

SUPREME COURT OF ARIZONA

RAFEEQ SALAHUDDIN,	)	Arizona Supreme Court
	)	No. HC-19-0027
Petitioner,	)	
	)	Maricopa County Superior Court
v.	)	No. CR144541
	)	
CHARLES L. RYAN, DIRECTOR,	)	
ARIZONA DEPARMENT OF CORRECTIONS,	)	<b>FILED 02/10/2020</b>
	)	
Respondent.	)	
_____	)	

O R D E R

Rafeeq Salahuddin, formerly known as Randy Harris, has filed a Petition for Writ of Habeas Corpus and Separate Memorandum of Points and Authorities. In this petition, Mr. Salahuddin presents claims based on Batson v. Kentucky, 476 U.S. 79 (1986), that he has previously presented to this Court in an appeal and two Rule 32 post-conviction proceedings. This Court denied relief or review. See State v. Harris, 157 Ariz. 35 (1988); State v. Harris, 175 Ariz. 64 (App. 1993) (review denied CR-93-0177-PR); State v. Salahuddin, 2016 WL 5436486 (Ariz. App. 2016) (review denied CR-17-0018-PR). Therefore,

**IT IS ORDERED** that the Petition for Writ of Habeas Corpus and Separate Memorandum of Points and Authorities are dismissed.

DATED this 10<sup>th</sup> day of February, 2020.

\_\_\_\_\_/s/  
John R. Lopez IV  
Duty Justice

TO:  
Rafeeq Qadeer Salahuddin, ADOC 056940, Arizona State Prison, Florence  
- East/Shock Unit

APPENDIX C

SUPREME COURT OF ARIZONA

RAFEEQ SALAHUDDIN,	)	Arizona Supreme Court
	)	No. HC-19-0027
Petitioner,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CR144541
CHARLES L. RYAN, DIRECTOR,	)	
ARIZONA DEPARMENT OF CORRECTIONS,	)	FILED 03/05/2020
	)	
Respondent.	)	
	)	
	)	

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O R D E R

On February 27, 2020, Petitioner Rafeeq Salahuddin, Pro Se filed a "Motion for Panel Reconsideration." Upon consideration,

IT IS ORDERED dismissing Petitioner's Motion for Panel Reconsideration.

DATED this 5th day of March, 2020.

\_\_\_\_\_/s/\_\_\_\_\_  
ANN A. SCOTT TIMMER  
Duty Justice

TO:

Joseph T Maziarz

Rafeeq Qadeer Salahuddin, ADOC 056940, Arizona State Prison, Florence  
East/Shock Unit

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF ARIZONA  
En Banc

THE STATE OF ARIZONA,

Appellee,

v.

RANDY J. HARRIS,

Appellant.

Supreme Court  
No. CR-86-0054-AP

Maricopa County  
Superior Court  
No. CR-144541A

O P I N I O N

**FILED**

MAY 9 1988

DAVID H. GILL  
CLERK SUPREME COURT  
BY

APPEAL FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Honorable Peter D'Angelo, Judge

AFFIRMED

Robert K. Corbin, The Attorney General  
by William J. Schafer III, Chief Counsel  
Galen H. Wilkes, Assistant Attorney General  
Attorneys for Appellee

Phoenix

Ross P. Lee, Former Maricopa County Public Defender  
by James H. Kemper, Deputy Public Defender  
Attorneys for Appellant

Phoenix

L I V E R M O R E, Judge

In *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), the court held it to be a denial of equal protection for a prosecutor to use his peremptory challenges to exclude jurors on the basis of defendant's race. In *State v. Holder*, 155 Ariz. \_\_\_, 745 P.2d 141 (1987), we held that a potential Batson error must be raised at trial, or it is waived. We are now required to determine when objection must be made. In this case, the first objection was made not at the time that peremptory strikes were exercised but the next day after the jury had been impanelled and all the stricken jurors excused. We hold this objection to be untimely and hence a waiver of the issue. Consequently, we affirm.

Batson does not forbid the use of peremptory challenges against jurors of defendant's race. Rather it forbids such a challenge because they are of defendant's race. When it appears that the forbidden purpose is being achieved, the prosecutor is required to come forward with a neutral explanation for the challenge. Implicit in this is that where no such explanation is forthcoming, the challenged jurors must be allowed to sit. When no objection is made until after the challenged jurors have been excused, the possibility for an immediate remedy for unconstitutional action has been lost. To allow a defendant to permit an error to go unrectified and then, as here, claim the right to a mistrial or a new trial if he is convicted violates the contemporaneous objection rule and waives the issue for purposes of appeal. *Government of Virgin Islands v. Forte*, 806 F.2d 73 (3d Cir. 1986). See generally *State v. Holder*, 155 Ariz.

\_\_\_\_\_, 745 P.2d 141 (1987); People v. Holder, 153 Ill. App. 3d 884, 106 Ill. Dec. 700, 506 N.E.2d 407 (1987).<sup>1/</sup>

Affirmed.

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JOSEPH M. LIVERMORE, Judge

CONCURRING:

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STANLEY G. FELDMAN, Vice Chief Justice

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JAMES DUKE CAMERON, Justice

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WILLIAM A. HOLOHAN, Justice

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JAMES MOELLER, Justice

Chief Justice Frank X. Gordon, Jr. did not participate in this decision; pursuant to Ariz. Const. art. 6, § 3, Judge Joseph M. Livermore, Court of Appeals, Division Two, was designated to sit in his stead.

<sup>1/</sup> In United States v. Thompson, 827 F.2d 1254 (9th Cir. 1987), the court held timely an objection made after the challenged jurors had been excused. To the extent that this ruling was based on the proposition that the facts justifying the objection may not have been known until then, it has no application to this case. To the extent that the ruling was based on the absence of prejudice to the government because it was free to retry the defendant, we respectfully reject it. Because the government is always free to retry one who has his conviction overturned for procedural errors, the Thompson rule would effectively eviscerate the contemporaneous objection rule and would allow all errors to be raised for the first time on appeal.

No. \_\_\_\_\_

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

RAFEEQ QADEER SALAHUDDIN — PETITIONER  
(Your Name)

VS.  
DAVIN SHINN, DIRECTOR,  
ARIZONA DEPARTMENT OF COR. ET AL — RESPONDENT(S)

**PROOF OF SERVICE**

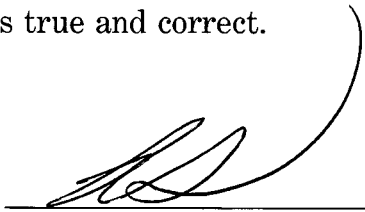
I, RAFEEQ QADEER SALAHUDDIN, do swear or declare that on this date,  
June 01, 2020, as required by Supreme Court Rule 29 I have  
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*  
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding  
or that party's counsel, and on every other person required to be served, by depositing  
an envelope containing the above documents in the United States mail properly addressed  
to each of them and with first-class postage prepaid, or by delivery to a third-party  
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Office of the Attorney General of Arizona  
2005 N. Central Ave.  
Phoenix, Arizona 85004

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 01, 2020

  
\_\_\_\_\_  
(Signature)