes. (Id. at 476).

Coconino County Attorney Stacey Kneuger was the prosecutor in this post conviction proceeding. She was also the prosecutor in CR2015000189 a case in which petitioner was convicted of Identical Aggravated ASSULT charges, except for the fact that the dangerous nature was list in the indictment and the jury made the seperate finding of dangerousness, after the prosecutor (Kneuger) Moved for the court (Judge Grimsley) to instruct the jury of its "DUTY," to make the seperate finding of dangerousness.

Even though the aggravated assault charges in both of these cases are inherently dangerous, prosecutor Kneuger was well aware of the "REQUIREMENTS" in LARIN, to have the dangerous nature listed in the indictment, and have the jury make a seperate finding of dangerousness.

This fact was demonstrated in the trial of CR 2015-189 by prosecutor Kneuger, there by petitioner must state the obvious, prosecutor Kneuger knowingly, intelligently and voluntarily

Falsely argued the Court of Appeals decision in LARIN in the April 21, 2017 response to petitioner's P.C.R. petition, and this fact could not have escaped the trial court's attention, which clearly establishes the corroboration between the prosecutor and the judge to deny this petitioner's Constitutional rights, by summarily dismissing petitioner's P.C.R. petition, for reasons that are not supported by the court's record and contrary to law, this clearly constitutes a bias abuse of discretion by the trial court.

Therefore the Arizona Court of Appeals had a duty to competently, diligently, and most of all impartially address and correct this blatant abuse of discretion.

Further it was the court of Appeals assertion that that they review the record in this case, therefore that court could not have missed its own decision in LARIN v. STATE, 233 ARIZ. 202, 310 P.3d 990, 671 ARIZ. ADJ. Rep. 6. (APP 2013), nor can the Court of Appeals deny that this court's ruling in JONES v. U.S., 526 U.S. 227, 243 n. 6 (1999), established a clear and irrefutable bias abuse of discretion by the trial court, therefore once again petitioner MUST point out that the Court of Appeals undeniably, unequivocally was itself bias, when it ruled this petitioner failed to establish the trial court abused its discretion,

this decision was a "LEGAL FICTION" to avoid reaching the merits of the issue, and complying with the law.

The Arizona Supreme Courts decision to deny review of these lower courts rulings was an endorsement of these courts' Arbitrary and capricious rulings, and a failure to uphold the integrity of a Fair and Impartial Judicial proceeding, that thereby resulted in prejudice to petitioner, due to the fact petitioner was denied relief from the violations of his 5th, 6th, 8th, and 14th amendment constitutional Rights.

CONCLUSION

Petitioner would humbly and respectfully move this Honorable court to order the Ariz. Supreme Court to vacate the illegally enhanced portion of petitioner's sentences in the Aggravated Assault Convictions in CR98-208 counts 7 and 8, and CR98-473 Count 1, and sentence petitioner in accordance with the Probation Eligible to a 8.75^{YRS} aggravated maximum sentencing range prescribed by the jury's verdicts.

STATEMENT OF THE CASE

On Nov. 19, 1998 the trial court sentenced petitioner as a dangerous offender when the dangerous nature was not listed in the indictment, nor was there a separate finding of dangerousness in the jury's verdicts.

The trial court illegally sentenced petitioner to concurrent 15 years sentences in consolidate cases CR98-208 counts 7 and 8, and CR98-473 count 1, Aggravated Assault convictions, which was clearly ~~beyond~~ enhanced beyond the lawful sentencing range of probation eligible to a aggravated maximum prison term of 8.75 years prescribed by the jury's verdicts, pursuant to A.R.S. §§ 13-702 Non Dangerous offenders sentencing statute.

These illegally enhanced sentences result directly from the trial court's illegal finding of dangerousness in the forementioned Aggravated Assault convictions, thereby the trial court clearly violated its discretion, and violate this petitioner's 5th, 6th, 8th and 14th amendment rights.

REASONS FOR GRANTING THE PETITION

Sept 29, 2016 petitioner filed a Notice of Post Conviction Relief, in the Navajo County Superior Court, that trial court acknowledged the Notice for PCR and granted petitioner permission to proceed with the filing of the PCR petition, which would establish the fact that the trial court assessed the facts presented in the Notice for PCR, and determined that petitioner had met the legal requirement to file said PCR petition, that petition was filed 3/8/2017, yet on Oct. 3, 2017 that trial court would summarily dismiss this petitioner's PCR petition, stating it was untimely filed and the issue had been raised in a previous PCR petition, these stated reasons, clearly contradict the trial court's determination that the petitioner met the legal requirements to file a legal and legitimate PCR petition on 3/13/2017, pursuant to Ariz. Rules Crim. Proc., Rule 32.1(d). The fact is had petitioner been sentenced in accordance with the sentencing range prescribed by the Jury's verdicts, petitioner's lawful sentence expiration date would have been Jan. 9, 2012.

Thereby anytime spent on parole or incarcerated after Jan. 9, 2012 was unlawful do to the trial court's illegal enhancement of this petitioner's sentence through a incorrect dangerous offenders sentencing statute, the record clearly verifies that petitioner was unlawfully incarcerated in consolidated cases CR98-208 and CR98-473 at the time petitioner filed said PCR petition on 3/13/2017, the record further establishes that the illegal sentence in CR98-208 and CR98-473 did not expire until May 25, 2017, therefore it is a for certain fact that petitioner was unlawfully incarcerated at the time the PCR petition was filed pursuant to Rule 32.1(d) of the A.R.C.P.,.

Just as it is a for certain fact that the case record proves the facts argued in this issue have never been adjudicated on Appeals or in any Collateral proceeding, as required by Ariz. Rules of Crim.

proc., RULE 32.2(a)-(2), for the trial court to have rendered a decision supported by facts or law, no such proof exist due to the fact, the facts of this issue are only raised in the 3/13/2017 PER petition, a fact the trial court was aware of when that court permitted petitioner to file said PER petition on 3/13/2017.

which thereby establishes that the trial court deliberately made fictitious ruling in order to keep from reaching and ruling on the merits of the issue, for it is this court's decision in U.S. v. JONES, 526 U.S. 227, 243 n.6 (1999), and the Ariz. Court of Appeals decision in State v. LARIN, 233 Ariz. 202, 310 P.3d 990, 671 ARIZ. ADV. REP. 6 (APP 2013 9/14/12), which is in accordance with this court's decision in JONES, that dictated that the trial court grant this petitioner relief, but the trial court in its despotic behavior, was derelict in performing its duty to uphold the law, (see attached pages),

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

EWapto young Jr

Date: April 29, 2020

REASONS FOR GRANTING THE PETITION (Attachment A)

On May of 2019 petitioner filed a Petition For Review in the ARIZ. Court of Appeals, seeking relief from the trial court's Oct. 3, 2017 fictitious ruling.

But on 12/12/2019 the court of Appeals would render its own fictitious ruling, stating; That petitioner had failed to establish that the trial court abused its discretion.

As previously proven petitioner's PCR petition was legally and legitimately filed, due to the fact the trial court's decision to summarily dismiss this petitioner's PCR petition is not supported by facts or law, and irrefutably establishes that the trial court's decision was an abuse of discretion, that was a deliberate ruse, in order to skirt its duty to follow the Court's Ruling in U.S. v. Jones, as well as the Court of Appeals ruling in STATE v. LARIN.

Therefore the Court of Appeals 12/12/2019 decision establishes that Court's blatant disregard of its duty, to reach and rule on the merits of the issue presented in the PCR petition, which clearly establishes this petitioner's 5th, 6th, 8th, and 14th amendment rights were violated, and this Court's decision in JONES as well as its own decision in LARIN, demanded that, that

continuence of attachment A)

1 Court granted petitioner relief, but the Court
2 of Appeals would act in accordance with the
3 trial court's despotic behavior, as it to was
4 also derelict in performing its duty to uphold
5 the law as well.

6 Therefore petitioner in Decempf 2019 would file
7 a petition for review in the Ariz. Supreme court
8 requesting that court review the Court of Appeals
9 faticious ruling for an abuse of discretion, due
10 to that court's dereliction of its duty to uphold
11 the law, in its performance as an appellate
12 Court.

13 In Aprl of 2020 the Ariz. Supreme court would
14 deny review of petitioner's petition and thereby
15 would skirt its responsibility as the parent court
16 of the lower state courts, to ensure the fair
17 adminstration of Justice, to ensure the actions of
18 the lower courts promote the integrity of the
19 Judicial system, but this can only happen if or
20 when that court asserts itself, at the times
21 when the lower courts, whether deliberate or not
22 fails to follow and uphold the laws of our constitution.

23 The fact vs the Ariz. State courts have deliberately
24 ignored the violations of this petitioner's 5th, 6th, 8th
25 and 14th amendment constitutional rights.

26 Each one of these courts had an obligation to reach
27

(Confluence of Attachment A)

1 and address the merits of the issue presented
2 to its court, but in a disturbing display of
3 despotic behavior, have deliberately been
4 delinquent in performing their duty, these actions
5 clearly warrant a concern for the fair administ-
6 ration of Justice to any and all American citizens
7 that are unfortunate to find themselves in this
8 position in the Ariz. State Courts, no citizen can
9 receive Justice when a court or courts have
10 become deliberately derelict in their duties
11 to enforce and uphold the laws of our constitution.

12 Thereby petitioner would humbly and
13 respectfully request that he be granted relief
14 from the violation of his constitutional rights
15 by this Honorable Court.

16 Which would in turn address the Ariz. State
17 Courts despot attitudes, when it comes to complying
18 with this Honorable Court's rulings and decisions
19 that are binding upon those courts.

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