

JUN 18 2020

OFFICE OF THE CLERK

20-5698
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Adrian Hernandez — PETITIONER
(Your Name)

Warden Bruno Stolc ^{vs.}
David Shinn et al. — RESPONDENT(S)
Mark Brnovich Attorney General

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S Court of Appeals Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Adrian Hernandez
(Your Name)

1752 E. Arica Rd
(Address)

Eloy, Az, 85131
(City, State, Zip Code)

520-464-3800
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- A. Is a petitioner denied a fair trial when a juror states she can not be impartial but is still allowed to sit on petitioner's jury anyways?
- B. Is counsel ineffective if he does not raise the fact that a petitioner was denied a fair trial by a partial juror?
- C. Is evidence newly discovered if the evidence was missed by trial Appellate and PCR Counsel thus exceeding any procedural default or untimeliness?

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A Post conviction filing first filing

APPENDIX B Second Post conviction filing

APPENDIX C Petition for review Court of Appeals

APPENDIX D Habeas Corpus Denial and Magistrates Report and Recommendations

APPENDIX E 9th Circuit COA denial

APPENDIX F 9th Circuit reconsideration denial for COA

APPENDIX G Record of partial juror on defendants trial

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
Strickland v. Washington 466 U.S. ct. (1984)	4
Dyes v. Calderon 151 F.3d 970, 973 (9th Cir. 1998)	4
Harris v. Housewright, 697 F.2d 202 (1982)	5
Miller-EL v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029 (2003)	6
Slack v. McDaniel 529 U.S. 473 (2000)	6
U.S. v. Gonzales, 214 F.3d 109 (9th Cir. 2000)	7

STATUTES AND RULES

28 USC § 2254	3
28 USC § 2254 (d)(1)(d)(2)	

OTHER

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

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 E 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 D 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 Superior Court court appears at Appendix A,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 10/26/2017. 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

United States Constitution, Amendment V:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice 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

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.

United States Constitution, Amendment XIV § 1

All persons born or naturalized in the United States and subjected 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 privilege of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

The right of a state prisoner to seek federal habeas corpus relief is guaranteed in 28 U.S.C. § 2254. The standard for relief under AEDPA is set forth in 28 U.S.C. § 2254(d)(1)(d)(2).

STATEMENT OF THE CASE

The primary basics of our criminal justice system is to assure that a criminal defendant receives a fair trial by an impartial jury and that he or she receives the effective assistance of counsel to his defense see United States v. Nell 626 F.2d 1223, 1228-29 (5th Cir. 1976) and Strickland v. Washington 466 U.S. 668 S.Ct. (1984).

This court has held that due process is violated if a juror is seated on a criminal defendants case that is partial. The Sixth Amendment guarantees Criminal defendants a verdict by an impartial jury. Dyes v. Calderon, 151 F.3d 970, 973 (9th Cir. 1998). The bias or prejudice of even a single juror is enough to violate that guarantee. Accordingly the presence of a biased juror cannot be harmless; the error requires a new trial without a showing of actual prejudice.

FACTS OF CASE:

On November 5th 2009, the state filed an indictment in Maricopa County Superior Court charging the defendant with 1 count first degree burglary, 6 counts of kidnapping 3 of which was crimes against children, 3 counts of armed Robbery and 1 count of misconduct involving weapons a class 4 felony. The state dismissed the misconduct involving weapons charge. As a result of a jury trial the jury found the defendant guilty on all counts and the court sentence the defendant to a prison term of 37 years. After sentencing the defendant filed a timely notice of appeal and the Court of Appeals affirmed the conviction on February 14, 2012. A timely notice of post conviction relief was filed and the defendant was appointed PCR Counsel who filed a notice of completion and claimed to have no colorable claims to raise on the defendants behalf. The defendant then had help filing a pro per petition. Some time past and the defendant had help with a second review of the record and discovered newly discovered evidence and filed a second successive PCR however the court rejected the PCR and never appointed counsel to litigate the issue and deemed the filing untimely. The defendant then filed review in the Court of Appeals and that court granted review but denied relief on October 26, 2017. The defendant then filed for a writ of habeas corpus and the Arizona district court denied relief as well as a certificate of appealability. The defendant then requested a COA certificate of appealability from the 9th Circuit Court of Appeals.

that Court denied his request and rehearing was denied on March 19 2020. The defendant now submits his writ of certiorari.

1 Pertinent Facts

In the early morning of October 28th 2009 the petitioner and an accomplice forcibly entered into a residence, armed with semi-automatic handguns with intent to burglarize the house. Inside the house were three adults Leyva, Peralta and Martinez and three minor children. Once inside the house the defendant and the accomplice forced all the occupants into one room and took turns guarding the occupants at gun point. The defendant and the accomplice took beer and a playstation 3 from the residence and fled the scene in a SUV vehicle. The defendant was arrested shortly thereafter and was identified as one of the men who entered the home and restrained the victims. The defendant was later questioned by police, and later admitted to participating in the burglary but was under duress and was forced to do so at gun point by his accomplice.

2 INEFFECTIVE ASSISTANCE OF COUNSEL AND NEWLY DISCOVERED EVIDENCE

When the defendant had help with his case from another inmate at the prison facility he discovered that he had newly discovered evidence. During the defendants trial it was discovered juror number 40 expressed to the Court that her ability to be fair and impartial was affected because of a past experience see Appendix. This Juror was never struck for cause by trial Counsel; Appellate or PCR Counsel also failed to raise this claim during Appeal and Post conviction. The defendant was thus denied the right to effective assistance of Counsel on all stages of his case. See RT pg. 83, 93 on March 15th 2010. see Harris v. Housewright, 697 F.2d 1482 (1982). So the defendant brought this issue to the Courts attention in a successive PCR petition under newly discovered evidence Rule 32.1(e). The Court rejected the defendants filing as not newly discovered evidence and never appointed Counsel to litigate the claim. The defendant presents three questions of law (1) Is the Petitioner denied a fair trial when a Juror states they cannot be fair and impartial and is allowed to sit on the jury any way? (2) Is Counsel ineffective if he does not raise the fact that a petitioner was denied a fair trial by a partial Juror? (3) Is evidence newly discovered if the evidence was missed by trial, Appellate and PCR Counsel thus excusing any procedural defaults and untimely filings?

Denial of Certificate of Appealability

In Miller-EL v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029 (2003), this Court clarified the standard of issuance of a Certificate of Appealability [hereafter "CoA"]: a prisoner seeking a CoA need only demonstrate a substantial showing of the denial of a constitutional right. "A petitioner satisfies this standard by demonstrating that jurist of reason could disagree with the District Court's resolution of his constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further. We do not require petitioners to prove before the issuance of a CoA that some jurist would grant the petition for writ of habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the CoA has been granted and the case has received full consideration that Petitioner will not prevail. Id 123 S.Ct. at 1034, citing Slack v. McDonald, 529 U.S. 473 (2000).

In this present case, the District Court and the Court of Appeals denied the Petitioner a Certificate of Appealability, despite the overwhelming evidence the Petitioner presented in his application for a Certificate of Appealability and his rebuttal of presumption of correctness in the State and District Courts. Petitioner presented clear evidence of ineffective assistance of counsel at all stages of trial appeal and PCR proceedings, and missed the fact that the defendant was denied a fair trial with a partial jury. None of the Courts properly analyzed the merits of the defendant's constitutional claims or conducted an evidentiary hearing. This Court should issue a CoA and grant Certiorari with full briefing in the interest of justice and for the concern of the public for the reasons stated in this Writ of Certiorari.

The defendant in this matter was denied his right to the effective assistance of counsel and a trial by a fair jury. The defendant is requesting that this Court grant Certiorari. The defendant is not procedurally barred because it cannot be the defendant's fault that counsel failed to raise meritorious claims at trial, appeal and his first PCR proceedings.

REASONS FOR GRANTING THE PETITION

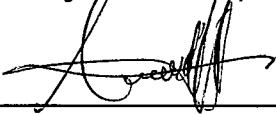
A. To Peter Courts and Lawyers for allowing partial Jurors to Serve as Jurors on a Criminal defendants Case.

As stated before the Sixth Amendment guarantees Criminal defendants a verdict by an impartial jury. see US v. Gonzalez, 214 F.3d 1109, 9th Cir(2000). A partial Juror is enough to violate due process and deprive a defendant of a fair trial. The 9th Circuit never gave the defendant a fair opportunity to litigate his Constitutional claim. The District Court denied the defendant as untimely under the AEDPA standard. However the defendant showed a clear reason for any untimely filing in the State Courts as well as the cause and prejudice standard. Since the first PCR is a continuation of the second untimeliness does not apply. A partial Juror on the defendants case is a clear violation of due process and this court should grant Certiorari and remand for a new trial for the interest of justice. Appendix G shows the clear violation on the Court record.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 6/18/20